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Petition.

Filed September 17, 1924.

IN CHANCERY OF NEW JERSEY.

To his Honor, EDWIN ROBERT WALKER,
Chancellor of the State of New Jersey.

The petition of Owen Cummings, of the City of Newark, in the county of Essex and State of New Jersey, respectfully shows:

1. Your petitioner was lawfully joined in the bonds of matrimony to his present wife, Sadie Cummings, the defendant in this suit, on the 15th day of November, 1917, by the Rev. Father O'-Neill, a Minister of the Gospel at Newark, in the State of New Jersey.

2. Defendant, since her marriage to your petitioner, and on the 7th day of August, 1924, and on the 24th day of August, 1924, committed adultery with one Frank Grimm, at or in a lot on Hornblower Avenue, opposite Academy Street, in the Town of Belleville, New Jersey, and on Washington Street, about one hundred feet south of John Street, Belleville, New Jersey, respectively.

3. Petitioner and defendant were bona fide residents of the State of New Jersey when this cause of action arose, and they have ever since continued to be bona fide residents of this State, down to the time of the commencement of this action, residing at Newark and Belleville, respectively, in the County of Essex.

4. One child was born of the marriage afore-

said, to wit, Olive Marie Cummings, age three years, who is in the custody of the defendant, who is unfit to have the custody of said child; and that the welfare of said child requires that she should be removed from her custody and restored to that of your petitioner.

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

And your petitioner will ever pray, &c.,

CHILD, YOUNG & HOWE,
Solicitors of Petitioner.

State of New Jersey, }
County of Essex, } ss.:

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

OWEN CUMMINGS.

Sworn and subscribed before me
at Newark, N. J., this 17th day
of September, 1924.

Ethel I. Jacobus,
A Notary Public of New Jersey.

Answer and Cross Petition.

Filed October 23, 1924.

IN CHANCERY OF NEW JERSEY.

Between OWEN CUMMINGS, Petitioner, and SADIE CUMMINGS, Defendant.	On Petition. Answer and Cross Petition.

The answer of Sadie Cummings, the defendant, to the petition of Owen Cummings, petitioner.

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

2. This defendant denies that since her said marriage and on the 7th day of August, 1924 and on the 24th day of August, 1924, she committed adultery with one Frank Grimm at Belleville as in said petition is alleged or with any other person at any other time or place, but to the contrary this defendant says she has always been true to her marriage vows and has faithfully observed her obligations as wife of the petitioner.

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

4. This defendant admits that one child was

born of the said petitioner and defendant, to wit: Olive Marie Cummings, age three years, who is in the custody of this defendant, but she denies that she is unfit to have the care, custody and education of said child.

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

SADIE CUMMINGS.
ISAAC FLEISCHMAN,
Sol. for and of Counsel with Deft.

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

1. The petitioner (cross defendant) and defendant (cross petitioner) cohabited at various places in the City of Newark with some interruptions as hereinafter stated from the date of their said marriage until on or about the 9th day of April, 1923 when the defendant (cross petitioner) was compelled to separate from him finally because of his extreme cruelty to her as hereinafter set forth. Almost from the beginning of her marriage life defendant (cross petitioner) suffered from the violent ungovernable and ill temper of her husband, especially when he was under the influence of liquor, in the use of which he frequently indulged. These attacks continued at intervals from December, 1916 until July 1918 when the defendant entered into the service of the United States Army and was abroad returning to Newark to live with the defendant (cross petitioner) in July 1919. That shortly after the return of said petitioner (cross defendant) this

defendant (cross petitioner) became infected with a disease which caused serious outbreaks and sores to come upon her hands and various parts of her body. That this infection or disease was communicated to her by her said husband, but that this defendant (cross petitioner) did not know at that time and was not informed until recently the nature of the infection and did not know until recently that this infection was a veneral disease communicated to her by her said husband. That in August 1921 the petitioner (cross defendant) seized a gas plate which the defendant (cross petitioner) was cooking a meal for her said husband and herself, wrenched the same loose from its fastenings and threw same down the steps. Shortly thereafter during the night the petitioner (cross defendant) dismantled one of the beds in the apartment occupied by then, cursed this defendant (cross petitioner) called her vile names and threw the mattress down the back stairs. Frequently when ever the impulse seized him, the petitioner (cross defendant) without cause would punch this defendant (cross petitioner) causing bruises to appear upon her arms, neck, face and shoulders and body. He frequently threw dishes, plates, pots and other household utensils upon which he could get hold at this defendant (cross petitioner) causing large and painful hurts and bruises to her, one such occasion occurring in October, 1921. In August, 1919 this defendant (cross petitioner) prepared a lunch consisting in part of some cold tea for the petitioner (cross defendant) to take with him to his place of employment. The petitioner (cross defendant) seized the bottle which was made of glass, threw it down upon the floor upon which

the defendant (cross petitioner) was then kneeling, scrubbing same. The force of the blow was such that the bottle broke into pieces, the glass was scattered over the floor and the contents spattered over this defendant (cross petitioner). In April, 1923 while this petitioner was engaged in wiping up the floor cleaning their home, the petitioner (cross defendant) without warning came from behind this defendant (cross petitioner) and smashed a plate over her head causing the plate to break in pieces and at the same time punched this defendant (cross petitioner) kicked her and told her if she did not leave him he would kill her, that he would not live with her any longer. That assault was the last of a long series of assaults upon this defendant (cross petitioner) by her said husband and threats to take her life and to get rid of her and this defendant (cross petitioner) then left her said husband, taking their child with her. That shortly after this defendant (cross petitioner) left her said husband, the said petitioner (cross defendant) informed the mother of this defendant (cross petitioner) that he would kill this defendant (cross petitioner) if she sought to return to him, at the same time using vile language of and concerning this defendant (cross petitioner) and accusing this defendant (cross petitioner) of unchastity and immorality. The following language was commonly used by the petitioner (cross defendant) to this defendant (cross petitioner) up to and including the date when this defendant (cross petitioner) left her said husband, some of the language being used to her upon the day she left her said husband: you are nothing but a whore; you are only good for niggers; you are nothing but a cock sucker; you know you are, aren't you. Your mother is

just as bad as you are. You are a son of a bitch; you go out and pick up niggers.

2. Defendant (cross petitioner) is a bona fide resident of this State, having her permanent home at Belleville, Essex County, New Jersey, when this cause of action arose as aforesaid and has ever since continued to be such resident down to the time of the commencement of this suit, residing continuously in the City of Newark or the Town of Belleville, aforesaid.

3. One child was born of the said marriage, to wit: Olive Cummings, three years of age. That by reason of the habits of said petitioner (cross defendant) and his habitual violence and his ungovernable temper towards all members of his household, he is unfit to have the charge and custody of the said infant child.

4. Defendant's (cross petitioner) maiden name was Sadie McDermott and she has no means of support except from her own exertions. Petitioner (cross defendant) possesses real and personal property of the value of Eighteen Thousand Dollars and above and is in receipt of steady income from the City of Newark for his services as an employee in the Fire Department.

5. This defendant (cross petitioner) fears that if she were to return to her said husband, her life would be continuedly endangered and her health and the health of her said daughter seriously and permanently impaired.

6. This defendant (cross petitioner) prays that

she may be divorced from the bonds of matrimony from her said husband for the causes aforesaid and that she may be awarded the custody of their said child and that the petitioner (cross defendant) may be compelled by the decree of this Honorable Court to support her and her said child, and that she have such further or other relief as may be just.

And this defendant (cross petitioner) will ever pray etc.

SADIE CUMMINGS.
ISAAC FLEISCHMAN,
Sol. for and of Counsel with
Def't (cross petitioner).

State of New Jersey, }
County of Essex, } ss.:

Sadie Cummings of full age being duly sworn according to law doth depose and say that she is the defendant (cross petitioner) named in the foregoing petition. That her said petition is not made by any collusion between her and the said petitioner (cross defendant), but in truth and good faith for the causes set forth in said petition.

SADIE CUMMINGS.

Sworn to and subscribed before me }
this 17 day of October, 1924. }
Leo L. Weinberg,
An Attorney at
Law of N. J.

Answer to Counterclaim.

Filed November 1, 1924.

IN CHANCERY OF NEW JERSEY.

Between OWEN CUMMINGS, Petitioner, and SADIE CUMMINGS, Defendant.	On Petition for Divorce. Answer to Counterclaim.

The answer of Owen Cummings to the counterclaim exhibited against him by the defendant, Sadie Cummings:

1. He admits the allegations of paragraph 1 as to his cohabitation with the defendant in the City of Newark until on or about the ninth of April, 1923, but denies the remaining allegations of paragraph 1.

2. He admits the allegations of paragraph 2 of the counterclaim.

3. He admits the allegation that one child was born of the marriage but denies the remaining allegations of paragraph 3.

4. As to the allegations of paragraph 4 of the counterclaim with reference to the defendant's ability to support herself he has not sufficient knowledge, information or belief to reply thereto; as to the allegations in paragraph 4 as to his being the owner of any real or personal property to the

value stated he denies it; as to the allegations as to his employment he admits that part of the allegation.

5. He denies the allegations of paragraph 5 of the counterclaim.

6. He denies that the defendant and counterclaimant is entitled to the relief prayed for against this petitioner and prays that said counterclaim may be dismissed.

OWEN CUMMINGS,
Petitioner and Defendant to counterclaim.

CHILD, YOUNG & HOWE,
Solicitor for and of Counsel with Petitioner.

Amended Answer and Cross Petition.

Filed April 3, 1925.

IN CHANCERY OF NEW JERSEY.

Between OWEN CUMMINGS, Petitioner, and SADIE CUMMINGS, Defendant.	On Petition. Amended Answer and Cross Petition.

The answer of Sadie Cummings, the defendant, to the petition of Owen Cummings, petitioner.

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

2. This defendant denies that since her said marriage and on the 7th day of August, 1924 and on the 24th day of August, 1924, she committed adultery with one Frank Grimm at Belleville as in said petition is alleged or with any other person at any other time or place, but to the contrary this defendant says that she has always been true to her marriage vows and has faithfully observed her obligations as wife of the petitioner.

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

4. This defendant admits that one child was born of the said petitioner and defendant, to wit,

Olive Marie Cummings, age three years, who is in the custody of this defendant, but she denies that she is unfit to have the care, custody and education of said child.

SEPARATE DEFENSE.

The defendant further answering the petition says:

1. The petitioner and defendant cohabited at various places in the City of Newark with some interruptions as hereinafter stated from the date of their said marriage until on or about the 9th day of April, 1923 when the defendant was compelled to separate from him finally because of his extreme cruelty to her as hereinafter set forth. Almost from the beginning of her marriage life defendant suffered from the violent, ungovernable and ill temper of her husband, especially when he was under the influence of liquor, in the use of which he frequently indulged. These attacks continued at intervals from December 1916 until July 1918 when the petitioner entered into the service of the United States Army and was abroad returning to Newark to live with the defendant in July 1919.

That in August 1921 the petitioner seized a gas plate upon which the defendant was cooking a meal for her said husband and herself, wrenched the same loose from its fastenings and threw same down the steps. Shortly thereafter during the night the petitioner dismantled one of the beds in the apartment occupied by them, cursed this defendant, called her vile names and threw the mattress down the back stairs. Frequently whenever the impulse seized him, the petitioner without

cause would punch this defendant causing bruises to appear upon her arms, neck, face and shoulders and body. He frequently threw dishes, plates, pots and other household utensils upon which he could get hold at this defendant causing large and painful hurts and bruises to her, one such occasion occurring in October 1921. In August 1919 this defendant prepared a lunch consisting in part of some cold tea for the petitioner to take with him to his place of employment. The petitioner seized the bottle which was made of glass, threw it down upon the floor upon which the defendant was kneeling, then scrubbing same. The force of the blow was such that the bottle broke into pieces, the glass was scattered over the floor and the contents spattered over this defendant. In April, 1923 while this defendant was engaged in wiping up the floor cleaning their home, the petitioner without warning came from behind this defendant and smashed a plate over her head causing the plate to break in pieces and at the same time punched this defendant, kicked her and told her if she did not leave him he would kill her, that he would not live with her any longer. That assault was the last of a long series of assaults upon this defendant by her said husband and threats to take her life and to get rid of her and this defendant then left her said husband, taking their child with her. That shortly after this this defendant left her said husband, the said petitioner informed the mother of this defendant that he would kill this defendant if she sought to return to him, at the same time using vile language of and concerning this defendant and accusing this defendant of unchastity and immorality. The following language was commonly used by the petitioner to this defendant up to and in-

cluding the date when this defendant left her said husband. Some of the language being used to her upon the day when she left her said husband: "You are nothing but a whore; you are only good for niggers"; "you are nothing but a cock sucker"; "you know you are aren't you?"; "Your mother is just as bad as you are? You are a son of a bitch"; "You go out and pick up niggers."

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

SADIE CUMMINGS.

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

1. The petitioner and defendant cohabited at various places in the City of Newark with some interruptions as hereinafter stated from the date of their said marriage until on or about the 9th day of April, 1923 when the defendant was compelled to separate from him finally because of his extreme cruelty to her as hereinafter set forth. Almost from the beginning of her married life defendant suffered from the violent, ungovernable and ill temper of her husband, especially when he was under the influence of liquor, in the use of which he frequently indulged. These attacks continued at intervals from December 1916 until July 1918 when the petitioner entered into the service of the United States Army and was abroad returning to Newark to live with the defendant in July 1919.

That in August 1921 the petitioner seized a gas plate from which the defendant was cooking a meal

for her said husband and herself, wrenched the same loose from its fastenings and threw same down the steps. Shortly thereafter during the night the petitioner dismantled one of the beds in the apartment occupied by them, cursed this defendant, called her vile names and threw the mattress down the back stairs. Frequently whenever the impulse seized him the petitioner without cause would punch this defendant causing bruises to appear upon her arms, neck, face and shoulders and body. He frequently threw dishes, plates, pots and other household utensils upon which he could get hold at this defendant causing large and painful hurts and bruises to her, one such occasion occurring in October 1921. In August 1919 this defendant prepared a lunch consisting in part of some cold tea for the petitioner to take with him to his place of employment. The petitioner seized the bottle which was made of glass, threw it down upon the floor upon which the defendant was kneeling, then scrubbing same. The force of the blow was such that the bottle broke into pieces, the glass was scattered over the floor and the contents spattered over this defendant. In April 1923 while this defendant was engaged in wiping up the floor cleaning their home, the petitioner without warning came from behind this defendant and smashed a plate over her head causing the plate to break in pieces and at the same time punched this defendant, kicked her and told her if she did not leave him he would kill her, that he would not live with her any longer. That assault was the last of a long series of assaults upon this defendant by her said husband and threats to take her life and to get rid of her and this defendant then

left her said husband, taking their child with her. That shortly after this defendant left her said husband, the said petitioner informed the mother of this defendant that he would kill this defendant if she sought to return to him, at the same time using vile language of and concerning this defendant and accusing this defendant of unchastity and immorality. The following language was commonly used by the petitioner to this defendant up to and including the date when this defendant left her said husband, some of the language being used to her upon the day she left her said husband: "You are nothing but a whore"; "You are only good for niggers"; "You are nothing but a cock sucker"; "You know you are, aren't you"; "Your mother is just as bad as you are"; "You are a son of a bitch"; "You go out and pick up niggers."

2. Defendant is a bona fide resident of this State, having her permanent home in Belleville, Essex County, New Jersey, when this cause of action arose as aforesaid and has ever since continued to be such resident down to the time of the commencement of this suit, residing continuously in the city of Newark or the Town of Belleville, aforesaid.

3. One child was born of the said marriage, to wit, Olive Marie Cummings, three years of age. That by reason of the habits of said petitioner and his habitual violence and his ungovernable temper towards all members of his household, he is unfit to have the charge and custody of the said infant child.

Amended Answer and Cross Petition.

4. Defendant's maiden name was Sadie McDermott and she has no means of support except from her own exertions. Petitioner possesses real and personal property of the value of eighteen thousand dollars and above and is in receipt of steady income from the city of Newark for his services as an employee in the Fire Department.

5. This defendant fears that if she were to return to her said husband, her life would be continuedly endangered and her health and the health of her said daughter seriously and permanently impaired.

6. More than six months has elapsed since the date of the last act of cruelty complained of.

7. This defendant prays that she may be divorced from the bonds of matrimony from her said husband for the causes aforesaid and that she may be awarded the custody of their said child, and that the petitioner may be compelled by the decree of this Honorable Court to support her and her said child, and that she may have such further or other relief as may be just.

And this defendant will ever pray, &c.

ISAAC FLEISCHMAN,
Solr. and of Counsel with Defendant.

Amended Answer and Cross Petition.

State of New Jersey, }
County of Essex, } ss.:

Sadie Cummings, of full age being duly sworn according to law upon her oath deposes and says:

I am the defendant-cross petitioner named in the foregoing cross petition. My said cross petition is not made by any collusion between the petitioner-defendant and myself, but in truth and good faith for the causes set forth in said cross petition.

SADIE CUMMINGS.

Sworn and subscribed to before me }
this 20th day of October, 1924. }
Scottie Basile,
Notary Public, N. J.

Amended Answer and Counterclaim.

Filed April , 1925.

IN CHANCERY OF NEW JERSEY.

Between OWEN CUMMINGS, Petitioner, and SADIE CUMMINGS, Defendant.	On Petition. Amended Answer and Counterclaim

The answer of Sadie Cummings, the defendant, to the petition of Owen Cummings, petitioner.

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

2. This defendant denies that since her said marriage and on the 7th day of August, 1924 and on the 24th day of August, 1924, she committed adultery with one Frank Grimm at Belleville as in said petition is alleged or with any other person at any other time or place, but to the contrary this defendant says that she has always been true to her marriage vows and has faithfully observed her obligations as wife of the petitioner.

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

4. This defendant admits that one child was

born of the said petitioner and defendant, to wit, Olive Marie Cummings, age three years, who is in the custody of this defendant, but she denies that she is unfit to have the care, custody and education of said child.

SEPARATE DEFENSE.

The defendant further answering the petition says:

1. The petitioner and defendant cohabited at various places in the City of Newark with some interruptions as hereinafter stated from the date of their said marriage until on or about the 9th day of April, 1923, when the defendant was compelled to separate from him finally because of his extreme cruelty to her as hereinafter set forth. Almost from the beginning of her marriage life defendant suffered from the violent, ungovernable and ill temper of her husband, especially when he was under the infiuence of liquor, in the use of which he frequently indulged. These attacks continued at intervals from December 1916 until July 1918 when the petitioner entered into the service of the United States Army and was abroad returning to Newark to live with the defendant in July 1919.

That in August 1921 the petitioner seized a gas plate upon which the defendant was cooking a meal for her said husband and herself, wrenched the same loose from its fastenings and threw same down the steps. Shortly thereafter during the night the petitioner dismantled one of the beds in the apartment occupied by them, cursed this defendant, called her vile names and threw the mattress down the back stairs. Frequently whenever

the impulse seized him the petitioner without cause would punch this defendant causing bruises to appear upon her arms, neck, face and shoulders and body. He frequently threw dishes, plates, pots and other household utensils upon which he could get hold at this defendant causing large and painful hurts and bruises to her, one such occasion occuring in October, 1921. In August, 1919 this defendant prepared a lunch consisting in part of some cold tea for the petitioner to take with him to his place of employment. The petitioner seized the bottle which was made of glass, threw it down upon the floor upon which the defendant was kneeling, then scrubbing same. The force of the blow was such that the bottle broke into pieces, the glass was scattered over the floor and the contents spattered over this defendant. In April, 1923 while this defendant was engaged in wiping up the floor cleaning their home, the petitioner without warning came from behind this defendant and smashed a plate over her head causing the plate to break in pieces and at the same time punched this defendant, kicked her and told her if she did not leave him he would kill her, that he would not live with her any longer. That assault was the last of a long series of assaults upon this defendant by her said husband and threats to take her life to get rid of her and this defendant then left her said husband, taking their child with her. That shortly after this this defendant left her said husband, the said petitioner informed the mother of this defendant that he would kill this defendant if she sought to return to him, at the same time using vile language of and concerning this defendant and accusing this defendant of unchastity and immorality. The following language was commonly used

by the petitioner to this defendant up to and including the date when this defendant left her said husband. Some of the language being used to her upon the day she left her said husband: "You are nothing but a whore; you are only good for niggers"; "you are nothing but a cock sucker"; "you know you are aren't you?" "Your mother is just as bad as you are?" "You are a son of a bitch"; "You go out and pick up niggers."

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

SADIE CUMMINGS.
ISAAC FLEISCHMAN,
Solr. for and of Counsel with Deft.

And this defendant by way of counterclaim exhibited against petitioner says:

1. The petitioner and defendant cohabited at various placed in the City of Newark with some interruptions as hereinafter stated from the date of their said marriage until on or about the 9th day of April, 1923, when the defendant was compelled to separate from him finally because of his extreme cruelty to her as hereinafter set forth. Almost from the beginning of her married life defendant suffered from the violent, ungovernable and ill temper of her husband, especially when he was under the influence of liquor, in the use of which he frequently indulged. These attacks continued at intervals from December 1916 until July 1918 when the petitioner entered the service of the United States Army and was abroad returning to Newark to live with the defendant in July 1919.

That in August 1921 the petitioner seized a gas plate upon which the defendant was cooking a meal for her said husband and herself, wrenched the same loose from its fastenings and threw same down the steps. Shortly thereafter during the night the petitioner dismantled one of the beds in the apartment occupied by them, cursed this defendant, called her vile names and threw the mattress down the back stairs. Frequently whenever the impulse seized him, the petitioner without cause would punch this defendant causing bruises to appear upon her arms, neck, face and shoulders and body. He frequently threw dishes, plates, pots and other household utensils upon which he could get hold at this defendant causing large and painful hurts and bruises to her, one such occasion occurring in October 1921. In August 1919 this defendant prepared a lunch consisting in part of some cold tea for the petitioner to take with him to his place of employment. The petitioner seized the bottle which was made of glass, threw it down upon the floor upon which the defendant was kneeling then scrubbing same. The force of the blow was such that the bottle broke into pieces, the glass was scattered over the floor and the contents spattered over this defendant.

In April 1923 while this defendant was engaged in wiping up the floor cleaning their home, the petitioner without warning came from behind this defendant and smashed a plate over her head causing the plate to break in pieces and at the same time punched this defendant, kicked her and told her if she did not leave him he would kill her, that he would not live with her any longer. That assault was the last of a long series of assaults upon this defendant by her said husband and threats to

take her life and to get rid of her and this defendant then left her said husband, taking their child with her. That shortly after this defendant left her said husband, the said petitioner informed the mother of this defendant that he would kill this defendant if she sought to return to him, at the same time using vile language of and concerning this defendant and accusing this defendant of unchastity and immorality. The following language was commonly used by the petitioner to this defendant up to and including the date when this defendant left her said husband, some of the language being used to her upon the date she left her said husband: "You are nothing but a whore"; "You are only good for niggers"; "You are nothing but a cock sucker"; "You know you are, aren't you"; "Your mother is just as bad as you are"; "You are a son of a bitch"; "You go out and pick up niggers."

2. Defendant is a bona fide resident of this State, having her permanent home in Belleville, Essex County, New Jersey, when this cause of action arose as aforesaid and has ever since continued to be such resident down to the time of the commencement of this suit, residing continuously in the City of Newark or the Town of Belleville, aforesaid. Defendant has been a bona fide resident of this State when this cause of action arose and for two years next preceding the commencement of this suit.

3. One child was born of the said marriage, to wit, Olive Marie Cummings, three years of age. That by reason of the habits of said petitioner and

his habitual violence and his ungovernable temper towards all members of his household, he is unfit to have the charge and custody of the said infant child.

4. Defendant's maiden name was Sadie McDermott and she has no means of support except from her own exertions. Petitioner possesses real and personal property of the value of eighteen thousand dollars and above and is in receipt of steady income from the City of Newark for his services as an employee in the Fire Department.

5. This defendant fears that if she were to return to her said husband, her life would be continuedly endangered and her health and the health of her said daughter seriously and permanently impaired.

6. More than six months has elapsed since the date of the last act of cruelty complained of.

7. This defendant prays that she may be divorced from the bonds of matrimony from her said husband for the causes aforesaid and that she may be awarded the custody of their said child, and that the petitioner may be compelled by the decree of this Honorable Court to support her and her said child, and that she have such further or other relief as may be just.

And this defendant will ever pray etc.

ISAAC FLEISCHMAN,
Solicitor and of Counsel with Defendant.

State of New Jersey, }
County of Essex, } ss.:

Sadie Cummings, of full age being duly sworn according to law upon her oath deposes and says:

I am the defendant-cross petitioner named in the foregoing counterclaim. My said counter claim is not made by any collusion between the petitioner-defendant and myself but in truth and good faith for the causes set forth in said cross petition.

SADIE CUMMINGS.

Sworn to and subscribed before me }
this 4 day of May, 1925. }

Genevieve Seaman,
Notary Public of N. J.

Reply to Amended Answer and Answer to Counterclaim.

Filed April 19, 1925.

IN CHANCERY OF NEW JERSEY.

Between OWEN CUMMINGS, Petitioner, and SADIE CUMMINGS, Defendant.	On Petition for Divorce. Reply to Amended Answer and Answer to Counterclaim.

The reply of Owen Cummings, the petitioner, to the amended answer of Sadie Cummings, the defendant:

1. This petitioner denies each and every one of the allegations of paragraph one of the separate defense of the defendant.

The petitioner, answering the counterclaim of the defendant, says that:

1. He denies each and every one of the allegations of physical violence alleged in paragraph one of the counterclaim, and specifically denies that he, either at the times stated or at any other time, used to the petitioner, or to any other person in her presence, the vile and indecent language set out in said paragraph one.

2. Petitioner admits the allegations of paragraph two of the counterclaim.

3. Petitioner admits that one child was born

of the marriage with the defendant, but denies that he is unfit, by reason of his ungovernable temper or the ungovernable temper of other persons comprising the petitioner's household, to have the care and custody of said child.

4. Paragraph four is denied, except that petitioner admits that he is in receipt of wages from the City of Newark.

Petitioner denies that the defendant is entitled to the relief prayed for in the counterclaim filed by her .

CHILD, YOUNG & HOWE,
Solr. & of Counsel with Petr.

OWEN CUMMINGS,
Defendant.

Order Permitting Filing of Amended Petition.

Filed February 2, 1926.

IN CHANCERY OF NEW JERSEY.

Between OWEN CUMMINGS, Petitioner, and SADIE CUMMINGS, Defendant.	On Petition for Divorce. Order Permitting Filing of Amended Petition.

Application being made to the Court by Francis Child, of Child, Young & Howe, solicitors for the petitioner for an order permitting the petitioner to file an amended petition in the above entitled cause, alleging acts of adultery to have been committed by the defendant on July 26, 1925, August 28, 1925, August 30, 1925, September 19th and 20th, 1925, October 26, 1925, November 7, 1925, December 13, 1925, and January 10, 1926; and it appearing that due notice of this application has been given to the solicitor for the defendant;

It is, on this 2nd day of February, 1926, ORDERED that the petitioner have leave to file an amended petition for divorce alleging the acts of adultery above set forth in addition to the charge of adultery alleged to have been committed with one Frank Grimm on the 7th and 24th days of August, 1924.

And it is further ORDERED that the defendant

answer the said amended petition within ten days after service of a copy thereof and hereof.

E. R. WALKER,
C.

Respectfully advised,
JOHN H. BACKES,
V. C.

Amended Petition.

Filed February 2, 1926.

IN CHANCERY OF NEW JERSEY.

To his Honor, EDWIN ROBERT WALKER,
Chancellor of the State of New Jersey.

The amended petition of Owen Cummings, of the City of Newark, in the County of Essex and State of New Jersey, respectfully shows:

1. Your petitioner was lawfully joined in the bonds of matrimony to his present wife, Sadie Cummings, the defendant in this suit, on the 15th day of November, 1917, by the Reverend Father O'Neill, a minister of the Gospel, at Newark, in the State of New Jersey.

2. Defendant, since her marriage to your petitioner, and on the 7th day of August, 1924, and on the 24th day of August, 1924, committed adultery with one Frank Grimm at or in a lot on Hornblower Avenue, opposite Academy Street, in the Town of Belleville, New Jersey, and on Washington Street, about one hundred feet south of John Street, Belleville, New Jersey, respectively.

Amended Petition.

3. Defendant, since her marriage to your petitioner, and on the dates and at the places following committed adultery with one Harold Young: July 26, 1925, at 175 Washington Avenue, Belleville, N. J., between the hours of eight and nine o'clock P. M.; August 28, 1925, at 175 Washington Avenue, Belleville, N. J. between the hours of seven and ten o'clock P. M.; August 30, 1925, at 175 Washington Avenue, Belleville, N. J., between the hours of one and one-thirty A. M.; September 19 and 20, 1925, at 10 Washington Street, Belleville, N. J., between the hours of eleven-forty-five P. M. on September 19 and one o'clock A. M. on September 20; October 26, 1925, at 175 Washington Avenue, Belleville, N. J., between the hours of seven-thirty and ten-fifteen P. M.; November 7, 1925, at 175 Washington Avenue, Belleville, N. J., between the hours of eight-twenty and ten-thirty P. M.; December 13, 1925, at 10 Washington Street, Belleville, N. J., between the hours of eleven and twelve P. M.; January 10, 1926, at 175 Washington Avenue, Belleville, N. J., between the hours of six-thirty and eleven-thirty P. M.

4. Petitioner and defendant were bona fide residents of the State of New Jersey when this cause of action arose, and they have ever since continued to be bona fide residents of this State down to the time of the commencement of this action, residing at Newark and Belleville respectively, in the County of Essex.

5. One child was born of the marriage aforesaid, namely, Olive Marie Cummings, aged four years, who is in the custody of the defendant, who is unfit to have the custody of said child and the

welfare of said child requires that she should be removed from the custody of the defendant and restored to that of your petitioner.

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

And your petitioner will ever pray, etc.

CHILD, YOUNG & HOWE,
Solrs. of Petitioner.

State of New Jersey, }
County of Essex, } ss.:

Owen Cummings being duly sworn according to law upon his oath, deposes and says that I am the petitioner named in the foregoing amended petition; and that my said petition is not made by any collusion between me and the defendant, but in truth and good faith, for the causes set forth in the amended petition.

OWEN CUMMINGS.

Sworn and subscribed before me
at Newark, N. J., this 27th day
of January, 1926.

Ethel I. Jacobus,
A Notary Public of New Jersey.

Answer to Amended Petition and Counterclaim.

Filed February 10, 1926.

IN CHANCERY OF NEW JERSEY.

Between OWEN CUMMINGS, Petitioner, and SADIE CUMMINGS, Defendant.	On Petition, etc. Answer to Amended Petition and Counterclaim.

The answer of Sadie Cummings, the defendant, to the amended petition of Owen Cummings, petitioner.

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

2. This defendant denies that since her said marriage and on the dates mentioned in said amended petition or at any other date, she committed adultery with one Frank Grimm at Belleville as in said petition is alleged or with any other person at any other time or place, but to the contrary says that she has always been true to her marriage vows and has faithfully observed her obligations as wife of the petitioner.

3. This defendant denies that since her said marriage and on the date mentioned in the amended petition or at any other date, she committed adultery with one Harold Young as in said petition is alleged or with any other person at any

other time or place, but on the contrary this defendant says that she has always been true to her marriage vows and has faithfully observed her obligations as wife of the petitioner.

4. This defendant admits it to be true that she and the petitioner were bona fide residents of the State of New Jersey when this supposed cause of action arose as alleged in the petition.

5. This defendant admits that one child was born of the said petitioner and defendant, to wit, Olive Marie Cummings age three years who is in the custody of this defendant, but she denies that she is unfit to have the care, custody and education of said child.

SEPARATE DEFENSE.

The defendant further answer the petition says:

1. The petitioner and defendant cohabited at various places in the City of Newark with some interruptions as hereinafter stated from the date of their said marriage until on or about the 9th day of April 1923, when the said defendant was compelled to separate from him finally because of his extreme cruelty to her as hereinafter set forth. Almost from the beginning of her marriage life defendant suffered from the violent, ungovernable and ill temper of her husband, especially when he was under the influence of liquor, in the use of which he frequently indulged. These attacks continued at intervals from December 1916 until July 1918 when the petitioner entered into the service of the United States Army and was abroad, returning to Newark to live with the defendant in July 1919. The petitioner commonly used the fol-

lowing language to this defendant: "You are nothing but a whore; you are only good for niggers; you are nothing but a cock sucker; you know you are, aren't you; your mother is just as bad as you are; you are a son of a bitch; you go out and pick up niggers".

That in August 1921 the petitioner seized a gas plate upon which the defendant was cooking a meal for her said husband and herself, wrenched the same loose from its fastenings and threw same down the steps. Shortly thereafter during the night the petitioner dismantled one of the beds in the apartment occupied by them, cursed this defendant, called her vile names and threw the mattress down the back stairs. Frequently whenever the impulse seized him, the petitioner without cause would punch this defendant causing bruises to appear upon her arms, neck, face and shoulders and body. He frequently threw dishes, plates, pots and other household utensils upon which he could get hold of this defendant causing large and painful hurts and bruises to her, one such occasion occuring in October 1921. In August 1919 this defendant prepared a lunch consisting in part of some cold tea for the petitioner to take with him to his place of employment. The petitioner seized the bottle which was made of glass, threw it down upon the floor upon which the defendant was kneeling, then scrubbing same. The force of the blow was such that the bottle broke into pieces, the glass was scattered over the floor and the contents spattered over this defendant. In April 1923 while this defendant was engaged in wiping up the floor cleaning their house, the petitioner without warning came from behind this defendant and smashed a plate over her head causing the plate to break

in pieces and at the same time punched this defendant, kicked her and told her if she did not leave him he would kill her, that he would not live with her any longer. That assault was the last of a long series of assaults upon this defendant by her said husband and threats to take her life to get rid of her and this defendant then left her said husband, taking their child with her. That shortly after this this defendant left her said husband, the said petitioner informed the mother of this defendant that he would kill this defendant if she sought to return to him, at the same time using vile language of and concerning this defendant and accusing this defendant of unchastity and immorality. The following language was commonly used by the petitioner to this defendant up to and including the date when this defendant left her said husband. Some of the language being used to her upon the day she left her said husband: "You are nothing but a whore; you are only good for niggers"; "you are nothing but a cock sucker"; "you know you are aren't you?"; "Your mother is just as bad as you are?" "You are a son of a bitch"; "You go out and pick up niggers."

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

SADIE CUMMINGS.
ISAAC FLEISCHMAN,
Solr. for and of Counsel with Deft.

And this defendant by way of counter claim exhibited against petitioner says:

1. The petitioner and defendant cohabited at

various places in the City of Newark with some interruptions as hereinafter stated from the date of their said marriage until on or about the 9th day of April, 1923, when the defendant was compelled to separate from him finally because of his extreme cruelty to her as hereinafter set forth. Almost from the beginning of her married life defendant suffered from the violent, ungovernable and ill temper of her husband, especially when he was under the influence of liquor, in the use of which he frequently indulged. These attacks continued at intervals from December 1916 until July 1918 when the petitioner entered into the service of the United States Army and was abroad returning to Newark to live with the defendant in July 1919.

The petitioner commonly used the following language to this defendant: "You are nothing but a whore; you are only good for niggers; you are nothing but a cock sucker; you know you are, aren't you; your mother is just as bad as you are; you are a son of a bitch; you got out and pick up niggers."

That in August 1921 the petitioner seized a gas plate upon which the defendant was cooking a meal for her said husband and herself, wrenched the same loose from its fastenings and threw same down the steps. Shortly thereafter during the night the petitioner dismantled one of the beds in the apartment occupied by them, cursed this defendant, called her vile names and threw the mattress down the back stairs. Frequently whenever the impulse seized him, the petitioner without cause would punch this defendant causing bruises to appear upon her arms, neck, face and shoulders and body. He frequently threw dishes, plates, pots and other household utensils upon which he could get hold at this defendant causing large and

painful hurts and bruises to her, one such occasion occuring in October 1921. In August 1919 this defendant prepared a lunch consisting in part of some cold tea for the petitioner to take with him to his place of employment. The petitioner seized the bottle which was made of glass, threw it down upon the floor upon which the defendant was kneeling then scrubbing same. The force of the blow was such that the bottle broke into pieces, the glass was scattered over the floor and the contents spattered over this defendant.

In April 1923 while this defendant was engaged in wiping up the floor cleaning their home, the petitioner without warning came from behind this defendant and smashed a plate over her head causing the plate to break in pieces and at the same time punched this defendant, kicked her and told her if she did not leave him he would kill her, that he would not live with her any longer. That assault was the last of a long series of assaults upon this defendant by her said husband and threats to take her life and to get rid of her and this defendant then left her said husband, taking their child with her. That shortly after this defendant left her said husband, the said petitioner informed the mother of this defendant that he would kill this defendant if she sought to return to him, at the same time using vile language of and concerning this defendant and accusing this defendant of unchastity and immorality. The following language was commonly used by the petitioner to this defendant up to and including the date when this defendant left her said husband, some of the language being used to her upon the date she left her said husband: "You are nothing but a whore"; "You are only good for niggers"; "You are nothing

but a cock sucker"; "You know you are, aren't you"; "Your mother is just as bad as you are"; "You are a son of a bitch"; "You go out and pick up niggers".

2. Defendant is a bona fide resident of this State, having her permanent home in Belleville, Essex County, New Jersey, when this cause of action arose as aforesaid and has ever since continued to be such resident down to the time of the commencement of this suit, residing continuously in the City of Newark or the Town of Belleville, aforesaid. Defendant has been a bona fide resident of this State when this cause of action arose and for two years next preceding the commencement of this suit.

3. One child was born of the said marriage, to wit, Olive Marie Cummings, three years of age. That by reason of the habits of said petitioner and his habitual violence and his ungovernable temper towards all members of his household, he is unfit to have the charge and custody of the said infant child.

4. Defendant's maiden name was Sadie McDermott and she has no means of support except from her own exertions. Petitioner possesses real and personal property of the value of eighteen thousand dollars and above and is in receipt of steady income from the City of Newark for his services as an employee in the Fire Department.

5. This defendant fears that if she were to return to her said husband, her life would be continuedly endangered and her health and the health of

her said daughter seriously and permanently impaired.

6. More than six months has elapsed since the date of the last act of cruelty complained of.

7. This defendant prays that she may be divorced from the bonds of matrimony from her said husband for the causes aforesaid and that she may be awarded the custody of their said child, and that the petitioner may be compelled by the decree of this Honorable Court to support her and her said child, and that she have such further or other relief as may be just.

And this defendant will ever pray etc.

ISAAC FLEISCHMAN,
Solicitor and of counsel with Defendant.

State of New Jersey, }
County of Essex, } ss.:

Sadie Cummings, of full age being duly sworn according to law upon her oath deposes and says:

I am the defendant-cross petitioner named in the foregoing counter claim. My said counter claim is not made by any collusion between the petitioner-defendant, and myself but in truth and good faith for the causes set forth in said cross petition.

SADIE CUMMINGS.

Sworn to and subscribed before }
me this 9th day of Feb. 1926. }
Genevieve Scaviens,
Notary Public of N. J.

Reply to Amended Answer and Answer to Amended Counterclaim.

Filed February 19, 1926.

IN CHANCERY OF NEW JERSEY.

Between OWEN CUMMINGS, Petitioner, and SADIE CUMMINGS, Defendant.	On Petition for Divorce. Reply to Amended Answer and Answer to Amended Counterclaim.

The reply of Owen Cummings, the above named petitioner, to the amended answer of Sadie Cummings, the defendant:

1. This petitioner denies each and every one of the allegations of the defendant's separate defense, except that part which alleges that petitioner and defendant lived together until about April 9, 1923, which allegation is admitted.

The petitioner, answering the counterclaim of the defendant, says that:

1. He denies each and every one of the allegations of physical violence alleged in paragraph one of the counterclaim and denies that he, either at the times stated or at any other time, used to the defendant, or to any other person, in her presence or hearing, or used concerning her, the vile and indecent language set out in said paragraph one.

2. The allegation of paragraph two of the counterclaim is admitted.

Reply to Amended Answer and Answer to Amended Counterclaim.

3. Petitioner admits that one child was born of his marriage with the defendant, but denies that he is unfit, by reason of his habits, temper or conduct, to have the custody and charge of said child.

4. The allegations of paragraph four are denied, except the allegation as to defendant's maiden name and the allegation that petitioner is an employe of the Newark City Fire Department, which allegations are admitted.

5. This petitioner is without sufficient knowledge to form a belief as to what the defendant fears, but denies that it would be dangerous for his daughter to live with him.

6. The allegation of paragraph six is denied.

7. Petitioner denies that the defendant is entitled to the relief prayed for in paragraph seven of the counterclaim, and prays that said counterclaim may be dismissed.

OWEN CUMMINGS,
Petitioner.

CHILD, YOUNG & HOWE,
Solicitors for and of counsel with
Petitioner.

Order Admitting Party.

Filed February 10, 1928.

IN CHANCERY OF NEW JERSEY.

Between
OWEN CUMMINGS,
Petitioner,
and
SADIE CUMMINGS,
Defendant.

On Bill, Etc.
Order Admitting Party.

Upon reading the duly verified petition of Harry Young, praying to be made a party in this cause, It Is on this Tenth day of February, Nineteen Hundred and Twenty six, on motion of Samuel Roessler, solicitor for said petitioner Ordered that Harry Young, a person charged in the amended petition for divorce filed in this cause as a particeps criminis, be made a party defendant in this cause upon the terms and conditions following:

That the said Harry Young will abide by and perform such order and decree as may hereafter be made in this cause respecting the payment of the costs and expenses of this suit and will within five days hereafter file his answer to the petitioner's amended petition for divorce.

And it is further ordered that the title of this cause be amended by writing the name of Harry Young therein "intervening as defendant".

E. R. WALKER,
C.

Respectfully advised,
John H. Backes,
V. C.

Answer of Intervenor.

Filed February 15, 1926.

IN CHANCERY OF NEW JERSEY.

Between OWEN CUMMINGS, Petitioner, and SADIE CUMMINGS, Defendant. and HARRY YOUNG, Intervening as Defendant.	On Petition, etc. Answer of Intervenor.

The Answer of Harry Young admitted as a defendant, to the amended petition of Owen Cummings, Petitioner.

This defendant answering so much of the petition as he is advised is material for him to answer, says:

He denies that on July 26, 1925, August 28, 1925, August 30, 1925, September 19 and 20, 1925, October 26, 1925, November 7, 1925, December 13, 1925 and January 10, 1926, he committed adultery with Sadie Cummings, defendant at the places as in said petition is alleged or that he committed adultery with the said defendant at any other time or place.

This defendant prays that the said petition as to himself may be dismissed with costs.

HARRY YOUNG.

Decree of Dismissal.

Filed July 12, 1927.

IN CHANCERY OF NEW JERSEY.

Between OWEN CUMMINGS, Petitioner, and SADIE CUMMINGS, Defendant.	On Petition for Divorce. Decree of Dismissal.

This cause coming on to be heard in the presence of Francis Child, of Child, Young and Howe, solicitors of the petitioner, Isaac Fleischman, solicitor for the defendant and counterclaimant Sadie Cummings, and Samuel Roessler, solicitor for the intervenor, Harry Young, named in this cause as a particeps criminis, on petition, answer, counterclaim and answer thereto, and oral proofs having been taken in open Court, and the Court having duly considered the pleadings and proofs, and having heard and considered the arguments of counsel; and it appearing to the Court that the petitioner and defendant were lawfully married on or about the 15th day of November, 1927, as alleged in said petition and that the defendant has been guilty of the adultery charged against her in said petition as having been committed with one Frank Grimm but is not guilty of having committed adultery with the co-respondent, Harry Young, as charged in the petition; and it further appearing that the petitioner, Owen Cummings, has been guilty of extreme cruelty toward the petitioner as charged in the counterclaim filed herein, and that

in consequence thereof the petitioner is not entitled to a decree for divorce from the defendant, notwithstanding the fact that she has committed adultery; and it further appearing that the defendant and counter-claimant, because of her having committed adultery is not entitled to a decree for divorce from the petitioner, notwithstanding the fact that the petitioner has been guilty of extreme cruelty toward the defendant; and it appearing that at the time the petitioner's cause of action arose for adultery, and at the time the defendant's and counterclaimant's cause of action arose for extreme cruelty, the petitioner, and defendant and counter-claimant, were bona fide residents of this State and have continued so to be down to the time of the commencement of this action, and that jurisdiction herein was acquired by personal service of process upon the defendant within this State, and upon the petitioner by his appearance and answer to the defendant's counterclaim:

It is thereupon on this 12th day of July, 1927, by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, Ordered, Adjudged and Decreed and the said Chancellor, by virtue of the power and authority end of the Acts of the Legislature in such case made and provided, doth hereby Order, Adjudge and Decree that the petition for divorce filed by the petitioner, Owen Cummings against the defendant, Sadie Cummings, be and the same is hereby dismissed.

And it is further Ordered, Adjudged and Decreed that the counterclaim filed by the defendant, Sadie Cummings, against the petitioner, Owen Cummings, be and the same is hereby dismissed.

E. R. WALKER,
C.

John H. Backes,
V. C.

Notice of Appeal.

Filed Oct. 11, 1927.

IN CHANCERY OF NEW JERSEY.

Between OWEN CUMMINGS, Petitioner, and SADIE CUMMINGS, Defendant-Counterclaimant.	On Petition, &c. Notice of Appeal.

To MESS. CHILD, YOUNG & HOWE, Solicitors for Petitioner:

Take Notice that the defendant-counterclaimant, Sadie Cummings, hereby appeals from so much of the decree in the above entitled cause advised by Honorable John H. Backes, Vice Chancellor, as orders, adjudges and decrees that the counterclaim filed by this defendant-counterclaimant against the petitioner be dismissed, to the New Jersey Court of Errors and Appeals in the last resort in all causes.

ISAAC FLEISCHMAN,
Solr. Counterclaimant.

Dated October 8, 1927.

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

MERRITT LANE,
Of Counsel Counter-claimant.

Petition of Appeal.

Filed Oct. 31, 1927.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between OWEN CUMMINGS, Petitioner-Respondent, and SADIE CUMMINGS, Counterclaimant-Defendant, Appellant.	On Petition. Petition of Appeal.

To the Honorable the Court of Errors and Appeals in the Last Resort in All Causes:

The petition of Sadie Cummings, the appellant in the above entitled matter respectfully shows that your petitioner finds herself aggrieved by the final decree made in the Court of Chancery, by His Honor, Edwin Robert Walker, upon the advice of the Honorable John H. Backes, Vice Chancellor, on the 12th day of July, 1927, in a cause wherein Owen Cummings was petitioner and Sadie Cummings was defendant and counterclaimant, in this respect, to wit:

That the said decree orders, adjudges and decrees that the counterclaim of your petitioner against the said Owen Cummings be dismissed, and your petitioner humbly appeals from that part of the said decree of the Chancellor which decrees, as aforesaid, upon the ground that the same is erroneous for that, although the said Court found as a fact that the petitioner, Owen Cummings, had

been guilty of extreme cruelty towards your petitioner, as charged in the counterclaim filed herein, the said Court likewise held that your petitioner, Sadie Cummings, had been guilty of the adultery charged against her in said petition as having been committed with one Frank Grimm, whereas your petitioner shows that the evidence did not warrant the said Court in finding your petitioner guilty of adultery with the said Frank Grimm.

Your petitioner therefore prays that the said decree of the said Chancellor may be, in the particulars aforesaid, reversed, set aside and for nothing holden, and that the case may be remitted to the Court of Chancery with directions to enter a decree of divorce for your petitioner upon her counterclaim, with costs and a reasonable counsel fee; and that your petitioner may have such further relief in the premises as to this Honorable Court shall seem meet.

ISAAC FLEISCHMAN,
Solicitor of Appellant.

MERRITT LANE,
Of Counsel with Appellant.

Answer to Petition of Appeal.

Filed November 11, 1927.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between OWEN CUMMINGS, Petitioner-Respondent, and SADIE CUMMINGS, Counterclaimant-Defendant, Appellant.	On Petition. Answer to Petition of Appeal.

The answer of Owen Cummings, the above named respondent, to the petition of appeal of Sadie Cummings, the above named appellant:

This respondent, not admitting the truth of all or any of the matters in said petition of appeal contained, for answer thereto nevertheless admits that a decree was, on the 12th day of July, 1927, made and entered in the Court of Chancery of New Jersey in the above entitled cause for the purposes in said petition mentioned, and as therein set forth, but as to the form and substance of said decree this respondent begs leave to refer thereto when the same shall be produced.

This respondent is advised and believes that the said decree is agreeable to equity, and he prays that the same may be affirmed with costs to be taxed in favor of this appellee.

CHILD & SHIPMAN,
Solicitors for Respondent.
FRANCIS CHILD,
Of counsel with Respondent.

Notice of Appeal.

Filed July 8, 1928.

IN CHANCERY OF NEW JERSEY.

Between OWEN CUMMINGS, Petitioner, and SADIE CUMMINGS, Defendant.	On Petition for Divorce. Notice of Appeal.

To: ISAAC FLEISCHMAN, ESQ.,
Solicitor for Defendant.

Take Notice that the petitioner, Owen Cummings, hereby appeals from so much of the decree in the above entitled cause made by the Honorable Edwin Robert Walker, Chancellor of the State of New Jersey on the advice of the Honorable John H. Backes, Vice-Chancellor, on the 12th day of July 1927, as orders, adjudges and decrees that the petition for divorce filed by this petitioner against the defendant above named be dismissed, to the New Jersey Court of Errors and Appeals in the last resort in all causes.

CHILD, SHIPMAN & PLUMER,
Solrs. of Petitioner-Appellant.

Dated June 28, 1928.

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

FRANCIS CHILD,
Of Counsel with Petitioner-
Appellant.

Petition of Appeal.

Filed July 12, 1928.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between OWEN CUMMINGS, Petitioner-Appellant, and SADIE CUMMINGS, Defendant-Respondent.	On Petition. Petition of Appeal.

To the Honorable the Court of Errors and Appeals in the Last Resort in All Causes:

The petition of Owen Cummings, the appellant in the above entitled cause, respectfully shows that your petitioner finds himself aggrieved by the final decree made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, on the advice of the Honorable John H. Backes, Vice-Chancellor, on the 12th day of July 1927, in a cause wherein Owen Cummings, your petitioner, was petitioner and Sadie Cummings was defendant and counter-claimant, in this respect, to wit: that the said decree orders, adjudges and decrees that the petition for divorce filed by your petitioner against the said Sadie Cummings be dismissed; and your petitioner humbly appeals from that part of the said decree of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous in that although the said Court found as a fact that the defendant, Sadie Cummings, had been guilty of adul-

tery as charged in the petition filed herein, the said Court likewise found as a fact that your petitioner, Owen Cummings, had been guilty of extreme cruelty charged against him in the counterclaim filed by the defendant; whereas, your petitioner shows that the evidence did not warrant the Court in finding your petitioner guilty of extreme cruelty toward the defendant; that the said Court should have dismissed the counterclaim filed by the defendant, Sadie Cummings, against your petitioner and should have granted the prayer of the petition of your petitioner filed against the said Sadie Cummings, praying divorce on the ground of adultery.

Your petitioner, therefore, prays that the said decree of the said Chancellor may be in the particulars aforesaid, reversed, set aside and for nothing holden, and that the case may be remitted to the Court of Chancery of New Jersey with directions to enter a decree of divorce for your petitioner on his said petition, and that your petitioner may have such further relief in the premises as to this Honorable Court shall seem meet.

CHILD, SHIPMAN & PLUMER,
Solrs. of Petitioner-Appellant.

FRANCIS CHILD,
Of Counsel with Petitioner-Appellant.

The Answer of respondent Sadie Cummings to the Petition of Appeal of the above named Appellant.

Filed October 4, 1928.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between OWEN CUMMINGS, Petitioner-Appellant, and SADIE CUMMINGS, Defendant-Respondent.	On Petition of Appeal of Owen Cummings. The Answer of respondent Sadie Cummings to the Petition of Appeal of the above named Appellant.

This respondent, not acknowledging all or any of the matters which in the said petition of appeal are contained, to be true, for answer thereto nevertheless says and admits, that a decree was on the 12th day of July, 1927, made and entered in the Court of Chancery in the cause for that purpose mentioned in the said petition, as is therein stated, but as to the substance and form thereof, this respondent prays to refer thereto when the same shall be produced, and this respondent is advised and believes that so much of the decree as is appealed from by the appellant, Owen Cummings, is agreeable to equity, and she prays that the same may be affirmed, with costs to be adjudged to this respondent.

MERRITT LANE,
Solicitor for Respondent.

IN CHANCERY OF NEW JERSEY.

February 18, 1926.

Between

OWEN CUMMINGS,
Petitioner,

and

SADIE CUMMINGS,
Defendant.

Transcript of shorthand notes of testimony taken in the above entitled matter, before his Honor JOHN H. BACKES, Vice Chancellor, at the Chancery Chambers, in the City of Newark, New Jersey, in the presence of Messrs. CHILD, YOUNG & HOWE, (MR. CHILD) for Petitioner; MR. MERRITT LANE, MR. ISAAC FLEISCHMAN, and MR. SAMUEL ROESSLER, for Defendant.

RALPH MARINELLA, sworn for Petitioner.

Direct-examination by Mr. Child:

Q. Where do you live? A. 469 South 11th Street, Newark.

Q. What is your occupation? A. Chauffeur.

Q. And were you a chauffeur in the month of August, 1924? A. Yes, sir.

Q. Are you acquainted with Owen Cummings, the petitioner, in this case? A. Why, I am acquainted with him only the night I met him at Dreamland Park.

Q. What night was it that you met him if you can recall? A. August 6th.

Q. What year? A. 1924.

Q. And where did you meet him? A. In the front part of Dreamland Park entrance.

Q. Where is Dreamland Park? A. On Frelinghuysen Avenue.

Q. What did you do after you met Mr. Cummings? A. Well, Mr. Cummings asked me if I was hired; I told him "No". He said he wanted to hire my taxi to follow his wife, across the street. So I said "All right" to him, so I hired to him. Mr. Cummings sat in my taxi cab and I turned around and I went on the left side of Frelinghuysen Avenue. Waited. There was a gentleman with her—(interrupted).

The Court: What?

Witness: There was a gentleman with Mrs. Cummings at the time, see? And they boarded a Roseville trolley car and rode to Broad and Market Streets; there they got off and walked one block west of Broad Street, Halsey. I turned my cab down Market Street, a hundred and fifty feet and came in the direction they were walking and I parked my car on Market Street about a hundred and fifty feet from Halsey and waited. They entered the World Restaurant, 140 Market Street. I waited five minutes, then I went upstairs to see if the same couple was there, which I was following. When I entered the restaurant the waiter asked me what I wanted and I told him did anyone call for a taxi. He says "No". At the same time I seen the same couple sitting in the front part of the restaurant facing Market Street.

Q. Which couple? A. Mrs. Cummings and the party that was with her. I think his name was Frank Grimm.

Q. Do you see either of the parties that you followed that night in Court? A. Yes, sir.

Q. Will you kindly indicate the woman you followed, if you can? A. The woman is sitting on the left hand side, the second seat. The seat next to her is vacant.

Q. Inside of the rail? A. Right here behind these men—right here in front.

The Court: The woman in black?

Witness: With the black hat on and fur coat.

Q. Do you see the man in Court that was with her that night?

The Court: Is Grimm in the courtroom?

Mr. Lane: Yes.

The Court: Stand up.

Witness: That is the fellow.

The Court: Is that Grimm?

Witness: Yes, sir.

Q. And from the restaurant—did they go out of the restaurant? A. We waited about thirty-five minutes. It was then about 12:20 when they entered the restaurant, and they came out 12:50 and walked to the safety isle on Broad Street—Broad and Market. I turned my cab around again and I followed again and they boarded a Broad car and rode to Washington Avenue and Academy Street, Belleville. They walked up Academy Street west one block to Hornblower Avenue and I followed, passed them on Academy

Street and parked on Hornblower Avenue about a hundred and fifty feet. They walked up Hornblower Avenue and stood at a building—a tree opposite a building still under construction that is about two hundred feet from John Street. I turned down John Street about three hundred feet and turned around and waited five minutes more there. Then we proceeded on down Hornblower Avenue again and they was standing at a tree opposite a vacant lot. They stood at this tree for about thirty minutes, I think.

Q. And then what happened? A. They were standing pretty well together.

Q. How close were they? A. They were right up to one another with arms around each other, hugging and kissing, or might have been that. I drove two blocks down to—I think it is Lloyd Place, but I am not sure—Lloyd Place, we drove down one block, we came in the direction of John Street again and came down Hornblower Avenue one block—I think that is Rutgers Street—on the right hand side, turned in there and parked the cab and Mr. Cummings and I walked through the vacant lot opposite to where they were standing. That was about forty feet, I think, from where they were standing at the tree. They stood at that tree for about thirty minutes in that manner and then he walked into the lot and she followed him.

Q. Who? A. Mr. Grimm, and Mrs. Cummings followed him, and they walked in about fifty feet, I think, and disappeared. Then I didn't see them, it was so dark there, big tree, no light on the corner or nothing. It was pretty well dark. We waited and waited about twelve or fifteen minutes, and then I saw both of them coming out, fixing—dressing themselves, in that manner. It was about

2:50 or 3:00, something around that, when I left Mr. Cummings. Well, that is all.

Q. You left about 2:50? A. 2:58 or around 3:00 o'clock, it was.

Q. Now, what time did they come out, or what time did they stay there—between what time?

The Court: 2:50, he said.

Q. What time did they get there?

The Court: They were about in the lot at 2:50 in the morning. Do you want any more detail about it? They were not saying their prayers if they were there.

Q. That is the only thing you know that happened? A. Yes, sir.

Q. You never followed them again? A. No, sir.

Cross-examination by Mr. Lane:

Q. Had you ever met Mr. Cummings before? A. No, sir.

Q. How much did he pay you for what you did that night? A. Well, that I don't remember.

Q. Don't remember that? A. No.

Q. Have you ever seen Mr. Cummings since? A. Sunday morning.

Q. What? A. Sunday morning at my house.

Q. So that you haven't seen him from that date until Sunday morning of this week, is that right? A. Well, I have seen him before, after that happened. I seen him down in Broad Street.

Q. And talking to him? A. Yes, sir.

Q. About this case? A. Yes, sir.

Q. Did you follow her again? A. No, sir.

Q. Did he ask you to? A. No, sir.

Q. Have you ever seen her since? A. No, sir.

Q. This is the first time you have seen her after that? Have you ever seen Grimm since? A. About four days after that I saw Grimm.

Q. Where did you see him? A. On a coal truck.

Q. Driving? A. Yes, sir.

Q. Did you know Grimm before? A. No, sir, only until the night I saw them when I followed them with the taxi.

Q. And you didn't know Mrs. Cummings before? A. No, sir.

The Court: Ever see her before?
Witness: No, sir.
The Court: Never saw Grimm before?
Witness: No, sir.

Q. You haven't seen Mrs. Cummings since until today? A. This is the first I have seen her, this morning.

Q. What time was it when you saw her at Dreamland Park? A. 11:50.

Q. Where? A. On Frelinghuysen Avenue waiting for the trolley car.

Q. How far away? A. I should judge about thirty feet from where I was standing.

Q. Who pointed her out? A. Mr. Cummings.

Q. And Grimm was with her at that time? A. Yes, sir.

Q. You didn't see where they had come from. A. No, sir.

Q. You were behind her? A. No, sir; I was with my cab facing Elizabeth when he showed her to me. I turned around and stayed behind the car.

Ralph Marinella—Cross.

Q. I know, but the time he first pointed her out to you there was no trolley car there, was there? A. No, sir.

Q. You were standing on the sidewalk. A. Yes, sir; on the curb, waiting for the trolley car.

Q. Any other people there too waiting for the trolley car? A. Yes, sir.

Q. Quite a crowd? A. No; about fifteen or twenty people.

Q. They were two of the fifteen, is that right? A. They were two of the fifteen, yes, sir.

Q. Then they got in the trolley car. A. Yes, sir.

Q. And you followed that trolley car. A. Yes, sir.

Q. When did you next see them? A. Next saw them when they got off the trolley car at Broad and Market Street.

Q. A considerable number got off with them at that time? A. Few.

Q. How many, fifteen again? A. No, sir, about four or five people.

Q. Four or five got off. A. Yes, sir.

Q. And then they went to a restaurant. A. Yes, sir.

Q. And where was your car parked? A. My car was parked on Market Street, when they went in the restaurant.

Q. Where was your car parked when you saw them get off the car at Broad and Market? A. I was coming right along then; then I turned right around the corner, down Market Street a hundred and fifty feet, turned around and came back again, see?

Q. You followed the car right down? A. No; the car goes this way on Broad Street. I turned

around—made a right turn on Market Street down about a hundred and fifty feet and came back in the direction they were walking towards Halsey.

Q. You made a right turn at Market and Broad? A. Yes, sir.

Q. And then went around the block. A. No, I turned right on Market Street, made the turn right there on Market Street.

Q. At Market and Broad? A. No, down on Market.

Q. How far down from Market and Broad? A. A hundred and fifty feet—that is my imagination of the distance.

Q. And then you went on Market Street and parked where with reference to this restaurant? A. On the right hand side of Market Street facing Halsey, west.

Q. Right hand side from which way? A. West.

The Court: North side of Market Street —this side of Market?

Witness: This side of Market Street.

Q. And when you went up into the restaurant, where were they sitting? A. In the front part of the restaurant, in the corner like. There was a window facing the restaurant—or Market Street.

Q. You just looked at them. A. I just looked at them, yes, sir.

Q. Then you stayed downstairs until they came out. A. Until they came out, yes, sir.

Q. And then followed them to this tree? A. No, sir.

Q. Where? A. I followed them to Broad and Market Street safety aisle waiting for another car to Belleville.

Q. And then you followed with your car up to Belleville. A. Up to Belleville, yes, sir.

Q. And then where did you see them next? What did they next do? A. They got off the car.

Q. Where? A. Sir?

Q. Where? A. They got off the car at Belleville, Washington Avenue and Academy Street and they walked one block west.

Q. Where were you when they got off the car? A. On my taxi cab at all times.

Q. With reference to the car. Were you right there at the spot when they got off? A. Right alongside of it—passing it.

Q. Right passing the car as they got off. A. Yes, sir.

Q. And did any number get off with them at that time? A. No, just the two alone.

Q. Then what did you do? A. Why, I drove on up the street—up Washington Avenue a little ways—about seventy-five or eighty feet, I guess—not quite half of the block—and then I turned around again, see, and then I saw the same couple —(interrupted).

The Court: Where did they get off?

Witness: They got off Washington Avenue and Academy Street, Belleville.

The Court: Here at the corner of Broad and Market where did they get off?

Witness: They got off right at the safety isle.

The Court: Came up on a Broad Street car?

Witness: Came up on a Roseville car.

The Court: Stopped here at the safety isle at Broad and Market on Broad.

Witness: Yes, sir.

The Court: And it was there that you passed the car when they got off.

Witness: I passed the car when they got off. I came up to the front there; when the car stopped I stopped.

The Court: How did you know they were going to get off?

Witness: I watched them. I had been watching them.

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

Q. Until they got off? A. Until they got off. Then I made a right hand turn.

Q. They went up Market Street. A. Yes, sir.

Q. How did you know they were going up Market Street? A. I seen them cross Broad Street towards Halsey.

Q. Where is Dreamland Park? A. Dreamland Park is on Frelinghuysen Avenue.

Q. Yes. A. It is down quite a little ways on Frelinghuysen Avenue.

Q. And they got off this car on which side of Market Street, the near side or far side? A. I didn't understand that question.

Q. Which side of Market Street did they get off? A. Where? At Dreamland Park?

Q. No; when they got to Market and Broad. A. They got off on the right hand side coming this way, north.

Q. They were coming north? A. Yes, sir; they got off at the Broad and Market Street safety isle there.

Q. I suppose you saw them get up in the car to prepare to get off? A. Yes, sir.

Q. And you were watching them in the car. A.

I was right in the front of my taxi driving—the front, wheel, and at the same time, driving the car, I was watching them all the time.

Q. Which side of the car did they sit on? A. They sat—it was an open car—about five seats from the rear, about in the middle of the seat.

Q. Was the car crowded? A. Well, at Dreamland Park it was.

Q. Well, it was crowded. A. Not to much. Nobody was standing on the running board.

Q. Otherwise crowded? A. Seating capacity.

Q. Then when you saw them get off you went to the east on Market Street. A. Yes, sir; down.

Q. And then turned? A. And then I turned around.

Q. And came back. A. And came back.

Q. At what point of this procedure did you see them cross and go to Halsey Street? When was it you saw them cross to go to Halsey Street? A. When I turned around on Market Street.

Q. You had your back to them from the time you took the right hand turn. A. Yes, but I didn't have my back—I had my head at the side of the car, like this (indicating). Driving the taxi cab I sit in front like this (indicating). You sit like this in the car—no windshields on either side of the taxi.

Q. You saw them cross to go to the—(interrupted). A. Yes, sir; to the restaurant.

Q. How far is the restaurant from Broad Street? A. One block, on the corner—one door, I guess from the corner of Halsey. It said 140 Market Street.

Q. That is on the—(interrupted). A. Left side going up.

Q. On the left side going towards the Court

House, or on the right hand side going to the Court House? A. Left side going to the Court House.

Q. Left side going to the Court House. A. Yes, sir.

Q. Then you parked your car on Market Street on the other side of the street from the restaurant. A. Yes, sir.

Q. How did you know they were going to that restaurant? A. Well, I waited until they got—before I parked my car I waited until they got to where they were going. I took it easy coming up Market Street; I didn't go up very fast.

Q. Was there quite a little traffic on the street? A. No, sir; hardly any traffic at all.

Q. When you got to this place in Belleville you say you passed them. A. When they got off the car, yes, sir; I passed them. The car beat me. It was ahead of me at Washington and Academy Streets, see? See them get off the car and I passed them; at the same time I was passing them I was watching them to see what direction they were going. When I see they walked across Academy Street to go up Academy Street, then I turned my cab around and then they were up about a third of the block on Academy Street and I passed them up Academy Street. I parked on Hornblower Avenue then.

Q. Then they crossed the street. A. Yes, sir.

Q. Crossed Washington Avenue. A. Yes, sir.

Q. To Academy Street. A. Yes, sir.

Q. Is there a street comes in there known as Academy Street? A. Yes, sir.

Q. Walked up Academy Street? A. Yes, sir.

Q. How far? A. One block.

Q. And then? A. They crossed from Academy

Street to Hornblower Avenue—it is a street—I am not sure—it is a street that comes in crossways.

Q. And that is the time you saw them at this tree. A. No. They had passed my car on Hornblower Avenue about a hundred and fifty feet, I was parked, and they crossed to Hornblower Avenue and walked up Hornblower Avenue and came to the tree—there was a building still under construction there.

Q. Now, how far were you away from them when you saw them at the tree? A. I passed them. They were standing still.

Q. Well, what did you do then? A. I drove on John Street, made a left turn and went down about three hundred feet and I turned around and I came a little west, up to the corner, about forty or fifty feet, and I waited five minutes there in the car. Mr. Cummings was with me at all times. Then I turned around and I proceeded on down Hornblower Avenue, and they had left the tree near the building that was under construction and stopped at a tree opposite a vacant lot. This lot is between two houses. Then I kept on going two blocks, I think it is, a street called Lloyd Place, and went one block, I think, and came back the direction of John Street one block to Hornblower Avenue again and made a right—left hand turn on Hornblower Avenue and right hand turn on Rutgers Street and parked my cab on Rutgers Street, and Mr. Cummings and I walked through the vacant lot opposite to where they were standing.

Q. Now where were you standing when you saw them thirty minutes alongside of this tree? A. I was standing on the opposite side of the street.

Q. How far away from them? A. Well, about forty or fifty feet.

Q. Just across the street? A. Yes, sir—no; a little more in front of that house.

Q. You stood directly across the street? A. No; a slant. I don't know how to pronounce it right; on a slant like this. The tree is over there and the house over here on a hill like.

Q. Thirty minutes, and watched them. A. Yes, sir.

The Court: Any other people out?
Witness: No, sir.
The Court: That you saw.
Witness: No, sir.

Q. Then they went into the lot. A. Yes, sir; he went into the lot first and she followed.

Q. How long a time elapsed between—(interrupted). A. Well, that—I know they stayed in the lot between twelve and fifteen minutes; that's all I know.

Q. Were you there at the lot all this time? A. I was with Mr. Cummings alongside of this house on the opposite side of the street.

Q. And you were there during all the time they were in the lot. A. Yes, sir.

Q. And you said, as I recollect it, that they went back about fifty feet. A. Fifty feet.

Q. Then you lost them. A. Then I lost sight of them. They disappeared.

By the Court:

Q. You didn't go in the lot after them? A. We didn't go in the lot after them.

Q. Why? Do you know why Mr. Cummings

did not go in the lot after them? A. Well—(interrupted).

Q. Do you know why? A. No, sir.

Q. Do you know why you didn't? A. Well, I don't know.

Q. He told you what he was suspecting, didn't he? A. He didn't say anything to me.

Q. He told you why he was following his wife, didn't he? A. Said there was another man with her.

Q. Well, you knew why he was following his wife and what he suspected. A. Well, I guess I did.

Q. Why didn't you go across to the lot to see what these two were doing? A. I didn't go. If he didn't go anywhere I wouldn't go. I would follow where he went.

Q. Did he say why he didn't go into the lot after them? A. No, sir.

Q. With his wife in there—eh? A. No, sir.

By Mr. Lane:

Q. Who came out first, or did they both come out together? A. They came out together.

Q. And as I understand it, as they came out in your view they were fixing their dress? A. They were fixing their clothes, yes, sir.

Q. Both of them? A. Both.

Q. And that fixing wasn't accomplished until they came out on the sidewalk, is that right? A. Well, coming through the lot, see, and when they came to the sidewalk they walked south, I think, to John Street. That is the direction they were going.

Q. Still fixing their clothes? A. No, sir. When

they got to the sidewalk they were all fixed already, I think.

Q. And you then went away. A. I left Mr. Cummings. Mr. Cummings paid me the taxi bill and I left and went away.

Q. You didn't follow them after that. A. No, sir.

Q. Don't know where they went. A. No, sir.

Q. Do you know a man by the name of Edwin Field? A. No, sir.

Q. I show you a photograph and ask you—(interrupted).

Mr. Lane: I would like to have this marked for identification.

(Paper marked Exhibit D-1 for iden.)

Q. I ask you whether you can recognize that locality. A. Not that I can judge—(interrupted)

Q. You do not recognize that? A. No.

Q. I show you another photograph.

(Photograph marked Exhibit D-2 for identification.)

The Court: Is it a photograph of the lot?

Mr. Lane: It is a photograph of a lot. I don't know whether it is this lot or not.

Q. I show you another photograph, Exhibit D-2 for identification, and ask you whether you can identify it. A. Well, I will tell you, it was pretty dark in the street.

The Court: Answer the question.

Witness: No, sir, I cannot.

Q. You can't say whether that is or is not. A. Whether it is or is not I cannot say.

Q. You can't say whether Exhibit D-1—(interrupted). A. No, sir.

Q. —is or is not. A. No, sir.

Q. And it was too dark—(interrupted).

The Court: Is or is not what?

Q. Is not a correct representation of the—photographic representation of the lot you refer to, and it was too dark there for you to identify it. A. All I know is there was a lot there and it was between two houses.

Q. Did you make a statement of what you saw that night? A. Yes, sir.

Q. When? A. I don't remember the date. It was in the month of August.

Q. Just after it occurred? A. Yes, sir.

Q. Where? A. Detective Corbally's agency.

Q. Were you employed by Detective Corbally at that time? A. No, sir.

Q. Have you seen your statement since? A. No, sir.

Q. Haven't seen it since that time? A. No, sir.

By the Court:

Q. Any lights in the neighborhood of this lot? A. No, sir.

Q. You were sixty feet away? A. It was moonlight—quite a moonlight night.

Q. I thought you said it was dark. A. The trees made it dark around the neighborhood, a big tree there on the street.

Q. If it was so dark you can't identify the location by the photograph, how were you able to see these people coming out of the lot fixing their clothes? A. Well, I saw them.

Q. Well what? A. I saw them.

Q. Notwithstanding the fact that it was dark. A. Well, it wasn't so dark that you couldn't see.

Q. Then why is it so dark you can't identify the lot from the photograph? A. I don't remember the place. That is over a year.

By Mr. Lane:

Q. The date was August 7th? A. August 6th; 11:50 p. m. when I met Mr. Cummings.

Q. And the moon was up? A. Well, I didn't look in the sky to see if the moon was up there.

Q. You said a few moments ago it was moonlight. Was it moonlight or wasn't it? A. It was moonlight all right.

Q. Then the moon was up, wasn't it? A. It must have been.

Q. It was moonlight, there is no doubt about that, is that right? A. Yes, sir, about that.

The Court: He wants to know whether you are sure it was moonlight.

Witness: Like any other night, if you can see, walking through a dark street, and you can see, there must be a moon out to see, to make the street light. There was no lights in the neighborhood—maybe a block down there was a light.

The Court: You don't know what made it light, whether the stars made it light or the moon made it light.

Witness: I don't know.

HARRY DAILY, sworn for petitioner.

Direct-examination by Mr. Child:

Q. Where do you live? A. 53 Emmett Street, Newark.

Q. What is your business? A. Why, I am a bartender just now.

The Court: What?

Witness: Bar tender.

The Court: Where?

Witness: Lock Street and Sussex Avenue.

Q. What was your business in 1924, summer of 1924? A. Chauffeur, taxi driver.

Q. And during the summer of 1924, did you ever see Owen Cummings who is here in Court? A. Yes, sir.

Q. Where did you see him? A. Why, he hailed me at the Central Railroad and asked me if I was vacant, I told him I was—told me—he pointed his wife out to me who was standing in front of Truly Warner's and told me that he expected she was going to meet someone and if she did he wanted me to follow them.

The Court: Truly Warner's is where?

Witness: Branford Place and Broad Street.

Q. What time was that? A. Between 7:00 and 8:00. I don't remember just what time.

Q. Do you remember the date? A. It was sometime in August. I couldn't say the date.

Q. Early part or latter part? A. I couldn't say.

Q. Did you subsequently follow Mrs. Cummings, or the woman that he pointed out to you? A. Why, we waited about five or ten minutes and she met the same gentleman—(interrupted).

The Court: What?

Witness: She met this man down on the end—I don't know what his name is.

The Court: Where is he in the room?

Witness: The same, Grimm, I suppose his name is, now,—first I heard his name. They walked to the Central Railroad safety isle going south on Broad, and boarded an Elizabeth car and we followed them to Dreamland Park and they got out and went in the park. Mr. Cummings asked me to take a walk in the park and follow them and see if—take a good look at them in case he may want me to identify them sometime and I followed them in the park. I took off my taxi cap and put on another cap I always used to carry in the car and walked inside of Dreamland Park and they got an orangeade and I stood across the counter and had one too. I took a good look at them and came out and Mr. Cummings told me to drive back to the Central Railroad. I drove back and he paid me off and discharged me.

Q. Do you see the woman that you followed that night in the Court—is she in Court? A. Yes, sir; Mrs. Cummings here.

The Court: The lady sitting back of Mr. Lane?

Witness: Yes, sir.

Harry Dailey—Cross.

Cross-examination by Mr. Lane:

Q. You have seen Mrs. Cummings several times since, haven't you? A. This is the first time, today.

Q. Haven't you—whenever Mr. Cummings has gone down to see his child haven't you accompanied Mr. Cummings? A. No, sir; I have not.

Q. Never been with him? A. I have met him twice since. Today is the third time.

Q. But you never went with him at the time he came to see his child? A. No, sir; never.

Q. And you have never seen Mrs. Cummings since. A. Not until today.

STEPHEN P. FLARITY, sworn for petitioner.

Direct-examination by Mr. Child:

Q. You live where? A. 348 High Street.

Q. Newark? A. Newark.

Q. You are connected with the Corbally Detective Agency? A. I am.

Q. Was that agency employed by Mr. Cummings to follow his wife? A. It was.

Q. When? About when? A. It was about May or June, 1924.

Q. Did you at any time follow Mrs. Cummings? A. Yes, sir; I did.

Q. What days did you follow her? A. August 24th, 1924, at 1:15 in the morning I went to John Street and Washington Avenue, Belleville, in answer to a telephone call and I met Frank Corbally there. He took me up John Street to Washington Street and pointed out a man and woman

standing alongside of a large tree, about fifty feet in from John Street as Mrs. Cummings and that man in the rear there, whose name is Frank Grimm. They stayed there—that was about 1:15—they remained there until about 2:00 o'clock and when they parted I followed Grimm with Frank Galgano in an automobile to Broad and Market Street where he got off the trolley car that he had been riding on; he went in Thompson's Restaurant, came out and boarded an Orange car and rode to about 401 Warren Street and went in a house there.

Q. Did you have an opportunity of seeing his features that night? A. I did.

Q. Is it the same man that has been identified as Frank Grimm? A. It is the same man.

Q. Did you have an opportunity of seeing Mrs. Cummings' features that night? A. No, I did not.

Q. Galgano was with you? A. He was with me after Grimm had left the woman at the tree.

Q. And when you arrived there who was there from your agency? A. Mr. Corbally, Frank Corbally and Mr. Galgano and Mr. Cox—Raymond Cox.

Q. Did you follow Mrs. Cummings and Grimm at any other time? A. Yes, sir; on the 29th of August, same year, Frank Corbally picked me up at my house that night around—oh, near 11:00 o'clock. We drove to Washington Avenue and John Street and we saw Grimm and Mrs. Cummings get off a car and they walked up John Street to Bridge Street and over Bridge Street to some other street and down to a street called Liberty Street alongside of the cemetary there, and they stood alongside of a telegraph pole across the

street from the cemetary for about fifteen minutes. We circled around, went in the cemetary to try to see what they were doing, but when we got in the cemetary to opposite where they were, they had left.

Q. What time of day or night was this? A. That was after 11:00 o'clock; between 11:00 and 12:00. Then the following week Mrs. Cummings came into the office and Mr. Corbally, senior, and I were there and she wanted to know whether we were watching her and we told her we were not and asked her why she came in and she said she had been told that we had men watching her and she came down to find out what it was about. I told her that we were not following her and asked her if she ever saw me and she said she had not. We asked her who had told her and she said some friends of hers and they learned it from the police.

Q. Did you see them together at any other time? A. That is the only time I saw them.

Q. August 29th where did you first see them, at Dreamland Park? A. No; when they got off the trolley car at John Street and Washington Avenue, Belleville.

Cross-examination by Mr. Lane:

Q. How did you come to go up to this point on August 24th? A. Frank Corbally had called at my house and I wasn't home but came in shortly after and I went down and went up by trolley.

Q. Had you followed Mrs. Cummings before that? A. No, sir.

Q. Had your agency been following her before that? A. Yes, sir.

Q. For how long a period of time? A. A couple of months.

Q. During July and June?

The Court: May he said they started.

Witness: I am not sure whether it was May or June.

Q. And who was assigned to that work during those months? A. Mr. Cox and Mr. Galgano.

Q. And they had been making reports? A. They had.

Q. Do you recognize either one of these photographs, Exhibit D-1 or D-2 for identification? A. This looks something like the corner—(interrupted).

Q. This, Exhibit D-2? A. It looks like the corner of John and Washington Street in Belleville? I am not sure. There is a house on the corner like that, and that could be the tree, the second tree in from the corner. I am not sure. I do not recognize that (indicating).

Q. You do not recognize Exhibit D-1, and where were you standing when you watched them at this tree? A. At John Street and Washington Street.

Q. How far away? A. That tree—that is about fifty feet from the corner and I was on a stoop across the street on John Street.

Q. How far away would that be from the tree? A. Oh, say, about sixty-five—seventy feet.

Q. And they stood there for fifteen minutes? A. No, that was the night they were there—(interrupted).

Q. How long did they stay? A. I got there—I don't know how long they were there. I got there 1:15. They were there then and they were there until 2:00 a. m.

Q. They stood there—(interrupted). A. Forty five minutes while I was there.

Q. A little over forty five minutes? A. While I was there.

Q. Fifty minutes while you were there? A. 1:15 to 2:00 o'clock.

Q. Then they parted? A. They parted.

Q. When was it that Mrs. Cummings came to your office? A. That was about the 3rd or 4th of September, 1924.

FRANK GALGANO, sworn for the petitioner.

Direct-examination by Mr. Child:

Q. Where do you live? A. 44 James Street, Montclair.

Q. Are you employed by the Corbally agency? A. I am, yes, sir.

Q. And were you employed by the Corbally Agency in the year 1924? A. I was, yes, sir.

Q. Are you acquainted with the lady that has been identified here as Mrs. Cummings? A. I am, yes, sir.

Q. When did you first see her that you can recall? A. On August 16, 1924.

Q. And where did you see her? A. I saw her come out of her home—I saw her before that. She was pointed out to me by Mr. Cummings about two days previous to that.

Q. You say you saw her come out of her home. Where is her home? A. Number 10 Washington Street, Belleville.

Q. What time did you see her come out? A. Saw her come out about 4:00 p. m.

Q. And did you follow her? A. I did; yes, sir.

Q. State what you did and what you saw. A. Mrs. Cummings and a girl friend of hers came out of the home at 10 Washington Street, walked down William Street to Washington Avenue, boarded a trolley car going south on Washington Avenue; they got off the trolley car at—in front of the Post Office in Newark; they walked from the safety isle across to the Post Office, across Broad Street to the post office and met two men there; one man that I know is back there, by the name of Frank Grimm. They met together and walked back to the safety isle, boarded an Elizabethport trolley car and rode down to Elizabethport. On the way down Mrs. Cummings was sitting alongside of Frank Grimm and he had his arms thrown around her; they get off at Elizabethport and bought four tickets for the S. S. Express ferry for Coney Island, which they boarded. The boat left the dock about 7:20 p. m. On their way up they each had a seat alongside of the rail on the righthand side of the boat; about three quarters of the way up to Coney Island—three quarters of the way to Coney Island they were hugging and kissing each other, the four —two couples.

The Court: You mean each man kissing his own girl.

Witness: Yes, sir; well there were two couples.

The Court: You said all four hugging and kissing.

Witness: So they were.

Q. What time did they get to Coney Island about, if you know. A. About 9:15.

Q. When they got to Coney Island what did

they do? A. When they got to Coney Island they walked out to the boardwalk and to the Gold Mine —what they call the Gold Mine. It is a sort of thing you pay ten cents and you go through and it takes you through a very dark, like a caterpiller— very dark tunnel like. When they had gone into this Gold Mine, I left Mr. Cox out there in front of the Gold Mine to watch them until I came back from making a telephone call. I called our office up and informed them where we were and what was going on. When I returned from the telephone booth to the Gold Mine, why they had disappeared and I—(interrupted).

Q. Had Cox disappeared too? A. He had, yes, sir. I tried to locate them again until about quarter to 11:00—half past 10:00 or so, but I didn't find them any more and I discontinued for that evening.

Q. Who is Mr. Cox? A. He is a Corbally operative.

Q. When next did you see these people together, if you did? A. On the 23rd—the night of the 23rd and morning of the 24th of August, 1924.

Q. Where did you first see them that day or first see Mrs. Cummings that day? A. Saw Mrs. Cummings at her home that day.

Q. What time did you start watching her home? A. At—(interrupted).

Q. About what time? A. Some time in the afternoon about 3:00 or 4:00 o'clock.

Q. And where is her home? A. At 10 Washington Street, Belleville.

Q. Well, what did you see while you were watching her home that day? A. Why she came out of the home some time that afternoon about 5:00 o'-

clock and she walked on down—walked south on Washington Street to William Street, east on William to Washington Avenue; she boarded a trolley car and got off the trolley car in front of the Post Office.

Q. In Newark? A. In Newark. She met the same man, Frank Grimm. They first walked to the Palisade bus—they had the intention of going to the Palisade Park, and then turned around and walked back to the trolley car safety isle and boarded an Elizabeth trolley car. They rode on down in the trolley car to Dreamland Park. They got off at Dreamland Park and entered there. They walked around for a short time, matter of about twenty minutes or so and then entered the Arena. At that time they were having bull fights down there at Dreamland Park. They were in there until the fights were over, came on out and walked over and boarded a West Orange bus; they got off the West Orange bus at Market and Broad Street and walked west on Market Street to a Chinese restaurant just above Proctor's Theater, opposite Washington Street—opposite Bamberger's. They entered in there about—it was going on to 12:00 o'clock. I called—informed Frank Corbally of it —called him on the telephone, and about fifteen minutes later he was down there—came on down in his car and met up with me. I met him at Proctor's—in front of Proctor's Theater; about 12:15 —about 12:35, rather, Mrs. Cummings and Frank Grimm came out of the restaurant. They hired a taxi that was standing in front of Proctor's Theater and drove—the taxi driver drove them on up to Belleville. They got off—they got off the taxi at Washington Avenue and Rutgers Street—that is one block north of John Street. They walked up

—walked west on Rutgers Street to Hornblower Street or Hornblower Avenue. While they were walking around—they walked through several streets and back—walked back on Hornblower Avenue to John Street, east on John Street to Washington Street, and stood alongside of a large tree in front of a vacant lot on Washington Street, about fifty feet in front John Street. They were there from about a quarter to 1:00 until 2:00 o'-clock a. m., morning of the 24th.

Q. Could you see how close they were standing together when they were in the street,, or what they were doing there? A. Well, yes, sir, you could, from where we were standing—in fact, we were sitting on a porch right opposite Washington Street on John Street and they were standing very close together, just about make their mouths kissing each other there.

Q. Before they got to that lot had you seen that night or that afternoon any indications of affection between the two? A. No, sir.

Q. What time did they separate? A. About 2:00 a. m.

Q. When did you next follow those people?

The Court: Where did they go after that?

Witness: Why, about 2:00 a. m. they separated there at—right there at the tree. Frank Grimm walked down—walked east on John Street to Washington Avenue and got a trolley car there and Mrs. Cummings walked over to her home.

Q. How far was that—how far was the tree from the home? A. I beg pardon?

Q. How far was the tree from the home? A.

Oh, several houses—about six or seven houses.

Q. On John Street? A. On Washington Street.

Q. When did you next follow them? A. On the 29th of August, 1924.

Q. Just go back to the 23rd and 24th of August. Who was with you that night? A. Raymond Cox was with me that night.

Q. And anyone else? A. Mr. Flarity—well, he wasn't with me just then. He joined us about 1:00 a. m.

Q. And how many were there in your party? A. In our party there was four.

Q. How far was your party from where the two were under the tree? A. About fifty feet.

Q. Could you see them distinctly? A. Yes, sir.

Q. They could see you too, couldn't they? A. Well, they could have if they looked that way. If they came out to John Street they would have saw us.

Q. You weren't hiding, were you? A. We were hiding, yes, sir.

Q. Hiding behind what? A. Porch. It was a stucco porch there—it wasn't really a porch, it was more of a stoop, stairway, and then it had sort of a rail—stucco rail in front of it.

Q. Now the next time you followed them was when? A. On the 29th.

Q. And where did you see Mrs. Cummings that day? What place—where did you pick them up? A. From her home, 10 Washington Street, Belleville.

Q. And where did she go? A. She came out with the little girl, as Mr. Cummings told me, it was her daughter, and this girl friend of hers, and they walked on down William Street to the cut rate fruit store on Washington Avenue; they

entered the store and came out a few minutes later and walked back to William Street, up William Street to Washington Street, and entered their home. They were in the home about five minutes and came out again, the three, and walked east on William Street to Washington Avenue where Mrs. Cummings boarded a trolley car going south on Washington Avenue and this girl friend took the child with her; that is where they parted. Mrs. Cummings rode on down in the trolley car to in front of the Post Office again and met Frank Grimm there.

Q. What time did she meet him there? A. That was about 6:30 p. m. They walked back to the safety isle together and boarded an Elizabeth trolley. We followed the trolley car down to as far as the Durant Plant on Frelinghuysen Avenue there in Elizabeth; they got out of the trolley car there at the Durant Plant and walked back to Dreamland Park; they entered the park and walked around, going on different things and played a few games of chance and left there about ten o'clock—left the park, and they boarded a trolley car on Frelinghuysen Avenue opposite Dreamland Park. They rode on the car to John Street and Washington Avenue, Belleville—in the meantime there near Market and Broad Street, or near Bridge Street, rather, I made a stop, driving in my car, and I went into a telephone booth and I called Frank Corbally up and told him that we were on our way up to Belleville, so he met us up there with Mr. Flarity, up at John Street and Washington Street—and in the meantime they had got in touch with Mr. Cummings and he also arrived there. That evening they walked up John Street, walked west on John Street to Bridge Street,

Bridge Street to Liberty Street and alongside of a cemetery they stopped in front of a telegraph pole for a short time and Mr. Flarity and I chased through the cemetary as fast as we could go and by the time we got there, why, they had left—they had started to leave from that spot where they were standing at the telegraph pole.

Q. Now what time did they separate? A. They separated about eleven—about 10:30 that evening, I think it was, or about 11:00 o'clock, rather.

Q. And did you on that day see any indications of affection between them? A. Well, there at the pole, yes, sir.

Q. What did you see at the pole? A. Why, they were kissing each other there at the pole.

Q. Now, did you follow them on any other occasions than those that you have stated? A. No, sir.

Cross-examination by Mr. Lane:

Q. How long had you been working on this case? A. Why, I worked on it for I think the whole—mostly the month of August.

Q. Did you do any work on it before then? A. No, sir.

Q. Did you follow Mrs. Cummings at any other time? A. At any other time during that month?

Q. At any other time at all? A. Why, yes, I have.

Q. When? A. Why, on the 11th.

Q. Of what? A. August, 1924.

Q. Yes. A. The 13th, the 12th, the 20th, the 27th of August, 1924.

Q. Are those the only dates that you followed her? A. That I recall; yes, sir.

Q. Did you follow her at any other time outside of the month of August? A. Not that I recall, no, sir.

Q. Did you follow Grimm at any other time? A. No, sir.

Q. Nor did you follow Grimm on any other date during the month of August than what you have told me about, is that right? A. No, sir.

Q. When was Mrs. Cummings first pointed out to you? A. Why, I think it was on the 11th of August.

Q. Where? A. At her home.

Q. And by whom? A. By Mr. Cummings.

Q. Did you make notes of these occasions as they took place? A. Yes, sir.

Q. Where are they? A. I have destroyed them.

Q. When did you destroy them? A. When?

Q. Yes. A. After I made up my report.

Q. Why did you destroy the original notes? A. Why?

Q. Yes. Why? A. Why, I didn't have no use for them any more.

Q. You have been a detective for how many years? A. Six years.

Q. When did you make the report? A. Following morning.

Q. Your practice is to—(interrupted). A. What?

Q. Is it your custom to tear up your notes? A. Well, it is most always.

Q. When you make your formal report, who do you make that formal report to? A. To the office, Corbally.

Q. Is it your custom to destroy your notes when you make a formal report? A. Most always, yes, sir.

Q. Don't you know you have been examined in court a great many times and you have been asked to produce your original notes as distinguished from your report to your office and you produced them? A. On certain occasions I did have them, yes, sir.

Q. And there have been occasions then when you have not destroyed your original notes and you have produced those original notes in court on call, haven't you? A. I have; yes, sir.

Q. Now when was it that you adopted the practice, if you ever did, of destroying your original notes, as you made them, after you made your formal report? A. That I cannot recall. Sometimes I did and other times I didn't.

Q. You have some original notes in cases at the present time, haven't you, that you have worked on? A. Yes, sir.

The Court: Why did you destroy these notes.

Witness: I don't know. I just simply—when I was making up my report in the morning or after I got through with the case I throwed them away in the waste basket.

Q. Why didn't you destroy the notes in all cases where you made the report—you always make a report, don't you? A. Yes, sir; always do.

Q. Yes, and why didn't you then destroy your notes in all cases—your original notes—in all cases where you made your report? A. That I don't know; I can't say.

Q. You remember distinctly destroying these notes? A. The notes, yes, sir.

Q. You didn't require to look for them when you came to prepare for this case in order to satisfy yourself that they had been destroyed, is that right? A. No, not necessarily. I did look for some, and then I looked—in fact, I looked for all of them, and then I happened to think that I threw them away.

Q. So you started—(interrupted). A. I didn't throw them all away.

Q. You didn't throw them all away? A. No.

Q. You have some original notes? A. I have some; yes, sir.

Q. Where are they? A. Right here.

Q. Produce those that you have. A. Here is the 11th.

Q. Yes? A. 12th.

Q. Yes? A. 16th.

Q. Yes? A. And then there is that one for the 16th.

Mr. Lane: I ask that they be marked for identification.

(Papers marked Exhibit D-3 for iden.)

Q. Now, these notes which you have produced, which cover three—one of the days which you have testified to and two of the days that you told me you followed her when you did not see Grimm. Are these notes which were made at the time the things took place? A. No; those are not those.

Q. That is what I was asking you, your original notes. What are these that you have handed me? A. Why, those are notes which I made up that evening, on those occasions, and then made up the report in the morning.

Q. Well, are these—you make as you go along original notes don't you? A. Most always, yes,

sir. Sometimes I do and sometimes I don't, see?

Q. You did in this case, didn't you? A. On some occasions I did, yes, sir.

Q. Now were there some occasions that you didn't? A. Yes, sir.

Q. When you were working on this case? A. Yes, sir.

Q. Those original notes, the first things you put on paper, are the things I would like to have if you have got them. Where are they? A. I haven't got those.

Q. You haven't any of those. A. No.

Q. Those are the things that are destroyed. A. What I did use, yes, sir—what I did put down.

Q. These papers that you have handed to me were made up by you when? A. The following morning.

Q. From your original notes, weren't they? A. Yes, sir.

Q. And these are the papers that you—or copies of what you reported to your client, aren't they? A. Yes, sir.

Q. So that when you said a few moments ago—when you said you had the original notes of these three occasions, you were mistaken, is that right? A. No—yes; I can see that now.

Q. The reports which you made to your client, or which the office made to its client, they are in existence, aren't they? A. They are, yes, sir.

Q. Of the other dates? A. I beg pardon?

Q. Of the other dates? A. Of the other dates?

Q. Yes. A. I don't understand what you mean.

Q. You have shown me reports for August 11th, August 12th and August 16th. You have similar reports for every date, haven't you? A. No; I have not.

The Court: The office?
Witness: The office has.

Q. You have seen those reports recently, haven't you? A. My own reports?

Q. Yes. A. Yes, I have.

Q. When? A. Why yesterday.

Q. And you went over them in preparation for this date, didn't you? A. I did.

Q. You did that for the purpose of refreshing your recollection? A. Yes, sir; I did.

Q. Had you seen them before that between the time they were made and yesterday? A. Why yes, I did.

Q. When and for what purpose? A. Why, I saw them Monday and I saw them Tuesday.

Q. All for the purpose of refreshing your recollection? A. Yes, sir.

Q. You studied them so that you might testify here. A. Yes, sir.

Q. Now, on the 16th where were you when you first saw Mrs. Cummings? A. Why, I was parked on William Street north of—or west of Washington Street, Belleville.

Q. In a car? A. Yes, sir.

Q. Who was with you? A. Raymond Cox.

Q. And how far were you away from 10 Washington Street? A. About fifty to seventy five feet at the most.

Q. In direct line with it? A. No, sir, at an angle, at an angle.

Q. You could see the door? A. I could, yes, sir.

Q. What time was it when you first saw Mrs. Cummings? A. I think it was about four to five p. m.

Q. Now, is that the time you first—(interrupt-

ed). A. About 4:00 or 4:10 p. m.

Q. Was that the time you first saw her? A. I think it was.

Q. What time had you gotten there? A. No; I saw her that afternoon.

Q. What time did you first see her? A. First saw her, I think it was around 2:30.

Q. And under what circumstances did you see her? A. If I remember right she came out in the yard and was drying her hair.

Q. Do you know what door she came out of? A. Out of the side door.

Q. Now, after she came out at 4:30 or thereabouts, was she alone? A. I think she was.

Q. Well, have you any recollection as to whether she was or wasn't, or are you trying to remember what is in this report? A. No, I am just going on what I saw that day, if I remember right.

Q. Well, was she alone or did she have somebody with her? A. She had her little girl with her.

The Court: Are you trying to test this man's memory or integrity? You can't get very far. He made notes. I don't think it is profitable, do you?

Mr. Lane: Well, I think so.

The Court: Just to test his memory?

Mr. Lane: Not merely for the purpose of testing his memory.

Q. Do you remember whether she was alone or not? A. The first time I saw her you are referring to, Mr. Lane?

Q. Yes. A. Why she came out the door alone and I think her mother came out the front door and met her daughter on the lawn and was talking

to her a few minutes and went back into the house with a broom in her hand.

Q. How did you follow her when she came out the second time? A. How did I follow her? I followed her in the car.

Q. In your machine? A. Yes, sir.

Q. Now, on the day over to Coney Island, how many of you were on that boat—how many detectives were on that boat? A. Just two of us.

Q. And how far were you from the two couples that you have referred to? A. Why, just down the rail a ways, not very far down. We were sitting alongside of it—right alongside of the rail.

Q. Do you remember what day of the week that was? A. I think it was on Saturday.

Q. Did you see her with Mr. Grimm on any day that was not a Saturday? A. Yes, sir; I did.

Q. On what occasion was that and what day was it? A. I think it was—one was on a Friday.

Q. Do you remember the date? A. I think it was the 23rd.

Q. Now the 16th, you say this was on Saturday. If the 16th was on Saturday, the 23rd would be on Saturday, wouldn't it? A. I can't remember exactly what day it was, Mr. Lane.

Q. Do you remember following her, when you saw her with Mr. Grimm upon a day that was not a Saturday, is what I am trying to get at. A. I do not remember, no, sir; just what dates are down there, that is all.

Q. The dates, however, that you gave on your direct-examination, are correct; there is no doubt about that? A. Absolutely, yes, sir.

Q. Now, on the occasion that you saw them in front of this tree, or by this tree, do I understand that they stood at that tree for over an hour kiss-

ing each other? A. Not a steady kiss, no. Off and on.

Q. Well, but at any rate, this kissing—they didn't move from that tree. A. Didn't move from that tree.

Q. They stood at that one point? A. Absolutely.

Q. And were engaged in a continuous, or, rather, an interrupted performance of kissing. A. Yes, sir.

Q. From time to time, is that right? A. Yes, sir.

Q. And you didn't see anything else? A. No, only thing was that they were hugging each other there at the same time.

Q. They were hugging and kissing each other. A. Yes, sir.

Q. Standing up on the street. A. Yes, sir.

Q. So all that you could see from a point how far off? A. About fifty feet.

Q. And you were within fifty feet of them? A. Yes, sir.

Q. And you didn't see them do anything else there at that time except kissing? A. No, sir; I did not.

Q. Now, when they were at this telephone pole out in front—or telegraph pole in front of the cemetary, what day was that on? A. That was on the 29th of August, 1924.

Q. That was on Friday, wasn't it? A. I think that was on Friday, I do not remember just what day it was on, but I knew there was one Friday.

Q. Was there a lot on that street? A. There were some lots on that street, yes, sir.

Q. And they were standing there, and you were

how far away when you were looking at them? A. Why, they were standing directly under a telegraph pole that had the electric light on.

Q. Yes; but how far away were you? A. We were standing up about a hundred to a hundred and twenty five feet north of them.

Q. That was on what street? A. That was on Liberty Street.

Q. And they were kissing each other there? A. Yes, sir.

Q. Standing up by the telegraph pole? A. Yes, sir.

Q. For the time you were looking at them. A. Yes, sir.

Q. At least fifteen minutes. A. Yes, sir.

Q. Any other people on the street? A. Not any people there, no, sir. There was a cemetary on one side.

Q. How far was that from her home? A. It was about a five minute walk from her home.

Q. What attraction was there at the cemetary, do you know? A. No affection.

Q. Attraction. A. Oh, attraction? That would attract them there?

Q. Yes; attract anybody to a cemetary; was it dark? A. Yes, sir; it was dark in places and there was a long vacant lot alongside of where we were standing.

Q. I show you D-1 and D-2 for identification and ask you whether you can recognize the locality of those photographs. A. Yes, sir.

Q. Which one? A. This is the first one here (indicating).

Q. That is Exhibit D-2. The tree that is in the foreground, is that the tree that you have been referring to? A. No, sir.

Q. Which is the tree? A. This is the tree here (indicating).

Q. Then it is the tree that is in the background. A. Yes, sir—background? No, that is—(interrupted).

Q. Well, the tree that appears to the right of the picture, put it that way—the middle tree shown on the picture. A. Yes, sir.

Q. And you don't recognize this locality? A. I do, yes, sir.

The Court: What?

Mr. Lane: Exhibit D-1.

Witness: This is the lot that Mr. Cummings pointed out to me and Mr. Cox at one time stated that that was the lot that he had saw Mrs. Cummings and Frank Grimm in; that is between Hornblower Avenue—and there is another block back here which I do not recall the name of.

Q. You don't recognize this as any locality in which you saw Mrs. Cummings and Mr. Grimm; is that right? A. No; no, sir.

Q. Did I understand you to say that there were building operations going on on this lot? A. No, sir.

Q. You didn't? A. I did not.

RAYMOND COX, sworn for petitioner.

Direct-examination by Mr. Child:

Q. Where do you live, Mr. Cox? A. 111 Leslie Street.

Q. Newark? A. Newark.

Q. And what is your business? A. I am mana-

ger of the American Associated Industries.

Q. What do you mean by that? A. That is my business.

Q. What do you mean? A. Managre of that plant.

Q. What is that plant? A. Manufacturers of spot lights.

Q. For automobiles? A. For automobiles.

Q. Were you at any time employed by the Corbally Agency? A. I was.

Q. And when were you employed by them? A. From May, 1924, until about November or December.

Q. Of that same year? A. Of that same year.

Q. During the course of your employment did you have occasion to follow the lady that has been identified as Mrs. Cummings, and a man named Frank Grimm? A. Yes, sir.

Q. On how many occasions did you follow Mrs. Cummings if you can recall? A. Mrs. Cummings?

Q. Yes. A. I believe it was six or seven; I am not sure.

Q. And did you ever see her meet Mr. Grimm? A. I did.

Q. When was the first date, if you can recall it, when you saw Mrs. Cummings meet Frank Grimm? A. I believe it was on the 16th.

Q. Of what month? A. Of August, 1924.

Q. And where did you see them meet? A. In front of the Post Office.

Q. In Newark? A. In Newark.

Q. And from there where did they go? A. On the 16th they went—they first went over to the Palisade bus line in front of the Public Service Terminal, turned around, came back—they had another couple with them at the time—they turn-

ed around and came back to the Post Office and boarded an Elizabethport car and I got on the same car with them and we rode down to Elizabethport and there they got tickets for the boat to Coney Island. All this time I was with Frank Glagano. At the boat we also bought tickets and went down with them, and all while they were on the boat, on the way down, why they showed some intense affection.

Q. Well, what did they do—what did Mrs. Cummings and Grimm do, if anything, on the boat? A. Well, in the first place they sat on the dark side of the boat and they sat very close together, and they were hugging and kissing one another. At Coney Island when they got off the boat they, of course, walked arm in arm up the pier to the boardwalk and up—I think it is West 16th Street, and in there—at West 16th Street they walked towards—to the amusement park and entered an amusement called the Gold Mine. The Gold Mine takes about three or four minutes to go through.

Q. Did you go in the Gold Mine? A. I did not on that day, but I did the next day.

Q. What did you see that day, that first day? A. At that time, Galgano was with me—and at that time Galgano left me to call up the office in Newark while I stayed outside and watched the ride. Well, when they came out of the ride Galgano hadn't yet returned so I followed them back to the boat and on the way back they stopped in a restaurant, sort of a chop house, I guess it is, and they got something to eat and came out and reboarded the boat. On the way up they were on the upper deck—on the way to the Island they were on the upper deck, and on the way back they sat on the lower deck in the back of the boat and

at this time—during all this time, why, Grimm had his arm around the lady and they seemed quite affectionate.

Q. When you say "the lady" who do you mean? A. Mrs. Cummings.

Q. That was on the return trip? A. On the return trip.

Q. What time did they get back to Elizabethport? A. I believe it was 11:45; I am not sure.

Q. And from there where did they go, do you know? A. They boarded a Roseville trolley car which I boarded, and we rode up to Dreamland Park, and at that time I got off the car and they continued to ride on the car and all the while, of course, they had their arms around one another.

Q. On the trolley car? A. On the trolley car. Going down in the afternoon they had their arms around each other in the trolley car also.

Q. You did not continue on with them to see where they went. A. No. I followed in a taxi from then on, because the car got too crowded to keep track of them.

Q. You followed in a taxi? A. I followed up to John and Washington Avenue, John Street and Washington Avenue.

Q. What did you see there? A. They got off the car and walked up John Street to Washington Street and directly home.

Q. To whose home? A. To number 10 Washington Street where Mrs. Cummings lived.

Q. And did you see anything while they were walking from the trolley car to Mrs. Cummings' home, any demonstration of affection or anything of that sort? A. No, sir; I did not, except they had their arms around one another as people do walking on a dark street.

Q. Where did Mrs. Cummings go when she reached her home? A. She went into her house. They stopped for a moment or so to say "Good night" and went into the house.

Q. Where did he leave her? A. In front of the house Number 10 Washington Street.

Q. And what time was that? A. I couldn't tell the time. It was after 12:00. I don't know what time after.

Q. When next did you see them together if at all? A. I think it was the next week, I think it was the 23rd.

Q. And where did you see them? A. Why, Mrs. Cummings—we had been—Galgano and I were up at the house, shadowing the house and Mrs. Cummings came out and went down to the same place —to the Post Office and met Mr. Grimm there; they went from there down to Dreamland Park; they walked around the park and finally went in the bull fights that were going on in the Arena at the time. Beforehand they had played games of chance and had drinks.

Q. And when did they come out of the bull fights? A. As soon as it was over. I don't know how long that was.

Q. Where did they go then? A. They went from there, I believe—I can't recollect. I believe they went right home. They went right out of the park and boarded a Roseville car and rode to Broad and Market Street. There they got off and went down to the Royal, Chinese Restaurant named the Royal. It is down on Market Street, opposite Washington Street.

Q. And how long did they remain there, about? A. They remained in there for a half an hour, I think.

Q. Then where did they go? A. They then boarded a taxi and the taxi took them up to Washington Avenue and John Street; but after the D. L. & W. station at Broad Street here I didn't see them because I got down in the bottom of the car, and the next time I saw them was to get out of the taxi, and after that I didn't see them at all that night.

Q. Saw them get out of the taxi? A. Saw them get out of the taxi, but I didn't see them after that.

Q. Why didn't you see them after that? A. Because I was down on Washington Avenue waiting for Mr. Cummings.

Q. When next did you see them together? A. It was on the 29th.

Q. And where did you see them that day? A. They met at the same place and went down to Dreamland Park again, but they didn't stay in the park only until about 10:15, I believe. They left and started back for home.

Q. Do you remember where they got out of the trolley car? A. Where they what?

Q. Where they alighted from the trolley car. A. About down to the Elizabeth line.

Q. You mean coming home? A. Coming home?

Q. Yes. A. I believe they got off at Rutgers Street.

Q. And did they go directly home then? A. After that I did not see them.

Q. During this trip of the 29th did you see any evidence of affection between the two? A. Going down in the trolley car.

Q. What did you see? A. They sat with their arms around one another.

Q. How about coming back? A. Tne same way.

Q. Now when next did you follow them? A. 29th was the last.

Cross-examination by Mr. Lane:

Q. Have you your original notes that you made at the time? A. No, sir; I have not.

Q. Did you make any original notes? A. I did at the time it was going on; yes, sir; while we were following them.

Q. When did you destroy your notes? A. As soon as I left the employment of the Corballys.

Q. You kept your notes up until that time? A. Some of them, not all of them. I kept what were in the book and were tied in the book, anything that was made on loose paper I threw away.

Q. Did you tell Mr. Corbally or anybody from the Corbally Agency you were going to destroy them? A. No, sir; as soon as I left the employment I knew I had no more use for them and I destroyed them.

Q. You knew you were going to be a witness in this case? A. No, sir; I did not.

Q. Wasn't that talked about before you left the employ of the Corbally Agency? A. What do you mean?

Q. What I say. Didn't you know you were to testify in the cases you were working on? Wasn't anything said about that? A. There were.

Q. Yes. And in such discussion didn't the question of your notes come up? A. When?

Q. When you left the employ of the Corballys. A. No, it did not.

Q. Nothing was said about your notes as to whether you had them or whether they had been destroyed? A. Not a word.

Q. Although you did discuss the fact that you were going to testify in the cases you had worked on; is that right? A. Do you mean that I told them that I would testify in any case that I worked on?

Q. Yes. A. I didn't say that in so many words, no.

Q. They asked you to. A. They didn't ask me when I left.

Q. It was discussed or talked about. A. Not with me, when I left it wasn't.

Q. Nothing said about it? A. Not a word.

The Court: It was understood on your part.

Witness: If they had asked me, I would have. I would do it, naturally, as I am doing now.

Q. Now, did you make any—besides your original notes did you make reports to the agency? A. Reports? A. I certainly did.

Q. The next morning? A. Yes, sir; the next morning.

Q. Those reports are in existence, aren't they? A. Absolutely.

Q. And you have seen those reports recently? A. Oh, yes.

Q. And gone over them for the purpose of testifying here, is that right? A. I looked at them; yes, sir; I didn't go over them though.

Q. On the 16th of August do you remember where was it—where were you when you first saw Mrs. Cummings? A. On the 16th?

Q. Yes. A. I was in the car at William Street and Dowd, or William and Washington.

Q. And Galgano was with you in the car? A. Yes, sir.

Q. Now, when Mrs. Cummings and her friend boarded the trolley car that afternoon, what did you do? A. I stayed in the car with Frank Galgano and followed them down to the Post Office.

Q. And you followed them in the car to the Post Office? A. To the Post Office in our machine.

Q. In your machine? A. Yes, sir.

Q. There can't be any question or mistake about that, can there? A. Not a bit.

Q. And both of you were in that car; is that right? A. At that time we were.

Q. And that was about six o'clock at night, wasn't it? A. About that. I wouldn't say for sure.

Q. Now, do you know Galgano's handwriting? A. I might.

Q. Have you seen his report of the 16th? A. No, sir.

Q. Now I show you Exhibit for identification D-3 referring to the date of August 16th and ask you whether if you read that portion of it your recollection may be refreshed (indicating). A. That report is correct.

Q. Well, then, you are incorrect? A. I am.

Q. So that, although a few moments ago you were certain that there could be no question but that you and Galgano both went down in the car that afternoon, you now say you were incorrect and that what happened was—(interrupted). A. That I went down in the trolley car.

Q. Yes. And what happened to the car, the automobile you had up there? A. That followed right on behind.

Q. Who was driving? A. Mr. Galgano.

Q. And where did you meet Galgano again that day? A. That night I met Galgano down in front of Plaut's. He had followed the car down to there. When I got off he stopped his machine in front of Plaut's.

Q. So that he just happened to meet you at that point, at the time you got off? Did you have any arrangement as to where you would meet him or what? A. Naturally when you are working together you keep together.

Q. So the car followed all the way down? A. Absolutely, followed the trolley car.

Q. The trolley car all the way down and he saw you when you got off? A. Most likely or he wouldn't have stopped.

Q. And did she get off the car at that point? A. Certainly did.

Q. Have you told us all of the times that you followed Mr. and Mrs. Cummings? A. Yes, sir; I have.

Q. I don't mean all the times in which you saw —withdrawn. Have you told us all the times you followed Mrs. Cummings? A. No, I have not.

Q. What other dates did you follow Mrs. Cummings? A. I am not sure of the dates, butI think —I know it was before the 16th. I followed her two or three times. I am not sure how many times I was there at night around five o'clock.

Q. Did you follow Mr. Grimm at any other times than those you have referred to? A. Yes, once.

Q. What date was that? A. I am not sure, but I believe it was the 27th.

Q. And you made a report to your agency of that? A. Yes, sir.

Q. Have you your original notes of those cases?

A. No original notes whatsoever; they are all destroyed.

Recess.

FRANK CORBALLY, sworn for Petitioner.

Direct-examination by Mr. Child:

Q. You live where? A. Number 2 Myrtle Avenue, Newark, New Jersey.

Q. And you are connected with the Corbally Detective Agency? A. Employed by the Corbally Detective Agency.

Q. Did you at any time watch Mrs. Cummings, the defendant in this case? A. Yes, sir.

Q. Who pointed her out to you? A. Mr. Galgano.

Q. Upon what dates did you watch her? A. On the night of August 23rd, 1924.

Q. Any other time? A. August 29th, 1924.

Q. Is Mrs. Cummings in the court room? Can you identify her? A. No, I could not.

Q. Where did you start in watching her?

The Court: The lady sitting back of Mr. Lane is said to be her.

Witness: I wouldn't know her the way she is dressed now, your Honor, no, sir.

Q. Where did you start operations of watching her? A. Why, about quarter to 12:00 Mr. Galgano called me up—on the evening of August 23rd, at my home and told me that Mrs. Cummings and a gentleman were in the Royal Restaurant on Market Street. I went down and met Mr. Galgano, and they came out about 12:10 P. M.

Q. Who was with Mrs. Cummings? A. Another gentleman.

Q. A gentleman, you mean. A. Yes, sir; a gentleman.

Q. Do you see him here in Court? A. No, sir; I would not recognize him.

Q. Where did they go from there? A. Why, they boarded the car and rode to Belleville. They got off at John Street and walked one block up to Washington Street and walked over Washington Street about—south about fifty feet. They stood behind the tree for about twenty or twenty-five minutes. I left watching them and went down after Mr. Cummings, down to the fire house, and brought him up, brought him up and showed the two of them standing behind the tree from the corner.

Q. How long did they stand there? A. Well, must be twenty-five minutes.

Q. And from there where did they go? A. Why, he walked over to Mrs. Cummings' house and then walked down—I forget what street it is.

Q. Who walked down? A. Mrs. Cummings and the man that was with her, walked to Mrs. Cummings' home.

Q. Where was her home, do you know? A. Number 10 Washington Street.

Q. What time did they get to the house, if you recall? A. Must be around 1:00 o'clock.

Q. While they were standing there by the tree could you see what they were doing at all from where you stood? A. No, sir; could not; it was too dark.

Q. What date was this? A. August 23rd, 1924.

Q. And when was the next time you watched them? A. August 29th.

Frank Corbally—Cross.

Q. Where did you see them that night? A. I saw them as they were getting off the trolley car at John Street and Belleville; they walked up John Street, up to the top of the hill to another street, I think it was Liberty Street; stood on the corner near the electric pole about twenty minutes talking; they went down that street—I forget the name of it—to Mrs. Cummings' street and he left her there and walked down to Washington Avenue and went to the lunch room, came out of the lunch room and boarded a trolley car to Newark.

Q. What time did he leave Mrs. Cummings that night? A. About 11:30 P. M.

Q. How many times did you follow Mrs. Cummings and this man? A. That is the only two times I was on it.

Cross-examination by Mr. Lane:

Q. Who were with you on the 23rd? A. Mr. Galgano, Mr. Flarity, a gentleman friend of mine, by the name of Mr. Mooney, another operator by the name of Cox, Mr. Cox—I believe that is all that was with us.

Q. And who were with you on the 29th? A. Mr. Cox, Mr. Flarity, Mr. Galgano and myself.

Q. Did you make the notes? A. Yes, sir.

Q. Have you got them here? A. No, sir, I have not. I just read them before I came here though.

Q. Your original notes? A. Yes, sir.

Q. Lead pencil notes, I mean, made at the time? A. Yes, sir.

Q. Not the report. A. No, sir; we always make up lead pencil reports first.

Q. Lead pencil reports? A. Yes, sir.

Q. And is it your practice to keep those? A. Yes, sir; to keep them on file at the office.

Q. And you don't know of any other practice that they indulged in, in this case? A. Except Mr. Flarity. He generally typewrites his reports instead of writing them with a pencil.

Q. Mr. Flarity? A. Yes, sir.

Q. But the other operators; they write them in pencil and keep their notes? A. Yes, sir.

Q. And the notes you have reference to, your original notes, are at your office? A. Yes, sir.

Q. And you read them just before you came here to testify? A. This morning, I did.

Q. This morning? A. Yes, sir.

Q. And you told us all you know? A. All I can remember.

Q. Do you know a restaurant on the corner of Chester and Washington Avenues, kept by a man named Rothrock? A. On Chester Avenue and Washington Avenue?

Q. Yes. A. No, sir.

Q. Who is Mr. Mooney? A. That was a gentleman from New York who was stopping at my house that night.

M. HORACE WEY, sworn for Petitioner.

Direct-examination by Mr. Child:

Q. Where do you live, Mr. Way? A. 111 Brunswick Street.

Q. What is your occupation? A. At present I am not doing anything. I have just returned from college.

Q. Are you acquainted with or did you ever meet Mr. Owen Cummings the petitioner, in this case?

A. I met him one night last summer. He presented himself to us. My friend and I, Mr. Palmer, were stopping at a drug store in Arlington. We just left our house and stopped at the drug store. Mr. Cummings came up to us and asked us if we had seen any gentleman—(interrupted).

Q. Never mind what he said to you. A. I never met him before. First time I ever saw him.

Q. Now, after you met Mr. Cummings, what did you and Mr. Palmer do? A. Why, we had been down to my house until about around nine o'clock.

Q. This last summer, 1925? A. Yes, sir, 1925. We had been down to my house, I believe I had been working later—we left there about nine o'clock. We were going over to his house in Arlington. We stopped at this drug store, Laurel Avenue, to get a package of cigarettes.

Q. What did you do after Cummings spoke to you? A. He asked us if we had seen this young lady and man, and he asked us information about road houses and so forth, around town there. Asked us if we would look up the street there—we had a fliver coupe—he asked if we could follow them—we hadn't seen them up to that time, see? If we could locate them— We went up Kearney Avenue and we saw no trace of them and then we came back to the drug store after about ten minutes and we saw Mr. Cummings again. At that time he had given us no information about what it was all about and we were kind of bewildered—we were just doing it for a little sport. He told us he had a gentleman following the couple and asked us if we would wait until they came back—I mean wait until this gentleman came back, and we waited until he came back. He got a lift back and it seem-

ed he had followed the couple up the Belleville pike.

Q. Never mind what he had done. What did you do after the man came back—where did you go? A. Why, we followed Mr. Cummings and this other gentleman in the flivver coupe and went up the Belleville pike and stopped at the main street there in Belleville and we waited there a couple of minutes and there was a fire. He pointed out the place to us where the young lady was supposed to be and the young lady and the man and an elderly lady and a young baby came out to go to this fire. And Mr. Cummings asked if we would follow him. We went around the corner—I guess it is Rutgers Street—and they were coming back from a false alarm.

Q. Who? A. This Mr. Young and Mrs. Cummings and the baby and this elderly woman were coming back and Mr. Young and Mrs. Cummings were walking together. Mr. Cummings—(interrupted).

Q. Mr. Who? A. I mean Mr. Young. He had —I think he had his arm around her waist; I wouldn't say for sure.

The Court: What? He had his arm in her arm or around her?

A. They were walking up the street.

The Court: You say he had his arm around her arm or around her waist, which?

Witness: I don't know which. I know they were walking together anyhow. Then we went over to this house again on the main street there and shortly afterwards.

The Court: Is that the Cummings house as you understood it?

Witness: No. That is this gentleman Mr. Young—Mr. Young's house. They went in there, up on the porch—they didn't go in, and very shortly afterwards they came downstairs again from off the porch—

The Court: Who—they?

Witness: Why, Mrs. Cummings, Mr. Young, the baby and this elderly woman, and Mr. Cummunings suggested that we follow them. It seemed as if they were going to take them home. So we walked down the avenue and went up a street to the right and followed them over to Mrs. Cummings' street and we walked—it was a very dark street—and we got behind a tree and watched them stop at a house there, and then we walked by the house—they were all standing there, and we went down to the corner and stood behind a telegraph pole, and we couldn't see very well there; we stood off about fifteen doors; and we came back on the side of the street where the house was and Mrs. Cummings and Mr. Young—there was a little gate there—they were sitting there by the gate and the elderly lady and baby were standing there talking to some other person. They were out in front with everybody. We went by the house and went back to the avenue to Mr. Cummings, and we were going to come back again, but just then Mr. Young and his mother, as I understand it, came back, so we came home.

The Court: The elderly woman, you understood, was Mr. Young's mother?

Witness: That is what I understood.

Q. When they walked down the street at the time of the false alarm of fire did you see any evidence of affection between Mr. Young—

The Court: What he saw. I will say whether it was affectionate.

Q. Have you told us all you saw? A. Yes, sir.

The Court: He said he had his arm around her arm or around her waist, he don't know which.

Q. Did you notice whether he paid any attention to the child or not? A. When he crossed the street from Rutgers Street there, I think he picked up the child. I know he caressed the child on the head and acted very familiar with her.

Q. The child? A. The child in particular; I notice that; and he ran back again to touch the child—pick it up.

Q. Have you told us everything that you saw them do that night? A. I think I have.

Cross-examination by Mr. Lane:

Q. How old are you? A. Twenty one.

Q. What college do you attend? A. At present I do not attend any. I just quit. I did go to Wesslyan University, Connecticut.

Q. Had you ever met Mr. Cummings before? A. No, sir.

Q. Have you ever met him since? A. Not until today.

Q. Never met Mrs. Cummings? A. Never met her at all.

Q. Have you ever seen Young before? A. No, sir?

Q. Do you recognize Mrs. Cummings? A. No, I do not recognize Mrs. Cummings, but I recognize Mr. Young.

The Court: Mr. Young, will you stand up? Is that the man?

Witness: Yes, sir.

The Court: Where did the Youngs live, as you understood it? You didn't know any of these people, did you?

Witness: I didn't know them.

The Court: You only identify them from what Mr. Cummings told you at the time?

Witness: Yes, sir.

The Court: He told you who the woman was and who the man was and who the elderly woman was?

Witness: Yes, sir.

Q. Where was Young's house? A. As you come out of the Belleville pike it was across the street in the second house on the left.

Q. What street that is you don't know? A. I think it is Washington Avenue.

Q. Washington Avenue? A. In Belleville. It is the main street where the trolley car runs.

Q. Where did the Cummings live? A. I remember there was a gasoline station on the corner.

Q. Washington Street? A. On Washington Street.

The Court: The Youngs' house on Washington Street—the Youngs' house and the Cummings' house was on the same street?

Witness: No; the Youngs' house was on

Washington Avenue.

The Court: And the Cummings' house is on what—Washington Street?

Witness: I guess it is Washington Street. I don't know, but they went up a couple of blocks.

Q. How far apart? A. I think we walked down two blocks to this gasoline station and then walked up one and turned to the left. I don't know that—(interrupted).

Q. Did you follow Mrs. Cummings on any other occasion? A. No, sir; I did not.

Q. You met her on the street once, didn't you? A. No; I don't know what you mean.

Q. Didn't she stop you once and ask you whether she was following you, or whether you were following her or not? A. No, sir.

Q. Sure nothing like that took place? A. No, sir.

Q. Didn't you tell her you were not following her? A. No, sir.

Q. Wasn't that one night last week when she was with her little child? A. No, sir.

Q. Sure about that? A. I haven't been in town but about a week.

Q. I mean last summer. A. No, sir; I immediately forgot all about it. This is the first I heard of it.

PAUL PALMER, sworn for Petitioner.

Direct-examination by Mr. Child:

Q. Where do you live? A. 215 Laurel Avenue, Arlington.

Q. Did you ever meet Mr. Cummings, the petitioner, before? A. One night in August, last summer.

Q. Met him over in Arlington? A. Yes, sir.

Q. Did you at his request go over to Belleville? A. Yes, sir.

Q. And did you see a man and a woman in Belleville? A. Yes, sir.

Q. Where did you go in Belleville? A. We went —we first went up to the corner of Washington Avenue and Rutgers Street, and parked there. We were told by Mr. Cummings that his wife would be across the street in the second house from the corner.

The Court: Cummings was a stranger to you, was he?

Witness: Yes, sir; never had seen him before. We waited there about five or ten minutes. False alarm or some fire had been near the railroad down Rutgers Street, and the woman, who Mr. Cummings said was his wife and some gentleman friend and some elderly woman and child came out of the house we were watching and went down to where the fire was supposed to be, and Mr. Cummings asked that we follow them. We followed them down and waited until they started home and came up back of them, and the gentleman friend of Mrs. Cummings picked up the child and carried it across the street once or twice and coming up Rutgers Street I believe he had his arm around her waist.

The Court: Are you sure about that, the arm around her waist, or her arm?

Witness: Her waist, I think.

Q. And then? A. They returned to the porch of his house—what I believe to be his house—and they all sat there for, I should say, twenty minutes.

Q. Whose baby was it, as you understood it, Mrs. Cummings'? A. Mrs. Cummings' house?

The Court: Mrs. Cummings's baby.

Witness: So I understand.

Q. What did you do then? A. They left the porch then and started to walk down Washington Avenue towards Newark. I think they walked one block down. We followed them—and walked one block up. I don't know the name of that street. They then turned to the left on the next block, which was Washington Street and down, to what I believe to be Mrs. Cummings' home.

Q. Who went down? A. Mrs. Cummings and the man.

The Court: And the man and baby?

Witness And the older woman and the child.

Q. Where did the elderly woman and the child and Mrs. Cummings go? A. They went into the house—the front stoop of the house.

Q. Did the man accompany them? A. Yes, sir, he did. They stood there and talked quite some time, until we walked down the street passed them and stood behind a pole on that street, and we thought it would be about time we should go back to Mr. Cummings. We started back and when we saw him we told him what we had seen, and then we saw Mr. Young, I believe his name is, and his mother, not the child, but Mr. Young and his mother returned.

Q. Do you see Mr. Young in the court room, can you identify him? (Mr. Young stands up.) A. I believe that is him.

Cross-examination by Mr. Lane:

Q. What time was it you saw them come out to go to the fire? A. About nine o'clock—or we left Arlington, I would say, between 9:30 and quarter to 10:00.

By the Court:

Q. Why were you so busy about this thing? It was none of your affair. It wasn't a very nice thing to be bothering with. Why were you interested? A. He asked us to go.

Q. He was an absolute stranger to you. Why should you bother with another man's business, and one of spying on a woman? Why were you interested? A. He claimed his wife was out with another man. We didn't know if that was exactly right on her part.

Q. Why were you interested in it? It wasn't your wife? Why were you interested—I say, why were you two interested? A. I guess we didn't have much time to think it over before we went. We did it right on the spur of the moment.

By Mr. Lane:

Q. How old are you? A. Twenty, now.

Q. What is your business now? A. Clerk.

Q. What was your business then? A. Clerk.

Q. Did you make any report of this in writing? A. No, I did not.

Q. At any time? A. No, sir.

Q. Were there other people going to this fire besides the Youngs? A. Quite a few.

Q. Quite a few. That's all.

HARRY KAISER, sworn for the Petitioner.

Direct-examination by Mr. Child:

Q. Mr. Kaiser, do you know Mr. Cummings, the petitioner? A. Yes, sir.

Q. Where do you live? A. 274 Mt. Pleasant Avenue, Newark, New Jersey.

Q. What is your occupation? A. Fireman.

Q. City of Newark? A. Yes, sir.

Q. Are you acquainted or do you know Mrs. Cummings by sight? A. I do now. I didn't up until I spoke to Mr. Cummings or Mr. Cummings spoke to me, rather; I never recall meeting her before.

Q. Are you acquainted with a man named Young? A. No, sir; I know him now, though.

Q. Know him by sight? A. Yes, sir.

Q. When did you first see Young to your knowledge? A. On June 4th, 1925.

Q. And where did you see him? A. Front of the Library on Broad Street.

Q. And why were you there? A. On Broad Street this side of the Library.

Q. I say, how did you happen to be there? A. Mr. Cummings asked me if I would mind following Mr. Young and his wife—a man that proved to be Mr. Young.

Q. Did you follow them? A. Yes, sir.

Q. What time was it you saw them in front of the Library? A. About eight o'clock. Mrs. Cum-

mings came out with the child and met Mr. Young.

Q. Out of where? A. Out of the Library. Walked across the street in the ice cream store; stayed probably five or ten minutes; came out; Mr. Young saw Mrs. Cummings on the car, Mt. Prospect Avenue car, with the child; Young walked down to Orange Street and got on a Broad Street. Later on, probably half an hour—three- quarters—I met Mr. Cummings and told him what I had saw. He suggested we take a ride on a trolley car. He says "We will locate them later." Took a Broad Street, rode to Riviera Park in Belleville. Went into the park, looked through the park, couldn't locate anybody, came out; Mr. Cummings said, "We will ride back." I said, "We might as well walk, pretty nice night." We walked back. We—Mr. Cummings met some friends and he talked ten or fifteen minutes; left them, walked down another block and there we met Mr. Young and Mrs. Cummings walking west on William fifteen feet from us.

Q. Were they alone? A. Yes, sir.

Q. Did they have the child with them then? A. No, sir.

Q. Then what did you do? A. We continued on past them.

Q. Who—we? A. Mr. Cummings and myself.

Q. Did you recognize his wife to speak to her? A. I didn't recognize her.

Q. Did he? A. He recognized her; didn't speak to her.

Q. On the same sidewalk you passed them? A. No; they were going west on William; we were walking south on Washington Avenue.

Q. Did you see them again together any other time? A. On June 10th.

The Court: On that day, you mean?

Witness: June 10th.

Mr. Child: Yes.

Witness: Mrs. Cummings left Mr. Cummings, came out with the child, met Mr. Young and they went in the ice cream store, corner of Bridge and Broad.

Q. Came out of where? A. Ice cream store.

Q. Before they went into the Ice cream store. A. Came out of the Library.

Mr. Child: That is the place of visitation of the child, your Honor.

Witness: Waited on the safety aisle, got on a Broad car at Bridge and Broad. I got on at Orange Street; sat two seats ahead of Mrs. Cummings. She was sitting on the right with the child; Young was sitting opposite her with another gentleman. At the D. L. & W. the other gentleman got off the car. Young called Mrs. Cummings over to his seat. She went over with the child. Mrs. Cummings told him to take off his hat, which he did. The child was standing partly in the aisle and party squeezed into the back—into the seat. Young started to play with the child with his hand, chucking it under the chin and caressing it; apparently the child resented it. He continued playing—with the left hand—making motions to the child, withdrawing his hand to Mrs. Cummings' breast where he was apparently rubbing her breast. They rode to Bloomfield Avenue and Belleville, got off the car and went into the Regent Theater. I saw

Mr. Cummings later on, told him what had happened, went back about ten after 10:00, I believe it was, went in the theater and looked around, couldn't locate them. Sat there trying to locate them, and I saw Young's form stand up in the aisle when they were leaving the performance at the end; they walked over, got on a car; I got on the car—Broad car—rode as far as the North Newark station of the Erie Railroad; I got off the car; they got off and I left.

Q. Did you follow them at any other time? A. On June 16th.

Q. Where did you meet them that day? A. At the Library. She met—Mrs. Cummings met Mr. Young with the child and another young girl, who Mr. Cummings said was Young's sister. They got onto the car, rode to the city line, got off the car, walked on the east side of Washington Avenue up to John Street, crossed over and went into a house which Mr. Cummings said was Mr. Young's home, No. 175 Washington Avenue, Belleville, New Jersey. I met Mr. Cummings after and told him.

Q. What? A. Mr. Cummings. We went back up—waited there. They were—apparently somebody was sitting on the stoop—who it was I don't know—once in a while I would see a cigarette being smoked. Later on, about—it was about 10:45 I believe when they left. Mr. Young, Mrs. Cummings and the child came down out of Young's home, walked down Washington Avenue and up John Street to Mr. Cummings, and I withdrew back a little ways, twenty or thirty feet, and Mr. Cummings suggested to take a walk up and see where they went. I said, "Sure". I walked up

and as I got near the next corner Mr. Young was returning alone.

Q. How did Mr. Young conduct himself towards Mrs. Cummings on that trip? Was there anything unusual about his conduct? A. Not on that last trip, no, sir.

Q. Did you watch them again? A. No. The next time was on January 12th of this year. Mrs. Cummings wasn't into that, though.

Q. What? A. On January 12th of this year when Mr. Young shook his fist at Mr. Cummings from the car.

The Court: What did he do?

Witness: Shook his fist at Mr. Cummings.

Q. In a car? A. From a car—he was in a car.

Q. You mean trolley car? A. Yes, sir.

Cross-examination by Mr. Lane:

Q. You had been accompanying Mr. Cummings down to the Library on these various visitations of his quite often, haven't you? A. Met him three times for that purpose.

Q. Is that the only time you accompanied him when he went to see his child at the Library? A. Only the next time I went was January 12, this year.

Q. Did you accompany him on that occasion to the Library also? A. No, I didn't accompany him, but I walked down after, you know, then I left.

Q. What time of the day was it that you and Mr. Cummings went down to the Library? A. That night around twenty five after 7:00. I would go down—Mr. Cummings would leave me at Orange and Broad.

New Jersey State Library

Q. Well, didn't you go with Mr. Cummings right to the Library? A. No, sir; not with Mr. Cummings.

Q. Did you meet Mrs. Cummings at the Library? A. Met her coming out—saw her coming out.

Q. Did you speak to her or did she speak to you? A. No, sir.

Q. Have you ever spoken to her? A. No, sir.

Q. Where was Mr. Cummings when she came out of the Library? A. I don't know.

Q. How long after she came out of the Library did you meet Mr. Cummings? A. Well, on the first night, that was June 4th—yes—June 4th, she came out, I should judge, around 8:00 o'clock. I met Mr. Cummings between 8:30 and 9:00 o'clock.

Q. Where? A. Orange and Broad.

Q. Is that where you had an appointment to meet him? A. No; I had no appointment. That is where I picked him up.

Q. Pure accidental picking up? A. No; I had been looking and waiting for him, but I had no appointment—no set place to meet him.

Q. Where was he to come from? A. I don't know. He had said nothing. He came along on very short notice that night, asked me, "Harry, will you do a favor?" I said, "Yes"; he explained it; he says, "You follow them." I said, "All right." And, of course, Mr. Young saw Mrs. Cummings on the Mt. Prospect car with the child, he walked to Orange Street, got on a Broad, that threw off the plans of following the two of them together where they went.

Q. When did you get your instructions to go down to the Library on the night of June 4th? A. About quarter after 7:00 that night, twenty after, maybe.

Q. Where? A. Orange and Broad.

Q. From whom? A. Mr. Cummings.

Q. And how did you happen to meet Mr. Cummings there? A. He came along, I was standing there.

Q. Pure accident? A. Yes, sir.

Q. You had no appointment to meet him there? A. No, sir; positively.

Q. And did Mr. Cummings at that time tell you he was going to the Library to see his child? A. Yes, sir.

Q. And then you went right to the Library, did you? A. Yes, sir—I didn't go to the Library.

Q. I understand you didn't. You stayed on the outside. A. Yes, sir.

Q. Did you see Mr. Cummings go in? A. No, sir.

Q. Did you see Mrs. Cummings go in? A. No, sir.

Q. Well, did Mr. Cummings leave you to go to the Library before you? A. Mr. Cummings left me, but he said he was going to see the child. Where he went I don't know.

Q. And you didn't see him go into the Library? A. No, sir.

Q. How long did you wait there? A. I waited —well, I guess it was about half past 7:00—around 8:00 o'clock probably.

Q. Watched in front of the Library? A. This side of the Library.

Q. This side of the Library. Then you saw Mr. Young and Mrs. Cummings come out? A. Yes, sir; Mr. Cummings was across the street in the park.

Q. Did you see Cummings come out? A. No, sir.

Q. When did you next see Cummings? A. I next saw Cummings between quarter to 9:00 and 9:00 o'clock.

Q. Did you follow Mrs. Cummings and the child after they left the Library? A. No; they met Mr. Young.

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The Court: Is the Library the place fixed by the Court for the husband to see the child?

Witness: They walked over to the ice cream store after meeting Mr. Young, came out probably five minutes later, and he put her on the Mt. Prospect car.

Q. What do you mean "Mr. Young saw Mrs.
20 Cummings on the car?" Do you mean he took her to the car? A. Yes, sir; safety isle. And she got on the car with the child.

Q. And then he waited— A. He walked on up to Orange Street and got on the safety isle and got on a Broad car.

Q. And then what did you do? A. I went looking for Mr. Cummings. I met him about quarter —(interrupted).

30 Q. You don't know where Cummings had been in the meantime? A. No, sir.

Q. And you met him on Orange Street? A. Orange and Broad.

Q. Although you had no appointment to meet him there. A. No, sir; no appointment.

Q. And then you and he went up to—(interrupted). A. To Riviera Park.

Q. Riviera Park? A. Belleville.

Q. What? A. Riviera Park, Belleville; looked
40 around, couldn't locate them.

Q. And then you went back and finally saw Mrs. Mrs. Cummings and Mr. Young walking on William Street, is that right? A. Yes, sir, west on William Street.

Q. West on William Street, and how close were you to them? A. About as close as I am to you, or you are to me, rather, about fifteen feet.

Q. And Cummings was with you? A. Yes, sir.

Q. And nothing was said by either of you. A. Cummings recognized them—"Here they come now". I recognized Mr. Young, it turned out to be.

Q. They didn't say anything? A. They didn't say anything, no, nothing was said, spoken.

Q. And the child wasn't there? A. The child was not there.

Q. And what time was that? A. Eleven o'clock.

Q. Now, on the night of June 16th where did you first get your instructions or when did you first get your instructions to be at the Library that night? A. Same night, around quarter after to twenty after 7:00.

Q. Where? A. Orange and Broad.

Q. Did you have an appointment to meet Mr. Cummings there? A. No, sir; Mr. Cummings came along.

Q. Pure accident? A. Yes, sir.

Q. And do I understand that exactly the same things happened in exactly the same way that night? A. Yes, sir; that is to what I stated.

Q. Cummings told you to go to the Library? A. Yes, sir.

Q. Wait until his wife came out? A. Yes, sir.

Q. And you did? A. I waited across the street, yes, sir.

Q. You don't know where Cunmmings went in the meantime? A. No, sir; I paid no attention.

Q. You didn't see Cummings come out of the Library? A. No, sir.

Q. You did see his wife. A. Yes, sir; I saw Young come out.

Q. Where were you then? A. On Broad Street.

Q. And then they met. A. Yes, sir.

Q. And got in a trolley car. A. Yes, sir.

Q. Both together this time? A. Yes, sir; with the child, and with the girl that Mr. Cummings stated later was Young's sister.

Q. All three of them? A. Four of them, counting the child.

Q. And where was Cummings then, do you know? A. I don't know.

Q. You got in the same car? A. Yes, sir.

Q. And how far from them did you sit? A. That time I sat four or five seats in front of them.

Q. Cummings wasn't with you? A. No, sir.

Q. Then what did you see? A. Didn't see anything then.

Q. What did you see finally that night, anything A. They rode to the city line. The car finished there. They had to get off there. We all had to get off. They walked up Washington Avenue, crossed over at John Street, Belleville, and went to Mr. Young's home—what Mr. Cummings said was Mr. Young's house.

Q. But Cummings wasn't with you at all that night? A. Not until the evening—not until they went in the house and I came back and met Mr. Cummings at the city line.

Q. Did you have an appointment to meet him there? A. Yes, sir.

Q. When did you make that appointment to meet him there? A. That night I didn't make an appointment to meet him at the city line. He left a telephone number; I called him up and he came up.

Q. Did you telephone to him then? A. Yes, sir.

Q. Where did you telephone? A. I telephoned a place on Orange Street.

Q. Where? A. I can't recall the number, but it is Knowles' cigar store.

Q. Was Cunmmings to wait for a telephone there? A. I suppose he was, because he came up and met me after I telephoned.

Q. Well, you told us on direct-examination with respect to what happened going up in that car. What happened going up in the car? A. Not on June 16th.

Q. What date was it? A. June 10th.

Q. June 10th? A. Yes, sir.

Q. Tell me what happened going up on the car June 10th. A. I stated—(interrupted).

The Court: Not what you stated. What happened?

Witness: I sat two seats from Mrs. Cummings and the child. Mr. Young sat opposite Mrs. Cummings with some other man; the other man got up and got out at the D. L. & W.; Mr. Young called Mrs. Cummings over; she went over. She said, "Take off your hat." He had a straw hat on; he then started playing with the child. The child apparently resented it; he withdrew his hand and apparently he was rubbing Mrs. Cummings' breast.

Q. What do you mean by "apparently"? A. He was—at the same time he tried to play with the child there—he was playing with the child.

Q. Where were you sitting? Two seats ahead of where Mrs. Cummings had left?

The Court: Say that over again; what was he doing?

Witness: What was he doing? Rubbing Mrs. Cummings' breast after he had attempted to tease the child with his left hand. hand.

Q. Which hand was he rubbing her breast with? A. Left hand.

Q. Which hand was he teasing the child with? A. With the left hand. He had started to tease the child—the right hand he had on the back of the seat, left it there.

Q. Which side of him was Mrs. Cummings on? A. On the right.

Q. He was—you were sitting in front of them. A. Yes, sir.

Q. You had to turn around to look? A. I was sitting over probably where you are maybe—two seats.

Q You had to turn around? A. Looked that way (indicating).

Q. Looked right at them. Did they know you were looking at them? A. I don't know whether she saw me or not.

Q. She could have seen you if you saw her? A. Yes, sir.

Q. And so could Young. A. If he had looked.

Q. Were there many people on this car? A. There were quite a few.

Q. Open car? A. Yes, sir; open car with cross seats.

Q. What do you mean by "open car with cross seats"? A. Well, some cars are open with all cross seats; this was cross seats with an aisle in the middle, seating two.

Q. Then it isn't an open car, is it? A. Yes, sir; pay as you enter.

Q. I understand that, but is it an open car or closed car? A. It is an open car.

The Court: Open car, wire sides?
Witness: Yes, sir.

Q. How many people sitting on each side of the aisle? A. Two on each side of the aisle.

Q. Two on each side of the aisle? A. In each seat, yes, sir.

Q. How many with you? A. Only myself.

Q. You were alone in your seat? A. Yes, sir.

Q. Where did you meet Cummings that night? A. At the Library.

Q. At the Library or at Orange Street? A. At the Library I met Cummings that night.

Q. By appointment? A. As Mr. Cummings stated, "Come down there, you will find Young there. You can watch him and she will meet him.

By the Court:

Q. Let me ask about the breast. Young was sitting on the outside? A. No, sir.

Q. On the aisle seat, was he? A. No, sir. Mrs. Cummings was sitting from the window seat, on the outside.

Q. Young sat at the aisle? A. No, sir; Mr. Young sat on the seat with the window; Mrs. Cummings sat on the aisle seat.

Q. You said she asked him to come over? A. He asked her to come over.

Q. Didn't you say twice that she asked him to come over? A. No, sir; he asked her to come over.

Q. Well, then she sat to his left, didn't she? A. At his right.

Q. What? A. At his right.

Q. How could he be apparently teasing the child with his left hand and apparently rubbing her breast? A. He had his right hand back of her on the seat; on the top of the seat.

Q. That hand was innocent. A. Yes, sir.

Q. How could he with his left hand apparently be fooling with the child and apparently rubbing her breast? A. She was sitting on his right and the child was standing there. He was, with his left hand—his right hand was up that way back of her, and with his left hand he started chucking the child under the chin and gradually pulled his hand back until he was rubbing Mrs. Cummings' breast.

Q. Rubbing it or brush by it? A. I say was rubbing it; it was going up and down probably a dozen times.

By Mr. Lane:

Q. What do you mean by "coming over"; where was she when he said "Come over"? A. Right opposite him—right opposite that seat he was on.

The Court: How does counsel understand the statement? Am I in error as to his earlier statement?

Mr. Lane: That is what he earlier said.

The Court: That she called him over. He said that twice, I think.

Harry Kaiser—Cross.

Q. Who told who to take their hat off? A. Mrs. Cummings told Young to take his straw hat off, which he did. He had a straw hat on.

Q. Where was the child? A. In the aisle, partly, skinned in between her knee and the back of the seat in front of them.

Q. Standing up? A. Yes, sir.

Q. Not in Mrs. Cummings' lap? A. No, sir.

Q. Well, the child was four and a half years old. A. Somewheres around there.

Q. So he comes just a little above Mrs. Cummings' knees, doesn't he? A. Yes, sir.

Q. And she is sitting there? A. Yes, sir.

Q. And Mrs. Cummings was sitting back in the seat? A. Yes, sir.

Q. Wasn't leaning forward over the child. A. No, sir.

Q. The car, of course, was light. A. The car was light?

Q. Yes; lights in the car. A. Didn't need no light at that time, 8:00 o'clock, daylight saving time—that means it was only 7:00.

Q. How long have you known Cummings? A. About fifteen years.

Q. You are very friendly with his brother who is in the same engine house? A. Yes, sir; I have been very friendly with his brother.

Q. Fire department employee? A. Yes, sir.

JAMES J. WOOD, sworn for Petitioner.

Direct-examination by Mr. Child:

Q. Where do you live? A. 311 Woodside Avenue.

Q. Newark? A. Newark, New Jersey.

Q. What is your employment? A. I am a fireman, Engine Company 13.

Q. Are you acquainted with Mrs. Cummings—do you know her by sight? A. Yes, sir.

Q. Do you know a man named Young? A. Yes, sir.

Q. Are they in court? A. Yes, sir.

Q. Can you identify Young?

The Court: The man sitting back there?

Witness: Sitting back next to the last row.

The Court: Is that the man who stood up?

Witness Woman with a black hat sitting next to him.

The Court: Is that the man?

Witness: That is Mr. Young.

Q. Can you identify Mrs. Cummings? A. Sitting directly in back of this gentleman here.

Q. Did you at any time see Mrs. Cummings and Young together? A. Well, the early part of June—about the middle of June Mr. Cummings came to my house looking for me.

Q. What year? A. 1925. Came to my house looking for me and I was out. On my way home I ran into him. He asked me—he says, "Jimmie, I want you to do me a favor." I said, "All right." He says, "Come down to the Regent Theater with me." So I went down with him. Stood across the street. I asked him, "What is the trouble?" He says, "My wife is in there with a fellow from Belleville." So when the show was over and they came out, why, Owen pointed them out to me. They went down Belleville Avenue on the west side of

the street, to Clark Street, crossed over to the east side of Belleville Avenue—there was another lady with them, and this lady went in a store to purchase something and Mrs. Cummings and Mr. Young stood in the hallway of a store—in the entrance—not in the hallway—in the entrance of a store. While they were standing there waiting for this woman to come out, why, Mr. Young just put his hand on Mrs. Cummings' shoulder, or probably might have been her neck and pulled her toward him. I was standing opposite them; and the woman came out and they all got on a Broad car. They got off at William Street, Belleville. I got off the car at John Street, walked west on John to Washington, south on Washington to William, and while I was going south on Washington, why, Mrs. Cummings and this old lady—middle-aged lady, went into—and Mr. Young—went in the house known as 10 Washington Street.

Q. Mrs. Cummings? A. Elderly or middle aged lady and Young went into the house 10 Washington.

Q. What time did they go in there? A. Must have been around 11:00 o'clock.

Q. Now, while they were—how long were they in the doorway or entrance of that store by the theater? A. Well, it couldn't have been over five or seven minutes at the most.

Q. Just describe, if you can, what you saw them doing—if there is anything more than what you have already described. A. He just put his arm over and pulled Mrs. Cummings forward.

Q. Did you see whether he kissed her or not? A. No, I couldn't swear to that.

Q. How did he pull her over—out of the passage-

way or what? A. No, towards him. They were both in the passageway of the store.

The Court: Were you trying to get in?
Witness: No, sir.

Q. Did you ever follow them again? A. Well, on one occasion—it wasn't what you would call following. I was going through Belleville on July 4th and I happened to see fireworks being displayed on the terrace in front of 175 Washington Avenue and naturally I looked that way and I seen Mrs. Cummings standing on the stoop and Mr. Young was on the terrace lighting fireworks.

Cross-examination by Mr. Lane:

Q. Was it the elderly lady who went into the store when Mrs. Cummings and Young were standing in the hall entrance? A. Yes, sir.

Q. What store is that? A. I don't know what store it is, because I didn't happen to inquire to find out what store it was.

Q. Well, was the store lit up? A. Yes, sir; the store the woman went into was lit up.

Q. They were doing business there? A. Yes, sir.

Q. People going in and out? A. Yes, sir; where the middle aged woman went in they were doing business, because she came out with a package.

Q. And rejoined—(interrupted). A. Rejoined Mrs.—(interrupted).

Q. —Mrs. Cummings and Young who were in the meantime standing in the entrance of the store. A. The entrance this side of where the woman went into.

Q. In the light. A. No, sir. Well, it isn't what

you would call exactly dark.

Q. Where was Mr. Cummings? A. Mr. Cummings was standing up the street.

Q. With you? A. No, sir.

Q. You were across the street. A. Yes, sir.

Q. That street is how wide? A. I should think Belleville Avenue is about thirty five to forty feet, I guess.

Q. What? A. About thirty five to forty feet, maybe more.

Q. Isn't Belleville Avenue about a hundred and twenty five feet at that point? A. Not between Clark and Crane Streets.

Q. It was between those streets that this thing happened? A. Yes, sir.

Redirect-examination by Mr. Child:

Q. Was the entrance to the store that this middle aged woman who accompanied Mrs. Cummings went into, the same entrance that Young—(interrupted)? A. No; it was the entrance this side.

Q. Was that store open and doing business, they— A. Where the middle aged woman went in the store was doing business.

Q. What about the other store? A. They were not doing business.

Recross-examination by Mr. Lane:

Q. It was not at the entrance of the store that the elderly lady went in that they stood then, is that right? A. They didn't stand in the entrance of the store that the woman went into, no.

Q. Then how far away from the entrance of that store was the entrance—(interrupted).

Witness: One entrance this side.

Q. What kind of a place was that? A. I don't know what kind of a store it was.

Q. I understood you to say they were in the passageway. A. They were in the entrance as you go into this store. There is a window like that (indicating), that is the way the entrance is, and they were standing right here (indicating).

Q. They were not in the passageway of the store that was doing business. A. No, sir.

Q. Was it in the passageway of any store? A. The one next door to it.

Q. Do you know what kind of a store that was? A. No; I do not.

Q. How big of a recess was there there? A. I would say about twelve to fifteen feet.

Q. How far back into the recess were they? A. They weren't in over two or three feet.

Q. And do you think it was twelve or fifteen feet? A. The depth? The width of the entrance might have been twelve or fifteen feet.

Q. I am not talking about the width of it. I am talking about the depth of it. A. The depth—I haven't the least idea.

Q. Was there any recess there at all, or was the door flush with the building line? A. The door wasn't flush with it.

Q. How far back from the door was the building line? A. I couldn't say, probably five or six feet—maybe more.

Q. Do you recognize the elderly lady in court? A. No; I wouldn't say I could recognize the elderly lady.

The Court: Stand up.

Witness: It might have been that woman. I wouldn't say for sure.

The Court: I think you are mistaken when you said "elderly woman".

Witness: I said "middle aged".

Q. Did this elderly lady, or did Mrs. Cummings and Mr. Young go right up to the door of the store with the elderly lady? The store that was doing business. A. No, sir; they did not.

FRED COOK, sworn for Petitioner.

Direct-examination by Mr. Child:

Q. Where do you live? A. 123 Chester Avenue.

Q. Newark? A. Newark, New Jersey.

Q. What is your occupation? A. Carpenter.

Q. Are you acquainted with Owen Cummings? A. Well, somewhat, yes.

Q. How long have you known him? A. I know him from going in the restaurant about seven or eight months.

Q. And did you at his request ever follow his wife? A. Yes, sir. I was coming from the house —(interrupted).

Q. What house? A. 123 Chester Avenue, my house, in my car, and he approached me and asked me to follow a North Newark jitney, which I did, and told me there was a man by the name of Young and his wife in this jitney. I followed this jitney to Clay and Broad and they got off. They waited there for about seven or eight minutes and got the Kearny-Arlington bus. They took that to Arlington, to Midland Avenue and Kearny Avenue. They got off there and I parked my car there and left Mr. Cummings in the car and I followed

them up to 176, I think it was, Kearny Avenue, on the right hand side going up. So Mr. Young left her there and he went across the street into a house, 176 Kearny Avenue, for five minutes—no, Mrs. Cummings went in the house. Mr. Young waited there on the opposite side. Mr. Young crosses over and meets another man; he talked with this man for about—until she came out, and when she came out—when she came towards Mr. Young this other man left. They walked down to Laurel Avenue drug store, went in there and had a soda. While they were in there I ran back to my car, Midland Avenue and Kearny Avenue and told Mr. Cummings what I saw, and started my car up and ran to Laurel Avenue and Kearny Avenue to the drug store. I took my coat and hat off and walked in there and got a package of cigarettes and looked them both over carefully. I went back to the car and put my coat and hat on and they walked all the way to Rutgers Street, Arlington, over to Mr. Young's house; walked over—right over Rutgers Street to Belleville to Mr. Young's house. There they went up on the porch and I didn't see much anymore.

Q. Did you see them crossing the bridge at Belleville? A. Before they crossed the bridge there they stopped up on the dark part of the road there and put their arms around one another and kissed; they went about a hundred and fifty feet and stopped again and kissed.

Q. Where was that? A. That was on Rutgers Street before the bridge—way before the bridge.

Q. Did you see any kissing on the bridge? A. No, sir.

Q. And that was in Belleville or Arlington you

saw them kiss? A. That was in Rutgers Street, Arlington, going down that hill there.

Q. Now, when they came across the bridge, where did they go? A. Went up to Mr. Young's house.

Q. Do you know where that is? A. Yes, sir. I don't know the number. I know where the house is. Right on the corner there, Rutgers and Washington Streets; right near the corner.

Q. You have been referring to Rutgers Street, Arlington. Is there such a street as Rutgers Street, Arlington? A. That street runs right over in Belleville.

Q. Did you ever see them again? A. No.

Q. That is the only time? A. That was the only night.

Q. Did you see two young men that night? A. Yes, sir.

Q. That have testified? A. Yes, sir.

Q. Was that the same night? A. Same—very same night.

Q. Can you recognize the man and the woman that you saw that night in the court? A. Yes, sir.

Q. Point them out, please. A. Mr. Young is sitting over next to his mother and there is Mrs. Cummings right there.

Cross-examination by Mr. Lane:

Q. What is your business? A. Carpenter.

Q. How long have you known Cummings? A. About six or seven months from just going in the restaurant.

Q. Do you know the restaurant on the corner of Chester and Washington Avenue? A. Yes, sir.

Q. You spend a great deal of your time there,

do you not? A. Well, I just go in evenings and eat there, that is all.

Q. You spend a good deal more time than is necessary for eating, at that point, don't you? A. No, sir; I do not.

Q. Do you know the proprietor, Mr. Rothrock? A. Yes, sir.

Q. How long have you known him? A. Ever since he opened the place.

Q. You are a very good friend of his. A. Fairly good friend of his; yes, sir.

Q. You stop and talk to him. A. Naturally, when I go in to eat I talk.

Q. You met a man there by the name of Joseph Williams. A. Yes, sir.

Q. You met a man there, Joseph Reilly. A. I don't know. I know Reilly; I don't know whether it's Joe or not.

Q. Well, Reilly. Did you also meet a man by the name of Phiel? A. I know Phiel, yes, sir.

Q. You met a man there by the name of Lucas, didn't you? A. Yes, sir.

Q. You met Cummings there. A. That is where I met Cummings.

Q. And Cummings has been in that store on several occasions speaking to all five of these gentlemen, whose names I have mentioned; is that right? A. That I don't know.

Q. Didn't he talk to them in your presence? A. No, sir.

Q. Haven't you heard conversation carried on between these men?— A. Not conversations.

Q. You can't answer me until I ask the question. Haven't you heard conversations between Cummings and these men in which you were in-

cluded with respect to this divorce suit? A. No, sir.

Q. When was it that Cummings first suggested that you should take any part in it? A. The night I came from the house at 123 Chester Avenue; that is the only time.

Q. You met him there at the restaurant several times before, hadn't you? A. Before; I never stopped to speak to him—I knew him to say "how do you do?"

Q. You had met him at the restaurant, hadn't you, before that? A. Yes, sir.

Q. You mean you had never spoken to him before at the restaurant. A. Just a few words; not about his divorce case, no, sir.

Q. He just happened to meet you coming out of the house? A. Yes, sir; he jumped on the running board of my car.

Q. How old are you? A. I am twenty.

Q. You did this simply as a favor to him? A. Yes, sir.

Q. Weren't you paid for it? A. No, sir.

Q. Weren't you promised anything? A. No, sir.

Q. Hope for it? A. The only thing he paid for was gas.

The Court: What?

Witness: Gasoline he put in the car.

Q. Did you speak about what you had done to Joseph Reilly? A. No.

Q. Didn't you tell Joseph Reilly that you followed Mrs. Cummings but you never saw anything wrong? A. Oh, yes; I told him that.

Q. When did you tell him that? A. I don't know.

Q. How did you come to tell him that? A. Well, he was—I suppose he might have asked me questions which I didn't answer him; that is all.

Q. You what? A. He might ask me some questions. I don't remember telling him anything like that.

Q. You just said a moment ago you did remember telling him, did you or didn't you? A. I might have told him something like that.

Q. It isn't a question of might have. A moment ago I asked you didn't you tell Joseph Reilly you had followed Mrs. Cummings and you never saw anything wrong and you said yes; is that the fact? A. I said I never saw anything real wrong.

Q. Now you say you never saw anything real wrong, but—(interrupted). A. Nothing real wrong.

Q. Are you sure now it was anything "real wrong"? A. No, sir.

Q. It doesn't seem anything real wrong that you should see a woman kissing a man in an automomobile on the bridge—didn't see anything wrong. A. I didn't see them on the bridge.

Q. On the bridge or off the bridge, that isn't anything real wrong; is that right? A. No; it isn't right to be kissing a man.

Q. Then why did you tell Reilly, as you say you did, you never saw anything real wrong if you saw what you now say you saw? A. Real wrong—I meant something out of the way more.

Q. Have you spoken to Mrs. Cummings about this case? A. The only time I spoke to her she came to my house one Saturday night.

Q. Yes, and you told her that you had never seen anything wrong. A. Anything real wrong.

Q. You told her anything real wrong too; is that right? A. Yes, sir.

Q. Did she ask you, when you said anything real wrong—did she ask you what you had seen? A. No, sir; she didn't ask me that.

The Court: Were they in an automobile when you saw them kissing or were you in the automobile?

Witness: I was walking; I left my car.

The Court: Where were they?

Witness: They were walking on Rutgers Street from Arlington.

The Court: Your question misled me. You said kissing in an automobile, in one of your questions. You didn't mean that?

Witness: No.

The Court: I really did not get the thread of the story. As a matter of fact, I didn't know whether they were supposed to be in the automobile or not. He says they were both walking.

Q. And where did they start to walk? A. Why, from the drug store over there in Arlington—Laurel and Kearny Avenues.

Q. And how far did they walk? A. Walked all the way up Kearny Avenue up to this Rutgers Street.

Q. That is how far? A. Quite a walk.

Q. I know it is, but how far? A. I don't know how far it is.

Q. How many miles? A. Well, it must be a good mile.

Q. What were you doing in the meanwhile? A. I was walking behind them on the opposite side of the street.

Q. And then where did they go after that? A. They went down Rutgers Street and walked down

there about a block and a half and they stopped.

Q. Where did you follow them then? A. I was on the opposite side walking down.

Q. Walking? A. Yes, sir.

Q. And then what did they do? A. Then they stopped and kissed.

Q. Stopped—what kind of a street is that? A. Why, it is a kind of a lot—empty lots along there —lot of new buildings through there going up on the opposite side—on the left hand side going down.

Q. It is a main thoroughfare, isn't it? A. Yes, sir.

Q. County road. A. County road.

Q. You were on the other side? A. I was on the other side walking down.

Q. How wide is the street? A. Forty or fifty feet.

Q. Were there any other people on the street? A. No; kind of more traffic than anything.

Q. Cars going by all the time? A. Yes, sir.

Q. Where did they stop to kiss? A. Well, right down there about two blocks down from Kearny Avenue.

Q. Right in the middle of the street? A. No, sir; narrow sidewalks.

Q. In the middle of the sidewalk. A. Yes, sir.

Q. Right on the sidewalk they stopped to kiss. A. Yes, sir.

Q. How long did they stay there? A. Oh, just a minute or so; that is all, walked down another hundred and fifty feet and stopped to kiss again.

Q. Was there any reason why they stopped at those two places? A. No, sir; walking on the way over to Mr. Young's house.

Q. There aren't any trees there at all. A. No, sir.

Q. Not a tree on that street. A. Some little ones; not to amount to anything.

Q. Not to make any difference in the looks of the place—bare, isn't it? A. Yes, sir; bare.

Q. Electric lights? A. Yes, sir; electric lights all the way down.

Q. Yes, light. A. Yes, sir.

Q. And you continued—after they kissed the second time they went on walking. A. Went on walking.

Q. And you followed them on the other side of the street still? A. Right across the bridge over to Mr. Young's house.

Q. How far is Mr. Young's house from the bridge? A. From the bridge it is—oh, about three blocks, three and a half blocks, something like that from the bridge up.

Q. Then you saw them go in the house. A. They went in the house.

Q. And where did you station yourself? A. Well, I walked by twice, down and back again, to see if I could see them up there—I couldn't see them. They were up on the porch. They went up on the porch and I couldn't see them any more. I went back to Rutgers Street and Washington Street and I met a fellow there with a Studebaker —two young men—and they gave me a lift back to my car, Laurel and Kearny Avenue and I picked up Mr. Young—(interrupted).

Q. Picked up who? A. Mr. Cummings, he was in my car, sitting at the time. Two young men he told me—(interrupted).

Q. Never mind what he told you. That is the last you had anything to do with it, is that right?

A. No. I drove back to this house of Mr. Young's parked the car on Rutgers and Washington Streets —parked there, and that was the end of where I followed them.

Q. And you did all that for nothing? A. Yes, sir.

Q. Wasn't paid a cent? A. Wasn't paid a cent; no, sir.

Q. And no particular friendship for Cummings? A. Just from meeting in the restaurant; that is all.

Q. Did Cummings ever offer you any money? A. No, sir.

Q. Wait. Did Cummings offer you any money to introduce somebody to his wife and take her out? A. No, sir.

Q. Did you hear Cummings offer such money to a man by the name of Phiel? A. No, sir.

Q. Or a man named Williams? A. No, sir.

Q. Never heard anything of that kind in that corner restaurant? A. Not a thing.

Mr. Child: I object as not proper cross-examination.

Mr. Lane: That is all.

(Adjourned until February 25, 1926.)

IN CHANCERY OF NEW JERSEY.

February 25, 1926.

Between

OWEN CUMMINGS,
Petitioner,

and

SADIE CUMMINGS,
Defendant.

Continuation of hearing pursuant to adjournment, at the place and in the presence of the parties as before.

HAROLD DOUGHTY, sworn for Petitioner.

Direct-examination by Mr. Child:

Q. You live where, Mr. Doughty? A. 409 Summer Avenue.

Q. Newark? A. Newark.

Q. What is your occupation? A. City fireman.

Q. Connected with #13 engine? A. Yes, sir.

Q. Are you acquainted with Owen Cummings, the petitioner? A. Yes, sir.

Q. Do you know his wife? A. I know her by sight, yes, sir.

Q. How long have you known Owen Cummings? A. About six or seven years.

Q. How long have you known his wife by sight? A. About a year ago.

Q. Do you see her here in the court this morning? A. Yes, sir.

Q. Where is she? A. The lady right over there.

Q. End of the table? A. Yes, sir.

Q. Where did you see her a year ago? A. It was in June, in front of the Library, with Mr. Cummings, his wife and little girl and another girl.

Q. That is the first time you saw her? A. Yes, sir.

Q. Did you see her after that? A. I seen her once in a Chinese restaurant.

Q. Where? A. On Broad Street or Market Street, the Central—not the Globe—right near—right below Central Avenue there.

Q. On broad Street? A. On Broad Street, right hand side.

Q. What time of day or night was this? A. It was after the theater.

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

Q. Was she alone or was she in company with someone? A. She was with a gentleman.

Q. Do you see the gentleman here in court? A. Yes, sir.

Q. Kindly indicate him. A. The gentleman right there in the second row.

The Court: Is it Mr. Young?

The Witness: Mr. Young, I was told. I don't know the gentleman.

Q. (Stand up, Mr. Young.) Is that the gentleman? A. Yes, sir.

Q. Where were they in that restaurant? A. Why, I was sitting in a booth myself. I just came from the theater, and Mrs. Cummings and this gentleman came in. They went in a booth. I

don't know what booth they went in, it was near Broad Street.

Q. Did you see them as you came out? A. As I came out I seen them in the booth; yes, sir.

Q. Were they alone or was someone else with them? A. They were alone.

The Court: Open booth.
Witness: Open booth; yes, sir.

Q. Did you see Mrs. Cummings at any other time with Young? A. No, sir.

Cross-examination by Mr. Lane:

Q. When was this? A. In June.

Q. You don't know the date? A. Around the 10th, I think. I am pretty sure it was the 10th. You mean the Chinese restaurant or the Library?

Q. Yes. A. I couldn't say what time it was, in the restaurant. I just came from the theater myself and dropped in there.

Q. Do you know what month it was? A. Well, it was in August or September, around in that time.

Q. You have no more idea than August or September? A. August or September. I couldn't tell you the date or anything about it.

Q. How soon after you saw them did you tell Mr. Cummings? A. I told him the next morning. I worked with him.

Q. Were you just accidentally in that place? A. Accidentally, yes, sir; both times was accidental, that I ran into them.

Q. How did you come to see them at the Library? A. Through a friend of mine that was in the car and pointed Mrs. Cummings and Mr. Cum-

mings and the little girl and the other girl out to me, and this gentlemen was standing near the park across the street.

Q. That is Mr. Young? A. Mr. Young. And after Mr. Cummings, I suppose, said all he wanted to, he went towards Orange Street, why, Mrs. Cummings met this Mr. Young and they went across the street in the candy store at the corner of Bridge and Broad Street.

Q. What time of day was that? A. That was in the evening after supper and between 7:00 and 8:00 o'clock.

Q. Did you tell Mr. Cummings about seeing Young there then? A. Yes, sir.

Q. How soon after you saw Young did you tell him? A. The next morning.

Q. Had you talked with Mr. Cummings about his wife before that? A. No, sir. Overheard conversation like saying "Going to get a divorce" or something like that.

The Court: What?

Witness: Just conversations in the station house, talking about getting a divorce, or something like that.

The Court: You knew it was on.

Witness: I didn't know the divorce was on at that time. I have only been there since June. I had only worked with Mr. Cummings since June.

The Court: I thought you said you heard talk about divorce.

Witness: No; I didn't say anything about hearing about divorce.

Q. Did you have any talk with Cummings or hear any talk with Cummings about any difficulty

—talk in the station house about any difficulty between Cummings and his wife before you saw Young and Mrs. Cummings? A. No, sir.

Q. Didn't know anything about any difficulty between Cummings and his wife at all? A. No.

Q. Had no talk with Cummings? A. No, sir.

Q. And have had no talk except when you told him of these two events. A. Only when I said I accidentally saw Mr. Young and Mr. Cumming's wife downtown in the chop suey or restaurant.

Q. You told him each time accidentally? A. Yes, sir.

Q. And did you tell him Mr. Young? A. I told him a gentleman. I didn't know at the time who the gentleman was.

Q. Have you ever seen Young except on these two occasions? A. No, sir.

Q. And the first time was it light or dark? A. Which time do you mean? A. The first time at the Library, that was in June. There was light there.

Q. Light? A. Yes, sir.

Q. You were how far away from Young? A. I was across from the park.

Q. Where is that—how far? A. Well, it is pretty wide street. I guess it's over fifty to sixty feet.

Q. A hundred feet, wasn't it, from where you were? A. I couldn't say for sure how far it is. It is quite a ways.

Q. And when you saw them in the restaurant, they simply passed you? A. Passed me.

Q. And going out you passed them. A. No, I didn't pass them. I went over and paid my check and was standing there I seen the two of them in the booth.

ABRAM VANDERSLUYS, sworn for Petitioner.

Direct-examination by Mr. Child:

Q. Where do you live? A. 54 North 20th Street, East Orange.

Q. And what is your business or occupation? A. I am a salesman.

Q. And for what people? A. Kardex Company, Newark.

Q. How long have you been with that company? A. Five and a half years.

Q. Are you acquainted with Cummings, the petitioner? A. Yes, sir.

Q. How long have you known him? A. About three months.

Q. Do you know Mrs. Cummings? A. I know her by sight, yes, sir.

Q. And how long have you known her by sight? A. About the same period.

Q. How did you become acquainted with the petitioner and the defendant in this case? A. I met the petitioner at the home of Miss Kopp, in Hawthorne.

Q. You mean met Mr. Cummings. A. Yes, sir; and while I have never met Mrs. Cummings personally, she was pointed out to me by Miss Kopp.

Q. And where did you first see Mrs. Cummings? A. In front of the Public Library in Newark.

Q. And how did you happen to be there? A. I met Miss Kopp in Newark at her request and after a short conversation with her we went to the Public Library because she expected to go there. Miss Kopp was an investigator and she was working on this case, so I remained with them simply as a matter of carrying on a conversation with them.

I didn't have anything else to do.

Q. And did you see the defendant that night? A. Yes, sir.

Q. At the Library? A. Yes, sir.

Q. When was it that you first saw her there? A. It was about 7:15 or 7:20 in the evening.

Q. Do you remember the date? A. I know the date approximately. It was about October 10th.

Q. Of last year? A. Yes, sir.

Q. And who was Mrs. Cummings with that night? A. She was with a little girl whom Miss Kopp told me was her daughter. She met Mr. Cummings at the Library.

Q. Did you subsequently see her that night after meeting Mr. Cummings? A. Yes, sir.

Q. Where did you next see her? A. They talked for a period of time which was about fifteen minutes and Mr. Cummings left. Mrs. Cummings and the little girl walked down Broad Street to Central Avenue and Broad. She remained there for a period of about twenty-five minutes I would say, and then she went around the corner of Central Avenue and met a gentleman whom I have since learned is Mr. Young, and a lady.

Q. And what? A. And a lady whom I have learned is Mrs. Young, and another lady whom I have learned is Miss Young. I don't know her first name.

The Court: Mrs. Young, the mother, as you understand?

Witness: Yes, sir; the mother of Mr. Young.

The Court: And Miss Young, a sister, as you understand?

Witness: Yes, sir; that is my understanding.

Q. Then what did they do? A. They boarded a Central Avenue trolley car and rode up Central Avenue to a street, I think, known as Morris Avenue, at least it is the street that leads to the Armory—the Newark Armory. They walked up that street and entered the Armory. I understand there was some kind of a show on there. That is the last I saw of Mrs. Cummings on that occasion.

Q. And did you later see Mrs. Cummings? A. Yes, sir.

Q. Do you see the man that was pointed out to you as Mr. Young in the court? A. Yes, sir.

Q. (Stand up, Mr. Young.) Is that the gentleman? A. That is Mr. Young; yes, sir.

Q. When did you next see Mrs. Cummings? A. I saw Mrs. Cummings again later in the month of October of the same year. I would say about the 26th or 25th. I had been at the home of Miss Kopp in Hawthorne and upon leaving for Newark, Miss Kopp said that she was going to Newark and would like to know if I would drive her over in my car. I agreed and we proceeded on to Newark and Miss Kopp asked me to stop in front of 175 Washington Avenue, Newark—or Belleville—and we parked my car on the opposite side of the street, directly opposite 175 Washington Avenue, and we saw Mr. Young in the house. The house was lit up and you could see through the window from that position.

The Court: Young's home, as you understood it.

Witness: Yes, sir; Young's home.

Q. Go on. What did you see there at that time? Did anything occur there?

The Court: What did you see there?

Witness: Why, your Honor, I beg your indulgence in this. You find it rather hard to recollect and I am careful not to say things I am not certain of.

The Court: You were asked what you saw. You say the house was lighted.

Witness: Yes, sir; the house was lighted up. That was about quarter to 7:00 in the evening.

The Court: What time of year?

Witness: In October, 1925; at about half past 7:00 this Miss Young—Mr. Young's sister—came out, left the house. At about 8:00 o'clock Mrs. Cummings arrived at the house. She entered and was admitted by Mr. Young. When she entered—shortly afterwards—the light was extinguished. We could see them in the front room of the house, both, and at some times they were seated at the piano together, and at other times they were in the front room together, and at the time they were sitting at the piano, Mr. Young had his arm around Mrs. Cummings.

The Court: Proceed. Can you go a little faster?

Witness: I will try to.

Q. Just state in a general way what you saw. A. They remained there and at about a quarter to 9:00 Miss Florette Kopp, who was also with us, telephoned to the Cummings home, or rather, the Young home and inquired whether Mrs. Young was there.

The Court: How do you know?

Witness: Because she came back—I was-

n't there when she did it—and remarked about it. I remember that—and asked if Mrs. Young was home.

Q. Never mind what transpired over the telephone. What did you do—what did you see there? A. I remained there until Mrs. Cummings and Mr. Young came out, which I would say was about 10:30, and they walked to 10 Washington Street, I think the street is.

Q. That is Cummings' home as you understood it. A. Yes, sir; that is Cummings' home; and we drove there behind them, and they went into—Mr. Young left Mrs. Cummings at the door of that home.

Q. And what time did they leave the home of Mr. Young?

The Court: 10:30, he said.

Q. 10:30? A. Yes, sir; that is my recollection of it.

Q. Did you at any other time see Mrs. Cummings than this time in October? A. Yes, sir; I saw her again the early part of January, which I would say was about the 7th.

Q. Of this year? A. Yes, sir.

Q. Where did you see her? A. Pardon me. I will correct that. That was December, in front of the Library, and she saw Mr. Cummings and then she got on a trolley car and went to 175 Washington Avenue. With her was a little girl which, I understand, was her daughter.

Q. Did you see her that night in company with Young? A. She went into the house and Mr. Young admitted her to the house. He was there when she arrived.

Q. What time did she get there about? A. About 8:15 in the evening.

Q. And how long did you remain at the house? A. We remained at the house until about 10:30.

Q. Did she have the baby with her? A. Yes, sir.

Q. Did you see anyone else in that house—go in that house while you were there? A. No, sir.

Q. Did you see anyone come out while you were there that night except Mrs. Cummings? A. No, sir.

Q. And at 10:30 Mrs. Cummings came out and went home, is that right? A. Yes, sir; in company with Mr. Young.

Q. And have you seen her again subsequently to that date? A. Yes, sir; I have.

Q. When, please. A. About December the 13th or 15th she met Mr. Cummings at the Library again and she left Mr. Cummings and got on the trolley car and got off at Belleville Avenue, and I believe the street is Crane Street. I am not certain about that, but it is right near the junction of Bloomfield Avenue and Belleville Avenue. She met Mr. Young and Mrs. Young and Miss Young and the entire party went to the Regent Theater on Bloomfield Avenue, remained there for a period, I would say, an hour and a half—ordinary motion picture show.

Q. Then where did they go? A. They came out of there and went into an ice cream store, which is about two doors from the theater, and they came out of there and boarded a car and went to Belleville again to 175 Washington Avenue.

Q. About what time did they get to 175 Washington Avenue? A. My recollection of that is it was about 11:00 o'clock or after.

Q. When they were on their way on the trolley car to 175 Washington Avenue, this party of four, where did Mr. Young and Mrs. Cummings walk, in front of the other two or behind them, if you know? If you don't know, say so. A. I am not certain. I believe they were behind them.

Q. What time did Mrs. Cummings leave 175 Washington Avenue that night? A. She left there shortly after that.

Q. Did she go home alone? A. No, sir; she went home with Mr. Young.

Q. Did he accompany her all the way home? A. Yes, sir.

The Court: Took her to the door, is that what you mean?

Witness: Yes, sir; took her to the door.

Q. Now did you at any other time see—did you see Mrs. Cummings and Mr. Young together? A. Yes, sir; there was one other occasion.

The Court: What did you say your business was?

Witness: Salesman.

Q. When was that? A. That was in the beginning—first part of January, about the 10th.

Q. And where did you see them then? A. Saw them at 175 Washington Avenue.

Q. And what time was that? A. That was about eight o'clock in the evening.

Q. And where were they? A. They were in the front room of the house.

Q. Could you see whether there were other people in the room or not? A. I didn't see anyone else in the room.

Q. And how long did Mrs. Cummings remain there that night, if you know? A. I don't know, because I left.

Q. What time did you leave? A. Half past 9:00.

The Court: The night you said you saw them when Mr. Young had his arm around her, anybody else there that night?

Witness: No, sir.

The Court: Couldn't see anybody there?

Witness: No, sir.

Q. Was the time in January the last time you saw them together? A. Yes, sir.

Q. Now on these occasions, with the exception of the time when you saw him in the room sitting at the piano with his arm around her, did you see any evidence of affection between the two?

The Court: What you may regard as affectionate—(interrupted).

Q. Did you see any intimacy—any acts of intimacy?

The Court: Let him tell what he saw.

Witness: Shall I tell what I saw?

Q. Will you state what you saw?

The Court: Have you told us all you have seen?

Witness: No, sir; not quite.

Q. That is what I want to know. Please state it. A. At the time when Mr. Young and Mrs. Cummings were walking together on these occasions that I saw them that I have mentioned, he had his arms around her waist at different times—not con-

tinually, but at different times that they walked together.

The Court: On the street?

Witness: On the street, yes, sir.

The Court: Where was this? What part of Newark?

Witness: This was proceeding from the Library and Central Avenue and Broad Street, and on occasions when they walked from 175 Washington Street.

The Court: On Broad Street?

Witness: No, this was in Belleville.

The Court: Oh, Belleville. That is a prominent street, isn't it?

Witness: Washington Avenue, yes, sir.

The Court: 7:00 o'clock in the evening you saw them do that?

Witness: No; it was after they left the house. It varied at different times.

The Court: On the way home from the Young house to the Cummings house?

Witness: Yes, sir.

The Court: That is what you mean.

Witness: Yes, sir; but the first time I saw Mrs. Cummings it was on Central Avenue right near Broad.

The Court: Had his arm around her then, is that what you mean?

Witness: Yes, sir.

The Court: Right on the public street?

Witness: Yes, sir.

The Court: Early in the evening?

Witness: Yes, sir.

The Court: See anyone else around doing that?

Witness: No, sir; I didn't. I thought it rather singular.

Q. What else have you seen, if anything? A. I believe that is all.

Q. How did it come, Mr. Vandersluys, that you were in company with the Misses Kopp on these different occasions when you met Young? A. Why, I didn't know I was going along—Miss Kopp —the three Kopp sisters are personal friends of mine.

The Court: You didn't know on these three or four occasions you were going along spotting?

Witness: I didn't on the first occasion.

The Court: The others?

Witness: The others I thought it might occur, but it wasn't mentioned.

Cross-examination by Mr. Lane:

Q. How long have you known the Misses Kopp? A. For about a year and a half.

Q. And how did you get acquainted with them? A. I got acquainted with them through an attorney in Paterson, New Jersey.

Q. Who referred you to them so you might engage their services? A. Yes, sir.

Q. As detectives in a divorce suit? A. Yes, sir.

The Court: This divorce suit?

Witness: No, sir; another.

Q. That is your own divorce suit. A. My own, yes, sir.

Q. And they have been working for you on your

own divorce suit from that time, year and a half ago, until when?

The Court: Three months.

Witness: The three months refers to my acquaintance with Mrs. Cummings. Up until September of last year.

Q. Was that case tried? A. Not yet.

Q. Pending? A. Yes, sir.

Q. And the names of the parties are what?

Mr. Child: I object as not proper cross-examination.

The Court: Objection overruled.

Witness: Names of what parties?

Q. The parties to that suit. A. Myself as petitioner, my wife as defendant.

Q. What is your wife's name? A. Clara Vandersluys.

Q. Did you go around with the Kopp sisters in your own suit? A. Sometimes.

Q. For the purpose of getting evidence of adultery? A. Yes, sir.

Q. On your wife? A. Yes, sir.

Q. And that extended over a period of approximately a year prior to the time that you did this work. A. Yes, sir; approximately a year.

Q. Now your work—work on your case, as I understand it, had ceased in September? A. Yes, sir.

Q. And this work that you did on this case extended over, October, November, December, January—right up to the present time. A. Yes, sir; up until January.

Q. You had no business relations with the Kopp

sisters during that time. A. None whatever, no, sir.

Q. You were just a casual caller in their house in Hawthorne. A. Yes, sir.

Q. And upon each one of these occasions that you went with them you say that you—except the first one—you had no intimation that you were going to be taken on—(interrupted). A. No, sir. My reason—(interrupted).

Q. —an expedition of this kind. A. No, sir; I did not.

Q. What was your reason for going? A. They wanted to confer with me about my own case.

Q. Each one of these times that you were in their presence—or in the company of the Kopp sisters, it was with respect to conferences as to your own case, is that right? A. It wasn't the direct purpose of it, but it invariably came up.

Q. So that they conferred with you at the house and they conferred with you while they were using your automobile to take them to Belleville. A. Sometimes such a conversation came up, yes, sir.

Q. Have you told us all that you saw on each one of these occasions? A. Yes, sir; I believe I have.

Q. The house that is at 175 Washington Avenue, how far does that set back from the street? A. It sets up on a terrace, I would say, about twenty-five feet back from the street.

Q. How high is the terrace? A. I would estimate the terrace to be about fifteen or twenty feet.

Q. Where were you standing? A. I wasn't standing; I was sitting in the car.

Q. Where were you sitting? So you were sitting in the car on the street. A. Yes, sir.

Q. On which side of the street? A. The street,

opposite the house—the side opposite the house.

Q. Across the street? A. Yes, sir.

Q. And your car remained there how long? I am talking now about the first occasion. A. I would say it was there about an hour and a quarter.

Q. And you were watching in this room all the time? A. No, not all the time.

Q. Well, what part of the time weren't you? A. Glancing in at different times.

Q. You were there for the purpose of watching? A. Yes, sir, but I wasn't gazing unceasingly into that window.

Q. And you could see into the room? A. Yes, sir.

Q. See the people in it? A. Yes, sir.

Q. After the light was extinguished? A. No, not after the light was extinguished.

Q. I thought you said you did. A. I did not, sir.

The Court: Yes, you did. You said you saw them in there after the light was out.

Witness: I do not recall it. I didn't mention the light.

The Court: I won't say that you did. My recollection is that you did.

Mr. Child: My recollection is that he saw on one occasion. I don't know whether it was this occasion or not.

Witness: I didn't mention the light, I don't think at the time.

Q. When did you see them with his arm around her? A. When the light was on.

The Court: If you said you saw them

when the light was out, you didn't mean it?

Witness: Yes, sir.

Q. How many times did you see that? A. You mean during the same evening?

Q. Same evening or any other evening. I understood you didn't see it any other evening, did you? A. There were two occasions.

Q. There were two occasions when you saw Mr. Young with his arm around Mrs. Cummings at the piano? A. No, sir; there weren't two occasions when I saw Mr. Young with his arm around Mrs. Cummings at the piano.

Q. Only that once. A. One occasion was at the piano, the other was in the room standing.

Q. You didn't tell us about that.

The Court: Two different occasions?

Witness: Yes, sir; two different occasions.

Q. Two different occasions? A. Yes, sir; two different evenings.

Q. You haven't told us about that, standing with his arms around her. A. The question wasn't asked and I didn't think to mention it.

Q. You were asked to tell everything you saw. A. At that time when you asked it, I didn't think of it.

Q. All right. What else now did you see that you hadn't thought of? A. I believe that is all.

The Court: How did he have his arm around her?

Witness: Why, just around her shoulders.

The Court: How?

Witness: You mean the position?

The Court: Yes.

Witness: Just like this (indicating). Standing around this way, this way, just like that (indicating).

The Court: In a half embrace.

Witness: I would say that, yes, sir.

Q. Now, going back to this occasion when you did see them—Mr. Young with his arm around her—what were they doing during the time that you could see them in the room?

The Court: You mean while the arm was around her?

Mr. Lane: No, not when the arm was around her.

Q. Any other time, what were they doing? A. Sometimes they were walking around the room. Sometimes they were standing in the room as I described.

Q. What do you mean "as I described"? A. Just now, as I described.

Q. You said that was another occasion. A. No. You refer now to the arm around Mrs. Cummings?

Q. I refer to the time when you saw Mr. Young have his arm around Mrs. Cummings at the piano. A. At the piano, they were both sitting at the piano.

Q. How long had you watched them when the light was lit? A. Probably twenty minutes.

Q. What were they doing? A. Sitting at the piano.

Q. All the time? A. No, sir.

Q. Well, then what were they doing during all that time? A. Well, they were, as I say, standing in the room at times and then seated at the piano.

Q. Was the piano in the back of the room—in the rear of the room? A. No, sir, towards the front.

Q. Right alongside of the window, I suppose? A. Yes, sir.

Q. Light burning? A. Yes, sir.

Q. Put his arm around her in front of the window at the piano? A. Yes, sir; the light was burning.

Q. How long did they remain seated at the piano with his arm around her? A. I would say about twenty minutes.

Q. How many? A. About twenty minutes.

Q. Did he have his arm around her all that time? A. No, sir; as I said there were times when they were sitting at the piano—(interrupted).

The Court: Twenty minutes at the piano with his arm around her?

Witness: No; I wouldn't say that.

The Court: That was the impression I got.

Q. I asked you how long they were sitting at the piano with his arm around her. A. During the entire time they were sitting at the piano, his arm was not around her.

Q. How long was he sitting at the piano with his arm around her? A. I would say five minutes then, your Honor.

Q. Who was at the piano—who was the one doing the playing? A. I don't know. I don't remember who did the playing.

Q. Well, how were they sitting at the piano? A. Side by side, facing the piano, of course.

The Court: How do you know his arm

was around her and you cannot tell me who was playing?

Witness: I didn't notice who was playing.

The Court: He wasn't playing one handed, was he?

Witness: No, sir; I can't even say they were playing—that anyone was playing.

Q. Did they appear to be playing? A. Appeared—(interrupted).

Q. If they didn't appear to be playing, what did they appear to be doing? A. It didn't appear to me as if they were playing at the time.

Q. What were they doing, sitting there? A. Yes, sir, sitting on the seat.

Q. With their backs to you? A. Not exactly, with a side position.

Q. So that you could see their faces. A. Not all their faces, no, sir.

Q. You could see the side face, at any rate. A. Yes, sir.

Q. Could you see the keyboard of the piano? A. Yes, sir.

Q. You can't tell me whether they were playing or not, or anybody was playing. A. No, sir; I do not recall.

The Court: You say this house was on an elevation of fifteen feet above the street?

Witness: That is what I would approximate it.

The Court: And you could see the piano keys from where you were?

Witness: No, sir; I don't remember seeing the piano keys.

The Court: I understood you to say that.

Witness: I didn't mention the keys, your Honor.

Q. Could you see the keyboard of the piano or couldn't you? A. No, sir. I didn't see the keyboard of the piano.

Q. Why did you say a few moments ago that you did? Not a few moments ago, within less than a minute ago. A. I didn't say that I saw the keyboard of the piano. It wasn't asked of me.

Q. Your recollection now is that you haven't within the last few moments said you saw the keyboard of the piano? A. That is it exactly, yes, sir.

The Court: Read the testimony.

(Testimony read as follows: "Q. Could you see the keyboard of the piano? A. Yes, sir.")

Q. Now, is there any explanation as to why you answered that question "Yes"? You heard the reporter read you the question and answer, namely, "Did you see the keyboard of the piano? Answer: Yes." Now, is there any explanation as to why you made that answer? A. No, sir; there is none.

Q. No explanation? A. No, sir. My answer was yes on that.

Q. No explanation? A. I can't explain it; no, sir.

The Court: Be a little bit careful and observe what he asks you.

Witness: Pardon me. The only way I can explain that is when you mentioned the word "keyboard" I probably had in mind the upper part of the piano. I didn't place enough importance on the word "keyboard" therefore—(interrupted).

Q. Then you could see the upper part of the piano which is back of the keyboard? A. Yes, sir.

Q. And you couldn't—and seeing that from this elevation of fifteen feet you couldn't—or on this elevation of fifteen feet some twenty five feet back, you couldn't say whether they were playing or not? A. I can't say that. I wouldn't say. I didn't take notice whether they were or not.

Q. Yet you looked at them so that you could see their faces or part of their faces. A. Yes, sir.

Q. And you didn't see what they were doing, whether they were playing or whether they were just sitting there, or whether they were talking or what they were doing? A. No; I don't remember seeing their hands.

The Court: Are you sure it was an upright piano?

Witness: No, sir; I am not positive of that, your Honor.

Q. Then you are not positive you could see the upper part of the piano. A. They were sitting at the piano and naturally, I assumed that the rest of the piano was there.

The Court: Do not assume.

Q. Can you tell me—put your mind back to that occasion. Will you tell me what you did see? A. I saw Mr. Young and Mrs. Cummings seated out in front of a piano, and his arm at one time, was around her shoulder.

The Court: What? Her shoulder? Around her shoulder?

Witness: Around her body in the rear.

The Court: Which was it, shoulder or waist?

Witness: Well, I don't remember what distinctly, whether it was shoulder or waist, but it was around her; I could see that.

The Court: And for how long?

Witness: Well, I would say not more than five minutes.

Q. And this is all you did see? A. Yes, sir.

Q. You can't tell me whether they were talking there or whether they were playing at any time, or any other move that they made, except that this man had his arm, on one occasion around this woman's waist or body, or some part of her, for five minutes? A. I will not say for five minutes continually.

Q. Five minutes then, intermittently. A. Intermittently would be correct; yes, sir.

Q. The arm around the shoulder was the only thing that you saw? A. Yes, sir.

Q. And when they were not at the piano, where were they? A. They were in the room standing; sometimes either one would walk to another part of the room, disappear from view sometimes.

Q. I didn't get that last. A. Sometimes one or the other would disappear from view. I don't know where they went.

Q. Go out of the room? Did you see them go out of the room at all? A. No; they would disappear from view. I didn't know whether they went out of the room or stayed in the room.

Q. You could see the whole room. A. No, sir.

Q. What part of the room could you see? A. I could see the room involving the piano.

Q. Is that all that you could see? A. Well, I

think it takes up about half the room.

Q. What prevented you from seeing the rest of it? A. Well, because I was looking through one window.

Q. Was there anything to prevent you from looking through the other window at this distance? A. Yes, sir.

Q. What? A. There was some obstruction in the way of that window which I don't know what it was.

Q. You don't know what the obstruction was or where it was? A. No, sir.

Q. You have a definite recollection of an obstruction? A. Yes, sir; and I think it was a Christmas tree.

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

Q. Anyone else come into the room that you saw? A. No, sir; not that I saw.

Q. Who put the light out? A. I don't know.

Q. What drew your attention to the putting of the light out—simply the light going out? A. Yes, sir.

The Court: Was that the night of the arm incident when the light went out?

Witness: Yes, sir.

Q. And what was the date? A. The date was October 25th or 26th.

The Court: With a Christmas tree in the room?

Witness: I must be confused then, your Honor, on the date. You see there were several dates and my memory is very poor on it. I remember that at one time the obstruction was there, just which one it is I cannot identify it with.

Q. Well, if the obstruction wasn't there upon this particular occasion what was there that prevented you looking in the window—both windows? A. Because at the times I looked, I just looked through the other window.

Q. Now what were these people doing just before the light went out? A. Nearly, as I can remember it, they were standing near the piano—had risen from the seat of the piano.

Q. And you watched them standing there? A. Yes, sir; I saw them standing there.

Q. What? A. I saw them standing there; yes, sir.

Q. And then the light went out? A. Yes, sir. Then they moved away from my view and immediately afterwards the light was extinguished.

The Court: Now on that night did you see anyone go in or out of the house? You say you saw nobody in the room?

Witness: No, sir; I didn't see anybody in the room.

The Court: Did you see anybody around the house other than the two?

Witness: Someone came in the house; Mrs. Cummings, and Miss Young returned to the house later in the evening.

The Court: Did you see her go out that evening?

Witness: As near as I can remember I did not, your Honor.

The Court: Don't you recall saying in the very early part of your examination that on that night Miss Young went out of the house, and then you saw all these things that you are now telling us? You gave me

the impression that you were trying to tell me there was nobody in the house, that Miss Young had gone out. Don't you recall saying that?

Witness: There were several evenings—(interrupted).

The Court: You do not recall saying that on the night that you saw this arm incident, earlier in the evening Miss Young left?

Witness: Yes, sir; I recall that.

The Court: Now is it a fact?

Witness: Yes, sir. I distinctly remember seeing Miss Young leave.

The Court: On that night?

Witness: On one evening.

The Court: You do not say it was on this night?

Witness: I am trying to connect that now, your Honor.

The Court: But you did definitely connect that night in my mind with the night of the arm incident. You say it did not occur that night or did occur? I am not so much interested in what you said before as of the fact.

Witness: The first evening where the arm incident came in was October 26th, I believe, or October 25th.

The Court: I don't care anything about the date.

Witness: Somewhere there.

The Court: I am asking you whether on the night of the arm incident you saw Miss Young leave the house before that occurred.

Witness: Yes, sir; that is right.

Q. What time? A. About 7:30.

Q. And before or after Mrs. Cummings came to the house? A. It was before Mrs. Cummings came to the house. She came as I recall it now, about eight o'clock.

Q. How long did you and Miss Kopp remain outside while the lights were out? A. I would say about half an hour.

Q. What did you do? A. We sat there in the car.

Q. Didn't do anything else? A. One other thing occurred. One of the Misses Kopp telephoned the house.

Q. You mean one of the other—one of the Misses Kopp left your automobile? A. Yes, sir.

Q. And went somewhere? A. I didn't see her.

Q. What did you do there? A. I sat there.

Q. With the other Miss Kopp? A. Yes, sir.

Q. And for about a half hour you say? A. As near as I can recall that is about the time.

Q. Then what happened? A. Then at about 10:15 Mrs. Young returned, or came in.

Q. Then what happened? A. And the lights were lit and—(interrupted)

The Court: Before she came?

Witness: No, sir; was lit upon her arrival.

Q. After she got in? A. After she got in, about ten minutes after that, Mr. Young and Mrs. Cummings came out.

Q. I am interested in the lights now. When Mrs. Young came home the lights were all out in that house, is that right? A. No, not all the lights.

The Court: In this room?

Witness: In this room.

Q. How soon after she got home were they put on? A. Within a few minutes.

Q. Then all the lights in this house were not out? A. No, sir; there was one which was not, which I would say was the rear room of the house, because you could see—(interrupted).

Q. What floor? A. First floor.

Q. What do you mean by "the rear room of the house"? A. Well, the lights—(interrupted).

The Court: You mean the kitchen?

Witness: Yes, sir; I would say kitchen. The reflection could be seen.

Q. How did you see that light? A. Because there was a space between the two houses. There was a shaft of light there coming from the window.

Q. That light was lit there all the time? A. Yes, sir.

Q. And no other windows—and no other lights in the house? A. No, sir; that is the only one I saw.

Q. And you didn't see any lights—any other lights in the house during any of this time except the lights in the front room, which were extinguished and then relit when Mrs. Young came back and the light in the rear room; is that right? A. Yes, sir.

Q. You saw no lights upstairs? A. I don't recall seeing any lights upstairs, but I will not say there were no lights upstairs.

Q. But you don't recall seeing any? A. No, I didn't look upstairs. It didn't occur to me to look there.

Q. You were watching the house, weren't you?

A. Not the house. I was just looking in that front room and I was attracted to the light that was there.

Q. You and the Misses Kopp went there to see what was going on. A. Yes, sir.

Q. And you watched the whole house, didn't you, not one window. A. Yes, sir; I might say that we observed the house.

Q. Then you know whether there were lights upstairs or not, if there were lights. A. I should know, but I don't remember.

Q. You didn't see these people again after they disappeared from your view before the lights went out until they came out after Mrs. Young returned, is that right? A. No, sir; I didn't see them.

Q. Is the kitchen directly behind this front room? A. Yes, sir.

Q. Could you see the door—door leading from the front room back into this kitchen? A. No, sir.

Q. And the darkness that was in this front room was not relieved by any reflection of any light, is that right? A. Yes, sir; it was not relieved.

Q. Just pitch dark? A. Yes, sir.

Q. You couldn't see anything that went on in that room? A. No, sir.

Q. Where were the two when the lights went out? A. They were standing alongside of the piano.

Q. Could you see them? A. Just before the lights went out, yes, sir; but I didn't see them as the light went out—at the exact moment.

Q. How long a time elapsed between when you saw them standing at the piano and when the lights went out? A. Just a few minutes.

Q. And at the moment of the lights going out

they had disappeared from your view, is that right? A. Yes, sir.

Q. You were looking in the room when the lights went out. A. Yes, sir.

The Court: Do not spend any more time on it.

Q. Now, the second occasion that you saw them in that room was when—the second occasion? A. The second occasion?

Q. You saw them in this room when? A. On October 13th, I believe it was.

Q. Well, the time you have been talking about was October 26th. A. I beg pardon, December 13th, I think it was.

Q. And what time in the night was that?

The Court: Come on and answer, won't you please?

Witness: I am trying to recall just the time it was, your Honor.

Q. Was it at night? A. Yes, sir; it was at night.

Q. And who were present there with you? A. Myself and—(interrupted).

The Court: Who was with you?

Witness: Miss Kopp.

Q. In your automobile? A. Yes, sir.

Q. Watching the house again? A. Yes, sir.

Q. Where did you have the car parked that night? A. In the same place, opposite the house, on the other side of the street.

Q. You saw them both in this same room that night? A. Yes, sir.

Q. For how long? A. Well, I will say about an hour.

Q. Anybody else in the room? A. No, sir.

Q. Anybody else in the house? A. I didn't see anyone in the house or in the room.

Q. You didn't see anyone in the room? A. No, sir.

Q. What did they do that night? A. Well, practically the same as on the other night, except—(interrupted).

Q. Then I suppose he sat with his arm around her at the piano? A. No, sir.

Q. What then? A. He didn't sit with his arm around her at the piano the second time.

Q. Then it wasn't the same. A. It wasn't exactly the same, no, sir.

Q. What did they do? A. They didn't sit at the piano with his arm around her. I saw only on one slight occasion that he put his arm around her when they were standing.

Q. On what? On one slight occasion? A. Yes, sir.

Q. What do you mean by that? A. It was slight duration, the time that his arms was around her.

Q. And how long were they there that you saw that time? A. Oh, I will say about an hour.

The Court: Shoulder or waist?

Witness: Well, I would say midway between.

The Court: Don't say what you would say. You ought to have a definite knowledge. You speak definitely enough of the occurrence.

Witness: Midway between her shoulder and her waist.

Q. Is that the time that he had his arm around her in the way you have illustrated here a few moments ago? A. No, sir.

Q. That is still another time? A. There were only two—only two times.

Q. Well, when was the time you saw him with his arm around her in the manner you illustrated here in court?

The Court: October 26th he was talking about then.

Witness: That is right, October 26th.

The Court: This is December 13th.

Witness: I might qualify—(interrupted).

The Court: Never mind. We do not want any qualifications. Answer the questions.

Q. Let me get my mind straight. When you illustrated here in court a few moments ago were you illustrating the time they were sitting at the piano? A. Yes, sir.

Q. Or when they were standing up? A. It was —both those things happened in the same evening, on that first—October 26th.

Q. So that on October 26th there was—he had his arm around her at the piano. A. Yes, sir.

Q. And he also had his arm around her standing up? A. Yes, sir.

Q. Now don't you know only a very few moments ago you told us they were on different occasions and that he did not stand up with his arm around her on October 26th? A. I do not recall that.

Redirect-examination by Mr. Child:

Q. Mr. Vandersluys, it has been testified that

you were going around with the Kopp sisters, I think, in October, 1925, and that you had engaged their services in your own suit some year or year and a half before that. A. That is a fact.

Q. What had transpired in your own suit that necessitated you going to the Kopp sisters again, if anything? A. Why, there had been a reconciliation between my wife and myself. I had taken her back.

Q. And down to what time had that continued, that reconciliation? A. That continued for a period of over a year.

Q. And when did you again—when did you start a new suit for divorce? A. Suit had not actually been started in the first case.

Q. And when did you start your suit in your second case or in the one case—when did you start your suit? A. In September, 1925.

Recross-examination by Mr. Lane:

Q. Did you reduce what you had seen to writing at all—did you make any written report of this or sign any papers? A. You mean of what I have just testified to?

Q. Yes. A. No, sir; that is why I find it hard to recall it.

NORMA KOPP, sworn for Petitioner.

Direct-examination by Mr. Child:

Q. Where do you live? A. 169 Beuna Vista Avenue, Hawthorne, New Jersey.

Q. What is your business? A. Private investigator.

Q. Were you engaged by Mr. Cummings in this case? A. I was not.

Q. Was your firm or—(interrupted). A. No; I had nothing to do with it.

Q. Well, did he employ you? A. He employed my sister, Miss Constance. I did no business with Mr. Cummings.

Q. Did you afterwards become acquainted with Mrs. Cummings by sight? A. I did.

Q. When? A. On July 4th, 1925.

Q. Where did you see her that day? A. I saw her at the Library in Newark at about 7:35 in the evening. She met Mr. Cummings with her little daughter, Olive Cummings.

Q. Did Mr. Cummings point her out to you at that time? A. He did.

Q. Did you follow her that night? A. Mrs. Cummings went to her home at 10 Washington Street.

Q. Please answer my question. A. I did.

Q. Where did you follow her to? A. Number 10 Washington Street, Belleville.

Q. Did you see anything of Harold Young that night? A. I did.

Q. Where did you first see him? A. I saw him at 175 Washington Avenue, Belleville, at about ten minutes after 8:00.

Q. That was before you went to the Library or after? A. After the Library.

Q. Where did you see him at that time, at 175? A. I saw him on the top of the terrace stairs. Mrs. Cummings was going up the stairs with her little daughter, and Mr. Young met her at the head of

the stairs. He put his arm around her and kissed her.

The Court: Mrs. Cummings or the baby?

Witness: Mrs. Cummings. The baby ran on ahead into the house.

Q. Who was in the party that night with you? A. With me?

Q. Yes. A. Mrs. Ada Smalley, Mrs. Ringold, Mr. Cornelius Troast, and my sister Miss Florette Kopp.

Q. How long did you remain at 175 Washington Avenue that night? A. I remained until pretty nearly 9:30 when I returned to my home.

Q. Did you see her after that that night? A. I did not.

Q. Did you follow them subsequent to that—follow Mrs. Cummings? A. Yes, sir.

Q. Upon what date did you follow Mrs. Cummings subsequent to July 4th? A. July 16th.

Q. Did you see her that day? A. I saw her that evening.

Q. Where? A. At 11 Washington Avenue, Newark.

Q. Where? A. 11 Washington Avenue, Newark. She arrived in the evening and a terrible storm blew up.

The Court: Is that her house or Young's house?

Witness: That is a different place, near the power house—near the cemetary on Washington Avenue there in Newark. I again saw her on—(interrupted).

Q. Was she alone or with anyone that night? A. She was with her child.

Q. You did not see Young that night? A. I did not.

Q. When did you next see her? A. On July 22nd, 1925, I saw her at the Library, Newark.

Q. At what time? A. Met Mr. Cummings around twenty minutes of 8:00.

Q. And did you see Young there that night? A. Not at the Library. I saw him later.

Q. Where did Mrs. Cummings go from the Library? A. She walked to Huyler's drug store on Broad Street, near Central Avenue; she entered the store at the main entrance, came out on Central Avenue, with her child, walked down to Plane Street and Central Avenue where she met Harold Young. I previously saw Harold Young in the park near the Library the same evening before. This evening they walked back again up to Central Avenue and Broad Street, where Harold Young went into the florist's on Broad Street, bought some flowers—I think they were gladiolas —brought them out and handed them to Mrs. Young. Mrs. Young looked at them—(interrupted).

Q. Mrs. Young? A. I mean Mrs. Cummings. Pardon me. She looked at them and then they went on a bus to Belleville where they got out at the city line. They walked together. During their walk to 10 Washington Street, Belleville, Mr. Young continually had his arm around Mrs. Cummings' waist.

Q. At what time did they get to Washington Street, Belleville? A. I think it was about quarter to 9:00 or 9:00 o'clock. I remained there until about 10:45 when I left Mr. Young still at the home of Mrs. Cummings.

Q. When did you next see Mrs. Cummings? A.

On July 26th, 1925, on Sunday; at half past 5:00 she left—(interrupted)

Q. In the afternoon, half past 5:00 p. m.? A. Yes, sir. She left Riviera Park with Mr. Young, Mrs. Young, a young lady who I was told was Miss Mildred Young, and Olive Cummings. They left the park and went to 175 Washington Avenue. Harold Young took Mrs. Cummings to her home at 10 Washington Street. He then returned to his own home. About 8:00 o'clock that same evening Mrs. Cummings came to 175 Washington Avenue, Belleville. About quarter after 9:00 probably a little sooner, Mrs. Young and her daughter, Miss Mildred Young and Olive Cummings left their home. They remained away probably a half hour or more and then they returned. Miss Mildred Young rang the doorbell at 175 Washington Avenue and Mr. Harold Young opened the door and let his mother and sister and Olive Cummings in. They all left about half past 10:00 that same evening and went to a delicatessen store on—I think it is 272 Washington Avenue, Belleville. Mrs. Young and Miss Young and Olive Cummings went in the delicatessen store. Right next to the delicatessen store is a fish store, on towards Newark. Harold Young and Mrs. Cummings remained outside. Harold Young drew Mrs. Cummings in the doorway of this store and put his arm around her and kissed her; not once but numerous times. When Mrs. Young and her daughter, Miss Young, came out of the delicatessen store, they all went to Carrigan's and had a soda. Mr. Young took Mrs. Cummings and her child home to 10 Washington Street where he kissed her good night at the gate of her home at 10 Washington Street. I then followed Mr. Young to his own home 175 Washing-

ton Avenue. That was July 26th.

Q. Now when did you next follow her? A. On August 28th, 1925, I was at 175 Washington Street sitting in my car when, about half past 5:00, Mrs. Young left her home and went away in a sedan car which was standing in front of their home. At about—shortly before 6:00 Harold Young came home. At about ten minutes after 6:00 Mrs. Cummings came to 175 Washington Avenue. Harold Young met her on the porch, put his arm around her and kissed her. Twenty minutes after 6:00 Mildred Young left 175 Washington Avenue. We remained there until about—must have been 9:30 very nearly, when Mrs. Young came home. About 10:00 o'clock Harold Young took Mrs. Cummings home to her home at 10 Washington Street, Belleville. That was August 28th. During the time while we were outside of 175 Washington Avenue the lights in the house were never lit until the return of Mrs. Young at 9:30.

The Court: What date was that?

Witness: August 28th.

The Court: Daylight saving?

Witness: Yes, sir.

The Court: And it was daylight when Mrs. Young returned, I suppose?

Witness: No; 9:30. On August 29th, Harold Young went to the barber on Washington Avenue—I don't know the name—remained there about two hours.

Q. What time did he go? A. Two o'clock. Came back to his home at 4:00. At ten minutes after 6:00 he left his home and went to Broad and Market Street, Newark. He went to Kresge's

store and bought a pair of arm garters. He then went to the Newark theater on Market Street, where he waited probably fifteen or twenty minutes when Mrs. Cummings met him. They both together went into the drug store on the corner of Market and Broad, then went back to the theater; he bought two tickets; I immediately bought one right after him. They both went into the theater. Mrs. Cummings went up to the ladies' room. Mr. Young waited for her. They both went down to the fourth aisle—fourth seat in; Mrs. Cummings taking the fourth or fifth seat and Harold Young taking the seat right next to her. I sat down in back of Harold Young. My sister and Mrs. Rosenstein came in after. They remained in the theater until the show was over. During their time in the theater Harold Young had his arm on and off around Mrs. Cummings; he held her hand. He kissed her hand, not once, but many times. So much so that the people sitting next to me remonstrated about the actions of this couple. Mr. Cummings came into the theater and sat down behind us.

Q. Mr. Cummings? A. Yes, sir. Shortly before the show ended I left the theater—Mr. Cummings left ahead of me. They came out together and went to the Eagle Chop Suey on Market Street. After—it must have been about ten minutes to 12:00 when they came out of the chop suey place, walked up Broad Street—down one block on Broad Street, looked at some men's suits in the window, returned to Market and Broad; at Market they walked down Market Street towards Mulberry. It took them very nearly fifteen or twenty minutes to reach Mulberry Street, because during their walk they went in, not one vestibule

of the stores, but went in numerous stores. Harold Young kissed Mrs. Cummings, not once but at least ten or fifteen times in his walk from Broad to Mulberry Streets, on Market.

Q. Where were you all this time? A. I was following them.

Q. Where? A. On the street, walking.

Q. On the sidewalk? A. Yes, sir.

Q. Which side of Market Street were you on? A. I was on the other side at times and on the same side they were. In fact I stood right in front of the window, the same window they were in the vestibule of the store. They turned up Mulberry Street. It must have been after midnight. I crossed the other side of Mulberry. He had his arm around her waist all the way down under the trestle there until you come to the Mulberry Arcade. Shortly—right in front of me a man came out of the Mulberry Arcade and stopped and spoke to Harold Young and Mrs. Cummings. He handed him something and Mr. Cummings—I mean Mr. Young put his hand in his pocket—I don't like to be mimicked by the co-respondent. Mr. Young is making faces at me.

Q. Never mind. Look at the Court or look at me.

The Court: Mr. Young must not do it.

Witness: (Continuing) When this man crossed over from the Chinese district at the Arcade—the Mulberry Arcade and handed Mr. Young something, Mr. Young went in his pocket—I couldn't see whether it was paper money or other money he handed him back. At that time my sister, Miss Florette and Mrs. Rosenstein came up to me.

They walked up Green Street as far as—(interrupted).

Q. Who do you mean by "they" please? A. Mrs. Cummings and Mr. Harold Young. The same man went back into the Mulberry Arcade who came over to him. They walked up Green Street to Broad Street to the City Hall of Newark where they waited for a bus. A bus came along and they got on the bus. We ran all the way to Market and Broad Street where I got in a taxi and followed the bus to the end of the city line, where Mrs. Cummings and Mr. Young got out and got on a trolley. They got out again at William Street and Washington Avenue. He then walked with her to number 10 Washington Street. It was very nearly 1:00 o'clock in the morning when we arrived there. They went on the porch and then they went to two bushes, which are on the right hand side of the house, at Mrs. Cummings home. There was a lot on William Street—there is only one house between her home and William Street. Mrs. Cummings had her hat on when she went in these bushes with Mr. Young. They were in there probably fifteen minutes. I could hear the moving of the bushes. She came out with him and had her hat in her hand. She was arranging her dress—the coat she wore that evening, a blue coat, with a sort of fur on the bottom. Mr. Young came with her to the gate. He kissed her good night and walked up under the electric light at William Street. I followed him with Mrs. Rosenstein and my sister, Miss Florette. He was fixing a belt or something on his trousers when he got by the electric light and lit a cigarette. I took him to his home at 175 Washington Avenue. It must have been quarter

to 2:00 or ten minutes of 2:00 because I had to go in a restaurant to call up for my car and I asked for the time. I got there at 2:00 o'clock. It is a lunch wagon on Washington Avenue.

Q. When did you next follow them? A. I followed them again on September 12th. Mr. Young, Mrs. Young and Mrs. Cummings left 175 Washington Avenue, Belleville, and took the Hudson Tubes to Coney Island. While they were going over to their train in the Tube, Mr. Young remained in back with Mrs. Cummings and kissed her two or three times, with his arm around her waist. In the train all the way over he held her hand. His mother was sitting there. A part of the conversation which I heard was that Mrs. Young would make room for Mrs. Cummings in her home. He said he didn't want her to be put up in the garret, that there was plenty of room on the first floor where they were living. They continued on to Coney Island. I last saw the three of them enter the incubator place in Coney Island. I then left. I was going back to Newark. Mrs. Rosenstein and my sister, Miss Florette were on the same train. We returned to Newark, met Mr. Cummings—Mr. Cummings had been with me—and we waited until 12:20. They didn't return. That was on September 12.

Q. Now when did you next follow them? A. September 17, around 8:00 o'clock in the evening Mrs. Cummings met Harold Young at the dummy post at John Street and William.

Q. What? A. Dummy post on John Street and Washington Avenue. They walked up John Street and finally got to the cemetary on the corner of Bridge and William Street. She had the child with her. The little one was running ahead.

Harold Young and Mrs. Cummings were standing about two hundred feet in on Bridge Street off of William Street. He kissed her. He crushed her to him. I passed on the opposite side of the street. They took about twenty minutes to reach the foot of the hill on Mill Street, as near as I know—Mill and Bridge. They finally returned after walking for over an hour.

Q. Returned where? A. To 10 William Street.

Q. Ten what? A. William Street—or 10 Washington Street. Pardon me. Where he left Mrs. Cummings. It must have been after 10:00 o'clock. He kissed her good night and I followed him to his home at 175 Washington Avenue.

Q. Well, did you follow them after that? A. On September 19th, 1925, Harold Young was waiting for Mrs. Cummings on the corner by the Catholic Church on William Street. He waited there quite a little while, when finally, about quarter to 8:00, Mrs. Cummings came with her child. They walked down Bridge Street. They let the little one run ahead, and during their walk down the street he continually had his arm around her waist. They walked up—I believe it is Mt. Prospect Avenue—or the street until they reached the Mt. Prospect Theater, where he went in the candy store and bought a box of candy. They entered the theater. I followed them into the theater. He sat down next to Mrs. Cummings. Held her hand. I came out of the theater, sent my car for Mr. Cummings. I returned—the entire time at the theater—and about 11:15 he came out with Mrs. Cummings and the little one. He walked all the way down to Washington to Cateract—or—I don't know all the names of the streets; they went in and out of streets—where they got on a trolley car. This is

New Jersey State Library

September 19th, and went to Williams and Washington Avenue, Belleville. They walked up to 10 Washington Street where Harold Young opened the door with a key and put the little one in the house. It was about quarter to 12:00 when they arrived there. Mrs. Cummings went to the side of the house and remained there with Harold Young for half an hour when Harold Young left and went to his own home. He kissed Mrs. Cummings at the gate that night. It was about one o'clock, not quite when he got to his home.

Q. When is the next date you followed them? A. September—just wait a minute. October 10th.

Q. And where did you see them then, that night? A. Mrs. Cummings met Mr. Cummings at the Library. She remained with him about fifteen minutes and walked to Broad and Central Avenue where she waited for about twenty minutes more. She stood right by me with the little one when a bus came and Mrs. Young and Harold Young got out of the bus. They went to the Fashion Show at the Armory, as near as I recollect and I then left.

Q. When did you next follow them? A. On October 26th about quarter to 7:00 I was passing the home of Harold Young when I saw him in the window. We parked our car on the opposite side of the street. About half past 7:00 Mildred Young left her home. About 8:00 o'clock or a little after Mrs. Cummings came to the Washington Avenue home of the Youngs. Shortly after she got there the lights went out. My sister, Miss Florette, left my car and while she was gone the light went on in the house for a few moments. They again went out. At about 10:15 Mrs. Young, the mother of Harold Young, returned. She got into the house,

the lights went on and about 10:30 Mrs. Cummings came out with Harold Young and went to 10 Washington Street, Belleville. He left Mrs. Cummings and kissed her good night. I followed Harold Young back to his home. That was October 26th.

Q. When next did you follow them? A. November 7th.

Q. Where did you see them that night? A. I saw Harold Young down in the park at the Library. Mrs. Cummings boarded a car and I returned to 175 Washington Avenue. Mrs. Cummings left her husband, Mr. Cummings. I returned to 175 Washington Avenue where, about 8:20, Harold Young let Mrs. Cummings in and about—a little after 10:00 o'clock in the evening, Harold Young and Mrs. Cummings came out and went to Number 10 Washington Street to the home of Mrs. Cummings. That was on November 7th. On December 13th I saw Mrs. Cummings meet Mr. Cummings at the Library with her child about twenty minutes to 8:00 I was right near by. I heard her say to Mr. Cummings that the child was very sick, had a sore throat, and she would have to leave immediately. She immediately left and went up on a car towards the Regent Theater.

Q. Where was that? A. Bloomfield Avenue. She got out—I think it is Clark Street—she walked back to a store where they had some dolls; I think it is 50, the number—where she met Mrs. Young, Harold Young and Miss Mildred Young. I was walking with a gentleman by the name of Mr. Gardner, and stood right by the store. She made this remark to Mrs. Young, "I got rid of him and told him I had to take the child home." They went to the Regent Theater together. Mrs. Young

sat with Harold Young—Mrs. Cummings, I mean, sat with Harold Young; Mrs. Young and her daughter and the child sat together. They came out of the theater after 11:00 o'clock, went to a store and had a hot chocolate. They then went towards Belleville. Harold Young took Mrs. Cummings to her home with the child. It must have been near midnight. He let the little one in the door and he remained outside on the front porch of 10 Washington Street where Mrs. Cummings lived. Mrs. Cummings wore a dark dress that evening and then when they were standing on the stoop I could see a lighter under garment.

Q. How long did they remain there? A. About —(interrupted).

The Court: What do you mean by that?

Witness: It looked to me like an underskirt. I know she had a dark dress on. It might have been gray or light blue. He remained with her. I saw him with his arms around her. I stood opposite a garage directly in line with the entrance of their home and then I walked over in the road. Mr. Gardner and my sister, Miss Florette, were with me at the time. Harold Young came out of the house and walked to 175 Washington Avenue, arriving there—(interrupted).

The Court: Came out of the house? I thought he was on the front porch.

Witness: He was.

The Court: She put the child in.

Witness: Put the child in. And walked away from the house, off the porch. This was on December 13th.

The Court: You said he came out of the house.

Witness: I didn't mean that; I meant he left the porch.

Q. What time did he arrive home, or leave the house? A. It was after midnight. I looked at the clock in my car at the time.

Q. When did you next see them together? A. The next time I saw them together? That was the last time until I met them here in court.

Q. What? A. That is all. Last time I saw them until I met them in court here.

The Court: In where?

Witness: In the court.

The Court: Here?

Witness: Yes, sir. That is the last time.

Cross-examination by Mr. Lane:

Q. You have a very good memory, haven't you? A. I don't know.

Q. Well, how long since you have refreshed your recollection as to what occurred on these ten or twelve different dates you have recited here without any hesitation? A. How long ago?

Q. Yes. A. Oh, probably a week.

Q. Did you have a report or make a report in writing at the time? A. I just kept a little note of each days' happenings.

Q. Have you got those little notes? A. Yes, sir. Do you wish to see them?

Q. I didn't ask for them yet. And those little notes you subsequently used as the basis of making a written report to counsel? A. No. My memory is very good. I do remember these dates very well.

Q. And remember each of these details as they occurred? A. Yes, sir.

Q. How many cases have you got or did you have under way at the same time? A. I wouldn't be able to tell you that, Mr. Lane.

Q. Well, about. A. I couldn't.

Q. More than one? Your memory should be acute as to that, I should think. A. I wouldn't be able to tell you how many.

Q. Well, more than one? A. Surely.

Q. More than a dozen? A. I couldn't tell you. Dozen more or less, I wouldn't be able to tell you at that time.

Q. At least a certain number? A. I wouldn't be able to tell you more or less.

Q. And were you doing work on these other cases at the same time? A. At different dates, yes, sir.

Q. During this period of time? A. Not on the days I was after—(interrupted).

Q. No, of course not, but on the next day or the day before? A. I wouldn't be able to tell you that.

Q. You were constantly at work. A. I am.

Q. Do you remember the name of the case you were working on on October—(interrupted). A. Why—(interrupted).

Q. Wait. Do you remember the name of the case you were working on on October 27th? A. I believe I was trying to find out where Mr. Friedman was—Isadore Friedman of Paterson.

Q. And October 28th? A. Well, that I wouldn't be able to tell you.

Q. Why not? A. Because nothing important happened on that day.

Q. October 25th. A. October 25th I was after Mrs. Cummings.

Q. How long had you been at work on this case? A. How long—do you mean how many days?

Q. How many days? What space of time? When were you retained? A. I wasn't retained, Mr. Lane. I can't tell you anything about it.

Q. When were you—(interrupted). A. The first time I saw Mrs. Cummings was July 4.

Q. What was the first time you saw Mr. Cummings? A. Oh, end of June—beginning of July, as near as I can recollect.

Q. Were you present at the time that Mr. Vandersluys, I think his name is—or some such name as that, testified as to what occurred at 175 Washington Avenue? A. I was on the 7th of November and I was on the 26th of October.

Q. You were there on what date? A. October 26th.

Q. Tell me what occurred that night. A. On October 26th?

The Court: In front of the house.

Witness: In front of the house. We were passing in Mr. Vandersluy's car when I saw Harold Young in the window. We parked —Mr. Vandersluys parked his car opposite. About half past 7:00 Miss Mildred Young left the home. My sister, probably in a half an hour after Mrs. Cummings came in—she came in around 8:00 o'clock, at 175 Washington Avenue—my sister, Miss Florette, and Mrs. Rosenstein left Mr. Vandersluy's car. While they were gone the lights went on in the house. Before they returned to the car the lights went out. After they re-

turned the lights remained out until the return of Mrs. Young, which was, I think, 10:15 that evening when Harold Young took Mrs. Cummings home. That occurred on October 26th.

Q. Is that all you saw there on October 26th? A. All I saw?

Q. Yes. A. I saw Mrs. Cummings and Mr. Young in the room.

Q. Well, what were they doing, kissing this time? A. I didn't see them kiss in the room, no, sir.

Q. With his arm—(interrupted) A. I saw his arm around her waist.

Q. His arm around her, indulging in something which appeared to be—(interrupted). A. His arm was around her at one time, I noticed.

Q. Is that all you noticed? A. When Mrs. Cummings came to the house at 8:00 o'clock, Harold Young received her and kissed her and put his arm around her.

Q. Was this witness who last testified with you at that time? A. He was.

Q. And saw it? A. I don't know what he saw, Mr. Lane. I couldn't tell you.

Q. It wasn't talked about among you people. A. No; I didn't draw his attention to anything. He simply sat at the wheel and I was sitting in the back.

Q. Didn't say a word to him. A. Mr. Cornelius Troast was with me.

Q. I didn't ask you that. You didn't say a word to him at all. Who is Mr. Cornelius Troast? A. He is the chauffeur of my sister, Miss Constance.

Q. Nothing said to this man or nothing was re-

ferred to. A. In what way?

Q. As to the fact that these people had met with kisses at the top of the terrace. A. That was an ordinary occurrence for them to kiss.

Q. Won't you answer the question? A. Nothing was said at that time by me to Mr. Vandersluys.

Q. Didn't you see the piano? A. I didn't take notice of the piano, no.

Q. Or anything of that kind? A. No, I did not.

Q. You were watching there to see what went on. A. I saw Mrs. Cummings meet Mr. Young.

The Court: Answer the question.

Witness: I saw—(interrupted).

Q. What did they do when they were in the room that you saw? A. As I told you, he had his arm around her waist.

Q. When? A. About—shortly—right after she entered.

Q. What were they doing the rest of the time when his arm wasn't around her? A. The light went out. I couldn't see.

Q. Is that all you saw of them in the room? A. Except when the lights went on again while my sister put in a call.

Q. What did you see then? A. I only saw Harold Young go through the room. I saw Mrs. Cummings also in that room. The lights were immediately put out.

Q. When they were in this room prior to the lights going out—from the time you began to look until the time the lights went out, what did you see happen? A. At which time when the lights went out? At the first time or the second time?

Q. The first time the lights went out. I didn't know there was a second time. A. When my sis-

ter went away and telephoned they lit the lights and by the time she returned the house was in darkness, now which time?

Q. The first time. A. When Mrs. Cummings entered the lights almost immediately, probably a minute and a half to two minutes, the light went out.

Q. Yes. A. Before they went out I saw Harold Young probably as he walked in from the porch with his arm around Mrs. Cummings' waist.

Q. Yes. A. That is all I saw in the room.

Q. So that the lights went out in the house about a minute or a minute and a half after they went in the house? A. Maybe two minutes.

Q. Or two minutes? A. I didn't keep track of the time.

Q. It was a short interval of time? A. Shortly after Mrs. Cummings arrived there.

Q. Shortly after Mrs. Cummings arrived there? A. Yes, sir.

Q. You expressed it as a minute or a minute and a half. A. At that time.

Q. Yes, at that time. A. Yes, sir.

Q. And you didn't see anything happen in that room. A. Then I left the car and called Mr. Cummings at that time.

Q. You didn't see anything happen in that room. A. Not while I was in the car.

Q. You didn't see anything happen in that room after Mrs. Cummings went in until the lights went out except as he—as you put it, I believe—probably as he walked in from the porch he had his arm around her shoulder, is that right? A. Yes, sir, but she had her coat off then when I saw his arm around her waist.

Q. That is all you saw. A. I left the car and called up Mr. Cummings.

Q. That is all you saw. A. That is all I saw.

Q. Although you were watching. A. I wasn't watching them when I was away telephoning.

Q. You didn't go away to telephone until after the lights went out, did you? A. Yes, sir.

Q. Then you didn't see the lights go out. A. Yes, I did. I say I went away when the lights were put out.

Q. You were there until the lights went out. A. Yes, sir.

Q. That was a minute and a half. A. I said two minutes, maybe more.

Q. Now, could it have been as much as twenty minutes during five of which Mrs. Cummings and Harold Young sat at the piano? A. It might have been eight or nine minutes, because she had to take her coat off and the time it took her to go from the porch in, I suppose.

Q. During five of which Mrs. Cummings and Harold Young sat at the piano. A. I didn't say that.

Q. You were watching and didn't see it? A. I didn't say that.

The Court: Did you see it?

Witness: No, sir.

Q. Although you were watching there. A. Yes, sir, I left the car immediately and called up Branch Brook 3799 to get Mr. Cummings and I was unable to do so—I received no answer.

Q. How long did the lights remain out? A. Until my sister telephoned.

Q. Well, that doesn't give me any time at all. A. Well, about quarter to nine, I think—half past

8:00 to quarter to 9:00. I didn't make a note of the time.

Q. Then what happened? A. The lights went on for three or four minutes, as near as I can recollect.

Q. Yes. A. And my sister, when she returned —(interrupted).

Q. Then what happened? A. They went out.

Q. I know. Did you see anything happen during the time they were home? A. I saw Mr. Young as though he walked through the room, from one end of the room to the other, and I saw Mrs. Cummings standing.

Q. What doing? A. I am telling you standing, and he walked to one end of the room from the other. I don't know what he did. That is all I saw.

Q. When the lights first went on what position did you see them in? A. He was walking.

Q. And where was she? A. Well, probably in one end of the room.

Q. Was there any other light in that house? A. In the rear window.

Q. And was this witness that testified a few moments ago there at the time these lights went on and off? A. Well, that I wouldn't be able to tell you exactly. He might have been in the car or out of the car. I know he left the car once with Mr. Troast.

Q. Can't you recollect whether he was or wasn't? You can recollect everything else. A. I wouldn't say and be positive he was in the car at the time. He might have been out of the car. I couldn't tell you because I left the car immediately when the lights went out again.

Q. Then how long after that was it that the

lights went out and stayed out? A. They stayed out until the return of Mrs. Young.

Q. And how long was that? A. I think to the best of my knowledge and belief it was ten fifteen.

Q. Now what date was it that you—and you all went away together? A. What do you mean we all went away together?

Q. Yes. In your car. A. I didn't say anything about us all going away.

Q. Well, did you? A. When do you mean?

Q. When you were through, what did you do then? A. October 26th?

Q. Yes. A. When Mrs. Young returned at 10:15—(interrupted).

Q. What did you do after the thing was all over is what I am asking you. A. Why, Mrs. Cummings came out with Harold Young and I followed them to 10 Washington Street.

Q. Did all of you follow or just one? A. I followed on foot. What the rest did I don't know.

Q. How far behind them? A. Behind Cummings—or behind Mr. Young—about twenty or thirty feet on the opposite side of the street; sometimes on the same side of the street. They walked up John Street. William Street or Washington Street is very dark, except one light on the left hand side going towards Mrs. Cummings' home, which is about two hundred feet from the home. That is the only light on the street itself, and I walked on the right hand side of the street and then I crossed over; and on William Street and Washington Street there is a light—arc light—also; those are the only two lights coming from John Street over, at that time.

Q. How long is the street? A. How long the street is? Which one?

Q. Washington Street. A. Not a very long block.

Q. It is one block, isn't it? A. It is a block, yes, sir.

Q. That is the length of the street, isn't it? A. Yes, sir; on Washington Street.

Q. That is what I mean. A. Well, maybe two thousand feet, more or less. I couldn't tell you exactly.

Q. And you followed them twenty five feet behind. A. At times, thirty.

Q. Where was the car in the meantime with all these people in? A. I don't know where the car was.

Q. When they came out of the house. A. I left the car.

Mr. Child: Will you kindly answer the questions?

Witness: I don't know where my car was.

Q. Where were you when they came out of the house? A. In Mr. Vandersluys' car.

Q. Then your car was there when they came out of the house, with all these people in it, was it not? A. Yes, sir.

Q. And then you left the car and started to follow them? A. Yes, sir.

Q. Now what night was it you told us about this going into the bushes? A. That was on August the 29th—or at least, 30th.

Q. What time of night? A. That was in the morning; 1:00 o'clock.

Q. What time in the morning? A. One o'clock.

Q. And at 175 Washington Street? A. No, sir; at 10 Washington Street.

Q. 10 Washington Street. A. Street.

Q. And where are these bushes? A. They are on the right hand side of the house as you enter the home—the house—Mrs. Cummings' home.

Q. And who were with you? A. On that night?

Q. That morning. A. That morning, Mrs. Rosenstein and my sister, Miss Florrette Kopp and Mr. Cummings and Mr. Cornelius Troast.

Q. They were all there at that time? A. No, sir.

Q. Well, I asked you who were with you? A. That night?

Q. At that time. A. My sister, Miss Florette, and Mrs. May Rosenstein.

Q. Where had you left Mr. Cummings? A. He got lost in the traffic in my car with Mr. Troast.

Q. At what time? A. After midnight.

Q. Where did you park your car that night? A. I didn't park it. I don't know where Mr. Troast parked the car.

Q. How did you go to 10 Washington Street? A. In a taxi which I hired on the corner of Market and Broad.

Q. Where did you leave the taxi? A. On the corner of William Street and Washington Avenue.

Q. How far from 10 Washington Street? A. Street. One block up—two blocks up to William Street.

Q. Then where did you go? A. When I left the taxi?

Q. Yes. A. I walked up William Street to Washington Street and stopped in front of a garage directly opposite Mrs. Cummings' home.

Q. And there were three of you there? A. Three of us.

Q. And how far is that point that you stopped

from Cummings' front door? A. Where I stopped? I didn't stay at one place.

The Court: Answer the question, please.

Witness: Why, probably forty feet from where I stopped.

Q. And were the others with you? A. Yes, sir.

Q. And is that as close to the door as you got? A. Oh, no. That is the opposite side of the street. You can cross over.

Q. Did you cross? A. I did.

Q. When? A. Immediately after they got up on the stoop.

Q. Yes? A. Yes, sir.

Q. And then where did you go? A. Then I went behind a tree which is directly opposite these bushes.

Q. And how far away from these bushes is this tree that you were behind? A. About thirty feet.

Q. And was anybody with you? A. Yes, sir.

Q. All three of you? A. Yes, sir.

Q. Behind this tree? A. I don't know where they were. They were right near me. I paid no attention to my sister or Mrs. Rosenstein.

Q. Have you any idea as to where they were? A. I wouldn't be able to tell you. They were right near me. They were in front of me, back of me and around me.

Q. What did you get behind the tree for, to hide? A. No, sir; I leaned up against the tree there. The tree is in front of this garage, and you have to some way or other stand by the tree—the tree is in the way there—it is on the sidewalk like.

Q. Is this tree on the other side of the street or in front of the garage? A. It is right on—a little bit off from the garage.

Q. On the side of the street with the garage? A. With the garage.

Q. I thought you told me a moment ago you crossed the street. A. No; I didn't say I crossed the street and I didn't say the tree was on the other side of the street.

Q. I am asking you what you did when you crossed the street. A. I simply stood there.

Q. Where? A. On the other side of the street.

Q. Right in front of the house? A. On the right hand side, back of bushes on the sidewalk.

Q. How far away from the bushes? A. Oh, twenty five feet, not even that.

Q. On the sidewalk? A. Yes, sir.

Q. And were the others with you then? A. Yes, sir; they were with me from the minute I got there.

Q. Wait. You saw them, then you knew where they were. A. Who?

Q. The others. A. Which others?

The Court: Your sister and—(interrupted).

A. My sister and Mrs. Rosenstein, why, they were right around me, maybe one foot, two feet, probably half a foot; maybe four feet.

The Court: You were all in a group?
Witness: Not at all times, no.

Q. At the time you crossed the street? A. No, I couldn't tell you that; that would be absolutely impossible, because I couldn't look behind me. I was looking in front of me at what Mr. Young and Mr. Cummings were doing when they left the stoop.

Q. How close did you get to them? A. To who?

Q. The only persons we are talking about, Mr. Young and Mrs. Cummings. A. Why, sometimes

I was probably twenty five feet from them—thirty feet—maybe a little bit more.

Q. How close to you were they when they were behind the bushes or in the bushes? A. In the bushes?

Q. Yes. A. From where they were—went in the bushes? I was about twenty feet away from them.

Q. And when she came out of the bushes and carried her hat? A. I wasn't more than twenty feet from her.

Q. How far are these bushes from the house? A. From the house, about fifteen, eighteen, twenty feet, more or less.

Q. On which side of the house? A. As you enter the front of the house they are on the right hand side, to the rear of the one house that is the only house from William Street to Washington Street—to her home.

Q. About how far are they in front of the house or rear of the house? A. Sort of the side—what I would call the north side of the house.

Q. What kind of bushes are they? A. I couldn't tell you. All I know is there were two bushes there.

Q. How big bushes—what do you mean by "bush"? A. Why, I think they may be four or five feet high and they were green—foliage, that night, I know, in August. I couldn't tell you what kind of a bush. I never made it my business to find out. All I know is there were two bushes there at that time.

Q. Well, you could see two bushes. A. As good as I could see.

Q. Were they clumps of bushes? A. No.

Q. They were two distinct bushes. A. Probably

they were three or four feet apart as near as I could see with the foliage on them.

Q. And you don't know what kind they were? A. No, sir.

Q. Have you seen those bushes since? A. No, sir—I have seen them since the 29th of August?

Q. That's what I mean. A. Yes, sir; I saw them December 13th, the last time.

Q. High bushes? A. They are about four feet —five feet—not quite. I couldn't just tell you.

Q. Could you see the people behind them? A. I could see them.

Q. Well, when they were standing up? A. Yes, sir; I could where I stood.

Q. See what was going on? A. I could see the black object.

Q. See what was going on? A. No; I wouldn't be able to tell you what was going on.

Q. How did they get off the porch? A. What time, Mr. Lane.

Q. When they went into the bushes? A. They walked off the porch and went into the bushes.

Q. How is the entrance to the porch, on the side or front or what? A. No, right in front. They went down a few steps. There is a few steps on the porch, walked down the steps, they turned to their left to get to the bushes.

Q. How long did they stay on this porch? A. Five or six minutes.

Q. What were they doing on the porch? A. On August 29th, why, Harold Young had his arms around Mrs. Cummings and was kissing her and after that they walked to these bushes.

Q. After staying five minutes on the porch? A. As near as I can recollect.

Q. How far are these bushes from the next

house? A. Why, it is back of the next house, that is, these bushes, and I think the rear door of that next home is about twenty, twenty two or three or four feet from these bushes, as near as I can tell you.

Q. Now, while they were behind these bushes what did you hear? You said you heard—(interrupted). A. I heard like moving of more than one person.

Q. Did you hear anything else? A. No, sir.

Q. Did you hear anything said? A. No, sir.

Q. You could hear the moving but not the words? A. I heard the kissing on the front porch before they entered the bushes.

The Court: He is interested in the bushes now.

Witness: No. I heard nothing said. I just heard like muffled sounds, the moving of more than one human being.

Q. Did you hear any kissing? A. Not in the bushes.

Q. And you saw nothing? A. I couldn't—I saw the two objects there.

Q. Did you see them over the bushes? A. What is that?

Q. Did you see the two objects over the bushes? A. At times I saw them behind the bushes and then in between the two bushes.

Q. Could you see their heads over the bushes? A. Sometimes, and then they were lower than that.

Q. Were they on the ground or standing up? A. That I wouldn't be able to tell you.

Q. If you could see their heads over the bushes

and you could hear the movements—(interrupted). A. I could hear very plainly.

Q. Yes. —then weren't you close enough to see whether they were on the ground or standing up? A. I wouldn't be able to tell you whether they were on the ground. They could have been on the ground half a dozen times without my knowledge.

Q. Could you see between the bushes? A. No, sir. I could see they were in between the two bushes.

The Court: From where you were could you see between the bushes to where they were?

Witness: Yes, sir.

The Court: Then the bushes were not close together.

Witness: No, sir; they were about three or four feet, but the foliage was very green on them at that time.

Q. Now did you hear any talk while they were on the porch? A. I heard kissing very plainly.

Q. Did you hear any talk? A. No, sir.

Q. You could hear the kissing, but you couldn't hear that they were talking at all? A. No, sir; unless they whispered.

Q. I see. So the kissing must have been silent unless it was accompanied with whispers. A. The kissing was very loud.

Q. I say the kissing itself was the only noise you heard? A. Yes, sir.

Q. They didn't say anything during the entire five minutes while they were kissing? A. No, sir.

Q. And you didn't hear anybody make any suggestion to go behind the bushes. A. I wouldn't be able to hear that.

The Court: You did not.
Witness: I did not.

Q. You were close enough unless they talked in whispers to hear what they said, as I understood you. A. Yes, sir.

Q. And you didn't hear any suggestion made by either of them. A. No, sir; they simply went to these bushes.

Q. In silence they walked off the porch and went behind the bushes? A. They weren't very quiet about it.

Q. What did they say? Did they say anything? A. They didn't say anything. They didn't need to say anything. I could see them.

By the Court:

Q. You are a pretty good sized woman and could see from the sidewalk. Will you explain how it was that these people couldn't see you? A. There was a larger tree.

Q. From these places where they were. A. I don't know, your Honor.

Q. How they couldn't see you from this porch or behind the bushes. A. I wasn't on any porch.

Q. How they couldn't see you from where they were on the porch. You said you were within twenty feet of them. A. Yes, sir.

Q. Can you explain to me how it was they didn't see you? A. Right behind—(interrupted).

Q. The reason I ask you is because evidently you saw them go behind the bushes. A. Yes, sir. I will try to explain it to you. Where these two bushes are—(interrupted).

Q. The explanation I want is, that these people, as you say, tried to do something in secret, still

could not see you twenty feet away or twenty five feet away when you were on the sidewalk. A. Because I was very careful that they wouldn't see me.

Q. You were not concealed. A. No.

Q. A woman that weighs—how much do you weigh? A. About a hundred and sixty pounds.

Q. How tall? A. I am five feet seven in my stocking feet.

Q. Good big—good sized woman. A. Yes, sir. Right behind these bushes there is a yard.

Q. I don't care about the bushes. I just wanted to know whether you could explain to me why these people who were bent upon each other, as you would indicate, could not see you and still they were careful to go behind the bushes. Go on.

By Mr. Lane:

Q. Now at no time were you on the inside of the yard, were you? A. What is that?

Q. At no time were you on the inside of the yard of this house? A. No, sir.

Q. How close to the fence were you? A. I was right onto the fence of the adjoining yard.

Q. Standing up? A. Me? Yes, sir.

Q. You, yes. During all this time? A. Not all during that time, no, sir.

Q. During the time you were watching. A. I wasn't in one position two minutes.

Q. Always standing on your feet though. A. I was.

Q. You mean you were flitting in front of this house? A. No, no.

Q. Picket fence in front of it, isn't there? A. Yes, sir.

Q. I show you a photograph and ask you if you

can recognize the house—the front of the house. A. Yes, sir.

Mr. Lane: I ask that it be marked for identification.

(Photograph marked Exhibit D-1 for identification of this date.)

Q. Now will you tell me which side of that house as you look at it the bushes were? A. I can't show the bushes.

Q. Which side? A. On the right hand side, right over here, your Honor, near the rear of the other house.

Q. I show you another photograph and ask you whether you can recognize that as another illustration. A. Yes, sir; I can. This is the other side of the house. Not where the bushes were. This is the side going towards John Street; this is the side going towards William Street (indicating). The bushes are on the side going towards William Street.

Q. Where is the porch? A. Right here.

Q. Where is the nearest street light? A. The nearest street light on William Street is up William Street, about two hundred feet up.

Q. Pretty dark around there where that door is. A. Then there is a light on the corner.

The Court: Pretty dark where this door is.

Witness: Yes, sir; but there is a light on the corner.

The Court: Shining up against that door?

Witness: No, sir.

The Court: It is darker at that door than at the bushes—darker at the door than in the bushes.

Witness: Yes, sir.

The Court: So you don't know why they went into the bushes, do you?

Witness: I couldn't tell you.

Mr. Lane: I ask that the second photograph be marked for identification.

(Photograph marked Exhibit D-2 for identification, of this date.)

Q. This porch which appears on the left hand side of these two photographs is the only porch there is on the house, is it not? A. In the front.

Q. In front, yes. A. I couldn't tell you what is in the back.

Q. Were there any lights in the house at the time? A. No, sir.

The Court: No lights in the house?

Witness: When they came in, no.

The Court: You say they put this three year old baby in the front door.

Witness: Not on that night; on the night of the 29th of August.

The Court: On any other night?

Witness: They did.

The Court: No lights in the house?

Witness: No, sir. There was a light downstairs in one part of the house—in the rear. I didn't pay any attention. They put the child in. That was the 19th of September and 13th of December.

Q. Did they have the child with them any time during that night? A. No, sir.

Q. Did you see the child during any period that night? A. I did not.

Q. Now, there was another occasion—there were two occasions, were there not, when you were with this witness who testified a few moments ago, Mr. Vandersluys, or some such name as that? A. Two other occasions? On November 7th I was with him.

Q. Now, what happened on November 7th that you saw? A. Why, I saw Harold Young down in the park and Mrs. Cummings was at that time at the Library. I went to 175 Washington Avenue and about twenty minutes after 8:00 I saw Harold Young leave Mrs. Cummings in—(interrupted).

The Court: When you answer a question do you have to tell the story over again? When you were with him, that is what he wants.

Witness: That is what—I did see her—I saw Mr. Vandersluys.

Q. Was he with you all that time? A. Yes, sir.

Q. So he was with you all the night of November 7th? A. Yes, sir; I was in his car.

Q. What was it that you saw at the house? A. At about twenty after 8:00 I saw Harold Young leave Mrs. Cummings in at 175 Washington Avenue.

Q. And this other witness was with you? A. Yes, sir.

Q. And what did you see? A. After she got in the house about—(interrupted).

Q. Was there any kissing? A. I couldn't see—no, sir. Then they left together shortly before 10:00 o'clock and went to 10 William Street.

The Court: Washington Street.

Witness: Pardon me.

Q. Now, what did you see at 175 Washington Street? A. Why, I saw Mr. Young meet Mrs. Cummings at the porch.

Q. Yes, and put his arm around her and kiss her. I see. There was kissing there only. A. Yes, sir. On the porch. You said in the house.

Q. On the porch there was kissing. A. Yes, sir; he always kissed her when he met her.

Q. And Mr. Vandersluys was there? A. What time?

Q. With you—was he there when she came? A. Yes, sir, but he was driving, he was at the wheel in front.

The Court: Never mind. Do not excuse. The car was parked, wasn't it?

Witness: Yes, sir; not all the time.

Q. At the time she came and kissed. A. Yes, sir. We were in motion when she came.

Q. So you were in motion when you saw him meet her? A. Yes, sir; just about stopping. No, not when he greeted her, when she came to the foot of the terrace.

Q. When she did the kissing you were stopped? A. Yes, sir; I was out of the car.

Q. Where was Mr. Vandersluys? A. In his car.

Q. And how far were you from the car? A. Oh, maybe ten feet.

Q. How far were you from the porch of 175 Washington? A. I was directly opposite.

Q. Across the street? A. Yes, sir.

Q. And he came out, as I understand it, to meet her at the top of the terrace. Was that the time? A. No, sir, not that night. That was the 4th of July.

The Court: What?

Witness: That was on the 4th when he met her on top of the terrace.

Q. She went in? A. She went up the porch and he met her.

Q. On the porch? A. Yes, sir.

Q. Then what happened? A. Then they went in.

Q. What happened then? A. Then they came out.

Q. Never mind when they came out. What happened when they were in? A. I don't know; I couldn't tell you.

Q. Did you see anything? A. No.

Q. You were looking. A. Yes, sir.

Q. They were in a lighted room. A. At times.

Q. You saw them in the lighted room. A. Yes, sir.

Q. What did you see? A. Saw them walk in.

Q. What did you see? A. Saw his arm around her waist.

Q. Well, then, you did see something. A. Yes, sir.

Q. A few moments ago you told me you didn't. A. Well, he had his arm around her.

Q. I asked you what you saw. Now tell me what you saw. A. His arm was around her waist, that is what I saw.

Q. What else? A. That is all until he left her at the gate.

Q. Confine yourself now to the lighted room. That is all I am asking you about. What occurred in the lighted room from the time you saw them enter the lighted room until you saw them leave. A. That is all I saw of her.

Q. What were they doing, sitting down, stand-

ing up or—(interrupted). A. I couldn't tell you, Mr. Lane, what they were doing in there.

Q. Couldn't even tell me whether they were sitting or whether they were standing? A. No, sir.

Q. Or what they were doing? A. No, sir.

Q. Although you were looking at them. A. At times.

Q. And all you know is, however, that one of the times that you happened to look at the mwas when he had his arm around her—(interrupted). A. Yes, sir; when she entered.

Q. —her waist, is that right? A. Yes, sir.

Q. And how long did he have his arm around her waist? A. Two or three minutes.

Q. Kissing at that time? A. No, sir; he kissed her on the porch.

Q. Were they talking? A. I couldn't tell you. I couldn't hear them.

Q. But were they just standing—couldn't you tell, looking in a lighted room when two people were together with the arm of one around the waist of the other, whether they were talking together or whether they were walking or what? A. I wouldn't be able to tell you whether they were talking or not; that would be impossible for me to tell you.

Q. Then what was the last you saw before they came out of the house? A. Saw them come out together.

Q. I understand that, but before you saw them come out. A. I didn't see anything.

Q. Did they leave the room or what? A. Left the porch.

Q. Did they leave the lighted room? How did they get out of the lighted room? A. Walked out the front door.

Q. Did you see them put their hats and coats on or anything of that kind? A. No, sir; I did not.

Q. Well, what was the last view that you had of them—what were they doing the last you saw of them before they came out on the porch. A. That was when she entered, because I left to get Mr. Cummings.

Q. Well, then the last you saw them was when she entered. How did you see him with his arm around her during the time that they were in the lighted room? A. That was when she entered.

Q. So it was when she entered that he had his arm around her? A. Yes, sir.

Q. As he took her in the house he put his arm around her, as I understand it? A. I couldn't see how he did in the hall. I only saw it in the room. How they got in the room I don't know.

Q. As he entered the room? A. He had his arm around her waist, what I told you.

Q. Did you come back? How long before they came out of the house did you come back? A. From where?

Q. From where you had gone to the telephone. A. I couldn't get Mr. Cummings. I tried numerous times.

Q. How long I asked you? A. About an hour.

Q. How long were you back at the car before they came out of the house? A. About a little over an hour.

Q. And where were they then? A. I wouldn't be able to tell you.

Q. Weren't you watching? A. I was. The house was dark.

Q. The house was in darkness that night? A. Yes, sir.

Q. And when did the lights go out with reference to the time that Mrs. Cummings came in that night? A. That I wouldn't be able to tell you because I went off and telephoned.

Q. How long were you away? A. Oh, I think I must have been around twenty minutes or more trying to get Mr. Cummings.

Q. And when you came back the house was in darkness? A. Yes, sir.

Q. Sure of that? A. Positive.

Q. On that night of November 7th? A. November 7th.

Q. You are sure that was the night that Mr. Vandersluys was with you? A. He was. I was in his car.

Q. And was there any light left in the house after the light in the front room went out? A. In the rear of the house there was a light continually.

Q. And then what next happened? A. They came out and went home.

Q. While the lights were unlighted? A. They were lit.

Q. That is what I asked you. What happened next after the lights went out? A. The lights went on when they left.

Q. In what part of the house? A. Front.

Q. Just this one room? A. Well, it is like one big room there on the right side of the house.

Q. Did you see the person turning the light on? A. I couldn't. I don't know where the switch is.

Q. Did you see the people? A. Well, I say the house was in darkness.

Q. Did you see anybody in the room after the lights went on? A. Harold Young.

Q. Who else? A. Mrs. Cummings.

Q. Then you saw them both in the room after the lights went on and before they came out? A. Yes, sir.

Q. What were they doing? A. Just walking across the room.

Q. And then what happened? A. They came out and they went to Number 10 Washington Street.

Q. And then what did they do when they got to 10 Washington Street? A. Kissed her good night, put his arms around her and kissed her.

Q. Where? A. At the gate.

Q. At the picket fence? A. At the gate—at the opening, yes, sir.

Q. How far were you behind them then? A. I was on the opposite side of the street.

Q. Where was the rest of your party? A. They were in the car.

Q. And where was the car? A. I couldn't tell you.

Q. Was anybody with you? A. No.

Q. No one followed them to 10 Washington except you? A. No, sir; not that I know of.

Q. Now, when did you first see them come out of the house, after the lights were lit? A. What time, you mean?

Q. Yes. A. I know it was after 10:00 o'clock.

Q. And what were they doing as they came out? A. Why, helping her down the terrace. It is quite a steep incline.

Q. Where were you then? A. Out on the street.

Q. Did you see anybody around the house that night besides Mr. Young and Mr. Cummings? A. I did not.

Q. Did you see anybody around that house on the night of October (withdrawn). You didn't see

any person around that house on the night of November 7th. A. No, sir.

Q. No one at all? A. No, sir.

Q. At any time? A. No, sir.

Q. Now, there was another occasion—were those the only two occasions, October 26th and November 7th that you followed these people at a time when Mr. Vandersluys was with you? A. No. October 10th.

Q. What happened on October 10th? A. Why, Mrs. Cummings left Mr. Cummings at the Library and went to Central Avenue and Broad Street, Newark. She waited there about twenty minutes or maybe more and on a bus coming down from Belleville, Mrs. Young and Harold Young got out. They went and got on a car and came up to the Armory, Fashion Show, I believe it was.

Q. Is that all? A. And on November 13—(interrupted).

Q. Is that all that night? A. Yes, sir; I left.

Q. And Mr. Vandersluys was with you all the time? A. Yes, sir.

Q. Was there any kissing or hugging or holding of hands on the public streets during that time? A. He always took—(interrupted).

Q. I am asking you on this occasion what happened—what did you see? A. Why, they walked from the trolley. Within a block or so of the Armory Mr. Young remained in back with Mrs. Cummings, Mrs. Young went ahead with little Olive Cummings, and Harold Young had his arm around Mrs. Cummings' waist the entire way to the Armory, which I guess, was a block and a half.

Q. And they were kissing? A. No, I didn't say so.

Q. No kissing. There wasn't any kissing. A.

Not that I saw. It was very dark and a lot of people were going to the Armory.

Q. What do you mean by having his arm around her waist? In an embrace as they walked along? A. In a regular—what I would call an embrace.

Q. Regular embrace. A. Around her waist.

Q. That everybody could see? Not the way a man and wife would walk along a street holding an arm or anything of that kind, but embracing? A. No; around her waist.

Q. And everybody could see that passed them. A. If they looked.

Q. Yes. And it was so that it would draw the attention of everybody to it, wouldn't it? A. Not on a dark street.

Q. How close were you behind them? A. I was on the opposite side of the street.

Q. You could see them from the other side of the street. A. Yes, sir.

Q. There were some people on their side of the street. A. Passed them, yes, sir.

Q. Quite a crowd going there to the Armory. A. Yes, sir.

Q. Vandersluys was with you. A. Not with me.

Q. Where was he? A. In his car.

Q. Where was he? A. I was walking. I couldn't tell you. I didn't pay any attention to where the car was.

Q. You haven't any idea where the car was? A. I wouldn't be able to tell you.

Q. Where did you pick him up? A. Pick who up?

Q. Vandersluys. A. I didn't pick him up.

Q. Where did you pick him up or where did he pick you up after the Armory? A. At the Armory I ran and got in the car.

Q. So that he was following at the same time. A. He must have been or he couldn't have found me.

Q. Were there any other occasions that you followed—did you follow them at all that night afterwards? A. No, sir.

Q. Was Cummings with you that night? A. No, sir; he had left her at the Library.

Q. Was Cummings with you the night of November 7th? A. No, sir; I tried to get him, I couldn't.

Q. August 29th. A. Mr. Cummings was with me, to give you the exact time, from 1:00 until 6:00 when he had to report to his fire house.

Q. 1:00 to 6:00 what? A. In the afternoon.

Q. I mean that night. A. In the evening Mr. Cummings came again to the Newark Theater at quarter after 7:00.

Q. And after that? A. He remained with me until—I met him again after we got lost in the traffic, after 2:00 in the morning. That's why I got the taxi.

Q. Was Mr. Cummings working on the 29th? A. Yes, sir, in the evening. Mrs. Cummings told Mr. Young that Owen was working, when she met him.

Q. On the night of August 29th? A. Yes, sir.

Q. Where? A. Right in front of the Newark Theater.

Q. You were close enough to her to hear—(interrupted). A. Yes, sir; I was right by Mr. Young.

Q. —what they said. A. Yes, sir.

Q. Mr. Cummings was at that theater that night, wasn't he? A. Later.

Q. Went right in the theater? A. Yes, sir.

The Court: You people apparently met so often, did he ever address you?

Witness: Who, Mr. Young?
The Court: Yes.
Witness: No, sir.

Q. How close did Mr. Cummings sit to you on the night of August 29th? A. Mr. Cummings sat back of me and I sat back of Harold Young.

Q. For how long a time did Mr. Cummings sit back of you? A. I think it was until about 10:15 or 10:20.

Q. And was that the occasion that everybody was—attention was drawn to the fact that this couple were indulging in embracing in the theater? A. Yes, sir, in a way.

The Court: Spooning.

Q. Spooning? A. Making love.

Q. Making love.

The Court: They call it petting now instead of spooning.

Q. And that was a continuous performance, was it? I don't mean the theater, but the making love during practically the entire time they were in there. A Probably a little bit of intermission once in a while.

The Court: Generally.

Witness: It was pretty nearly the whole evening.

Q. Generally continuous. A. Yes, sir; he kissed her hand.

Q. And what else did he do besides kiss her hand? A. Put his arm around her.

Q. Just around her neck, over the seat? A. No, around her waist.

Q. Around the waist underneath the seat? A. No, around her waist.

Q. What else? A. He rubbed his hand up and down her arm. She had short sleeves on the dress.

Q. What else? A. He kissed her in the back of her neck. I sat directly right behind him.

Q. I suppose when he kissed her in the back of the neck he rather turned his head, didn't he, so that his eyes were—(interrupted). A. I couldn't tell you, but he did it, and he gave her a Life Saver, I know that.

The Court: What?

Witness: He gave her some Life Saver candy.

Q. And all this time the people were indulging in remarks about it, and Cummings was sitting right there, is that right? A. Yes, sir; Mr. Cummings was right behind me—not right there, but behind me. He was going to sit with me, but he was afraid they would see him.

Q. He could see what was going on? A. He could, easily.

Q. Now, what else? Were there any other occasions except October 26th and November 7th that you were out when Mr. Vandersluys was present? A. Yes, sir; December 13th.

Q. What happened that night? A. That was the evening when Mrs. Cummings told Mr. Cummings she had to take her little girl home immediately, she had a sore throat and she left Mr. Cummings, only stayed with him about eight minutes.

The Court: And went to the theater.

Witness: At the Regent Theater, and met Mrs. Young and Mr. Young and Mildred Young at this doll store. I think the name

is Flack's. I was right there by them with a gentleman by the name of Mr. Gardner.

The Court: Were you always dressed pretty much the same?

Witness: I wear a gray cape pretty much all the time—coat. I change my clothes quite often, but I do not disguise myself. I heard a remark Mrs. Cummings made that she didn't know me when she entered the court room.

Q. On the night of December 13th was Mr. Vandersluys with you all during the time? A. Yes, sir; he was in the car—driving the car. Mr. Cummings was with me too. I got Mr. Cummings immediately after she left him,—got in the car with Mr. Vandersluys and I think my sister and Mr. Gardner.

Q. Then where did you go? A. We followed the car that Mrs. Cummings got on, and she got out—I think it is Clark Street—and ran back to this place where she met these people—the Youngs; then they went over in the Regent Theater. Mrs. Cummings sat with Young, Mrs. Young and Miss Young sat with the child; came out of the theater when it was very nearly over.

Q. Was there loving and kissing in that theater that night too? A. Yes, sir; he always did.

Q. All right. And Mr. Cummings was there too? A. Not in the theater.

Q. He wasn't in the theater? A. Remained outside. I came out—(interrupted).

Q. And Mr.—(interrupted). A. Gardner.

Q. Well, was Mr. Vandersluys there in the theater? A. No, sir.

Q. Where was he? A. In his car.

Q. But Mildred Young was there. A. In the theater.

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

Q. And Mr. Young and Mrs. Cummings and Mrs. Young. Yes, sir, and the child.

Q. And they indulged—Mr. Young and Mrs. Cummings indulged in kissing so that it drew the attention of everybody around. A. Not that night I didn't say.

Q. Did they? A. I suppose some people noticed it.

Q. About the same? A. I didn't remain in the theater the entire time; I came out.

Q. While you were there was it a continuous performance as it has been before as you have already described? A. Very nearly the same. Maybe not quite so much.

Q. What happened then? A. Went in and had a hot chocolate and then they went on home. What's his name, Mr. Young, took Mrs. Cummings and the child home, put the child in the door and remained up on the porch.

Q. That is the night they put the child in the door? A. That is the second night they put the child in.

Q. When was the second night they put the child in? A. September 19, or at least—yes.

Q. What time in the night was this? This last time I am talking about now. A. Near midnight.

Q. They put the child in the door—just opened the door and just put the child in? A. I don't mean they threw her in; handed her in.

Q. Nobody was there to take her. A. I don't know; I wasn't in the house.

Q. Did it look so?

The Court: Was it dark?

Witness: There was light in the rear of the house.

The Court: In the vestibule or entry where the child was?

Witness: There isn't any vestibule.

The Court: I mean the door of the room.

Witness: That was dark. The front door was dark.

The Court: The room they put the child in, that was dark?

Witness: Yes, sir.

The Court: Three year old baby?

Witness: The baby cried on that night, because she couldn't walk any more—not that night, on September 19th.

The Court: When they put her in the door did she cry?

Witness: No, sir, not that night. I heard the door close.

The Court: What did they do?

Witness: They returned on the porch.

The Court: Doing what?

Witness: Kissing and embracing.

Q. What else? A. As I described I saw the lighter garment under Mrs. Cummings' dark dress. She wore a dark blue serge dress that night.

The Court: What do you mean? Do you mean it was raised?

Witness: Yes, sir.

The Court: You saw the dark raised over the white?

Witness: Yes, sir; I saw the white under the dark. I couldn't have seen the white if the dark wasn't raised.

Q. Where was Cummings at this time ?

The Court: Young, you mean?

Mr. Lane: Cummings.

Witness: In the car with Mr. Vandersluys and Mr. Gardner, and my sister, Miss Florette, was with me.

Q. And what more did you see there that night? A. They remained there about fifteen minutes and Young left. It was after midnight. I could hear them kissing.

Q. You could see them too, couldn't you? A. I wouldn't say I could see the kiss; that I wouldn't say.

Q. How close were you? A. I was right towards William Street on the same side of the street.

Q. You were close enough to see this white petticoat, I suppose. A. Yes, sir; I saw that when I passed.

Q. Or skirt or whatever you may call it in these days. You were close enough for that. A. I saw that when I passed.

Q. You were on William Street, you say? A. No, sir; I was towards the William Street end, not towards the John Street end. The William Street end is to the right of the house towards that big arc light.

Q. Yes; I know. And how far from the house were you towards the William Street side? A. I wasn't on William Street—what part of the house do you mean?

Q. Where were you? A. I was on the sidewalk on the same side of the street as 10 William Street —I mean 10 Washington Street, towards the William Street end.

Q. Just exactly what I want to say. A. Not on William Street,

Q. I didn't say on William Street—towards William Street. A. On Washington Street—on the side where it goes towards William not toward John. I was on the side towards the bushes.

Q. Now, how far were you away from the bay window that is on the front of that house? A. What time, Mr. Lane?

Q. At the time you saw them kissing on the porch and also the white petticoat. A. I passed the house—I passed the house at 10 Washington Street when I saw the lighter garment. Mrs. Cummings stood in the corner of this porch and as I passed I saw this, that her dress was raised.

Q. Yes, and the lighter garment underneath. A. I walked along the fence.

Q. What was Young doing? A. Hugging her, close up to her. It looked like one object; two objects in one, to me. They were right up in the corner of that porch.

Q. And how far could you see this light underskirt? A. As I passed.

Q. Up to her waist or how far? A. No, probably up to just beneath her knees.

The Court: Just what?

Witness: Just below her knees.

The Court: Below her knees?

Witness: It looked as though her dark dress was raised.

The Court: Was her dress below her knees?

Witness: Yes, sir.

The Court: Was her dress longer than to her knees?

Witness: Yes, sir.

Q. So that what you saw was the white petticoat below the knees. A. No, sir.

Q. Well, then, what? A. I didn't say it was a petticoat. I didn't know it was a petticoat. It wasn't white. I said it might have been blue, it might have been another color.

Q. It was still some color. A. I know her dark dress was raised.

Q. It was a skirt of some kind, nature or description, is that right? A. Could be like a skirt. I don't know it was a skirt. It was something lighter.

Q. It was fabric of some kind and not her skin? A. It was not her skin. It was lighter than her dress and the dress was above the knee.

Q. The dress was above her knee, but the white was below the knee. A. Yes, sir.

(Adjourned until June 1926.)

IN CHANCERY OF NEW JERSEY.

June 23, 1926.

Between
OWEN CUMMINGS,
Petitioner,

and

SADIE CUMMINGS,
Defendant.

Continuation of hearing pursuant to adjournment at the place and in the presence of the parties as before.

Mr. Fleischman: The complainant has been paying for the support of the youngster, but I served notice on Mr. Child that we would argue the question of allowance and alimony and counsel fee this morning.

Mr. Child: By the moving affidavits it appears the defendant in this case has twenty five hundred dollars in her possession which was given to her by the complainant, and it seems to me that that of itself is sufficient to show her ability to pay counsel fees.

The Court: I will reserve the motion until the close of the final hearing.

NORMA C. KOPP, recalled for further

Cross-examination by Mr. Lane:

Q. I show you a photograph and ask you whether you recognize it.

Mr. Lane: I ask to have it marked for identification.

(Paper marked Exhibit D-1 of this date for identification.)

Q. I ask you whether you recognize that location shown by that photograph. A. I do not.

Q. Have you looked at it carefully? A. I have.

Q. You do not recognize this, what I marked "X" as the garage which you referred to in your testimony, in front of which you were standing? A. I wouldn't be able to tell you, no.

Q. You do not recognize this tree which I have marked also "X" as the tree behind which you said you were standing? A. No.

Q. You do not recognize it? A. I wouldn't be able to tell you positively.

Q. You do not recognize anything on that photograph? A. I do not, because I do not—I couldn't.

Q. I show you another photograph which I ask to have marked for identification.

(Paper marked Exhibit D-2 of this date for identification.)

Q. I ask you whether you recognize that locality. A. I do.

Q. And the house in the middle is what? A. 175 Washington Avenue, Belleville.

Q. The one which I have marked on this photograph "X". That is the Young house, is it? A. Yes, sir.

Q. Now, I show you another photograph, which I ask to have marked for identification.

(Paper marked Exhibit D-3 of this date for identification.)

Q. I ask you whether you recognize that locality. A. That, to the best of my knowledge and belief—the condition of the ground when this picture was taken, is the front of Mrs. Cummings home at 10 Washington Street.

Q. Front or side? A. Do you mean the way this picture has been taken? What I see in the picture here is a part of the front yard of Mrs. Cummings' home.

Q. Yes. And Mrs. Cummings' home is the house that I have marked "X" isn't it? And it is a side view of that house, and this is a side view of that home. A. I cannot understand you.

Q. That house. A. That house is Mrs. Cummings' house.

Q. Yes; and it is the side of Mrs. Cummings' house, isn't it? A. That (indicating) would be the back of this house. This (indicating) is the side of Mrs. Cummings' house. This (indicating) is not Mrs. Cummings' house.

Q. That is what I want to know. A. Why no.

Q. That is not Mrs. Cummings' house? A. No, not according to this picture as it looks to me here. That (indicating) is William Street, this is Washington Street.

Q. Then you think that this photograph is a photograph—(interrupted). A. Which looks similar to the yard.

Q. Taken from Mrs. Cummings' house? A. I don't know how it was taken.

Q. Well, you think that this yard which is in the foreground is a part of the yard of Mrs. Cummings—is that right—house. A. I think so.

Q. And are these bushes which appear in the right foreground of this picture—(interrupted) A. Not the way I saw them.

Q. Wait. Are they the bushes that you refer to in your testimony? A. I wouldn't be able to tell you. I don't know.

Q. Is the point at which those bushes appear the point at which you saw Mrs. Cummings behind the bushes? A. I wouldn't be able to tell you.

Q. Can't you tell by assuming that to be Mrs. Cummings' yard? A. No.

Q. Assuming that to be a representation of Mrs. Cummings' yard, can't you tell me in what part of the yard the bushes were? A. No; I couldn't tell you what part, because they were all full of green foliage at this particular time when I saw Mrs. Cummings go to these bushes.

Q. Was there a picket fence there? A. I don't know whether it was picket or what it was.

Q. Was there a fence there? A. I didn't notice if there was a fence.

Q. Did the bushes extend right along the side of the yard or were they in just one clump at one point? A. All I saw were—that there were two bushes, in green foliage. Very large—to me it looked to cover quite a space.

Q. Two bushes. A. Well, I guessed it was two.

Q. And if we assume that this is Mrs. Cummings yard, can't you tell us whether these two bushes which appear in that photograph are in the position that the two bushes that you saw were? A. Impossible.

Q. Can't even give me relative positions? A. I wouldn't be able to, because it was all green at the time I saw it.

Q. Do the pictures show the location of the bushes that you are speaking of? A. Not the way I saw them.

Q. Bushes in some other direction—some other

place? A. No, they weren't in a different place, but when I saw them they were all green.

Q. I am not asking you about the condition they were in, I am asking you whether the location is shown on the picture. A. Not from where I was standing at the time.

Q. I show you another photograph which I will ask to have marked for identification.

(Paper marked Exhibit D-4 of this date for identification.)

Q. And ask you whether or not you recognize the locality shown in that photograph. A. No; I wouldn't be able to tell you.

Q. Can't you recognize the house that appears on the right side of this photograph? A. I only see one window.

Q. You cannot recognize it? A. No; I cannot.

Q. Did the yard of the Cummings' have in it a stone—a circle composed of large stones enclosing what appears to be a garden—flower garden—as shown on Exhibit D-3? A. I wouldn't be able to tell you.

Q. You didn't see that? A. No.

Q. And looking at Exhibit D-4 of today you cannot tell me whether these bushes—those two bushes which appear across on the left side of the picture beyond the picket fence and back of the large tree are the bushes that you referred to in your testimony. A. Not from this picture.

The Court: That picture is Exhibit what?

Mr. Lane: Exhibit D-4 of today.

Q. Were you ever at the Cummings' house or Mrs. Cummings' house in the day time? A. I passed it.

Q. And when you passed it—how many times did you pass it in the daytime? A. I wouldn't be able to tell you just exactly how many times.

Q. Quite a number of times? A. In my car.

Q. Still you cannot recognize any of these photographs other than as you have testified. A. Not from the pictures that were shown to me, the way it is taken, I wouldn't be positive in my identification.

Q. You have testified in a great many court cases, haven't you? A. Yes, sir.

Q. As a detective? A. Investigator.

Q. Or investigator. Extending over a period of how many years? A. I cannot just remember exactly, to be exact.

Q. About? A. Maybe eight years, I think—seven.

Q. And your sister, she goes with you on these trips and testifies also. A. Which sister?

Q. Well, which sister does? A. I have two sisters.

Q. Which sister does usually go with you on these trips and testifies with you? A. Well, I wouldn't be able to tell you just how many times in all those times.

Q. It is constant. A. Not for that amount of years, no.

Q. How many years has she been— A. I couldn't tell you.

Q. How many years have you been working with her? A. I wouldn't be able to tell you how many, but I believe it will be twenty two or twenty three; I don't know.

Q. Twenty two or twenty three years? A. No; in 1923.

Q. Have you another sister? A. Miss Fleurette, yes, sir.

Q. Does she also go around with you to give evidence to testify? A. She has testified several times, but that is all; and drives the car when we have no chauffeur.

Q. And your chauffeur, Mr. Troast, how long has he been with you? A. Since October, 1923.

Q. And during that period of time he has been going around to get evidence to testify. A. No; he drove my sister's car.

Q. What? A. He drove my sister's car.

Q. Yes; and he drove your sister's car under instructions of your sister, and when you have been following different persons whom you were retained to follow has testified quite often with respect to what occurred on those trips, hasn't he? A. Yes, sir; when he has been subpoenaed.

Q. By the person who retained you? A. By the lawyer.

Q. And usually when you have a case of this kind in court you testify to breaking in on the parties and finding them in the act of adultery, don't you?

Mr. Child: I object as not proper cross-examination.

The Court: Overruled.

A. I never broke in on anybody.

Q. Were you on the Mosser case? A. Yes, sir.

Q. Was there a breaking in in that case? A. No, sir.

Q. There wasn't? A. No, sir.

Q. They didn't go into the bungalow? A. Mr. Mosser did.

Mr. Child: I object.

Q. Do you remember the Friedman case? A. Yes, sir.

Mr. Child: I object to it as not cross-examination.

Q. Do you remember that there was a supposed catching in delicto in that case?

Mr. Child: I object.

The Court: Sustained.

Witness: I didn't understand that.

The Court: Strike out the answer. What is the purpose?

Mr. Lane: I am going to ask her now why it was.

Q. Why was it, Miss Kopp, that when you saw the people behind the bushes and in the condition that you have described, you did not go on and surprise them? A. Because Mr. Cummings was not there with me, hear enough.

Q. That is the only reason? A. That is the only reason.

Q. It is your practice to surprise them if you can, isn't it? A. No, sir.

Q. It isn't? A. No, sir.

OWEN CUMMINGS, sworn.

Direct-examination by Mr. Child:

Q. Where do you live, Mr. Cummings? A. 114 Washington Avenue, Newark.

Q. When were you married? A. November 15, 1917.

Q. Were you married in Newark? A. Yes, sir.

Q. By whom were you married? A. Father O'Neill.

Q. Who is Father O'Neill? A. Priest in the Catholic Church.

Q. And after your marriage where did you go to live? A. 66 Hinsdale Place, Newark.

Q. And how long did you live at Hinsdale Place? A. From November, 1917, until July, 1918, when I went to the Army.

Q. And have you always lived in Newark? A. No, sir.

Q. Since your marriage have you lived in Newark? A. Yes, sir.

Q. Whom did you marry? A. Sadie McDermott.

Q. Are there any children born of this marriage? A. One child.

Q. And how old is that child? A. Five years tomorrow.

Q. And is it a boy or girl? A. Girl.

Q. What is her name? A. Olive Marie Cummings.

Q. In whose custody is the child? A. Mrs. Cummings.

Q. Now, after your marriage how did you and the defendant get along? A. Almost from the time of our marriage my wife started to use vile language and about four months after our marriage Mrs. Cummings broke all the presents that were given to her, which were composed of cut glass and tore a part of her clothing, and in about April, 1918, about three months before I went in the Army, Mrs. Cummings acted so rough that I had to get out of the house one night about twelve o'clock and go down to the Continental Hotel; before I left she come after me with a knife, and in

order to take the knife away from Mrs. Cummings I had to knock her down. After she got up she come after me and I locked her up in the room and she broke the lock on the door and come out and come after me again, and I left and come down to the hotel in Newark.

Q. How long did you remain away from her at that time? A. I came back the day after.

Q. And after you returned from the Army where did you go to live? A. At 19 Washington Avenue, Newark.

Q. And how long did you live there? A. I lived there about five or six months.

Q. And then where did you move to? A. Moved back to the Hinsdale Place address again.

Q. Did anything happen while living at Washington Avenue—any disturbance or disagreement between you and your wife? A. Yes, sir; there were quarrels.

Q. What was the basis for those quarrels—reasons for them? A. I don't know, I never had her examined.

Q. Did you know what the reason was? A. There really wasn't any basis that I knew of. She had a bad temper and used it very frequently.

Q. When you went back to the Hinsdale Place address how long did you live there? A. I lived there until the spring of 1922—September, 1922.

Q. And what happened, if anything during the time you were living in Hinsdale Place? A. The latter part of 1921 and commencement of 1922 Mrs. McDermott, the mother of my wife, she come to live with us and she was very ill during the winter and she was perfectly all right and very agreeable until she got well; after she got well she started to make a disturbance and it got so that my wife

and her mother were all the time arguing. I'd come home from work at six o'clock, there would be no supper ready; so I told my wife that I would have to separate them if they couldn't agree; so I requested my mother-in-law to leave. She told me she wouldn't leave as her daughter had a half interest in the house, and that she wouldn't leave. However, I took her bed and bedding and I laid it out on the stoop and her son came down after her bed and bedding and took it away. About two days after Mrs. McDermott and her own son came back to 66 Hinsdale Place, her son asking if I wouldn't take—(interrupted)

The Court: Has this got anything to do with this case?

Mr. Child: I am just leading up to the circumstances—they charge cruelty.

The Court: They do?

Mr. Child: I am showing the conditions before the separation.

The Court: You said they charged cruelty?

Mr. Child: They charged cruelty in their answer.

The Court: I haven't heard anything yet. Do not anticipate.

Q. Did your mother-in-law leave the house? A. She left and she came back the week after and she started a disturbance again and I put her out.

Q. Now, then, while you were living in Hinsdale Place after your return from the Army, were you compelled or did you leave that house at any time? A. I left the house on various times.

Q. For what reason? A. My wife came after

me with the knife and believing she is crazy I would leave. On one occasion I went to Judge Quigley.

Q. Never mind that. Now, did your wife—did you and your wife get together again after these various occasions? A. On every occasion when she promised to behave herself I'd come back.

Q. And you have continued to live with her until when? A. Until April 5th, 1923.

Q. And what happened on April 5th, 1923? A. I wasn't home. When I came home she was gone and she took with her three hundred and ninety dollars which was in my clothes and stripped all —everything that it wouldn't take a moving van to move, such as sliver ware, all small articles, silver ware, money, clothes; tore all the pictures, insurance policies and everything of that kind— destroyed them all.

Q. Have you and your wife lived together or had intercourse since April 1923? A. No, sir.

The Court: Lived together?

Mr. Child: Lived together or had intercourse.

The Court: Why not divide that?

Q. Have you lived together since 1923? A. No, sir.

Q. April? A. No, sir.

Q. Have you had any intercourse with her?

The Court: He has answered that.

Q. Did you see your wife subsequent to April, 1923? A. Yes, sir.

Q. When did you see her after that? A. I seen her various times, and I would see the child.

Q. When did you first suspect that your wife might be guilty of any wrongdoing? A. I heard that she was running around the spring of 1924.

The Court: You answer these questions, please.

Q. In the spring of what? A. Spring of 1924.

Q. And what, if anything, did you do after you heard the—or after it came to your notice? A. I started to watch her.

Q. When did you start to watch her? A. July, 1924.

Q. And what was the first date that you watched her, if you can recall? A. I don't remember the first date I watched her.

Q. Did you, after you started watching her, see her with any man? A. I did, sir.

Q. When was the first date that you saw her with a man? A. August 6th, 1924.

Q. And where did you first see her on that day? A. At 825 Broad Street, Newark.

Q. At the Central Railroad Station? A. Opposite the Central Railroad station.

Q. What time of the day was it? A. About 7:30 p. m.

Q. And where was she standing? A. She was standing in front of 825 Broad Street.

Q. How long did she stand there? A. She stood there for about ten minutes that I seen.

Q. And then what happened? A. I seen her standing there—I went across the street and I got a taxi driver and I asked him if he was busy, he says, "No"; I told him my wife was standing across the street and if she met a man I wanted him to follow her. He said, "All right." His name was Harry .About five minutes

after a man came along who I never seen before and met Mrs. Cummings; Mrs. Cummings and this man walked over to the safety isle in front of the Central Railroad station, a Roseville car came along, she got in the Roseville car, going to Dreamland Park, rode to Dreamland Park on Frelinghuysen Avenue, got off, went into the park; I sent the taxi driver into the park to take a look at them so he would know them again; he came out. I paid the taxi driver off, and I stayed in the park—they stayed in the park until about 11:30. They visited the various amusements.

Q. What? A. They visited the various amusements; they sat on a bench in front of the swimming pool and this man had his arm around Mrs. Cummings and kissing frequently. They left the pool—and I waited until they came out of the park. When they came out of the park I got another taxi driver and they were standing across in front of the park, and they got in the trolley car; we followed them to Newark; they got off at the safety isle—(interrupted)

Q. Where? A. Broad and Market Street, Newark; they walked up to a Chinese Restaurant, and we followed them. We parked our taxi in front of this restaurant. We waited until they came out. They came out about 12:20 I think—12:50, I believe, and they walked over to the safety isle at Broad and Market Street; they got the 1:05 car north bound, Broad car, going to Belleville. They rode to Washington Avenue and Academy Street, Belleville; got off. We followed them up Academy Street. We passed them. We parked our taxi in front of a vacant lot on Hornblower Avenue opposite Academy Street, they passed us again; they

walked up and stood in front of a tree and a house in the course of construction. We passed them again. We drove our car up to John Street and turned down about three or four hundred feet. They walked back again to where we originally parked our taxi; we come back and we passed them again and we went passed them about two blocks to Lloyd Place; we turned left into DeWitt Avenue and we detoured back to John Street. We come back again and parked our car on Rutgers Street; went through the vacant lot until we got opposite Mrs. Cummings and the man whom she was with. Mrs. Cummings and this man stood against this tree for about half an hour in a loving embrace. They went in the lot and they stayed in the lot about fifteen or twenty minutes. They came out of the lot and the man was adjusting his clothing and Mrs. Cummings was adjusting hers. They walked up towards John Street and I discharged the taxi driver and I left.

Q. What was the taxi driver's name? A. Ralph Marinello.

Q. When did you next follow them? A. On August 24th. I was working in the fire house and Frank Corbally told me that—(interrupted)

Q. Never mind what he told you. He came and got you. A. Came and got me and told me they were at a tree about a hundred feet—Mrs. Cummings and a man was at a tree about a hundred feet from John Street on Washington Street. I went up to Belleville and I walked up to John Street and I could see two figures—or one was up against the tree and later this man came out and he walked down John Street to Washington Avenue and boarded the trolley car and that is the last I seen of him that day.

Q. What time of day was that? A. That was about two a. m. August, 1924.

Q. When did you next follow them? A. August 30, 1924.

Q. Who was this man with you? A. Frank—

Q. Who was the man she was with the second time? A. Frank Grimm, the same man of the first—(interrupted)

Q. Is he the man she was at Dreamland Park with? A. Yes, sir.

Q. What was the next date? A. August 30th, 1924.

Q. —where did you see her that night or day? A. I seen this man and Mrs. Cummings walk down Liberty Street, down around the cemetary in Belleville; they come back and stood against the telegraph pole, I believe, or tree; I don't know which; and he had his arm around her and kissed her. They walked up towards William Street. Mrs. Cummings went home and this man walked back and boarded a trolley car again and went somewhere—I don't know.

Q. Same man? A. Same man.

Q. When did you next follow them?

The Court: What time; broad daylight or midnight or when?

Q. What time was it? A. It was about eleven p. m.

Q. When did you next follow them? A. That was the last I followed that man.

Q. That is the last you saw of Grimm? A. That is the last I saw of Grimm.

Q. Now, did you follow your wife at any other time? A. Yes, sir.

Q. When did you follow her after the 30th of

August? A. On June 2nd, 1925, I seen Mrs. Cummings meet a man in front of the Town Hall in Belleville. This man I never seen before. They walked north on Washington Avenue to a moving picture theater, Sterns Regent Theater, near Jerolemon Street. They went into this theater and they sat about ten seats from the front row on the right hand side. This man had his arms around Mrs. Cummings and they remained in this position for about an hour.

Q. What time was that? A. They went into the theater about quarter to eight.

Q. In the evening? A. In the evening. They stayed in that position about an hour. They changed seats. Mrs. Cummings and this man walked back to the rear seats in the theater and they sat in the dark.

Q. Just a minute. Was that Harold Young? A. No, sir.

Q. I do not care to go into that. Do you know a man named Harold Young? A. Yes, sir.

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

Q. What was the first date you saw your wife with Harold Young? A. On the 4th of June, 1925.

Q. And where was that? A. At the Library, 11 Washington Street, Newark.

Q. What time of day was that? A. About 7:30 p. m.

Q. And what were you doing in the Library? A. Seeing my child.

Q. And did you see the Youngs and your wife together that night? A. They were not—yes, after I left she met Young and they went across the

street to the candy store and they came out of the candy store and she boarded a jitney and he boarded a trolley. They separated. And I had a man follow them. This man came back—he lost them somewhere. He and I suspected they would go to the Riviera Park in Belleville. We didn't see them in the park. We were coming home on Washington Avenue, near William Street, Belleville about 11:00 p. m. Mrs. Cummings and this same man were walking arm and arm up William Street, Belleville.

Q. Where did they go? A. Up Williams Street.

Q. You didn't see them any further that night? A. I didn't follow any further.

Q. When did you next see them together? A. The 10th of June, 1925.

Q. Where did you see them? A. They were at the Library again and he met Mrs. Cummings after she left, after bringing the child for visitation, and he took her over to the candy store and that is the last I seen of them.

Q. That night? A. That night.

Q. When did you next see them together? A. June 16th, 1925.

Q. Where? A. He was at the Library again, waiting to cross the street. Mrs. Cummings met him when I left.

Q. You didn't follow them? A. I didn't follow. On one of those occasions Mrs. Cummings wanted to know if I didn't want to get introduced to our child's new papa.

Q. When did you next follow them?

The Court: What is that? What did you say?

Witness: Mrs. Cummings, on one occa-

sion, wanted to know if I didn't want to get introduced to the child's new papa.

The Court: You mean she asked you that?

Witness: She asked me that, yes, sir.

Q. When did you next follow them after June 16, or see them together? A. July 22nd.

Q. Where did you see them together? A. I seen Young waiting over in the park. I didn't see them together.

Q. Was that a night of visitation? A. Night of visitation; yes, sir.

Q. When did you next see them together? A. July 26th, 1925.

Q. And where did you see them then? A. Riviera Park, Belleville.

Q. And what time was it? A. About 3:30 p. m.

Q. In the afternoon? A. In the afternoon.

Q. And who was in the party, if anyone, besides your wife and Young? A. Mrs. Cummings, Harold Young, Mrs. Young, Mildred Young and Olive Cummings, our daughter, were in the park. Mrs. Young and Mildred Young and the child were walking around together and Mrs. Cummings and Harold Young were walking in back of them. I left the park and I called up Miss Kopp; they arrived at the Riviera Park about 5:00 o'clock; the Youngs and Mrs. Cummings left the park about 5:00, boarded a trolley car and got off at 175 Washington Avenue, Newark—Belleville—and all of them went into the house. Harold Young took Mrs. Cummings and our child home to 10 Washington Street, Belleville. Harold Young returned to his house. Mrs. Cummings returned

again about 8:00 p. m. I think and went into the house with the child.

Q. What house? A. 175 Washington Avenue.

Q. Youngs'? A. Youngs' house, yes, sir. About 9:00 o'clock Mrs. Young and Mildred Young and our child, Olive Cummings, left and went to the store. They remained away thirty or forty minutes and they returned. When they returned Harold Young opened the door and let them in. Later, the whole party, including the Youngs and Mrs. Cummings and our child left 175 Washington Avenue and went to the store; Harold Young and Mrs. Cummings did not go into the store, they stayed in a dark doorway, I believe a fish store, and Harold Young was kissing her in the doorway. Later the whole party went to Kerrigan's Ice Cream store and had something to drink in there. Mrs. Young and Mildred Young went home and Harold Young left Mrs. Cummings and our child home; Miss Kopp and somebody else followed them up to 10 Washington Street.

Q. Did you follow? A. No, sir.

Q. When did you next see them together? A. August 25, 1925, I seen them. I was standing at the corner of Washington Avenue and Delevan Avenue, Newark. I seen Mrs. Cummings and Harold Young in the North Newark jitney. The number of this jitney was 392. I walked down to the next block and a friend of mine, Fred Young was sitting—Fred Cook was sitting in his automobile and I asked him if he would come with me and follow them. He did.

Q. They rode on this jitney to Clay Street—Clay and Broad, Newark; they waited for a Kearny & Arlington jitney, the number of this jitney was K-23. They rode to Midland Avenue—Midland

Avenue in Arlington. Got off and walked up the street. I remained in the automobile and Fred Cook followed them. Fred Cook came back and told me they were in a drug store on the corner of Kearny Avenue and Laurel Avenue, and he came back and got me in his automobile. We drove up in the automobile and we waited. I told Fred Cook to go in and get a good look at them so he would know them again. He went in and bought some cigarettes and he said—(interrupted)

Q. Never mind what he said. A. Young asked Mrs. Cummings "Shall we walk or ride—"(interrupted)

Q. Did you hear that? A. No, Fred Cook told me that.

Q. All right. I don't want that. Just what you saw. A. Fred Cook followed them to Belleville.

Q. What did you do? A. I waited in the automobile until he came back.

Q. Did you see them again that night? A. Yes, sir.

Q. What time did you see them that night? A. About 10:00 p. m.

Q. Where? A. At 175 Washington Avenue.

Q. And what did you see if anything? A. A fire alarm sounded at that time and Mrs. Cummings and Harold Young, Mrs. Young, Mildred Young and Olive Cummings walked down to see this fire. It happened to be a false alarm, and they came back together. Harold Young was walking up in back of the rest of the party with his arm around Mrs. Cummings. They went up to 175 Washington Avenue and all of them walked up the Avenue. I didn't see them any more.

Q. Who was with you that night? A. Fred

Cook and Mr. Way and another man; I don't remember his name. He has already testified.

Q. When did you next see them? A. August 29th.

Q. Where? A. I seen Harold Young leave his house at 2:00 p. m. He went to the barber shop; he left the barber shop about 4:00 o'clock. We was watching the house at 175 Washington Avenue, Belleville. I continued to watch until 5:30 with Miss Kopp. I had to go to work that evening at 6:00 o'clock. About 7:15 Miss Kopp's chauffeur came to the fire house and told me—(interrupted)

Q. Never mind what he told you. Did he come there to get you? A. To get me, yes, sir. They were at the Newark Theater on Market Street, Newark. I went down there. Miss Kopp had a seat reserved for me in back of her. She came out. I went in. I sat in back of her. While I was sitting in the theater, Young had his arm around Mrs. Cummings and was whispering and talking and petting her kind of part of the time. Brushing the hair out of her eyes, and on one occasion when Mrs. Cummings stooped for some reason or other, Young kissed her on the neck. They left the theater.

Q. What time? A. About 4:00 o'clock. They walked up Broad Street and then to a Chinese restaurant over Child's—Eagle Restaurant.

The Court: What?

Witness: The name of the restaurant is the Eagle. They came out in about half an hour and they walked towards Broad Street. Miss Kopp followed. The chauffeur and I got lost in the traffic and we did-

n't see the Misses Kopp again until about 2:00 p. m. in Belleville.

Q. 2:00 p. m.? A. 2:00 a. m.

Q. Well, did you see your wife at 2:00 a. m. that day? A. No, sir.

Q. When did you next follow your wife? A. September 12th, 1925.

Q. Where did you see her that night or day? A. Mrs. Cummings entered the house at 175 Washington Avenue, Belleville. On entering the house Harold Young came out and greeted her by putting his arm around her and kissing her. They went into the house. They came out, Mrs. Young, Mrs. Cummings and Harold Young came out about 6:10—about 10 minutes after—6:20—they boarded a car and rode to Military Park, Newark. They walked through this park towards the Tubes. I discontinued myself and the chauffeur and Miss Kopp followed.

Q. When did you next see them? A. September 14th, visitation night, at the Library.

Q. Where was Mr. Young? A. Harold Young was waiting across the street from the library.

Q. And what time did your wife meet him? A. I didn't see her meet him.

Q. You didn't see her meet him? A. No.

Q. When did you next see them together? A. September 19, 1925.

Q. Where did you see them then? A. Leaving the theater on Mt. Prospect Avenue near Heller Parkway, Newark.

Q. What time? A. About 11:15 p. m.

Q. And where did they go? A. They went home.

Q. Did they walk or ride? A. They walked to

Washington Avenue, they boarded a trolley car and rode to Belleville. We followed. The chauffeur and I stayed in the car and Miss Kopp followed them, took a position in front of the house before they got there.

Q. Did you see them? Did you see them enter the house? A. No, sir.

Q. Did you see them come out of the house? A. No, sir; I seen Young go towards his home up Washington Street.

Q. What time did the Youngs leave the house? A. That night, oh, it was—

The Court: Leave which house?

Q. Leave at 175 Washington Avenue? A. No; 10 Washington Street.

Q. That was your wife's home. A. Yes, sir.

Q. What time did he leave 10 Washington Street that night? A. I don't know whether he was in the house or not that night. He went to that address.

The Court: What?

Witness: I don't know whether he went to the house that night or not.

Q. Where did you see your wife and Young that night together last? A. When they got off the trolley car at Washington Avenue and William Street.

Q. Did they continue together? A. They continued together until they turned in on Washington Street.

Q. Did you follow them? A. Yes, sir; I did, in an automobile. We rode up past them.

Q. Where did you loose sight of them? A. When I passed Washington Street.

Q. When did you next—(interrupted)

The Court: They were going in what direction then?

Witness: They were going towards the home of Mrs. Cummings.

Q. When did you next see them together? A. The night after; September 20.

Q. Where? A. At the Library.

Q. What time did you see them join each other? A. I didn't see them join each other. He was standing across the street from the Library.

Q. You didn't see them together that night? A. I didn't see them meet each other, no, sir.

Q. When did you next see them? A. December 13, 1925.

Q. Where? A. I seen them meet at Park Street and Belleville Avenue, Newark.

Q. And what time was that? A. About twenty minutes to 8:00.

Q. Evening? A. Evening.

Q. And where did they go? A. They went to Stern's Regent Theater.

Q. And who was with them, if anyone? A. Mrs. Young, Miss Mildred Young were with them.

Q. And how long did they remain in the theater? A. Until about quarter to 11:00.

Q. And then what did you observe? A. We followed them to Washington Avenue and Williams Street, Belleville.

Q. Well, then, what happened, if anything? A. Miss Norma Kopp, Fleurette Kopp and Mr. Gardner followed them to the house. I remained in the automobile until they returned.

Q. Did you afterwards see them that night? A. No, sir.

Q. When did you next see them? A. January 10, 1926.

Q. Where? A. In—at 175 Washington Avenue Belleville.

Q. What time of day? A. I seen Mrs. Cummings go in about, at 6:50 p. m.

Q. Yes. A. Harold Young met her and kissed her at the door.

Q. Yes; what did you see then? A. They took the fixtures off the Christmas tree, and they were dancing part of the time, and the two of them were in a sitting position, I believe—it looked like a piano, where I was—where they were sitting. I later went up on the stoop and I found out it was a piano. The two of them were sitting on the piano stool playing the piano. Later they had some kind of a game on the floor. They removed the table from the center of the floor and Mrs. Cummings and Harold Young were playing checkers on the center of the floor.

Q. What time of night was this that you saw them? A. This was after 10:00 p. m., when I went up on the stoop and looked in the window and seen them play this game.

Q. And who was in the room with them if anyone? A. Didn't see anybody.

Q. Did you notice anything about the house that time? A. The lights went off and on about ten or twelve times.

Q. How long would they remain on and how long would they remain off, approximately? A. Well, five or ten minutes.

Q. Did you see anyone leave the house while your wife and Young was there? A. No, sir.

Q. Who was with you on that occasion? A. Miss Constance Kopp and Abraham Vandersluys,

until 9:30 p. m. Mr. Vandersluys left and another man came.

Q. Who was the other man if you know? A. Fred Deisen and he remained with us until about 11:30.

Q. And what else did you notice if anything, that night? A. Mrs. Young came home that night —Mrs. Young came home.

Q. What time did she come home? A. She came home about quarter to 11:00.

Q. Did you see Miss Mildred Young that night? A. No, sir; I didn't see her.

Q. When did you next follow them? A. That is the last time I followed them.

Q. I show you a letter dated January 25, 1926, and ask you if you know the handwriting of that letter? A. That is the handwriting of Mrs. Cummings.

Q. Your wife? A. Yes, sir.

Mr. Child: I ask to have it marked for identification.

(Paper marked Exhibit C-1 of this date for identification.)

Q. I show you an undated note addressed "Cummings" and ask you if you know whose handwriting that is? A. That is the handwriting of Mrs. Cummings.

Mr. Child: I ask that it be marked for identification.

(Paper marked Exhibit C-2 of this date for identification.)

Q. I show you an envelope addressed to Mr.

Cummings; whose handwriting is that? A. That is the handwriting of Mrs. Cummings.

Mr. Child: I offer that for identification.

(Paper marked Exhibit C-3 of this date for identification.)

Q. Did the undated note, Exhibit C-2,—was that enclosed in the envelope Exhibit C-3? A. Yes, sir; it was.

Q. Is Mr. Young in court? (Stand up, please.) Is that the gentleman that you saw with your wife on the various occasions you have testified to? A. Yes, sir.

Cross-examination by Mr. Lane:

Q. Mr. Cummings, what did you mean when you said at the outset of your testimony that you never had her examined, referring to your wife? A. She acted so queer and started throwing dishes.

Q. How long was it during your married life did you think she was acting so queerly? A. She acted queer whenever she threw dishes.

Q. What? A. Whenever she threw dishes she always acted queer.

Q. Over what period of time was that—several years before you separated? A. We just lived together four years.

Q. Several years, I said. All during your married life did she act that way? A. Not all the time; no, sir.

Q. What did you say to her when she asked whether you didn't want to be introduced to the child's new papa, or words to that effect? A. I didn't say anything to her at all.

Q. Well, didn't you think that was rather peculiar? A. I thought it was very peculiar.

Q. Well, didn't you say—why didn't you say something about it? A. I had absolutely no control over this woman. I didn't say anything.

Q. How did it come about that she said that? Tell me the detail of it. A. No details to it at all. Young was waiting across the street. She simply asked me if I wanted to get introduced to the child's new papa.

Q. Did you say "Yes"? A. Didn't answer.

Q. Say "No"? A. No, nothing.

Q. Had you been talking to her before? A. No, sir; I never talked to Mrs. Cummings at visitations of the child.

Q. So that when you went to visit the child—where did you get the child? A. She brings the child to see me.

Q. And you would meet her there? A. Yes, sir.

Q. And you talked to the child? A. No, sir: she stayed there with the child; the child doesn't talk to me—(interrupted)

Q. You never speak to her? A. No, sir.

Q. And you haven't spoken to her when she was there with the child on one occasion, have you? A. I have not; no, sir.

Q. Not a single word? A. No, sir.

Q. When was the first time that you went there to see the child? A. It is about a year ago.

Q. Can't you give me the exact date? A. No, sir; I cannot.

Q. Well, it was at the time you—in your first beginning to see your child, wasn't it? A. I first started to see the child in the Public Service.

The Court: Answer the question.

Q. All right. When was it when you first started to see the child at the Public Service? A. About June 15, 1924.

Q. And at the time you saw the child at the Public Service you never spoke to your wife? A. No, sir.

Q. Not a word passed between you? A. No, sir.

Q. Did she ever speak to you? A. Various times.

Q. And you refused to answer her. You didn't answer? A. I didn't answer her sarcastic remarks.

Q. You didn't answer her? A. No, sir.

Q. And when she made this statement of whether you didn't want to be introduced to the child's—what was the language she used?

The Court: New papa.

Witness: She asked me if I didn't want to get introduced to the child's new papa.

Q. That just came out of a clear sky. Nothing was said to lead—(interrupted) A. It came out of her mouth, I would say.

Q. Nothing else was said to lead up to it? You know what I mean. A. No, sir.

Q. When did you first retain the Corbally Detective Agency? A. About August 10, 1924.

Q. When did you discontinue with the Corbally Detective Agency? A. The last, about three weeks ago.

Q. When did you first discontinue, about three weeks ago? A. Yes, sir.

Q. Have they been working on this case right up—(interrupted) A. They watched her two or three times.

Q. Have they been working on this case right up to three weeks ago? A. Two or three times since the last hearing.

Q. Were they working during the year 1925? A. No, sir.

Q. Do I understand you had her followed during the last hearing or about the time of the last hearing? A. Yes, sir; the Corbally Detective Agency watched Mrs. Cummings two or three times since the last hearing.

Q. Why did you give up the Corbally Detective Agency in 1925 and take Miss Kopp? A. Because the Belleville Police tipped Mrs. Cummings off that the Corbally men were following her.

The Court: What?

Witness: The Belleville Police told Mrs. Cummings that the Corbally Detective Agency was following her.

Q. Was that the only reason? A. That is the only reason.

Q. How did you come in contact with the Misses Kopp—through whom? A. I heard there was a detective agency up around Paterson—I found out myself.

Q. Who did you hear it from? A. I don't remember.

Q. You don't remember the name? A. I think it was a jitney driver told me.

Q. Do you know the name of the jitney driver? A. No, sir; I do not.

Q. The Corballies didn't refer you to the Kopp sisters, did they? A. No, sir.

Q. You picked them out yourself? A. Yes, sir; I did.

Q. And that was after your suit had been started. A. Yes, sir.

Q. And after you had been advised that you didn't have enough, wasn't it? A. No, sir.

Q. Why did you retain the detectives in 1925, having started suit in September, 1924? A. Because I wanted to prove to the court that Mrs. Cummings was entirely unfit to have custody of our child.

Q. So it had nothing to do with your divorce case, but merely with respect to the custody of the child? A. It had both, custody of the child and the divorce.

Q. You didn't start your divorce suit in September, 1924, until you knew that Mrs. Cummings was going to sue you for the property, isn't that right? A. No; her suit was started about a year previous to that for the property.

Q. About a year after the suit was started by her for the property you started this suit for divorce; is that right? A. Yes, sir.

Q. And that suit had been settled, hadn't it? A. No, sir.

Q. Are you sure that suit was not settled before you started your divorce suit? A. Positive.

Q. Then it was in process of settlement? A. I don't know whether it was or not. It wasn't settled.

Q. It was not settled? A. No, sir.

Q. Had there been any negotiations for settlement at the time you started your divorce suit? A. Yes, sir.

Q. You saw your wife several times after she left you in April, 1923, and before you started—before the suit was started, didn't you? A. Yes, sir.

Q. She came down to see you at the fire house, didn't she? A. Yes, sir.

Q. What? A. Yes, sir; she did.

Q. Came down there on an average three times a week, didn't she? A. To where, to the fire house?

Q. 114 Washington Avenue, I think the number is. A. If she came down I didn't see her.

Q. You wouldn't see her? A. I wasn't there all the time.

Q. I know you weren't there all the time, but you were there sometimes when she came down there, weren't you? A. Yes, sir; I was.

Q. And you wouldn't see her. A. When I was there I always seen her.

Q. Did you see her? She told you when she came down she wanted to come back, didn't she? A. She never told me that.

Q. What did she tell you? A. She told me she would never come back.

Q. So that she came down there two or three times a week, didn't she? A. I don't know.

Q. Weren't you there? A. Nobody told me.

Q. How many times did you see her? A. I seen her various times, seen her once a week when she brings the child down.

Q. About once a week? A. Yes, sir.

Q. And she came down about once a week and each time she came down there she told you she wouldn't go back. A. She didn't tell me each time.

Q. What did she tell you? A. She told me she would never live with me.

Q. What did she come down to tell you? A. She didn't come down to tell me anything; she came down to bring the child down.

Q. Yes, and didn't you tell her—or did you tell —talk to her pleasantly? A. I did; yes, sir.

Q. When she came down? A. Always.

Q. Did you ask her to come back to live with you? A. Yes, sir; I did.

Q. How often during that period of time did you ask her to come back and live with you? A. Almost every time I ever seen her I asked her to come back and she told me she would never live with me, even at the fire house—in front of the firemen she said she would never live with me.

Q. Now, do you remember this time that you saw Mrs. Cummings, I think on the 6th of August

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The Court: 7th of August.

Q. At any rate, the time you first saw her across from the Central Railroad station, do you remember she saw you too? A. I don't know what she saw.

Q. Didn't she approach you and talk to you upon that occasion? A. No, sir.

Q. Upon any one of these occasions that you were following her didn't she speak to you? A. No, sir.

Q. Not on any one of those numerous occasions that you were following her? A. No, sir.

Q. Did she say a word to you? A. I never was near here when I followed her.

Q. I didn't ask you that. I asked whether on one of these occasions that you were following her, she did not intercept you and have a conversation with you? A. No, sir; never on any occasion.

Q. On August 6th where did you see her? A. At 825 Broad Street.

The Court: What year, Mr. Lane?

Mr. Lane: 1924.

Witness: 825 Broad Street, in front of the Central Railroad.

Q. Where were you when you saw her? A. I was across the street.

Q. Where, across the street? A. Opposite 825 Broad Street.

Q. In front of what building? A. I wasn't standing; when—I was in the taxi. I was sitting, opposite, on an angle of forty five degrees from where she was standing.

Q. Well, when you first saw her were you in the taxi? A. No, sir.

Q. I am talking about now when you first saw her. A. I was walking on Broad Street.

Q. And you just accidentally happened to see her. A. Purely accident, yes, sir.

Q. And you stopped there for some little time. A. No, sir.

Q. Didn't you hide behind the pillar of the National State Bank? A. No, sir.

Q. Do you know where the National State Bank Building is? A. Yes, sir; I know very well where it is.

Q. Weren't you right in front of the National State Bank Building? A. I passed the building; didn't stop.

Q. What? A. I didn't stop there.

Q. Wasn't it at that point that you looked over and saw your wife? A. No, sir.

Q. Well, in front of what building were you when you saw your wife? A. I believe it was in front of the Central Railroad. I was walking down that side of the street.

Q. What was she doing, just standing there? A.

Just standing there looking up and down the street very anxious.

Q. And you saw she was looking up and down the street very anxiously. A. Yes, sir.

Q. Do you know how wide Broad Street is? A. Yes, sir.

Q. How wide? A. About 110 feet at that point.

Q. And you could tell by looking across the street at your wife standing on Broad Street—what time of day? A. 7:30.

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

Q. On a summer night? A. Yes, sir.

Q. That she was looking very anxiously. A. Looking up and down; yes, sir.

Q. Anxiously. You could tell that she was looking anxiously, looking across that hundred and ten foot strip. A. She was looking up and down. She may not have been very anxious. I don't know how anxious she was.

Q. Then I am wondering why you said it. Why did you say she was looking anxiously if you didn't know it? A. Well, she was looking up and down the street and it appeared to me she was going to meet somebody and it finally happened that she did meet somebody.

Q. Yes. Now, what was it that made you—that you accidently happened to pass your wife on the opposite side of the street—what was it that directed your thought to the idea that she might meet somebody? A. Because just about that time anybody would have a date, about 7:30 p. m. or quarter to 8:00. What would she be standing there for?

Q. Do you know where she worked? A. At that time?

Q. Yes. A. Yes; I do.

Q. Where? A. At the A. & P. bakery in Belleville.

Q. Do you know what her hours were? A. Yes, sir.

Q. What? A. She went to work about 5:00 o'clock in the evening.

Q. And worked until when? A. Until about 1:00 o'clock.

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

Q. And do you know how long she had those hours? A. Yes, sir; I do; about the first of the year—first of the year after her hours were changed.

Q. What were her hours changed the first of the year at—to? A. I don't know. She went to work in the day time then.

Q. First of which year? A. 1925.

Q. Now do you know what her hours were changed to in 1925? A. She went to work in the day time, she told me.

Q. How did you know what her hours were? A. She told me. She had to bring the child to the Essex County Court House for visitation and due to the fact her hours were changed she couldn't bring her child there. She told me her hours were changed to the day time. She used to bring the child down about 2:00 o'clock in the afternoon, and due to the fact her hours were changed she couldn't bring the child down.

Q. At the time you saw her on August 7th—(interrupted). A. Yes, sir.

Q. —her hour was 5:00 o'clock in the afternoon. A. Yes, sir, but she was off that day; that was Wednesday night.

Q. What day of the week was that? A. Wednesday night, August 6th, 1924.

Q. Now how did you find out what her hours were? A. She told me.

Q. Is that the only way you knew? A. I seen her go into work; I watched.

Q. When were you watching her, seeing her go to work, would you say? A. I got the detail how she worked before I hired the Corbally Detective Agency.

Q. When did you find out the details? A. I seen her go in.

Q. You were watching her yourself then? A. Yes, sir; myself. I wanted to find out when she worked and when she came home.

Q. You went to the place where she worked, didn't you? A. Yes, sir; I went to the place.

Q. You talked to the girls. A. I talked to the superintendent of the factory.

Q. How long before you hired the Detective Agency did you ascertain what days she worked? A. About three or four days.

Q. And did you do that on instruction from the Corbally people? A. No, sir; I did not.

Q. Did you make any inquiry at the A. & P. to find out whether the hours had been changed after she told you about it? A. No, sir; I did not.

Q. When you went to the A. & P. to find out what the hours were, what did you find out? A. I found out Mrs. Cummings was discharged there at one time due to the fact that another man, Harold Young—(interrupted)

Q. I am not asking you that. I asked you what you found out with respect to the hours. A. The hours? I didn't find out anything about the hours.

Q. Didn't you go there for the purpose of finding out what the hours were? A. No, sir; not for the purpose of finding out the hours.

Q. And you did find it out—you did find the hours out from the superintendent of the A. & P. A. No, sir; not that; no.

Q. Did you find out at that time what her days off were? A. No, sir; I knew it. I knew when her days off was.

Q. What was her days off? A. Sunday—no, Saturday.

Q. How long before you hired the Corbally Detective Agency was it that you ascertained her day off was Saturday? A. About three or four days.

Q. Where did you meet this Fred Cook? A. On the corner of Chester Avenue and Washington Avenue, Newark.

Q. Where did you meet him first? A. In the vicinity where I lived.

Q. Where? A. I don't know.

Q. Didn't you meet him in a restaurant? A. He was in the restaurant various times when I was in there, yes, sir.

Q. Didn't you meet this man in that restaurant? A. Not exactly. I know he was in the restaurant with me, yes, sir.

Q. Didn't you first become acquainted with him from going to this restaurant? A. Yes, sir.

Q. What is the name of the restaurant? A. What restaurant do you mean?

Q. The restaurant at which you met the man and became acquainted with him. A. There are two restaurants there.

Q. The one you met the man in and became acquainted with him. A. I believe he and I have been in both of them. I don't know which one you mean.

Q. Which one was it that you became acquaint-

ed with him in the first time? A. I don't know which one of them.

Q. What was the name of the two restaurants you have in mind? A. One is the Blue Moon. I don't know what the name of the other one is.

Q. Do you know a man by the name of Pfeil? A. Yes, sir.

Q. Meet him there? A. I have seen him there; yes, sir.

Q. Talk to him? A. Yes, sir.

Q. Do you know a man named Reilly, Joe Reilly—meet him there and talk to him too? A. Yes, sir.

Q. Meet him there? Or John Reilly—meet him there and talk to him too? A. I don't remember seeing Joe Reilly there.

Q. Do you remember a man by the name of Williams? A. Yes, I do.

Q. Is he one of those that you met there in that restaurant? A. No, sir.

Q. Where did you meet him? A. Williams, I have seen him for a number of years in that vicinity and he usually sat on the bread box from 9:00 o'clock in the morning until 11:00 o'clock at night on the corner of Chester and Washington Avenue.

Q. Now I understand—I think it was on one of these occasions—the first occasion, I think, that you saw your wife—that you went up—or they went to Dreamland Park and you saw them kissing each other. A. Yes, sir; I did.

Q. Is that the first time you followed them? A. First time, August 6th, 1924.

Q. And where were you when you saw this kissing going on? A. I was in back of them. When

I passed back of them I don't think I was more than five feet away from them.

Q. Where were you when you saw this kissing? A. I was about five feet back of them passing on the board walk. They were sitting on the bench in front of the swimming pool.

Q. And had you followed them right from the entrance of the park? A. No, sir; I lost them. The reason why I was so near, I lost them—I seen them going up that way, and they got out of my sight and I again discovered they were sitting on a bench.

Q. What did you do when you saw them there? A. I watched them.

Q. How long did you stay there watching them? A. I watched them until they left. They sat on this bench about half an hour.

Q. And where did you stand all during that time? A. I stood about fifty or sixty feet away, out of their sight, where they couldn't see me.

Q. In which direction—what were you standing on, weeds, or what? There are no weeds there, are there? A. No, sir; on the board walk.

Q. On the board walk? A. Yes, sir.

Q. Did you move around at all? A. Yes, sir; I moved around all the time.

Q. They didn't see you—or apparently didn't see you. A. I don't know whether they seen me or not.

Q. First time you had seen your wife kissing another man, wasn't it? A. First time, yes, sir.

Q. And you just stood there and watched them. A. Yes, sir.

Q. Why? A. Because I heard she was running around previous to that.

Q. You said nothing to her? A. No, sir; I heard she was running—(interrupted)

Q. Did you say anything to her when you heard she was running around? A. No, sir.

Q. Why not? A. Didn't believe it.

Q. Didn't believe she was running around. A. No, sir.

Q. So that when you saw her kissing, it was a shock to you. A. I believed what I had been told previous to that when I seen her.

Q. I say, when you were told, before, you believed it—you said nothing to her about it. A. No, sir.

Q. I show you this, and ask you whether that is in your handwriting. A. Yes, sir; that is my writing.

Q. When did you send it? A. That was for Christmas or New Years.

Q. When? A. 1926, I believe.

Q. Well, now, was it 1926 or 1924? A. 1926; I am sure; yes.

Q. Was it this last Christmas? A. This last Christmas, to my recollection.

Mr. Lane: I ask that it be marked.

Q. Christmas of 1925 or the Christmas of 1924?

The Court: Did you say New Years or Christmas? I understood you to say New Years.

Mr. Lane: He didn't say.

Q. I ask you when you sent that letter. A. Either the latter part of 1925 or the commencement of 1926.

(Paper marked Exhibit D-4.)

Q. How old is your daughter? A. About five; June 24, 1926.

Q. I show you another little note and ask you in whose handwriting that is in. A. That is my handwriting; yes, sir.

Q. When did you send that to your wife or have it delivered to her? A. That was about six months after she left me.

Q. That is the first of September what year, 1923, isn't it? A. I believe so.

Mr. Lane: I offer that.

(Paper marked Exhibit D-5.)

Q. In this note you say, "Any belongings of yours, take them out of here before the 1st of September." A. I didn't say it that way.

Q. That is the way I am reading it. A. She told me she would never live with me and I kept the house—the flat—and my furniture for six months thinking she would return, and she told me she would never live with me, and she said she wanted the furniture and she said she was going to take it away. I told her to take it if she wasn't returning. I kept the place there for about six months, and I lost rent for about six months, the place wasn't rented, from April until September. I finally had to put the furniture in storage.

Q. I show you another little note and ask you whether that is in your handwriting. A. Yes, sir, that is my handwriting.

Q. When was that sent? A. I don't know.

Q. Can you tell me about when? A. No, sir.

Q. Read it and see by the context if you can't tell me about when it was written. A. That must be before that property suit was started.

Mr. Lane: I offer it for identification.

(Paper marked Exhibit C-6 for identification.)

Q. "Inform me how many suits you are going to start; also what you are going to do in the future with regard to your domestic trouble. Yours as ever, Owen." Do you know what that means? A. I do. I know all about it.

Q. What does it mean? A. She wrote threatening letters she was going to start suit, and what she wouldn't do, and that was the answer to the letter. I have the letters home, I believe, some of them.

Q. I show you two envelopes addressed—they are in your handwriting, aren't they? A. Yes, sir; they are mine.

Q. Can you tell me by reference to the date on that envelope, January 9, 1924, whether this exhibit D-6 was enclosed in it? A. No; I couldn't tell you.

Q. Can't tell me? A. No.

Q. These two envelopes are in your handwriting. A. Yes, sir.

Q. And enclose something to your wife. A. Yes, sir.

Mr. Lane: I ask that they be marked for identification.

(Papers marked Exhibits D-7 and D-8 for identification.)

Q. Now, I show you a letter bearing date October 23, 1923, and ask you whether that is in your handwriting. A. It is my handwriting.

Mr. Lane: I ask that it be marked for identification.

(Paper marked Exhibit D-9 for identification.)

Q. That is the first time you made any request to see your daughter, isn't it? A. First time I made any request? I was up to the house on various occasions and they wouldn't let me in.

Q. It was the first time you made any request, any actual request for your daughter. A. In writing, yes, sir.

Q. In writing, at any rate. A. Yes, sir.

Q. For a few weeks at least after the separation your wife brought the daughter down to the fire house to see you, didn't she? A. Not to the fire house.

Q. Well, to some place down there in that neighborhood. A. I don't know what place you mean.

Q. Did she bring the daughter to see you anywhere? A. Yes, sir.

Q. All right. Where? A. She brought the child to 114 Washington Avenue for about three or four times.

Q. And that covered how long a period of time after she had left you in April? A. Not immediately after—oh, about three or four months, I think.

Q. What did she bring the child down there for? A. For visitation.

The Court: That is your home?

Witness: Yes, sir.

Q. She did that voluntarily, didn't she? A. No, sir; that was the agreement when she left. I willingly gave her fifteen dollars a week for nine months.

Q. You were willing to give her? A. I gave her fifteen dollars a week until she told me that Mr. Fleischman told her she should get twenty-five—she wouldn't take the fifteen.

Q. So that after your wife left you you paid her fifteen dollars a week. A. About two months after her leaving.

Mr. Child: I object to the cross-examination. It seems to me very far afield.

Q. After your wife left you you paid her fifteen dollars a week. A. Not immediately after she left me, no.

Q. When did you start? A. Some time in June.

Q. And that agreement came about by demand upon her part, didn't it, for you to support her? A. Yes, sir.

Q. And an agreement was reached under which you did support her and paid her fifteen dollars a week? A. Yes, sir.

Q. And you kept that up until a demand was made for increased amount? A. No. That wasn't the reason why—yes; that was one reason, yes, sir.

Q. And when the demand came for an increased amount, you wouldn't pay it. A. No, sir.

Q. And then this trouble started, didn't it. A. Yes, sir.

Q. Now, I show you an advertisement in the Newark Evening News of Wednesday, June 30, 1920, and refer to this ad, "Dining room set, etc. for sale." That is your furniture, isn't it? A. Yes, sir.

Q. You put that ad in. A. Yes, sir; I thought if she had any intention of coming back she'd come

back when she seen the furniture advertised for sale.

The Court: 1920?

Witness: That is wrong; no. I'll tell you what happened to this. 1920 my wife—(interrupted)

The Court: He hasn't asked you anything.

Q. So that your wife—there was trouble in 1920? A. Yes, sir; there was.

Q. And your wife had left you? A. No, sir.

Q. What happened? A. She was working then, in 1920.

Q. She was working? A. And I wanted her to stay home.

Q. She was working.

The Court: I think you better confine yourself to the main case.

Mr. Lane: I think it has a bearing on the main case.

The Court: On the main case, as made?

Mr. Lane: I think so. I am not going into a lot of it.

Q. As I understand it she was working, you didn't want her to work, and in order to convince her she shouldn't work you advertised the furniture for sale, is that right? A. I told her if she didn't stay home I would discontinue keeping house and dispose of the furniture and get a furnished room —if she didn't stay home.

Mr. Lane: I ask that this be marked for identification.

(Paper marked Exhibit D-10 for iden.)

Q. Now, on the 24th of August, 1924, Mr. Cummings, where were you when you saw these two figures at a tree? A. I was about seventy five or a hundred feet away on John Street, Belleville.

Q. Who were with you? A. Frank Corbally, Galgano, Clark, Harry Corbally; and there was a couple of other men.

Q. All together? A. We was all together coming home in the automobile.

Q. Were you all together standing at the same place? A. No, sir.

Q. Where were you, scattered all over? A. There was nobody with me when I passed that street.

Q. You just casually passed. A. No; they were in back; they were scattered in different places.

Q. On August 30th, 1924, where were you when the kissing was going on at a telegraph pole or tree? A. I was on the street opposite Liberty Street.

Q. How far away from the tree? A. I must have been about a couple of hundred feet.

Q. What? A. A couple of hundred feet.

Q. A couple hundred feet? A. Yes, sir.

Q. And who were you with there? A. Flarity, Galgano and Clark; I think there was somebody else; I am not quite sure.

Q. And were you all together there? A. When Grimm left?

Q. When the kissing was going on. A. No; there was two men went through the cemetary.

Q. Two men went through the cemetary? A. Yes, sir; Flarity and another man went through the cemetary and they took a position in there.

Q. And you stood about two hundred feet away?

A. I believe it was about two hundred and fifty feet, yes, sir.

Q. Now you started to relate an incident on June 2nd, 1925 involving a theater at which some other man was present. That wasn't Young. A. No, sir.

Q. You said that they went into the theater and took a seat about ten feet away from the front as I recollect. A. No, sir; I didn't say that.

Q. What did you say? A. I said ten feet—(interrupted).

Q. Ten feet away from the front? A. Yes, sir.

Q. Where were you? A. I was in the back of them.

Q. How far back? A. About seven or eight feet.

Q. On the aisle? A. Aisle? I was in the seat.

Q. Was the seat an aisle seat? A. It was in the row of seats—same row of seats, directly in back of them I sat.

Q. What did you see? A. I seen this man have his arms around Mrs. Cummings and patting her on the shoulder, and they remained in that position about an hour.

Q. And you retained your seat there and watched them for about an hour? A. About an hour, yes, sir.

Q. Then what happened? A. They got up out of that seat and they walked back to a seat in the rear of the theater and they sat right there. It was pretty dark and this man had his arm around Mrs. Cummings and Mrs. Cummings was thrown over on this man—on his lap.

Q. Thrown over what? A. Thrown over on this man's lap.

Q. What were they doing? Where were they

sitting? A. In the back seat of the theater.

Q. Where were you? A. I stood in back of them. I moved out of where I was and I walked back and I stood right in back of them for about a minute.

Q. Right in back of them? A. Directly in back of them. They were in the back seat and I stood in the back of them and then I went out and waited until they came outside.

The Court: What?

Witness: And waited outside until they came out.

Q. Well, could you see them—as you walked up the aisle, I suppose, you saw them doing this. A. No, sir; not coming up the aisle.

Q. Then I don't understand.

The Court: He was back of them.

A. I was back of them, but when they left their seat I turned around and I seen where they went. I seen they didn't go out. They walked around the back of the seats and come in again and sat about two seats at the end; there was nobody at that seat, but them two—there wasn't many in the theater, not in the back.

Q. To get back of them again you had to come in front of them. A. They sat on the center row of seats. Where they sat first was the extreme right, and later I walked down on the extreme right of the theater, which must be about sixty feet to their right—two rows of seats, see—I walked on and walked back of them and stood there a minute before I went out.

Q. You stood there looking over at them. A. Yes, sir; I did.

Q. Nobody else in those seats? A. Not in the back seats.

Q. And what did you do then? A. I went out and I waited until they came out.

Q. When they came out what happened? A. I seen them go up Washington Avenue. There was another man following.

Q. Another man following? A. Yes, sir.

Q. Who was the other man? A. Edward Cornell.

Q. Friend of yours? A. I know him for some time, yes, sir.

Q. How did he come to follow them? A. Because I wanted him to.

Q. You were following her then? A. Yes, sir.

Q. When did you next see them, if you ever saw them again? A. I seen them go up Washington Avenue arm in arm.

Q. That is all you saw? A. Yes; I seen more than that.

Q. Go ahead and tell us. A. This Cornell that followed them, it seems they got wise to him—(interrupted)

Q. I am asking you what you saw. A. I seen them separate in front of the Town Hall in Belleville; that is what I seen.

Q. Do you know who this man is? A. Yes, sir; I do.

Q. Who is he? A. Joseph Riess; he is a married man with two children.

Q. How often had you seen her with him? A. That is the first time.

Q. And is that the last time? A. That was the last time. After that he quit his position and went down to the seashore.

Q. I didn't get that. A. He quit his position—

he worked in the same place as Mrs. Cummings—and he quit his position and went down to the seashore. He was a driver in the same place that Mrs. Cummings worked.

Q. And that is the last you have seen or heard anything with respect to him? A. I heard plenty. The last I seen.

Q. The last you saw him. A. Yes, sir; the last I saw, but I heard plenty.

Q. And it is the first time you saw. A. Yes, sir.

Q. Is that right? A. Yes, sir; it was the first time. It was the first time I followed him.

Q. Where does he live now? A. I haven't any idea where he lives now.

Q. Where does he work, do you know? A. I heard he works in the A. & P. bakery again.

Q. Here in Belleville? A. Belleville, yes, sir.

Q. When did they first go into the theater? A. About quarter to eight.

Q. Quarter to eight? A. Yes, sir.

Q. And how long did they stay there? A. It was after ten when they came out—about half past ten, I think.

Q. And were there many people in the show during the time the performance was going on? A. Yes, sir.

Q. What? A. Were there many people you say?

Q. Yes. A. I say there were.

Q. People to the right of them and people to the left of them? A. No; there was nobody to the right or to the left when they were in the back seat.

Q. I am not talking about the back seat. I am talking about when they were down in front. A. Yes, sir; very thickly populated.

Q. Well, anybody that was there could have seen what they were doing, couldn't they? A. Yes, sir; I suppose they could, if they weren't blind.

Q. You could see everything from five or six seats back. A. I couldn't see everything, no, sir. I could see him with his arm around her, that is all.

Q. When did you first see Young? A. June 4, 1925.

Q. Who were with you at the time you saw him on that night? A. Olive Cummings, my daughter.

Q. Anyone else? A. Mrs. Cummings was there for visitation with the child.

Q. Who else were with you? A. Nobody.

Q. Just happened to see him? A. Not with me at that time.

Q. Well, at any time that night. A. Yes, sir; just as Mrs. Cummings left me I went up to the corner and I found a friend of mine, Harry Kaiser, and I told him what had happened and he followed them.

Q. He followed them? A. Yes, sir.

Q. Had you ever seen Young before? A. Not to know him, no, sir.

Q. Had you ever seen him before? A. There was a man who stopped one time about a month, I think previous to that,—when I was talking to the child at the Library, a man stopped and shook hands with Mrs. Cummings and spoke to the child, and he stood there about three or four minutes talking to Mrs. Cummings in my presence. Of course I didn't pay any attention to it because I thought it might be some friend of Mrs. Cummings.

Q. Now this night that you saw them at the piano who were with you, in the party? A. Abra-

ham Vandersluys, Constance Kopp, until about 9:30, and after that Fred Deisen was with us.

Q. Where were you? A. I was in the car part of the time and I was up on the stoop—Young's stoop, part of the time, and I was on the stoop next door part of the time.

Q. Did you see the other Miss Kopp there at that time? A. I did. The other Miss Kopp was with me on the stoop next door and up on the Youngs' stoop too.

Q. What? A. And also on the Youngs' stoop.

Q. She went up on the stoop? A. Yes, sir.

Q. And looked through the window? A. I presume she did. I looked through the window.

Q. You were right there together, with her. A. Yes, sir; we was together next door.

Q. What was the name of the other Miss Kopp who did that? A. Miss Constance Kopp.

Q. I am not talking about Miss Constance Kopp now; I am talking about the other Miss Kopp, Norma. A. She isn't the woman that was with me that night.

Q. Was she there at all? A. That night?

Q. Yes.

The Court: Was who with him?

Mr. Lane: Miss Norma Kopp.

A. Norma Kopp, on the 10th of January, no; I don't think—(interrupted)

Q. I don't care anything about the date. On the occasion that you saw them at the piano.

The Court: Went up and looked in the window.

Q. Looked in the window. Was Miss Norma Kopp with you? A. No, sir.

Q. She wasn't in the party at all? A. No, sir.

Q. What date was it that Miss Norma Kopp was with you? A. On various dates.

Q. Well, what dates was she with you? A. You want me to start in and tell every date?

Q. I don't want you to tell the whole story over again. I want the dates; your recollection is very distinct as to dates. A. Approximately, you want? About seven or eight times.

Q. You—I want to know the occasion at which Norma Kopp was with you when you saw Mrs. Cummings and Young together. A. 4th of July was the first time.

Q. She was there on the 4th? A. 4th of July.

The Court: 1925?

Witness: 1925; and July 22, 1925; I believe she was August 25th, 1925; August 29th, 1925; September 12, 1925; September 19, 1925; December 13, 1925; and there was another date that I do not quite remember where she was with us when they were in the theater up in Belleville. I haven't got that date. I don't remember what date that was. There may be some other dates. That is all I remember.

Q. Did you make a memorandum of these various things as they occurred? A. I did; yes, sir.

Q. And you have gone over that, of course, for the purpose of testifying here. A. I looked them over, you know, to refresh my memory, yes, sir.

CONSTANCE KOPP, sworn for complainant.

Direct-examination by Mr. Child:

Q. You live where? A. 159 Beuna Vista Avenue, Hawthorne, New Jersey.

Q. Are you a detective or investigator? A. Yes, sir.

Q. Were you retained by Owen Cummings to follow his wife? A. I was.

Q. When did you first follow her? A. July 10, 1925.

Q. Where did you see her that night? A. First I saw her that night was at the library.

Q. What time of night was it? A. About 7:30 in the evening.

Q. Did you see her meet anyone at the Library? A. I did. I saw her meet Mr. Cummings.

Q. Did you afterwards see her meet any other man? A. I did. I saw her meet Mr. Young in front of number 10 Washington Street, Belleville.

Q. What time of night was that? A. That was about 8:20.

Q. Well, what did you observe that night? A. They both went into the house and went into the rear entrance and to the second floor, into the apartment, where they remained for about an hour and three quarters. She then came out alone and went home to number 10 Washington Street.

Q. Where did you say they were? A. Number 10 Washington Avenue.

Q. And they remained there about an hour and three quarters and then went to 10 Washington Street. A. No; she came out alone and went home to her own home at number 10 Washington Street.

Q. Where did you first see Young that night?

A. Standing on the sidewalk or in the curb between two cars.

Q. Well, where? That doesn't mean anything. A. At number 10 Washington Avenue.

Q. And did he greet Mrs. Cummings in any way that night—did he speak to her? A. Yes, sir; he did. He greeted her and assisted her up the stairs to this house.

Q. Is that all that you saw this night? A. That is all.

Q. When did you next follow them? A. On July 16th, I again saw Mrs. Cummings at the library; she again went to number 10 Washington Avenue, remained there a while and a storm arose and she then went home alone.

Q. Well, did she meet Young that night? A. No, she did not.

Q. When did you next see Young and Mrs. Cummings together? A. July 22.

Q. Where? A. At the library. I saw Mr. Cummings and Mrs. Cummings. Mrs. Cummings then went down Broad Street to Huyler's confectionery store; she went through Huyler's into Central Avenue and walked down Plane Street where she met Mr. Young; they then conversed there for about ten or fifteen minutes, returned up Central Avenue and Mr. Young went into the floral shop on Broad Street; he purchased a package of flowers and gave them to Mrs. Young, Mrs. Young took them and she opened the package and looked at them and expressed a remark of satisfaction.

Q. How close were you to them? A. Oh, I was about seven or eight feet. She then crossed the street with Mr. Young—(interrupted)

Q. Who got the flowers? A. Mrs. Cummings.

Q. Then what did they do? A. They then crossed on to the trolley safety zone platform and both went to number 10 Washington Street; arriving there at quarter of nine.

Q. That is Mrs. Cummings house? A. Mrs. Cummings' house, yes, sir.

Q. How long did they remain there? A. I remained there until about a quarter to ten and we then left, and in that time Mr. Young had not gone out of the house.

The Court: Why did you leave?

Witness: Well, I had to take care of some matters at my own home. I had to meet some clients.

The Court: You were out on the job. Why did you leave when you found him in her house?

Witness: I had an appointment at my own home and I had to go home.

The Court: More important than your business?

Witness: I had to meet these people. Very important.

Q. When did you next follow them? A. August 28th.

Q. Where? A. I was standing in front of number—Washington Avenue, the residence of Mr. Young, and while there I saw a sedan car in front of the house and I saw Mrs. Young go out into the sedan car. Miss Mildred came home shortly after and about ten minutes after six Mrs. Cummings went into the house. At about twenty minutes after six Miss Mildred Young went out of the house. There was then nobody home again until

9:30 in the evening, and even when it became dark there were no lights lit in the house. At 9:30 Mrs. Young came home and about 10:30 Mr. Young took Mrs. Cummings to her own home in Washington Street. I then left.

Q. When did you next follow them? A. January 10 I went down to Washington Avenue to the residence of Mr. Young with Mr. Abraham Vandersluys, Mr. Cummings and—those were the three I went alone with first. And Mrs. Cummings entered the house about quarter of or ten minutes of six—I mean ten minutes of seven. We were outside of the house there until about nine o'clock when Mr. Deisen came. Before Mr. Deisen came I saw Mrs. Cummings kiss and embrace Mr. Young a number of times. I saw them both sit down onto the floor and play a sort of game and while they were playing the game they would love and embrace each other. I also saw them kiss on the settee facing the left hand wall, which to me seemed to be the settee of the piano, and while sitting on the settee I saw Mr. Young put his arms around Mrs. Cummings. I also saw Mr. Young in a standing embrace with Mrs. Cummings for a period of five minutes. I saw this from the car in which I sat, and I also saw it from the stoop of the house which was next door to the house in which Mr. Young lived; and I also went on the stoop on two occasions and looked into the window and saw Mrs. Young, Mrs. Cummings and Mr. Young and the little kiddie at times alone. They came out of the house then at about 11:30 that night and he took her to her home in Washington Street.

Q. When did you follow again? A. I didn't.

Q. That was your last? A. My last time.

Cross-examination by Mr. Lane:

Q. On July 10 where did you see them? A. At number 10 Washington Street.

Q. Where? A. In the second floor of a house on number 10 Washington Street, right near the fire house.

Q. That is whose house? A. I don't know whose house.

Q. Is that the Cummings' house? A. No, sir—I beg pardon—Washington Avenue; number 10 Washington Avenue.

Q. Is this Youngs' house? A. No, sir; it isn't Mr. Young's house or Mrs. Cummings' house, but whose house it is I don't know. It isn't either one of the addresses where Mr. Young or Mrs. Cummings lives.

Q. What house is it then? A. It is an apartment house—a flat house.

Q. Well, where? A. Number 10 Washington Avenue, right near the fire house in Belleville. There is a little store on the corner—grocery store and confectionery store.

Q. Is this some new house that hasn't been mentioned yet in this case at all? A. Yes, sir; this is a new house.

Q. Who was with you at that house? A. Cornelius Troast and my sister Fleurette Kopp.

Q. Anybody else? A. No.

Q. Did you ever see them in that house at any other time? A. I did not. I saw Mrs. Cummings go to that house July 16, 1925, alone.

Q. Do you know who lives in the house? A. I do not.

Q. Did you make any inquiries to find out? A. No; I did not.

Q. You say there is a store on the bottom floor? A. No, sir; I said the store is on the opposite corner.

Q. What kind of a—is this three stories, four story or—what kind of a house? A. I believe it is a three story house.

Q. Is it in Newark or Belleville? A. It is by the fire house there. That is Belleville—I am not sure. It might be North Newark—right where the cemetary is there.

Q. What did you see there? A. I saw Mrs. Cummings meet Mr. Young on the curb in front of this house; they went through an alley way together, went up the back stairway into the house, on the second floor.

Q. How do you know they went on the second floor? A. I saw them enter the second floor —the doorway in the back—sort of a porch as they have in these houses as you come up the back stairway; and they went into the back doorway of this house. I rode into the street, which is a sort of circular street, and I saw them when I rode into the street.

Q. As I understand it they entered this house from the rear. A. Yes, sir.

Q. And you were where? A. In my Nash car on the side street.

Q. And how far is the side street away? A. Well, I believe it is either the second or third house from the corner.

Q. And that would be—this was in daylight? A. Yes, sir; it was right after eight o'clock—about quarter past eight.

Q. And they went up on the porch. A. Yes, sir.

Q. And into the back door. A. Yes, sir, or kitchen door of this apartment.

Q. And where was the entrance to the third floor? A. Continued on up.

Q. On the outside of the house? A. Yes, sir.

Q. And the entrance is from the outside? A. No—that is, if you wanted to go the back way.

Q. That is what I mean? A. Yes, sir.

Q. And you saw them go in? A. Yes, sir.

Q. And what else did you see? A. I saw Mrs. Cummings come out again in about an hour and forty-five minutes or two hours' time alone, and she then went to her home.

Q. But you didn't see anything else? A. Nothing else, no, sir.

Q. This was what time of the day? A. About quarter past eight in the evening when she went in.

Q. Yes, and she was there—must have been about ten o'clock when she came out. A. Around that time.

Q. Did you see any lights lit? A. No; I did not.

Q. You looked, of course. A. I did; I looked for the lights through the back, but there were no lights lit in the back; I could see no lights.

Q. You looked, of course, to see whether there were any lights lit in that second floor both front and rear? A. Yes, sir; I didn't see any lights, no, sir.

Q. You didn't even see the light lit even just before Mrs. Cummings walked out? A. No; I did not.

Q. There wern't any lights there? A. I didn't see any lights lit. At least one half hour before I

left the place—at least a half an hour before I left the place I took my position at the front of the house. They may have lit the lights half an hour before Mrs. Cummings left, because I was at the front of the house then.

Q. You could see right through, couldn't you? A. Impossible. That would be impossible. This is on the second story, you know.

Q. Yes; I know. The first story is raised above the street, or is it just—(interrupted) A. I think it is about—it might be two or three feet above the street—something like that.

Q. What is it—a flat like appearance? A. Yes, sir; it is one of those sort of old fashioned flat houses.

Q. Right on the street—flush with the street? A. Yes, sir—no, not exactly flush; have to go into a gate like and then on the stoop and then that way.

The Court: What?

Witness: You have to go on to the steps and into the front door, it isn't right flush with the street and go right into a doorway; it isn't that way. It isn't a modern house.

The Court: Sets back?

Witness: Yes, sir; sets back a little; not much.

Q. Now, this house, as a matter of fact is a six family house, isn't it? Isn't it a double flat? A. I don't know. I haven't the slightest idea. It might be a double flat, three stories, but they went in the left hand apartment on the second floor; that is the door that was on the left hand side as I would be standing in front of the house.

Q. Has anybody told you that the house was 11 and not 10 and that it was a house that Mrs. Cummings lived in with Mr. Cummings? A. No; nobody has ever told me that at all.

Q. Nobody suggested that? A. No.

The Court: Washington Street or Washington Avenue?

Witness: Number 10 Washington Avenue.

Q. How do you know it is number 10? Did you look at the number? A. I asked Mr. Cummings what the number of the house was and he says that it is 10 Washington Avenue.

Q. Do you know the difference between Washington Street and Washington Avenue? A. I do, sir. Washington Avenue runs through from the cemetary in Newark and up that way, Washington Street is a small street—narrow street.

Q. Do you know where the Cummings lived? A. No; I never knew where the Cummings lived, no.

Q. You base your statement that it was number 10 from the fact that you described this house to Mr. Cummings and he said it was number 10. A. Correct.

Q. Didn't he tell you—couldn't you see what the number of it was yourself without asking Mr. Cummings what it was? A. I didn't go near to the house at any time so that anybody would see me other than I was in the car, but I asked Mr. Cummings the house—I described the house to him where it was and he said, "That is number 10 Washington Avenue."

Q. And he did not suggest that he lived there once? A. No: I have never heard that Mr. Cum-

mings lived there; I have never heard that Mr. Cummings ever lived there; never.

Q. How did you recognize Young? A. I didn't know that that was Mr. Young at that time. That was the very first time that I saw Mr. Young, but I did recognize him then as the man that I again saw on August or July 22nd.

Q. It was getting dusk when you first saw them, wasn't it? A. No; it wasn't getting dusk. When I first saw them it was very visible because I could easily and plainly see. There were no lights lit on the street or anything. It was daylight yet.

The Court: What time of year—when was it?

Witness: July 10.

The Court: Daylight saving?

Witness: Yes, sir.

Q. But you, as I understand it, kept a considerable distance away from them. A. In the car, in the street. I didn't get out on the street.

Q. And the next time you saw him was in August? A. The next time I saw Mr. Young was July 22nd.

Q. Did you see Young come out of that house that night? A. No, sir; I did not.

Q. You told us who were with you, haven't you? A. Yes, sir.

The Court: How did you come to pick up Young in front of the house at that point?

Witness: I followed Mrs. Cummings from the library into the house and she got off the car and she met Mr. Young right at the curb there.

Q. How long after Mrs. Cummings left did you stay there? A. I followed Mrs. Cummings to her home, number 10 Washington Street.

Q. Why did you do that? A. I just wanted to see where she was going.

Q. Did you ever report this to anyone? A. What is that? Mr. Cummings.

Q. Mr. Cummings? A. Yes, sir.

Q. Not to his lawyer? A. No, sir; not at that time.

The Court: It is not the basis of cause of action in your pleading.

Mr. Child: No, sir; this is news to me.

Q. And you left Young in the house. A. Yes, sir; I imagine he was in the house. He hadn't come out during the time I was there.

Q. What time was it that Mrs. Cummings got there? A. Around quarter past eight—twenty after eight.

The Court: She got there?

Witness: She arrived at this house.

Q. Did you make any inquiry as to who lived in that left hand apartment? A. No, sir; I did not.

Q. Well, why? A. Well, Mr. Cummings said he knew somebody that lived in that apartment and I forget the name that it was.

Q. Beers, was it? A. I can't tell you the name. I can't remember.

Q. Some friend of his wife? A. Some friend of his wife, yes, sir.

Q. Don't you remember the name of the man? A. I don't remember, Mr. Lane, no, sir.

Q. And didn't Mr. Cummings say that Mr. Beers resembled Mr. Young? A. No.

Q. A great deal? A. No; we had no discussion on that at all.

Q. Well, were you consulted at all when this case was in process of being prepared? Were you present with Mr. Cummings with his counsel when he was going over it? A. I was, yes, sir.

Q. Was anything said as to why this incident was not used? A. No. No. I thought this incident—(interrupted)

Q. Didn't Mr. Cummings say to you—(interrupted)

The Court: Mr. Lane, I don't think you better pay any more attention to it. I think it has been pretty well explained.

Mr. Lane: It bears on the whole case.

Q. Didn't Mr. Cummings say to you when you told him what had occurred there that you were mistaken with respect to Mr. Young and that it was some friend of his wife who was in that house and it was perfectly all right or words to that effect? A. No, sir.

Q. What did he say? A. I described Mr. Young to Mr. Cummings and he says that is the exact description of Harold Young; I then saw Harold Young again July 22nd, and when I saw him July 22nd he wore the identical clothes that he had worn on July 10 and it was the same man.

Q. Well, what did Mr. Cummings say to you when you told him of what you saw at this 10 Washington Street, about some friend of his wife living in that house? A. When I saw Mr. Cummings I said, "Do you know anybody who lives there?" And he at first said, "No; I can't think who lives there," and later on he said to me, "Oh: I know," and these are his exact words, "My wife

has some friends living there," and those are the very words he used to me; and I then asked him for the address of the friend and he told me it was number 10 Washington Street, Newark.

The Court: Washington Avenue.

Witness: I beg pardon. Washington Avenue.

Q. Now, let me get the date of this; what date was this? A. July 10, 1925.

Q. July what? A. Tenth.

Q. Now on July 22nd, 1925, where did you see them? A. Who have you reference to, Mr. Lane?

The Court: You said "See them" who do you mean?

Q. Young and Mrs. Cummings. A. The first time I saw Mr. Young on July 22nd was when he was looking through the bushes at Mrs. Cummings and Mr. Cummings while Mrs. Cummings was there with her child at the Library. That is when I saw him alone, first. Next, with Mrs. Cummings I saw him at the corner of Plane and Central Avenue, Newark. They were together at that time.

Q. Yes. A. Then they walked up Central Avenue together, Mrs. Cummings taking Mr. Young's arm, up Central Avenue to the florist that is about one or two doors from the corner; they went in and purchased some flowers and—(interrupted)

The Court: Do you want all this over again?

Mr. Lane: No, sir; I want to get down to 10 Washington Street.

Q. When you saw them at 10 Washington Street, was that at Mrs. Cummings house you saw them that night? A. Yes, sir; in Belleville.

Q. As I understand it they went into that house at 8:45. A. Yes, sir; around that time; yes, sir.

Q. What room did they go into? A. They went upstairs into the house. I saw them go into the front door of the house.

Q. That is all you saw? A. Yes, sir.

Q. Any lights lit? A. There were some lights lit upstairs, yes, sir.

Q. After they got there or before? A. After they got there.

Q. Were there any lights lit when they arrived at the house? A. I didn't take notice of that, no.

Q. Who was with you on that night? A. On July 22nd Mr. Cornelius Troast, my sister Fleurette, my sister Norma, I think Mr. Abraham Vandesluys was with us that night and another lady and myself.

Q. Who is the other lady? A. I just don't remember who the other young lady was that was with us that night. If I am not mistaken I think it was Miss Rosenstein, Emma Rosenstein. I am not positive though.

Q. How did she come to be there? A. Well, Miss Rosenstein has been in failing health for a long time and the doctor advised her to be in the fresh air continually and she was all but sleeping at my place continuously for the last three or four months—that is, during that time.

Q. She was one of your clients, wasn't she? A. Yes, sir; she is the wife of Jack Rosenstein of Paterson, New Jersey.

Q. And you had gotten evidence for her. A. We found her husband, yes.

Q. That case was tried about two weeks ago in Paterson, wasn't it? A. Well, there was a hearing, but I don't just know how it was tried because I wasn't on that case at all.

Q. Before Vice Chancellor Lewis. A. Yes, sir; before Vice Chancellor Lewis.

Q. You were to be a witness. A. No, sir; I wasn't on that case at all.

Q. Well, your sisters then. A. Norma, yes, sir; that is right.

Q. And the charge of adultery was withdrawn, wasn't it? A. I don't know anything about it—charge of adultery being withdrawn, no, sir.

Q. At any rate, this Mrs. Rosenstein—you were working on her case at that time. A. I don't know—no; we were not working on her case at that time. The last we worked on Miss Rosenstein's case, that is my sister Norma, and the other, was the day before Decoration Day.

Q. You were not working on Mr.—what is his name—Vandersluys—some such name as that—you weren't working on his case either, were you? A. At which time, July?

Q. July 22nd. A. I don't know whether we were just working on it at that time or not. I just can't fix the date on that. We may have been. We worked on his case twice, you know.

Q. There was quite a party of you there, weren't there? A. Yes, sir; I believe they were—there were at least five or six of us.

Q. And they went into this house together and how long did they stay there? A. They remained there, they didn't come out—which place do you mean?

Q. 10 Washington Street. How long did they stay while you were there? A. What do you

mean, 10 Washington Street?

Q. Mrs. Cummings' house. A. I thought you meant the other one.

The Court: Mrs. Cummings'.

Witness: I was there one hour and then I went home.

Q. And what did the others do? Did they go home? A. They went home with me, yes, sir; because I had to go home in the car.

Q. Well, did anybody suggest breaking in the house? A. No, sir. We didn't know whether they were alone or not.

Q. Did you make any attempt to find out? A. Well, it was impossible to find out, because we hadn't gone to the house before they both arrived there.

Q. How long have you been an investigator? A. Oh, it is about eight years, something like that; six, eight, nine years—something like that.

Q. And when did Mr. Cummings retain you? A. July 2nd, 1925.

Recess.

After Recess.

CONSTANCE KOPP,

Cross-examination by Mr. Lane:

Q. Mrs. Kopp, coming down to the 10th of January, 1926, when did you first see Mrs. Cummings on that date? A. Ten minutes to seven.

Q. Where? A. At 175 Washington Avenue.

Q. And who were with you? A. Abraham Vandersluys and Owen Cummings.

Q. Who else did you see in that house that night? A. Mr. Young, Mrs. Cummings and the baby.

Q. Did you see anyone else in the house that night? A. I did not. I saw no one.

Q. Did you when you went up on the—you went up on the stoop didn't you? A. Yes; on two occasions.

Q. When you went up on the stoop could you see through into the kitchen? A. No; I could not.

Q. Could you see whether there was a light in the kitchen? A. I couldn't see that, no, sir, not from my position on the stoop.

Q. Well, at any time? A. No; I did not.

Q. And you stayed there until when? A. Eleven o'clock, around eleven o'clock.

Q. And during all of that period of time were Young and Olive and Mrs. Cummings in the front room? A. Yes, sir.

Q. From the time Mrs. Cummings entered until the time she left? A. That is right.

Q. She was in the front room? A. Yes.

Q. You saw no one else in that front room? A. No, sir.

Q. Did you hear a dog bark that night? A. No, sir, I did not; never did.

Q. Did you see a dog there around that house? A. No, sir.

Q. Have you ever seen a fox terrier dog in that house? A. No, sir.

Q. You said, I believe, that they were playing checkers, or what appeared to you to be checkers, on the floor? A. I said they were playing a game on the floor; I didn't know exactly what game they were playing.

Q. And did you see that from the stoop or from down below? A. From the stoop.

Q. Did you see the Christmas tree in that house that night? A. I did, I did.

Q. Did you see the Christmas tree fall? A. No, sir; the Christmas tree had not fallen at eleven o'clock that night. Well, I saw them take the decorations off the Christmas tree.

Q. Oh, who took the decorations off the Christmas tree? A. Mrs. Cummings and Mr. Young was packing it away in a box, sitting on a small chair or stool.

Q. Did you see Mildred there at that time? A. No, sir.

The Court: Who is Mildred?

Mr. Lane: Mildred Young is the sister.

The Court: Yes.

Q. When you left at eleven o'clock Mrs. Cummings was still there? A. No, sir; Mrs. Cummings and Mr. Young left the house between eleven and eleven thirty and he took her to her home and that is when I left.

Q. (By the Court.) Where was the baby? A. With the baby.

Q. Now, Mrs. Kopp, just for the purpose of attempting to refresh your recollection—it is before the Court some time ago—I am going to show you a diary, which I say will be proven to have been kept by Mildred Young, and ask you to read for the date of January 11th what is on that diary, and then ask you whether you are certain that you did not see Mildred there, that the Christmas tree did not fall and that Mrs. Cummings did not leave at ten thirty and that you did not see a light in the kitchen and them all having supper in the kitchen. A. No, sir.

Q. Nothing like that occurred? A. No, sir; absolutely not.

Q. And you cannot be mistaken with respect to that at all? A. The Christmas tree did not fall over at all, no, sir, and I did not see Mildred Young.

Mr. Lane: I think that is all.

The Court: That is all. Call your next.

Redirect-examination by Mr. Child:

Q. Was the child, Olive, in the room all of the time with those two that night? A. No, sir.

Q. (By the Court.) While you were looking. A. No, sir.

Q. How much of the time was she there? A. She would be in the room, say, twenty minutes, and then she would be—disappear out of view again and then she would be gone half an hour and then she would come back into the room again and later, after ten o'clock, I did not see the baby at all.

By the Court:

Q. Not after that? A. Not after ten o'clock, no, sir.

Q. I thought you said you saw her go home with her mother. A. I did, yes.

Q. You saw her after? A. I beg pardon. I mean I didn't see her in the room after ten o'clock, that is, with the two together.

EMMA ROSENSTEIN, sworn for the petitioner.

Direct-examination by Mr. Child:

Q. You live where, Mrs. Rosenstein? A. 22 Benson Street, Paterson.

Q. Are you acquainted with the Kopp sisters? A. Yes.

Q. Do you know Mrs. Cummings, the defendant in this case, by sight? A. Yes, sir.

Q. And are you acquainted by sight with Mr. Young? A. Yes, sir.

Q. Did you, in company with the Kopp sisters or alone, ever follow Mrs. Cummings or Mr. Young? A. Yes, sir.

Q. What was the first time that you can remember following them? A. On August the 29th, 1925.

Q. Where did you see them that night or that time? A. Why, I was in the car with Miss Kopp and we both had been to 114 Washington Avenue, Belleville, and about two o'clock a gentleman came out and followed down to a barber shop about two blocks down, I believe it was, on Washington Avenue and I waited about two hours for him to come out. We followed him back to 114 Washington Avenue again and he came out, I should judge, about seven o'clock, when he went down to the—

Q. Who was the gentleman? A. Mr. Young.

Q. Is he in court today? A. Yes, sir.

Q. Did you see him with Mrs. Cummings that afternoon or evening? A. No; I didn't see Mrs. Cummings until about, well, it was about seven o'clock, I should judge, when he went down in the overhang and got a car or bus, I forget just which it was, and went to market and Broad Streets.

Q. Newark? A. Newark. He got off the conveyance and the next time I saw him was at Broad and Market Street, when he met Mrs. Cummings on the corner of Broad and Market Street.

Q. What time of night was that? A. Why, I

should judge, around eight o'clock, half past, quarter to eight, something like that.

Q. Where did they go, if anywhere? A. They went in to the drug store and came out and went down to the Newark Theater, went into the Newark Theater.

Q. Did you go into the theater? A. Not at that time, no, sir.

Q. Did you go in afterwards? A. Why, parked the car and Miss Fleurette Kopp went in the Newark Theater and sat alongside of Mrs. Cummings and Mr. Young; I sat alongside of Mrs. Young and Miss Fleurette Kopp on my left.

Q. And what, if anything, did you observe as to their conduct while in the theater? A. Why they seemed to be very affectionate to one another.

Q. Well, what did they do? A. Well, they held hands and they patted one another on the hand and on one occasion Mr. Young pecked her with his lips on the back of her neck here, he kissed her on the back of the neck—it was more of a peck, it was done so quickly—and they had their faces almost together continually. He put his hand in his left hand side pocket of his vest and fed her Lifesavers, put them in her mouth for her. There was a movie going on, something about an animal brought back from a circus, or something, and Mrs. Cummings was telling something to Mr. Young and they were having a good laugh about it.

Q. How long did they remain in the theater? A. Why, Miss—I come upstairs—I got out and went upstairs and when I came down Mrs. Cummings and Mr. Young were going out of the theater.

Q. What time was that? A. I don't know just what time that was.

Q. Where did they go from the theater? A. They walked down to a chop suey restaurant just below Broad and Market Street on Broad, Chinese Restaurant on Broad.

Q. Go ahead. A. They went—from there they came out and walked up Mulberry Street to—or, up Broad Street as far as Mulberry Street, going into different doorways, in the corridors of different doorways of stores, when Mr. Young had his arm around Mrs. Young—

Q. (By the Court.) What streets? A. Up Market Street, through Mulberry Street.

Q. (By the Court.) And what? A. And they turned up Mulberry Street, to the Mulberry Arcade. Miss Fleurette Kopp and myself were following on the opposite side of the street. We went to Mulberry Street and turned down and at the Mulberry Arcade—or Green Street, this man walked up alongside of Mr. Young, that is all I could see, but I noticed this man walked up close to him and Miss Kopp and I at that time were opposite or near a fire house and a fireman asked us what we two girls were doing in that locality that hour of the night. With that they turned up Green Street and Miss Kopp went into a stationery store of some kind there on the corner, and with that Miss Fleurette Kopp and I walked up to her and the three of us walked up Green Street as far as the City Hall where Mrs. Cummings and Mr. Young got on a bus, and Mrs.—and Miss Norma Kopp, Fleurette Kopp and myself were in a taxi.

Q. (By the Court.) Then you walked south or north through Chinatown? A. What is that?

Well, I don't know Newark very well. We went from—

Q. (By the Court.) City Hall. Well, we walked down this street and the City Hall building stood on the left corner. We went as far as Washington Avenue and William Street where they—when a trolley stopped and Mrs. Cummings and Mr. Young started to get out and Miss Kopp stopped the taxi and the three of us went up to William Street facing, between—I know it was the second house on William Street, the first house facing William, and—or—Washington Street.

Q. Well, what did you see? A. Why, I was standing up—these two houses are close together—just above a little shed, and I stood up near one of those houses and Mrs. Young—or, Mrs. Cummings and Mr. Young walked up to the stoop and back again; then they went to the left of the house. I thought it was shrubbery that was there on the left of the house; it looked tall enough to be shrubbery.

Q. Well. A. And I couldn't see them for, maybe, fifteen minutes, and then, when they came back, Mr. Young embraced her and kissed her good night at the gate and came out; he was fixing his belt; I should imagine it was his belt.

Q. (By the Court.) What? A. His belt on his trousers. And he lit a cigarette there and he looked right across the street at us, but he went right on.

Q. What time of night was that? A. That must have been about one o'clock, two o'clock.

Q. (By the Court.) On what day and date? A. Of August 29th.

Q. When did you next follow them? A. The next time I saw them was September the 12th.

Q. Where? A. At 114 Washington Avenue.

Q. What time? A. Why, it must have been around six o'clock in the evening or a little after.

Q. What did you see that night? A. I saw Mrs. Young—and Mrs. Cummings and Mr. Young come out and get on a trolley and they went down to the City of Newark to the Tubes, I believe it is. Tubes, there, and went in, bought tickets and got on a train and transferred and got on another train and went to Coney Island.

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

Q. What did you see on the way over and at Coney Island? A. I was sitting alongside of Mrs. Young, Mrs. Young was touching me and I sat the way I am now. Mrs. Young sat facing her and then Mrs. Cummings, and then Mr. Young. I don't know what all their conversation was, but they were talking about the little girl going to school, something about the little girl going to school, and Mrs. Cummings asked Mrs. Young if she would fix a room up in the attic for her and she told her no, that Harold would not be satisfied to go up in the attic.

Q. Well, what did you observe about their conduct, if anything? A. Why, they were petting one another's hands and Mr. Young told her not to worry, that everything would come out all right.

Q. What did you observe, if anything, at Coney Island? What did they do there? A. I got off before they made the last stop at Coney Island, Miss Fleurette Kopp and I got off before they made the last stop.

Q. Did you notice anything in regard to their conduct on the way down in the train to Coney Island? A. Only that they seemed very affectionate, that is all, patting one another.

Q. When did you next follow them? A. The next time I saw them was September the 19th.

Q. And where did you see them then? A. Why, we followed Mr. Young from 114 Washington Avenue and he went to a Catholic Church and he stood there waiting for Mrs. Cummings just before dusk in the evening.

Q. What? A. He was waiting at this Catholic Church on William Street for Mrs. Cummings.

Q. Yes. Well, did she meet him there? A. And she met him there, yes, her and the little girl.

Q. What time? A. Around eight o'clock, I should judge.

Q. Where did they go? A. They went from there—they walked down the first street, I think it was Bridge Street, down the hill. In the meantime they stood on the corner quite a while, and then the little girl went down the hill and they walked down behind, and Mr. Young had his arm around Mrs. Cummings' waist and it took them a long time to get down the hill, I should judge, fifteen or twenty minutes.

Q. And then where did they go? A. They went to the Mt. Prospect Theater.

Q. And did you go in the theater? A. No, sir. Mr. Young went in and bought a box of candy. He came out and Mrs. Cummings and the little girl and him went into the theater.

Q. What time did they go into the theater? A. Why, I should judge, it was around half past eight, quarter to nine.

Q. Did you see them come out of the theater? A. Yes.

Q. What time did they come out? A. It must have been around eleven o'clock.

Q. I understood you to say that you did not go into the theater? A. No.

Q. Where did they go after? A. They came out of the theater; they walked down different streets until they came to a trolley line and got a car and went on home.

Q. Did you follow them to their home? A. Yes, sir.

Q. Whose home did they go to first? A. They went to 10 Washington Street and Mr. Young let the little girl into the doorway and came back and stood on the side with Mrs. Cummings in the shadow of that shrub, or whatever it was, there in the side.

Q. And how long did they stand there? A. Why, I believe it was about one o'clock when they left. We followed Mr. Young home.

Q. When did you next follow them? A. The next time we followed Mr. Young was October—I think it was on Saturday, I don't know whether it was October 10th or not, but the Fashion Show was down in Newark.

Q. Where did you see them meet that night? A. Mrs. Cummings met Mr. Cummings at the Library and she came over. After she left him, she came over to the safety isle to get a car as though going up to Washington Street, but when he got away she went down and walked down on the right hand side of Washington Avenue, I imagine it is, towards Central Avenue.

Q. Now, just a minute. Where did you see Young meet Mrs. Cummings on the night of October 10th? A. Broad and Washington—Broad and Central Avenue.

Q. All right. And from there where did they go?

A. They got on the car there. They met Mrs. Young, the mother.

Q. Which way was the car going? A. They went up Central Avenue.

Q. And where did they get off the car? A. I don't know the street, but they went to the Armory, I believe it was, where the Fashion Show was.

Q. Did you follow them? A. I was in the car —no, sir, I didn't get out. I saw them go into the Armory.

Q. You saw them go into the Armory? A. Yes, sir.

Q. Did you see them come out of the Armory? A. No, sir.

Q. Did you notice anything unusual about their conduct toward each other then? A. No, sir.

Q. When did you next follow them? A. The next time I saw them was October the 26th.

Q. Where? A. Why, it was about quarter after seven and I came down with Miss Kopp past 114 Washington Street and Mr. Young was in the living room, I judge getting dressed or at least he was putting on—as if bending over tying his shoes, and Miss Kopp said, "Oh, Mr. Young is there. We will stay here." Miss Kopp saw Mr. Young in the window and she said, "We will stay here." That was 114 Washington Avenue—that was 175 Washington Avenue. And then about half past seven a young girl went out, I don't know who she was, and about eight o'clock or so Mrs. Cummings came. She came up on a trolley car and got off and Mr. Young came to the door and opened the door. The little girl ran up and greeted them and they went in.

Q. Well, did they come out? A. No, sir; not till half past ten.

Q. Did they come out at half past ten? A. Yes, they came out and Mr. Young took Mrs. Cummings home, kissed her good night at the gate.

Q. The gate of what? A. 10 Washington Street.

Q. When did you next follow them? A. That is the only time, I believe.

Q. That is the last time? A. Yes, sir.

Cross-examination by Mr. Lane:

Q. Mrs. Rosenstein, the Kopp sisters were working for you? A. Yes, sir.

Q. Why did you go around like this? A. When did I go around?

Q. Why did you? A. Why, I was ill at the time and the doctor advised me getting the fresh air. Miss Kopp offered to take me around for fresh air in her car. That is why I was with her or in the country.

Q. You knew the business which you were going on. A. No, sir; as many times they took me to a show and went—(interrupted).

Q. You didn't know when you started out on these various expeditions you have testified about that you were going to follow Mrs. Cummings? A. No, sir; they never told me their business.

Q. It just happened that you were there? A. Yes, sir.

Q. You have been a witness, or, you were a witness in the Vandersluys case, weren't you? A. Yes, sir.

Q. When was that? A. When that case came up?

Q. Yes. A. Some time in February, I don't know exactly.

Q. This year? A. Yes, sir.

Q. And you testified to about—the same events as you now testify to about Mrs. Cummings, you testified to about Mrs. Vandersluys, didn't you? A. Just what do you mean?

Q. Following her and finding her. A. Yes.

Q. Yes. And you were also a witness in your own case, weren't you? A. Yes, sir.

Q. And the Kopp sisters were. A. No, sir.

Q. Well, they at least were prepared to be. A. Yes, sir.

Q. Are there any other divorce cases that you have testified to? A. No, sir.

Q. Are there any other clients of—or, have you followed anybody else— A. No, sir.

Q. Wait a minute. —for the Kopp sisters or with the Kopp sisters? A. No, sir.

Q. Did you ever, when you were around this place, 175 Washington Avenue, see any dog? A. No, sir.

Q. Did you ever hear a little dog bark— A. No, sir.

Q. —when you were around there at all? A. No, sir.

Q. On September 12, when you followed them to Coney Island, was there anybody with them? A. Mrs. Young.

Q. Mrs. Young was with them? A. Yes, sir.

Q. With them all the time? A. Yes, sir; as long as I was with them.

Q. What? A. As long as I was there.

Q. As long as you were there, as long as you saw them? A. Yes, sir.

Q. Mrs. Young left the house with them? A. Yes.

Q. And went back to the house with them that night? A. As far as I know.

Q. Where did you drop them? A. It was half past twelve when I left there. They had not got home yet.

Q. Well, where did you drop them? A. In Coney Island.

Q. Now, on October 26th who did you see at that house that night, 175 Washington Avenue? A. Harold Young was the only one I saw in the house and a young lady that came out and Mrs. Cummings that went in and the mother came back at half past ten.

Q. Didn't you say—the young lady that came out, what time did she come out? A. About half past seven. You see, I was not there all the time that evening.

Q. Do you know Mildred Young? A. No, sir.

Q. Did the young lady who came out of the house at half past seven have a package with her? A. That I didn't notice.

Q. Can you describe her as to whether she was light or dark? A. No, sir.

Q. Can you tell me about how old she appeared to be? A. No, sir.

Q. You are sure it was half past ten, as late as half past ten, at least, that Mrs. Cummings went home? A. Yes, sir.

Q. I show you what will be sworn to be a diary kept by Miss Mildred Young for 1925 and ask you to look at the page under date of October the 26th, where she says, "Mother was out; so was Dad."

The Court: Wait, wait, wait. Strike it out.

Q. And ask you to—

The Court: Strike it from the record, that reading.

Q. And ask you to look over that and the last three lines and tell me whether your recollection is now distinct that Mrs. Cummings left at ten thirty and not at nine thirty? A. No, sir; she did not leave at 9:30.

Q. No question—there can't be any doubt about that? A. No, sir.

Q. Did you make a memorandum as to the time? A. Why, no, sir, but it was nine or a little after that Miss Fleurette Kopp and myself went to a telephone booth in a candy store and called the Young's home and Mr. Harold Young answered and he said that his mother was not home and would not be home until real late.

Q. There is no doubt, it could not have been as early as nine thirty? A. No, sir.

ADA SMALL, sworn for the petitioner.

Direct-examination by Mr. Child:

Q. Mr. Small, where do you live? A. 49 Willington Avenue, Clifton.

Q. New Jersey? A. Yes.

Q. And are you acquainted with the Kopp sisters? A. I am.

Q. Do you know by sight Mrs. Cummings, the defendant in this case? A. I do.

Q. And do you know Mr. Young? A. Yes.

Q. Do you see him here in Court? A. Yes, sir.

Q. Did you at any time see Mr. and Mrs.—Mrs. Cummings and Mr. Young together? A. I did.

Q. Will you kindly tell us when you first saw them together? A. Fourth of July, 1925.

Q. Where? A. On Washington Avenue.

Q. Where? A. At Mr. Young's house.

Q. No, no. At what place, Belleville? A. Yes; right up the line here.

Q. What time? A. Oh, about eight o'clock, I guess.

The Court: Go on.

A. (Continuing.) And he greeted her at the top of the terrace and embraced her. First he met the child.

Q. (By the Court): What? A. First he met the child, the little girl and then he kissed the child and then he greeted Mrs. Cummings also with a kiss and the two of them went, I believe, on the porch.

Q. (By the Court.) Eh? A. They sat on the porch afterwards. That is all I seen.

Q. How long did they stay there on the porch? A. I don't know.

Q. What time did you see Mr. Young come there? A. Why, she went to Mr. Young's house.

Q. Yes, I mean Mrs. Young's. A. About eight o'clock or thereabouts. I am not positive as to the time.

Q. How long did you stay there? A. Oh, I don't know, about a half hour, I guess, or an hour.

Q. Were they on the porch when you left? A. I think they were.

Q. When did you next see them?

By the Court:

Q. Where were you? A. Down on Washington Avenue.

Q. Well, where? A. In an automobile.

Q. With the Kopp sisters? A. I was. That is the only time I ever saw them.

Cross-examination by Mr. Lane:

Q. How did you happen to be there on that day?

The Court: With the Kopp sisters.

A. Well, Miss Kopp—

Mr. Lane: Well—

The Court: I thought maybe you didn't hear her.

Witness: And Miss Kopp asked my mother and I would we like to go for a ride, as long as it was a holiday and didn't go out, so we agreed that we were going on a drive, that we were going down to Newark, said she would stay there for a few minutes, she wanted to see something, so we went down as far as the Library and we seen Mr. Cummings and Mrs. Cummings and the child and the child wouldn't pay any attention to him, at least, he stood there twenty minutes anyway and then I don't know where he went, Mr. Cummings. Anyway, we followed Mrs. Cummings up to Mr. Young's.

Q. How long have you been acquainted with the Kopps? A. Oh, about five years.

Q. How did you get acquainted with them? A. Social.

Q. What? A. Party, met them at a party.

Q. How long have you lived in Brooklyn? A. I never lived in Brooklyn.

Q. Clifton. I beg your pardon. A. About thirteen or fourteen years.

Q. And have they ever done any detective work for you? A. No, sir.

CORNELIUS TROAST, sworn for the petitioner.

Direct-examination by Mr. Child:

Q. You live where? A. 49 Wellington Avenue, Clifton, New Jersey.

Q. What is your occupation? A. Chauffeur.

Q. By whom are you employed at the present time? A. Bergen County Bus Company.

Q. Were you ever employed by the Kopp sisters as a chauffeur? A. Yes, sir.

Q. Were you employed in the year 1925 by them? A. Yes, sir.

Q. Were you acquainted with Mrs. Cummings, or do you know Mrs. Cummings by sight and Mr. Young by sight? A. Yes, sir.

Q. Did you drive a car and follow Mr. Young and Mrs. Cummings at any time during the year 1925? A. Yes, sir; I did.

Q. How many times did you follow them? A. About twenty times and more.

Q. And have you any recollection as to the dates when you followed them? A. No, sir; not the exact date. It was during the summer of 1925. I have some dates in my diary, but I don't remember them without looking in the diary.

Q. Have you your diary with you? A. Yes, sir.

Q. Will you refer to your diary and tell us, if you can, when you first followed Mrs. Cummings

and Mr. Young? A. I don't know whether I can tell you the first time. I just have a few of the times that I followed them. I have September—Saturday, August the 29th and August the 26th and August the 28th and the 29th and August the 2nd and September the 9th. Those are some of them. They are the only ones that I jotted down in here.

Q. Have you any recollection of what happened on August the 2nd, where you saw them? A. August the 2nd; no, sir, I don't remember the date.

Q. Have you any independent recollection of what happened on any of these dates? I mean, can you fix the date in your mind? A. Yes, Saturday August the 29th, I followed Mr. Young from his home to Market and Broad Street on a North Newark bus and he went to—he met Mrs. Cummings at the drug store on the corner of Market and Broad and from there they went to the Newark theater on Market Street and from there I—after they had gone into the theater I drove over there to the fire engine house where Mr. Cummings works, it is up in—just off of Belleville, I don't know the street, and I brought Mr. Cummings down to the North Newark Theater and Miss Norma Kopp and Fleurette Kopp and Emma Rosenstein were in the theater at that time. Mr. Cummings went in later on. They remained in there until a late hour, I think it was about eleven o'clock, and from there they went to the Eagle Restaurant on Market Street and they remained up in there about half an hour, I think about half an hour or so, and they came out of there and then I lost them and the Kopp sisters followed them and I later picked them up in Belleville.

Q. You didn't see Mr. Young and Mrs. Cum-

mings that night again after they left the Eagle? A. No, sir.

Q. Have you any recollection of what happened on the 26th of August, referring to your book?

Mr. Lane: Was that last date the 28th or 29th?

Mr. Child: 29th, he said.

A. 26th of August, did you say?

Q. Yes. A. Yes. On the 26th of August Mr. Young met Mrs. Cummings at the gas station.

Q. Where? A. Right on Washington Avenue about a block from each of their homes and they took a walk with the child through up one of those streets, they walked up about half an hour and then they came on back.

Q. Did you observe anything unusual about their conduct at all during that walk? A. Why, their conduct was always about the same. Mr. Young always played with the child and kissed and loved the child and helped Mrs. Cummings over the crossings and all that sort of stuff. I always used to pay particular attention to that one thing, because I always noticed that the child would kick at Mr. Cummings when he would—(interrupted).

Q. Never mind that. Did you ever see any sign of affection between Mr. Young and Mrs. Cummings? A. Yes, I did, at the soda store on Washington Avenue in Belleville.

Q. When was that? A. Why, Mrs. Cummings' mother went into the ice cream store and Mr. Young and Mrs. Cummings remained outside in the entrance to a store there and it was dark at the time and they kissed and embraced there in the doorway.

Q. When was that, do you recall? A. The exact date I don't remember now.

Q. Do you remember the month? A. No. It was one of the summer months of 1925 when I was driving for Miss Kopp. I don't remember the date. Then there was another time when Mrs. Cummings went over to Mr. Young's home and he kissed her right on the front porch in open arms he grabbed her.

Q. What time of night was that, or what time of day? A. That was about eight o'clock at night, eight or nine o'clock.

Q. Do you recall any other instance? A. Just where Mrs. Cummings would stroke his hair, when they were on the way to the Belleville Theater one night, she was running her hand over his face and stroking his hair back.

Q. What were they doing then, walking or riding? A. They were riding.

Q. Anything else? A. No; that is all.

Cross-examination by Mr. Lane:

Q. How long were you employed by the Kopp sisters? A. Kopp sisters, two years, about.

Q. And you lived in the same house with Mrs. Small? A. I did. She is my niece.

Q. You have acted as a witness in several of these cases, several cases in which the Kopp sisters have been investigators? A. Not several. About two or three or four, I guess; four at the most, I guess.

The Court: What do you call "several"?

Witness: Sir?

The Court: That is "several".

Q. You had the Kopp sisters follow your wife, didn't you? A. No, sir.

Q. And is there a divorce suit pending between your wife and yourself? A. No, sir; not now; it is all over.

Q. Not now; it is all over. Was there one pending? A. Yes, there was.

Q. When? A. In the past two years, three years.

Q. The evidence obtained by the Kopp sisters? A. No, sir.

Q. Did they figure into it in any way? A. Yes; as to my residence, that is all, for the two years.

Q. You were employed by them at the time? A. Yes, sir.

Mr. Lane: I think that is all.

FLEURETTE KOPP, sworn for the Petitioner.

Direct-examination by Mr. Child:

Q. You live where? A. 169 Buena Vista Avenue, Hawthorne.

Q. You are an investigator? A. Not necessarily, no.

Q. Well, you do following, don't you? A. Occasionally, yes.

Q. That is what I mean. Are you acquainted with Mrs. Cummings and Mr. Young? Answer please. A. Yes, sir.

Q. When did you first become acquainted with them, or see them? A. The first time was July the 4th, 1925.

Q. And where did you see them? A. At 175 Washington Avenue.

Q. Where? Belleville? A. Belleville.

Q. And what time of the day or night was it? A. Between seven thirty and eight.

Q. What did you see there that night? A. I beg pardon. I saw them at the Library first, at Newark, and thence at the Library—at the house.

Q. What did you see on the night of July 4th? A. I believe it was visitation night for Mr. Cummings' child and we followed them back from the Library to 175 Washington Avenue and he—Mr. Cummings—Mr. Young greeted Mrs. Cummings at the head of the stairway. It was a deep stairs or high terrace and the child was a few feet ahead of the mother and he greeted the child with a kiss and embrace and also Mr. Cummings, and they went up onto the porch and they were going to have a celebration of some kind there that—fire works, they were making preparations for a little celebration with some fireworks, and we remained around there for, oh, I should say, pretty nearly an hour.

Q. Where were they during that time? A. In and out of the house and sitting on the porch together side by side. The child was down on the terrace.

Q. What time did you leave? A. Oh, I guess it was a little after nine.

Q. When did you next see them? A. The 10th—if you may let me look at a book I have here—the 10th, I think. I am not just exactly certain. The 10th of July.

Q. All right. Where did you see them that night? A. That night she was at the Library again with the child and she came up on the trolley, the Broad Street trolley. After leaving Mr. Cummings, she came to a house at 11 Washington

Avenue, Newark, I think it is, or North Newark, is it? Near the cemetary.

Q. Yes. A. Behind an automobile on the same side of the street as this house stood Mr. Young. He met her there and took the child by the hand and they walked into the alley between Number 13 and 15, or 11 and 13, I don't know just which house is divided, and they went upstairs on the second floor of that house. It was an outside stairway such as—like a balcony.

Q. What time did they go in there? A. Well, I should think it was after eight o'clock.

Q. And what time did they come out? A. I think she came out herself alone that night and she went home.

Q. When did you next see them? A. The 16th, I think it was.

Q. And where? A. At the Library, I believe it was a visitation night again and she came home and a thunder shower—she went to that house again, but she hurried up to get home ahead of the shower; she boarded a trolley and went home.

Q. Did you see Mr. Young that night? A. No, I did not.

Q. When did you next see Mr. Young and Mrs. Cummings together? A. 22nd.

Q. And where? A. Let me refresh my mind. I have so many dates in my mind it is quite hard. I am not quite as gifted as my sister.

Q. Have you a diary? A. I haven't a diary, but a notation book of dates and different little minutes I get.

Q. Memorandum made at the time of the occurrence? A. Yes.

Q. Have you such a memorandum in your hand? A. I have it here, yes.

Q. Will you refer to it please? A. All right. It would help me along a little bit, at least to shorten the time. Yes; it was on a Wednesday, July the 22nd, she met her husband that night and after leaving him she met Mr. Young again.

Q. Where? A. She left him for a few moments and she went down through to Huyler's.

Q. No, no. Where did she meet Young? A. That is what I am telling you. She left her husband, went to Huyler's and then she met Mr. Young.

Q. Well, where is Huyler's? A. Just off the corner of Central Avenue and Broad.

Q. In Newark? A. It has two entries. You can go in on Broad Street and you can go out on Central. And she came out on Central Avenue side and she walked as far as Plane Street and she met Mr. Young there. I then walked away and I went back to where my automobile was standing. I wanted to hide myself; I had been on view for a few moments, and I hid myself, and, in the meantime, they had walked back to the corner and he was in the florist's shop buying some flowers. Sister, she remained on the job, on that part of it. Then they boarded the car and they got out at that overhead bridge down here at North Newark—Delaware Lackawanna is the railroad there? —and they walked as far as 10 Washington Street.

Q. (By the Court.) That is Belleville? A. Yes, that is Mrs. Cummings' home. He walked along there with the child on one hand and his arm around Mrs. Cummings. They got to 10 Washington Street there. It was either nine or a little after nine, around that time. And we remained there in the vicinity right near the house for about forty five minutes to an hour.

Q. And where did they go when they got to 10 Washington Street? A. They went in the house.

Q. And did you see Mr. Young after that again that night? A. No; I had to go off. We had something that we had to leave it for.

Q. All right. When did you next follow them? A. Well, I have here—it says, July the 26th. Let me see. This is where they were in Riviera Park.

Q. Who was in the party that night? A. There was Mr. Young and Mrs. Cummings and, I believe, his mother and Mildred, his sister, and little Olive Cummings.

Q. What time did you see them in the park? A. Around—I didn't see them in the park. I saw them as they were coming out, around five thirty or a quarter to six.

Q. Where did they go? A. They went out to 175 Washington Avenue.

Q. Well, what happened? Go on. A. And Mr. Young, he walked home with—to 10 Washington Street with Mrs. Cummings. His mother and sister went into the—their own home. Then Mrs. Cummings, she came back, after he had returned home, she came back again to 175 Washington Street, and that was around eight o'clock or a little after. At nine fifteen—at nine fifteen Mrs. Young, the elderly lady, she came out with Olive and Mildred. They were all out on the porch the most part of this time. You see, these things are written sometimes on the running board or on the wheel or any old place.

Q. Go on. A. Afterward the mother and sister, they went—

The Court: Do not read.

Witness: No. I am just trying to pick

up from where I left off. They went in after the mother and sister went off. The mother and sister went off for a walk a little while with the little girl and Mr. Young and Mrs. Cummings were in the house. They went indoors and closed the door. They had been sitting on the porch, the family together, and then the two of them just went in. They were in there, I should say, oh, say, forty five minutes. In the meantime the folks returned and Mildred, she rapped at the door and Mr. Cummings—or Mr. Harold Young, he opened the door. They went in. Immediately after that they had come out again and they remained on the porch and then they all came out. In the meantime, while they had been in there, when the folks were away, the lights were not lit in the house. When Mildred tapped on the door they lit the hall light and then the light stayed on all the rest of the evening that we were there.

Q. What time did you leave there, about? A. Oh, I should judge, we left there about between ten thirty and eleven.

Q. Did you see Mr. Young come out? A. Yes; he took her home that night.

Q. Well— A. First they went to a delicatessen store and he stayed with Mrs. Cummings outside while the sister and mother did some purchasing in the delicatessen store and there is a little fish shore, or fruit and vegetables and fish and things like that, was right alongside of the delicatessen store there and he was in the doorway there and

while there I saw that he kissed her.

Q. You saw him kiss her? A. Yes. I was just across the street.

Q. All right. Now, where did Mr. Young and Mrs. Cummings go from the delicatessen store? A. They went to a soda store, Kerrigan's.

Q. And then where did they go? A. I believe they stood talking for a while together and he took Mrs. Cummings home.

Q. Did you observe any— A. I think that is what it was. I might see it here—

Q. Did you— A. —somewhere. Yes; he took her home.

Q. Did you observe any evidence of affection on the way home or at the home? A. Yes. It was the customary thing for them to walk hand in hand, or for him to have his arm around her waist line.

Q. Did he do it that night? A. Yes.

Q. When did you next follow them? A. That was the 26th, wasn't it? A. Yes, 26th. Well, I guess there was quite a while lapsed there that we were not, because I guess this would be about—the next date I have would be about August 28th.

Q. Well, what happened on August 28th? A. A car was standing in front of the house at 175 Washington Avenue, a sedan car, and Mrs. Young came out and drove off. The gentleman that was driving and she rode off and shortly after she went away Mrs. Cummings came to the house and he greeted her at the stairs there.

Q. Who? A. I should say, Mr. Young.

Q. What do you mean by "greeted" her? A. Well, such as pat her on the back and take her arm or either put his arm around her waist line, or

something like that; and he would walk up to the stairs, help her up the stairs.

Q. What time did he get there that night? A. She got.

Q. Or, she got there? A. She got there around six ten, six twenty, six thirty, somewheres around that time.

Q. And what did you next see of them? A. I believe the sister went out that night, yes, the sister went out that night.

Q. What time? A She went out shortly—almost around the same time, possibly five or ten minutes after Mrs. Cummings got there.

Q. What did you do? A. I remained around there and watched, and the other—they were there all that while alone that night.

Q. How do you know? A. I watched the house. I knew that there was no one there. Mrs. Young was gone and Mildred was gone and then Mrs. Young, she returned about nine thirty and—

Q. Yes. A. And he then took her home, about three quarters of an hour after that he took her to the gate at her home and kissed her good night.

Q. When did you next follow them? A. Saturday, because the 29th to the 30th, that is, during the night, taking it over to the 30th—

Q. Yes. A. That afternoon was—being Saturday afternoon he went to the barbershop in Belleville there, just about two blocks below his home, and he was in there quite a while and returned to his home, I should say, maybe, around four o'clock. Around six o'clock he came out all dressed up and he walked down as far as the overhead bridge at North Newark and boarded a trolley there. We were there in the automobile right behind the trol-

ley and he got out at Broad and Market. There was a little break in it for us to follow there, because you cannot follow right around the trolley. The traffic zone is rather indefinite, therefore safe for us to get out. I remained for a few moments until he went around the block. I saw which direction he was heading and we came down Market Street—had gone around the block and I saw him just as he met Mrs. Cummings by a drug store on the corner, a few feet down from the corner. They went into the drug store. My sister was after them. I saw my sister come out of the drug store and they also. We waited a few moments. They walked down toward the theater, the Newark Theater. In the meantime, I jumped out with Mrs. Rosenstein. My sister, Norma, had already gone into the theater. After that I waited a few moments to see whether my sister would come out or not, which she did not. Knowing that, that she was going to remain in there, I also went in. I instructed—before going in I instructed Mr. Troast to get Mr. Cummings. After a while, being in the show, we had placed ourselves just alongside of Mrs. Cummings and Mr. Young, they were about the fourth row of seats from the front and about the fifth or sixth seat in; we sat in the same row, directly alongside of Mr. Young. In the meantime, I noticed that my sister had taken a closer seat alongside of—in back of them and Mr. Cummings was placed by her. During this time I took particular notice to see just what they would do in the show. It was a movie house; it was very dark. There was an elderly couple sitting just behind me who passed a remark—

Q. Never mind about the remark. A. I am not going to say it.

Q. All right. A. I glanced around and looked at Mr. Young and I just saw him as he kissed Mrs. Cummings on the neck. He was then unwrapping a roll of Lifesaver candy, doing it with one hand; his other hand was around her back. They were very much endeared to one another. They paid very little attention to the picture until one part in the picture where there was a scaling of dishes. I believe there was a tame lion or a tame gorilla or something like that in the picture and this monkey was throwing dishes and they had a wonderful laugh between themselves about scaling dishes. Some remark was passed—something about him, I couldn't get all of it, but that was the remark. Then by that time there was some vaudeville acts came on. They were a little more careful as to their actions then, owing to the fact that the building was very light then. She was then about ready to come out. Mrs. Rosenstein, knowing that they were about ready to come out, we both joined ourselves and went right out. We stood in the fore part of the theater, waiting for them to come out. I didn't see my sister at that time. I then saw her about ten minutes later. She had hidden herself in a part of the theater outside. They walked from there, Market Street, up Market Street, toward the Eagle Restaurant, near Proctor's, it is somewheres, or near Child's Restaurant. It is a chop suey place. They were in there, I should say, about forty minutes, maybe not that much, came out and they walked back. They were looking at gents' furnishings and looked in different stores and stopped for a while and then they went back over Broad Street down the lower part—or, this part of Market Street, and there were two or three stores there, such as gents'

furnishings, and the Army & Navy store there was in bankruptcy at that time, or something, had signs out, and the place was covered with these advertisements and it is sort of a horse shoe entrance, and they went in there and they were in the deepest, furthest end of that entrance there and I went the furthest I could, and I saw they were in one another's arms in that entrance, they were kissing one another in there. They came out from there, they went around the corner south on Mulberry. I believe they walked down about, it must be, two or maybe three blocks to what they call the Arcade, it is right in Chinatown, and a man came out from that part of the street. In fact, just as I noticed this man coming up to them, he was about in the center of the street, I saw my sister. I had taken up the trail behind my sister. She didn't know that I was behind her all this while. I had taken up on the opposite side of the street. And I saw that this man walked up exceptionally close to Mrs. Young. They were right off the corner, I believe it is Green Street, and there is a little stationery store somewheres in that vicinity and this man stood in the doorway crossed in front of them and they hesitated and they were very close to one another, apparently talking a few words, and Mr. Young put his hand in his right pocket. From where I was I couldn't see what they did, or whether they passed money or something, but anyhow it was very short and quick. They went up that street that comes out by the City Hall and they boarded a bus. We could not see a bus in sight and we ran—we ran all the way up, oh, possibly three quarters of a block and saw a taxi. We hailed the taxi—I had seen the number of the bus—and we hurried be-

hind the bus. I—let me see—then we followed with the taxi as far as William—Wiliiams Street, the street that she goes up to her home I believe is William Street, I think I have the name of it, I think the name is Williams.

Q. In Belleville? A. Yes, in Belleville. Just a moment. I think it is Williams Street; yes, that is it, Williams Street; and they walked up arm in arm up that street. We hurried out of the taxi, got out, made the taxi follow until a little ahead of the bus and we walked around the corner to the street where she lives and we were there just a little ahead of them as they came up the hill. We placed ourselves in the dark and I saw where he walked into the porch of her house. They then came off the porch. They had been there, oh, say, five minutes or so on the porch. They stepped down off the porch and for a moment I couldn't see her and then they both disappeared. They walked around the front part of the house, they were behind some large bushes there. I could hear the cracking of the bush or a twig, and they walked behind—they were not on the path, they were out of all sight, and they were that way, I couldn't see them for, oh, say, fifteen minutes, maybe a little more. She had a hat on all this while, but when she came out from behind these bushes she had her hat off, she had it in her hand, and he stood for a moment and hesitated and he came out to the gate and she walked—he, when he had kissed her goodnight right in the doorway, came out and lit a cigarette, and he was fixing his clothing, adjusting his trousers, straightening up his belt and—(interrupted).

Q. What time was this? A. Oh, this must have been about one thirty in the morning.

Q. Where did he go then? A. He went home.

Q. When did you next follow them? A. 29th and 30th. Well, this is an incident where they went to—(interrupted).

Q. No, I want the next day in August. A. This is, I believe, the date, the 12th of September, they went to Coney Island. The mother was along.

Q. Well, what did you observe on the trip to Coney Island? A. She had to go early in the afternoon—in the evening to the house and they all three of them came out at one time, around six thirty, and they went down on the car, the trolley car, and they boarded the seven o'clock or as near to seven o'clock train at the Tubes; they changed at Manhattan transfer and took a Coney Island train. I sat—Mrs. Rosenstein was on my right and I was here (indicating) and they were on the first seat that faces the long one alongside of the train, and Mrs. Cummings was along—Mrs. Young was alongside of Mrs. Rosenstein. We were like three in a row and they were two on the first seat facing, and little bits of conversation you could get at the time when the train was not the most noisy would be, she seemed to be rather—Mrs. Cummings seemed to be rather perturbed about something, something about she had a little difficulty at her own home and she said to Mrs. Young, "You will put up with me, won't you? You would let me have your old attic room, wouldn't you?" And she said, "We could fix that up nice." And Mrs. Young answered, "Well, Harold wouldn't stand for that. He wouldn't have you in the attic." He said, "What is the matter? We have plenty of bedrooms." He said, "Don't you worry —" he was patting her hand—he said, "Everything

will come out all right, you don't want to be worrying."

Q. All right. Did you go to Coney Island with them? A. Yes.

Q. What evidence, if any, did you observe of affection between them, except his patting her hand? A. And he had his arm around the back of the seat by her and he would put her hand up to his mouth, like to kiss it; he didn't smack it, but he pressed it up to, like, his hand. I took notice at that time that she had no wedding ring on. She had on a single stone ring on one hand and a little cluster, I believe, on the other, and Mr. Young had on either a black stone or sardonyx ring. He has a sardonyx ring.

Q. What time did they get to Coney Island? A. Let me see. They left Newark about seven, I should think. It takes about an hour and a half doesn't it, to go down? I really didn't time it.

Q. Did you go to Coney Island? A. Yes. I am really a little upset as to whether I got off one station before or after. Yes, I got off the station before they did. They got up to get out and I got off, too. I had to get off. I didn't go back in the train.

Q. You didn't see them at Coney Island? A. No, I can't say they got out. I knew they were—remained standing until the next station.

The Court: You didn't go to Coney Island to see them, did you?

Witness: I went to Coney Island and got out at Feldman's.

Q. Did you see them at Coney Island that night? A. I did not.

Q. When next did you see them? A. 12th of September—I think it must be around either the 17th or 19th. It was pretty nearly a week.

Q. Where was that? A. I think it was the 17th and 19th, I think that is what it was, those two days, yes. Here is one, the 17th. Let me see, the 17th, "took a walk"; they spent an hour in walking and he left—

Q. Where? A. Let me see. They took a walk all through around the upper part on the hill in Belleville, and it was rather late that evening when he met her and took a walk.

Q. What time? A. I should judge, he met her around nine o'clock.

Q. And then where did they go after the walk was over? A. He took her home.

Q. See any evidence of affection that night? A. He kissed her good night.

Q. When did you next see them together? A. The 19th.

Q. Where? A. He met her at a Catholic Church just a few blocks from her home.

Q. And what did they do? A. She had the little girl with her that night and they walked over to a motion picture house on Mt. Prospect Avenue.

By the Court:

Q. What date was that? A. The 19th of September.

Q. What day of the week? A. Let us see, the 17th was on a—well, I really don't know what day of the week it was. It was a week day, I think. Let us see. Saturday was the 12th. Well, the 19th would be just the week hence. It would be a Saturday. Yes, it was a Saturday.

By Mr. Child:

Q. Well, they went to the Mt. Prospect Theater, did they, that night? A. Yes, yes.

Q. And did you go in? A. Well, on the way over they were very affectionate. The little child —(interrupted).

Q. What did you see? A. Right near the cemetary there was a very lonely spot and they stood by a brown spot, fence or wall.

Q. What did they do?

The Court: The lawyer wants to know what, what.

Witness: The little child had run off about half a block.

By the Court:

Q. What did they do? A. Kissed and embraced.

Q. What? A. They kissed and embraced and they were right close up to one another.

The Court: That you could see. All right.

By Mr. Child:

Q. Did you go in the theater with them? A. I did not. I remained outside.

Q. What time did they come out? A. They came out about eleven fifteen.

Q. Where did they go then? A. They walked down to some street and they landed in Carteret Street; they were trying to take a short cut to the trolley.

Q. Did you follow them? A. Yes, uh huh.

Q. Whose home did they go to first? A. He took her home to her own home.

Q. And— A. And on that night the child was very tired. He carried the child part of the way and it walked part of the way. It had walked the whole way over to the theater—it is an awful distance—and they came home on the trolley. When he got to her home they put the little girl—she had awakened by that time, and she walked about a half block, and they put her into the house, opened the door and put her in and they came away from the bushes that night. That was one of the nights where they had disappeared into the bushes. They had spent about fifteen minutes on the porch.

Q. Yes, what time— A. And they disappeared in the bushes that night. They were there, I should judge, about ten or fifteen minutes.

By the Court:

Q. Where are these bushes? A. They are to the right as you pass the house to the right, like fancy flowering shrubs there.

Q. Are they large bushes? A. Yes, quite tall. They were tall enough to obscure a good sized person.

Q. As tall as a fence? A. Higher than a fence. I should think they were five or six feet high.

By Mr. Child:

Q. What time did they separate that night? A. They were together there for about, oh, say, twenty minutes. They were there quite a long time and he then parted with her in the same affectionate manner as was his custom, and he walked home.

Q. I am not interested in what his custom was. Did he kiss her or not? A. Surely.

Q. All right. Now, when did you next follow them? A. Coming almost to the end, I guess, here.

By the Court:

Q. What? A. October the 10th. There was not very much there. They went to the Fashion Show. The mother was with them there. It was mostly riding on the trolley. They had met one another down in Newark.

Q. What was the last date when you followed them? A. Let me see. I guess I have got two more or three more, two or three more.

Q. All right. Go on and tell us, then. A. I think I have here, November the 7th—I think I have here— a library night. I saw him in the park, Mr. Young, he was in the park, Mrs. Cummings—(interrupted).

Q. Where? What park?. A. This I don't know what they call it. It is on Broad Street right by the Washington Restaurant, big triangular park, I don't know the name.

Q. All right. What time? A. That was around between 7:30 and 8:00 o'clock at night, I guess.

Q. Did Mrs. Cummings join him? A. Mrs. Cummings left Mr. Cummings with the child and she went back to 175 Washington Avenue. When she got back Mr. Young was at the door. He opened the door. He hod gone on home. He was watching her that night through the bushes.

Q. Watching who? A. Mrs. Cummings, who was in the park earlier in the evening. I remained to watch there. I stayed in the car—we all did—watching Mrs. Cummings, but he had gone on home.

By the Court:

Q. Where were the bushes? A. In this big park, right up the pathway, right at the corner. The park comes to a sharp point directly in front of the library.

Q. Who was in the bushes? A. Mr. Young, he was stopped in a pathway just in back of it by a bush, he was watching Mrs. Cummings, and they were in the home that night together and she went in, he opened the door for her, but we didn't know whether or not they were there alone.

Q. All right. Now, when is the next night? A. December the 13th. She took the child down to Mr. Cummings that night as she was in a hurry—arriving there—and she was in a hurry to get away and she made complaint, she says, I was standing at the sidewalk just behind a little automobile that was parked at the library and I heard her say, "I can't keep the child out tonight, I am telling you. She has got a sore throat; she is too sick to come out. I must get home." Well, the child didn't want to stay and the father wanted to see her and the child kept in tune with the mother, "Yes. I want to go home." She left and took a Bloomfield Avenue car and she got out at a street, I believe they call it Crane or Clark, somewhere in that vicinity there, and there she met Mr. Young and his mother and sister and she says, "I got rid of him in a hurry." She says, "I told you I would be here," so she met them there and they went into the Regent Theater on Bloomfield Avenue. I stayed outside in the automobile.

Q. What time? A. My sister, she followed in and I believe she had a gentleman by the name of Gardner with her at the time.

Q. Your sister had? A. Yes.

Q. All right. Now, what time did they come out of the theater? A. When the theater closed.

Q. Well. A. A few moments before the large crowd came out—the picture must have been over—and they went down to the candy store. Harold Young bought some candy and they had a hot chocolate.

Q. Then where did they go? A. They all went on the trolley and Mrs. Young and Mildred went home and they stood on the porch. He took her to the house, Mr. Young took her to the house and—leading the child by the hand, and they remained talking outside for about ten or fifteen minutes. They put the child inside and they stood on the porch that night and just talked for a while and he went home and she went in.

Q. When did you next follow them? A. Now, let me see. Now, wait a minute—let me see—no, that is the night—let me see, how have I got this here? No; I have omitted a little bit here, something I missed here, the night that Mr. Gardner was along.

Q. Never mind. You got that in. A. Yes, I see I have. This page here, I have torn the page. I believe I got it too. And I joined my sister, that is what I did. I joined my sister and we walked up and as we walked up the side street they were standing—they walked in together and they stood on the porch—the child they put in—and they were like on the railing of the porch very close together; they were sitting together; he was leaning on the rail. We were exceptionally quiet. There was a lady had just walked up the street on the other side and we were very careful not to be noticed

and we hid ourselves on the other side of the street by a garage and we ventured out to the nearest side of their house and I could see them. They were kissing and embracing, and Mrs. Cummings, she had on some kind of a little blue-gray colored coat or a dark—something that was dark, and something white made its appearance there, very light in color made its appearance. Apparently, from where I was standing, it must have been an undergarment or a light dress. What dress she had on I couldn't say, but it looked like an undergarment. It was short.

Q. What else? When did you next follow them? A. I made my—I feared they had taken notice—I wanted to get away, as soon as possible. I walked around the corner. I just went ahead of my sister. Now, my sister remained a little behind me.

Q. Please answer: When did you next follow them? A. The next time?

Q. Yes. A. I don't think I was again on that, no.

Q. Is that the last occasion of your following the two? A. Yes.

Q. Do you recall whether or no you were present at a time when Mr. Young and Mrs. Cummings were in the living room of the house at 175 Washington Avenue sitting on a piano bench or something like that? A. I was not present.

Q. You were not present? A. (Witness nods no.)

Cross-examination by Mr. Lane:

Q. On July 4th who were at the house, when you saw them on the porch? A. Mrs. Young and Mrs. Cummings joined them and Mildred and the little girl and Harold Young.

Q. The little boy was there too, wasn't he? A. No, I didn't see—I didn't notice any little boy.

Q. And are you sure there was not any little boy around there? A. I didn't notice any there, no.

Q. But you saw everybody there. A. No, not at that time, when I first saw them.

Q. Well, at any time during the time you saw them on July 4th on that porch did you see a little boy? A. No.

Q. Did you see them playing with fireworks? A. Oh, I saw Harold Young set off some red lights.

Q. At any time did you see Mrs. Cummings leave the party and take Olive home? A. No.

Q. What time was it when Mrs. Cummings finally left? A. She was still there when I went.

Q. And that was what time? A. I went-I left there about nine thirty, I guess, near to ten, maybe.

Q. And Olive was still there? A. Yes, sir.

Q. There cannot be any doubt about that? A. No, sir. Mrs. Cummings did not leave and she did not take the little girl home.

Q. Mildred was there all the time, wasn't she? A. Mildred?

Q. Yes. A. In and out of the house on several occasions. I didn't pay any attention to what Mildred's movements were.

Q. Well, were they present when the kissing was going on? A. Yes, they were on the porch when he came out to meet her.

Q. Well, if the kissing had gone on, they saw the kissing, didn't they, or must have seen it? They were closer than you were. A. Maybe they were not looking just where I was looking.

Q. That was not any answer. There was not

any concealment about it, was there? A. No; it was very open.

Q. Very open, so it would be nothing for them to see it. A. Yes. It was way off; it was not on the porch it was done. It was done on the stairs, on the terrace.

Q. And so this love making at Coney Island was in the presence of the mother, wasn't it? A. Yes.

Q. And if you could hear she could hear. A. Uh huh.

Q. Now, on the 26th of July, which was a Sunday, did you see Mildred up at Riviera Park, or whatever the name is? A. I did.

Q. She was in the party, too, wasn't she? A. Yes, she was—

Q. She was there? A. The most part of the evening, the family with the mother.

Q. You have stated upon one occasion, I think, that—what was the night that they went down to the theater and did not get home until one o'clock? A. August the 29th and 30th.

Q. August the 29th. Well, was it August the 28th or 29th? A. August the 29th to the 30th.

Q. You are sure of that? It was not the night —(interrupted).

The Court: That is what she says.

Q. —of the 28th? And these dates, which you have given, you have given from a memerandum that you made at or about that time; is that right? A. Now, then, if I didn't get a chance—there is here one date, possibly I heard you speak before, that is skipped in here, because I didn't get a chance to keep every date.

Q. But the dates you have in, you have taken

from a memorandum? A. I have taken from a memorandum, yes.

Q. So those dates are accurate? A. Yes, they certainly are. I have the August 28th in here. That is separately from the 29th and 30th.

Q. What time did they get home on August 30th? A. The 28th, he took her home to her home that night about ten thirty.

Q. From where? A. From 175 Washington Avenue.

Q. She was at 175 Washington Avenue that night, then? A. Yes, sir. That was not when they were all alone.

Q. You have upon one or two occasions, I think, stated that no one was in the house. A. Yes, sir.

Q. Except them. You have accounted for the absence of Mrs. Young and you have accounted for the absence of Mildred. How do you account for Mr. Young, the elder? A. Mr. Young was not there.

Q. How do you know he was not? A. He was not there.

Q. How do you know he was not? A. I didn't go in the house.

Q. Well, how do you know he was not there? A. He made no appearance at any time—

Q. Did you ever see him? A. —going in or coming out.

Q. Did you ever see him? A. No, I did not.

Q. You know there is a Mr. Young, the father? A. No; I never questioned as to that and I never waited for Mr.—

Q. Do you know whether there was a Mr. Young, the father, who lived home? A. That may be all right. He was not there on those occasions.

Q. But he might have been there in that house

and you not know it; isn't that true?

The Court: Do not argue with her.

A. I never was in—

The Court: She didn't see it.

A. (Continuing.) 175 Washington Avenue.

The Court: Any more?

Mr. Child: No, sir; that is our case.

Mr. Lane: I will call Mr.—

Mr. Child: I desire to offer the World Almanac in evidence to show the moon was half full on the morning of August 7th, the evening of August 6th and morning of August 7th, 1924.

The Court: Will you admit it?

Mr. Lane: I will admit the World Almanac says it, if Mr. Child says so. I do not admit the moon was out.

Mr. Child: It says there was a full moon at that time. Will your Honor admit it?

The Court: Unless Mr. Lane makes an admission, I am not going to let the book in evidence.

Mr. Lane: I admit it does contain that part.

The Court: And also admit that the calendar shows that the moon at that period was—

Mr. Child: —astronomically one quarter full and from the lay standpoint half full.

The Court: That is plenty in these prohibition times.

Mr. Lane: What I am not admitting is that the weather—(interrupted).

The Court: If the moon was out, it may have been covered on account of a cloudy sky.

Mr. Lane: If the sky had been clear the moon should have been—was there, but should have been seen.

Mr. Theall.

EDSON THEALL, sworn for the defendant.

Direct-examination by Mr. Lane:

Q. Where do you live? A. 597 Summer Avenue.

Q. Where are you employed? A. A. & P. Bakery in Belleville.

Q. Do you know Mr. Owen Cummings? A. Yes, sir.

Q. How long have you known him? A. Since about a week before Decoration Day, 1925.

Q. How did you come to meet him a week before Decoration Day, 1925? A. Why, Mr. Andrew Rothrock brought him to the A. & P. Bakery and called me out of work at three o'clock in the morning.

Q. Who is Mr. Rothrock? A. Proprietor of a restaurant on Washington Avenue, number 65, I believe.

Q. And where did he take you? A. Who, Mr. Rothrock?

Q. Where did you go after Mr. Rothrock came to you at your place of employment? A. Why, he took me across the street from the A. & P.

Q. And introduced you to whom? A. Mr. Owen Cummings.

Q. Did you have a conversation with Mr. Cummings? A. Yes, sir.

Q. What was said? A. Why, Mr. Cummings wanted to know if I wanted to make some money, and I said, "In what way?" And he claimed that I was to take his wife to a hotel and be raided.

Q. And was the amount of money which he was to pay you for doing that mentioned? A. Yes, sir.

Q. How much? A. Five thousand dollars.

Q. Did he say anything to you with respect to what he had already done? A. Well, he claimed he spent around six—

Q. (By the Court.) Do you know what his business was? A. Mr. Cummings? No, sir.

Q. Did he say anything to you as to how much money he had already spent and with what success? A. He claimed he had spent around six thousand dollars trying to obtain evidence for a divorce so far.

Q. Did he say with what result? A. No; he didn't say.

Q. Now, did you agree to do that or not? A. No, sir.

Q. Did you decline to do it? A. What say?

Q. Did you decline to do it? A. Yes, sir.

Q. After you had declined to do it, did you hear any conversation between Mr. Rothrock and Mr. Cummings? A. Why, yes, Mr. Rothrock claimed that he could get a man to do that work for Mr. Cummings and that he would bring that man to me and have me introduce him to Mrs. Cummings and that that man would do it for much less money than five thousand dollars.

Q. Did you subsequently see Mr. Cummings? A. Why, about a week after.

Q. Did he make any inquiry of you then as to his

wife? A. Why, he asked me if his wife was still working at the A. & P. and I said, no, she had left.

Q. Do you know a Mr. Joseph Williams? A. Yes, sir.

Q. Where did you meet him? A. I have known him for years.

Cross-examination by Mr. Child:

Q. What is your business? A. My business?

Q. Yes. A. I am a checker-up in the A. & P. I check up all the trade that goes out on the trucks.

Q. How long have you been employed by the A. & P.? A. Two years this July.

Q. Have you ever been convicted of a crime? A. No, sir.

Q. What? A. Not convicted. I was in Rahway for nine days.

Q. For what? A. Carrying a gun.

Q. You say that Rothrock was present when Cummings offered you five thousand dollars to go with his wife? A. Yes, sir.

Q. And that Rothrock got you out and what did he say to you when he got you out of bed or wherever he got you out of? A. He got me out of work. I was working at the time.

Q. Yes. What did he say to you? A. Well, he asked me if I knew any of the girls that worked in the A. & P., and I said, "Yes, I do."

Q. Yes. A. And then he said, do I know Sadie Cummings. I said yes. He says, "Well, how would you like to make some easy money?" I said, "What do you mean?" He says, "Come on, we will step across the street and I will introduce you to somebody." First, I didn't want to go across because I didn't see anybody over there and

I thought there was something up and I didn't want to go across, so finally Cummings stepped from behind a tree and I went over.

Q. Did you ever see Cummings before? A. I had seen him, yes.

Q. Did you know him? A. No, sir.

Q. When was this? A. Around the week before Decoration Day, 1925.

By the Court:

Q. Did you know he was a fireman? A. What?

Q. Did you know he was a fireman in this city? A. No, sir; I didn't know anything about him.

Q. Did you ask him? A. No, sir.

Q. You knew his wife worked at your place. A. Yes. Of course, I didn't know anything about their trouble.

By Mr. Child:

Q. You knew what she did there, didn't you? A. Mrs. Cummings, you mean?

Q. Yes. A. Yes, certainly.

By the Court:

Q. Was it five hundred or five thousand he offered you? A. Five thousand dollars.

Q. And you turned it down, eh? A. I turned it down, yes.

Mr. Child: That is all.

Mr. Lane: Mr. Williams.

JOSEPH WILLIAMS, sworn for the defendant.

Direct-examination by Mr. Lane:

Q. Where do you live? A. 64 Chester Avenue, City.

Q. Speak out so I can hear you. A. 64 Chester Avenue, Newark.

Q. Who are you employed by? A. Just at present, no one.

Q. What? A. Just at present, no one.

Q. Were you, in July, 1925, employed by the Sinclair Oil Company? A. Yes, sir.

Q. In May, 1925, who were you employed by? A. By the Overlook—Sinclair Oil Company.

Q. (By the Court.) Eh, what? A. Sinclair Oil Company.

Q. Did you know Mr. Owen Cummings? A. After he introduced himself to me, yes.

Q. And when did he introduce himself to you? A. On or about May 25th, 1925.

Q. Where? A. At my home.

Q. And what did he say? A. He approached me and asked me if I would like to make some money and I asked him in what manner and he said he would like to have someone go and take his wife to a hotel and they will—he would come with a detective and see us there.

Q. What else did he say? A. He asked me if—well, I asked him then who his wife was and he said his wifes' maiden name was Sadie McDermit. I at that time said, no, that I had gone to school with a Sadie McDermit and I would never do anything like that.

The Court: Not with Sadie.

Witness: No, sir.

Q. Did you, in fact, know Miss McDermit? A. Yes, sir.

Q. Or Mrs. Cummings. A. Yes, sir.

Q. Did Mr. Cummings ask you to do anything else? A. No.

Q. Did he speak to you at all in respect to trailing his wife? A. Well, oh, yes; he asked me if I wanted to do that.

Q. What did he say, what did he say? A. He asked me,—when I refused to take his wife to a hotel, then he asked me if I would accompany another man and point Sadie McDermit to him and trail her, and that I refused to do.

Q. Has Mr. Cummings been to your house since then? A. No, sir.

Q. Have you seen him since? A. Yes, sir; I have seen him since.

Q. Where? A. Around the corner of Washington and Chester Avenue.

Q. Has he spoken to you about this matter? A. No, sir.

Cross-examination by Mr. Child:

Q. You say he asked you to point out his wife and trail his wife with some other man? A. Yes, sir.

Q. Did he give any reason for wanting to point his wife out to another man? A. He said he was trying to divorce his wife.

By the Court:

Q. Did you know her? A. Sir?

Q. Did you know her? A. His wife?

Q. Yes. A. Yes, sir. I went to school with his wife.

By Mr. Child:

Q. Well, what was his object, if you know, in having you point out his wife to some other man. A. So that he would not be seen.

Q. This was when? A. Around May the 15th of 1925.

Q. How long did you work for the Sinclair Oil Company? A. Four months, Pittsburgh.

Q. At Pittsburgh? A. Yes.

Q. When did you go in their employ? A. I went in their employ in September of 1924.

Q. September, 1924? A. Yes, sir.

Q. And you left their employ when? A. I resigned the first of the year of 1920—or just after the first of the year 1925.

Q. Who did you work for before you worked for the Sinclair Company? A. Before I worked for the Sinclair Company?

Q. Yes. A. I worked for the United Public Market.

Q. Where is that? A. 196 Belleville Avenue.

Q. Newark? A. Yes, sir.

Q. How long did you work there? A. I have been with the United Public Market off and on for about three years.

Q. How long? A. Off and on for about three years.

Q. When did you leave their employ? A. Back in 1923.

Q. Who did you work for between 1923 when you left the United Public Market until you went to work for the Sinclair Company? A. No, one.

Q. So you were out of employment for approximately a year; is that right? A. About that, yes, sir.

Q. What did you do during that year? A. Nothing.

Q. Why did you leave the United Public Market? A. Well, for no reason at all.

Q. What have you been doing since May, 1925? A. Since May of 1925?

Q. Yes. A. Nothing.

Q. How do you—have you independent means? A. Indirectly.

Q. What do you mean by that? A. Well, I have a home and supported by my folks.

Q. You are supported by your people; is that right? A. Yes, sir.

Q. Have you been ill? A. No.

Q. Why haven't you worked in the last year and a half? A. Why?

Q. Yes. A. Well, no reason.

Q. Why didn't you work for the year preceding the time that you went to work for the Sinclair Oil Company? A. Well, for no reason at all.

Q. Your parents furnish you with spending money? A. Yes, sir.

Q. Dress you? A. Yes.

Q. Board you? A. Yes, sir.

Q. (By the Court.) Married? A. No, sir.

Q. You are physically able to work? A. Positively.

Q. Why don't you work? A. Maybe I will some day.

Q. So the first time you saw Cummings was when he walked into your house and made you this offer? A. Yes, sir.

Q. Never seen him before? A. Not to my knowledge, no.

Q. He walked into your home and said, "I am Owen Cummings"? A. Yes, sir.

Q. "And I want you to go out with my wife." A. Yes, sir.

Q. Did he tell you who had sent him to your home? A. No, sir.

Q. And how much money did he offer you? A. The sum of the consideration was not mentioned.

Q. (By the Court.) What? A. The sum of the consideration was not mentioned.

Q. He didn't mention any amount he would pay you? A. No, sir.

Q. Did he tell you how it was that he was going to work it so you would be caught in a hotel room with his wife? A. No, I was not interested. I cut the talk short.

Q. You never had seen him before? A. No.

The Court: That is what he said. Do not repeat.

Mr. Child: All right.

The Court: Is that all?

Mr. Child: That is all.

Mr. Lane: Just one moment.

The Court: Go on.

Redirect-examination by Mr. Lane:

Q. Do you know Andrew Rothrock? A. Yes; I know Andrew Rothrock.

Q. The keeper of that restaurant. A. Yes.

Q. Do you know Edson Theall? A. Yes, sir.

Q. Does he frequent that restaurant? A. Why, I don't think so, no, sir.

Q. Do you know Joseph Reilly? A. Yes, sir.

Q. Does he frequent that restaurant? A. No, sir.

Q. Was Joseph Reilly present with you at any

time when Cummings approached you? A. No, sir.

Q. Do you know Fred Cook? A. I know of him, yes.

Q. Does he frequent that restaurant? A. Yes; I think he does.

Mr. Lane: That is all.

Recross-examination by Mr. Child:

Q. Just one question. Who was the superintendent of the Sinclair Oil Company for the time you worked in Pittsburg? A. W. J. Bean.

Q. Bean? A. Yes.

IN CHANCERY OF NEW JERSEY.

June 24, 1926.

Between

OWEN CUMMINGS,
Petitioner,

and

SADIE CUMMINGS,
Defendant.

Continuation of hearing pursuant to adjournment, at the place and in the presence of the parties as before.

ROBERT EATON, sworn for defendant.

Direct-examination by Mr. Lane:

Q. Mr. Eaton, where do you live? A. 31 Jefferson Avenue.

Q. What is your business? A. Paymaster.

Q. What was your business in 1924? A. Pay master.

Q. For what concern? A. Greater Atlantic & Pacific Tea Company.

Q. Do you know Mrs. Cummings? A. By sight, yes, sir.

Q. Was she employed by the Atlantic & Pacific? A. Yes, sir.

Q. Was there a record kept of the time that she worked at that place? A. Yes, sir.

Q. Have you that record? A. Yes, sir.

Q. Will you produce it? A. Yes, sir (producing paper).

Mr. Child: May I cross examine as to the record?

The Court: Later.

Q. Who kept that record? A. I did.

Q. And was the record kept in the ordinary course of your business? A. Yes, sir.

Q. And upon which your pay warrants were based, or upon which your pay checks were based? A. Yes, sir, that is the record card.

Q. Now, have you a record there for the month of August, 1924? A. Yes, sir.

Q. Will you produce it? A. Right here.

Q. Will you refer to the date of August 6th, 1924? A. I don't think I was told to bring that down here. Now; I have August 16 to 30, week ending 16th and 30th.

Q. Referring to date of August 16, 1924, then. A. Yes, sir; I have that.

Q. Was she or was she not working on that day? A. She was.

Q. From what hour to what hour? A. Well, I can't prove the record—I have no permanent record.

The Court: What? I do not hear you.

Witness: I only have the record on the pay roll. We use time cards, but they are destroyed after an audit is made by the company.

Q. When were those time cards destroyed? A. January, 1925.

Q. And how much,—can you tell by the records

which you have, as to whether she worked or not? A. I can prove that she worked.

Q. But you can't prove—(interrupted)

The Court: You can prove you paid for her work.

Witness: I am sure we wouldn't pay her unless she worked.

The Court: You can prove you paid her, I say.

Witness: Yes, sir.

The Court: You are not in the habit of paying without getting the work.

Witness: Not often, no.

The Court: Not often.

Q. What were her hours?

The Court: What do you know about it?

Witness: From five thirty—(interrupted)

The Court: Wait.

Q. Do you yourself know about her hours and about whether she worked or not? How do you get your information? A. I spoke to the foreman—I spoke to the superintendent of our bakery where Mrs. Cummings worked, her superintendent and also to her foreman.

The Court: Lately?

Witness: Yes, sir; three months ago. I don't know whether you call that lately or not; and also the woman whom she worked with; that with what I remember of the time I have written down here.

Q. I don't want any of the information which you acquired—(interrupted)

The Court: As a result of what he learned he wrote it down here.

Q. I don't want any information as to what you acquired—any information that you acquired three months ago. I want what your knowledge was at the time these payrolls were made up—the method of making up those payrolls—how did you get your information? A. From the time card.

Q. From the time card? A. Yes, sir.

Q. And what is the practice of your company with respect to these time cards? A. They are destroyed after an audit is made.

Q. What is the method with respect to making them up—how are they made up? A. Well, we take the time from the time card.

Q. How is the time card made up? A. That is made up automatically by a time clock.

Q. Punched? A. Yes, sir. In other words—(interrupted)

The Court: As the employee enters he punches the card?

Witness: Yes, sir.

The Court: And as he leaves he punches the card?

Witness: Yes, sir.

The Court: Somebody might punch it for him going in or going out.

Witness: I haven't found that—(interrupted)

The Court: I say, it might be.

Witness: Yes, sir.

Q. And those time cards then come to you? A. Yes, sir.

Q. And from those time cards it is entered on the payroll? A. Yes, sir.

Q. Now, with respect to any punching by anybody else—by somebody else—do you know of any instance of that kind? A. I haven't had one in five years and those records—(interrupted)

The Court: Those are the only records that your company has upon which your company disperses the money it disperses for help.

Witness: That is the original record. The time is taken from there onto the pay roll which I have here, and we pay out all these pay rolls.

Q. I mean the original time cards are the records which your company depends upon in the paying out of its money. A. Yes, sir, absolutely.

Q. Now, I ask you as to what that pay roll shows whether Mrs. Cummings worked on the 6th of August, 1924, or not. A. Yes, sir.

Mr. Child: I object.

The Court: Objection sustained.

Whether she was paid for it.

Q. Whether she was paid for working upon that day. A. Yes, sir; she was.

Mr. Child; The witness says it was the 16th.

Witness: I mentioned to Mr. Lane that it was the 16th.

Mr. Lane: I beg pardon. The 16th.

Q. Now, will you refer to your same records for

the 24th of August? A. Yes, sir; she worked on that day.

Q. Will you go back to the record of the 16th and tell us for how many hours worked that day was she paid? A. Well, it was either eight or nine and three quarters. I cannot tell absolutely here.

The Court: Eight or nine and three quarter hours?

The Court: Hours?

Witness: Hours. I can't tell. There was some overtime there and I can't tell which day she worked, not from the pay roll; but all together there was forty nine and three quarter hours worked that week, covering six nights.

The Court: What is that?

Witness: Covering six nights.

The Court: What do you mean by "six nights"?

Witness: Mrs. Cummings was working at night.

The Court: From what hour?

Witness: From five thirty.

The Court: To your knowledge—of your own knowledge?

Witness: From five thirty until two a. m.

The Court: Those were her hours?

Witness: Yes, sir.

The Court: For the week—you say she was paid for working during those hours for the week ending what?

Witness: Ending, what I have here, ending August 16th, August 23, August 30, 1924.

The Court: When did you make those entries?

Witness: On the dates mentioned, that is, two or three days following. These were the original records, here.

The Court: They were made at or about the time.

Witness: They were made on the Monday following the week ending date, from the time card.

The Court: What is your pay roll day?

Witness: I make up the pay roll on Mondays; they end on Saturday—Saturday morning usually.

The Court: Pay Saturday morning.

Witness: No, we pay the following Wednesday.

The Court: On Monday you make up the pay roll for the past week?

Witness: For the past Saturday, yes, sir, week ending on that Saturday, and pay the following Wednesday.

Q. Now, will you refer to the week ending August 23? A. Yes, sir.

Q. Can you from that record tell whether she was paid for work done on August 23rd? A. No. I can from the following week though. I can from the week ending August 30th.

Q. Well, refer then to the one—the week ending August 30th. A. Yes; she did work.

Q. What was she paid—not whether she worked—what was she paid? She was paid for how many days work during that week? A. Six.

The Court: How many hours?

Witness: Either forty eight or fifty two.

The Court: Fifty two would include Saturday until noon—half a day Saturday?

Witness: Would include Saturday until two a. m.—around that time, anyway.

Q. Now, will you refer to your week ending, or week which would include August 29th? A. Yes, sir.

Q. Can you tell me from that whether she was paid for work performed on August 29th? A. She was, yes, sir.

Q. And how many days did she—was she paid for work during that week? A. Six.

Q. Have you any other dates there? A. No; these are all that were called for.

Q. Those are all you brought? A. Yes, sir; I have plenty more.

Q. How long did she work with your company? A. From January 1924 to June 1925.

Q. And what day in June, do you know, did she leave your employment? A. I can't tell by this, probably the week ending—I have June 13, 1925.

Q. If Mrs. Cummings worked a half a day—it must have been, must it not, half day beginning in the afternoon? She didn't work in the morning at all, did she? A. She left—yes; she left at two a. m. in the morning.

The Court: You have an allowance of overtime. Do you know when that overtime was put in?

Witness: No. If I had the time cards I could tell that.

Robert Eaton—Cross.

Cross-examination by Mr. Child:

Q. You have put down on those records, have you not, the hours when she worked? A. No; I have the days on which she worked.

Q. Didn't you state that you had the hours when she worked? A. Not on the pay roll, no, sir.

Q. It doesn't show on the pay roll? A. No.

Q. What days off did she have? How many days a week off did she have? A. During the three weeks I have here? During the three weeks I have in front of me?

Q. Yes. A. None at all.

Q. Worked seven days a week? A. No, six days a week.

Q. That is what I asked you. Did she have one day a week off? A. Yes, sir.

Q. And did—if she worked overtime one day she would be credited with the same pay as if she—if she skipped a day—as if she was there, wouldn't she? A. No.

Q. Does that pay roll which you have there show a day to day record, or does it show merely the number of hours a week work? A. It shows the number of days straight week work and the number of hours overtime.

Q. Do you keep this pay roll yourself? A. It was made up by one of my assistants.

Q. Is that in your handwriting? A. No, sir, but I can prove the fact that it is right.

The Court: That is not in your handwriting is it?

Witness: No, sir.

Q. And wasn't made up by you. A. It was made

up by one of my assistants and checked by me.

Q. What did you check against? A. The time cards.

Q. Have you any independent recollection whatever of this particular labor item on this payroll? A. No.

Q. Is there any way of determining from that payroll whether she worked eight hours on one day and then four hours on the next and nine or ten hours on the next? A. Yes, sir; that would show.

Q. How would that show up?

The Court: On the record you have.

A. It would have shown if she hadn't worked the full week, the fact that she would have had so many hours deducted; it would be five days and so many hours, whereas the pay roll shows six clear days.

Q. It does show overtime? A. Yes, sir.

Q. Why did you say you couldn't tell on certain days whether she worked eight hours or nine and three quarters? A. The fact that she—eight hours is her full time, you understand; that comprises the day. I also have overtime here. I cannot tell on which day she worked that overtime.

Q. If she worked six days a week at what time could she put in overtime? A. On any night.

Q. Work earlier or late? A. Later.

Q. What time do they usually begin, at night? This is a bakery, is it? A. This was at our bakery, yes, sir.

Q. What hour does your bakery start—what hour do you bake? A. No regular hours at all. It is a twenty four hour arrangement, people coming in possibly every half hour throughout the twenty four.

Q. Does that record show any work done for

Saturday? A. Yes, sir, because our week ends on Saturday.

Q. Do you work Sundays? A. Pardon me?

Q. Does the bakery work on Sundays? A. Yes, sir.

Q. How can you tell then whether her day off is on Saturday or Sunday from that record? A. Because it naturally—(interrupted)

The Court: From the record.

Witness: From the record? Just a minute. Our bakery starts from Sunday. In this case it would be five p. m. on Sunday.

The Court: When does your week end?

Witness: On Saturday.

The Court: Do you work twenty four hours a day for seven days a week? Don't you?

Witness: No, sir; six days a week.

The Court: You don't work Saturdays?

Witness: It is rather hard to explain.

The Court: You do not work Saturdays from five o'clock on.

Witness: No; everyone is out of the bakery possibly about three o'clock Saturday afternoon.

The Court: And then return when?

Witness: Well, some start coming in on Sunday morning. We are not closed down completely.

The Court: Not until the next day.

Witness: No.

Q. Your bakery does close down at three p. m. on Saturday. A. No; I can't give you any exact

time it closes down. It all depends on our orders.

Q. Well, it does close down sometime Saturday afternoon, doesn't it? A. Most of the employees may be out of there—it may be called closing down. Naturally there are people working there.

Q. Didn't you state a moment ago that the employees were out of the bakery Saturday afternoon? A. Yes, sir; as a matter of fact, I did. I should say the majority of them; I wasn't thinking of the office and the electrician and a few more people.

Q. I don't care about the electricians. Were the help in the bakery doing the kind of work Mrs. Cummings did there out of the place on Saturday afternoon? A. Doing what?

Q. What was it she did? A. Originally in the laundry.

Q. What? A. Originally—Mrs. Cummings was in the bakery—pardon me.

Q. What? A. Originally Mrs. Cummings worked in the bakery.

Q. Doing what? A. I think on the bread wrapping machine.

Q. That paper wrapping? A. No, feeding the bread wrapping machine.

Q. You mean paper? A. No, wrapping.

Q. Paper. A. No. The machine wraps the paper around the bread. Mrs. Cummings was feeding the bread to the machine.

The Court: She was feeding the bread instead of the paper.

Witness: Yes, sir.

Q. Your record that you have here in court covers a period of approximately three weeks, is that correct? A. Yes, sir.

Q. Begins on August 16th and ends when? A. It begins on the week ending August 16th and ends week ending August 30th.

Q. 30 or—(interrupted) A. 30.

Q. You have two weeks record then. A. I have three weeks record.

Q. I notice that in the week ending August 16 on your payroll sheet, Mrs. Cummings received pay of twenty nine dollars. A. Nineteen dollars. Pardon me. You are looking at another person.

Q. Where is hers? A. Here (indicating).

Q. Nineteen dollars; and in the week ending August 23 her pay was seventeen dollars and twenty five cents. A. Yes, sir.

Q. What would the difference in the pay indicate? A. On the surface it would indicate that she would be out a day.

The Court: What?

Witness: On the surface it would indicate that Mrs. Cummings only worked five days.

Q. What was her rate per week, if there was a rate per week? A. Eighteen dollars.

Q. On your payroll of August 30th I notice that her pay this week was twenty two dollars and seventy cents. What would that indicate? A. There is a day paid there from the previous week.

The Court: What?

Witness: There was a credit made on the pay roll week ending August 23.

The Court: Does that show?

Witness: No; but I have a note of it here.

Q. When did you make that original note? A.

I found that in these payrolls when I made it up.

The Court: What?

Witness: I found that note in the payroll when I raked them out of the files here two or three months ago.

Q. What is there that shows this note that you state indicates that there had been an error refers to Sadie Cummings? A. Nothing at all.

Q. Then how can you say it refers to her? A. Because it is the only note on the pay roll. It was put right on there.

The Court: What?

Witness: It is the only note that was in the payroll.

Q. There are twenty odd names in this payroll. A. There aren't any more errors on there, are there?

Q. I don't know. How can you identify this as being an error that took place in the Cummings pay? A. It is obvious to me. I am sorry if it is not to you, but I speak from my work—the viewpoint of my work.

Q. That may be obvious to you, but I want to know how you can say that error occurred in Sadie Cummings pay rather than in some other person's pay. A. From the facts here—you can see here, this was filed with this payroll right here.

Q. Pay roll of August 30th, yes. A. This is the only day where the person worked seven days, understand, and I have here seven days. I have a note here and it says, seven days for the week ending August 30th, 1924, correcting error of one day paid short 8-23-24.

Q. That is the only thing that you can identify it by? A. Yes, sir; and the fact that I know, of course, the system I run these pay rolls on.

Q. How did it happen that this particular note was fast to the sheet and there are no other notes of any kind on the sheet? A. There probably are not any more errors on there. It is a very unusual thing.

Q. In the pay roll of August 30th, if you add a dollar and a half to her regular pay of eighteen dollars, that still does not account for the entire amount that she is paid there, does it? A. What is that—Just a minute.

Q. If you add the three dollars to the eighteen dollars, her regular pay—(interrupted) A. Well, she had three hours overtime.

Q. She had three hours overtime? A. Yes, sir.

Q. But there is nothing on these payrolls to show the day to day time, that is, whether she worked ten hours on one day or eight on another. A. No, sir.

Q. Or whether she was out on one day. A. No; there is no written proof of the fact, but I would swear that she was—(interrupted)

The Court: Now, don't you try to press anything into this case that you are not asked. Confine yourself to your record and the question.

Q. When did you last see these payrolls before you produced them here this morning? A. The last time I was in this court.

Q. That was some months ago? A. Yes, sir; I have forgotten the date.

The Court: At the hearing of this cause?

Witness: Yes, sir.

Q. And there is nothing from those sheets that enables you to tell the Court the fact that a person worked a given number of hours that week—you can't identify the days on those sheets. A. Yes, sir; I can, I said, from the fact that—(interrupted)

Q. No; I said from the record. A. No; I cannot prove that a person did not work or she should have been out of the bakery. The fact that I have never known people to wrap bread there on Saturday afternoon because our stores are closed on Sundays we wouldn't need bread to be wrapped. I am disinterested—

The Court: Please!

Q. Your stores open up—or your bakery opens up Sunday evening five o'clock, doesn't it? A. I don't know. I am not conversant with them to that extent. They open up some time on Sunday. I don't work there as a matter of fact.

Q. Where do you have your headquarters? A. In Newark.

Q. At this same branch? A. The bakery is one of our branches.

Q. Where is the bakery? A. In Belleville.

Q. And you worked in Newark, your headquarters. A. Yes, sir.

Redirect-examination by Mr. Lane:

Q. Those records as they are produced show the distinction on their face between the regular days and the overtime, do they not? A. Yes, sir.

Q. Each one is credited to so many days regular time and so much overtime, that is a fact, isn't it? A. Yes, sir.

Q. And it appears upon the face of the papers. A. Yes, sir.

By the Court:

Q. The payroll sheet under date of August 23, 1924—follow me. Yes, sir; I am following you.

Q. Under the caption of "Names" there are many names including that of Cummings. A. Yes, sir.

Q. Whose number is, apparently, 27. A. Yes, sir.

Q. What does the 27 mean? A. That is the time card number.

Q. Then opposite the caption of "Name" you have this caption, "Regular Time", and under "Regular Time" you have "Days". A. Yes, sir.

Q. Opposite the name of Cummings and under "Days" is 5. A. Yes, sir.

Q. Indicating that she worked five days. A. Absolutely.

Q. During that week. A. Yes, sir.

Q. And then the rate appears to be blank here, except as to Cummings, $18.00, and then the amount paid under the caption of "Amount"; then adjoining there is a caption "Overtime", hours, rates, amounts. A. Yes, sir.

Q. And then the sum total. A. Yes, sir.

Q. Now, that applies to all the other pay rolls. A. Yes, sir.

Q. Under the caption "Days" indicating the number of days worked during the week? A. That is service indication.

Q. What? A. That is indication of service.

Q. Now, take August 23, #2, Smith, 6 days. That indicates she worked what? A. Six days.

Q. Six separate days during the week. A. Yes, sir.

Q. And you come down to the name of Cummings, it indicates she worked five days during that week. A. Yes, sir.

Q. If it were 6 there, it would indicate she worked six days. A. Yes, sir.

Q. That applies to the other sheets? A. No. Here is a case here where it says, worked 7 days. This is the week following the payroll you have in your hand.

Q. Yes; that indicates she worked seven days. A. Yes, sir; but she couldn't have worked seven days in that week.

Q. You added one day to it. A. Yes, sir; on account of the error of the previous week.

Q. Take the payroll of the week of August 16th; all of the employees with the exception of two, whose names are on that list and including the name of Cummings, under the caption "Days" you have 6. That indicates that they worked on six separate days during that week, is that right? A. Yes, sir.

Q. And the explanation of the 7—(interrupted)

The Court: We have that.

Mr. Lane: I wanted to make sure that was in your Honor's mind.

The Court: That was carried over from the previous week. Where it was only 5 the previous week it should have been 6 and the payroll where it indicates 7, is the one omitted from the previous week as has been testified.

Do you deny the integrity of the pictures?

Mr. Child: I don't know whether they are the correct detail or not. I haven't seen them.

JOSEPH SHER, sworn for defendant.

Direct-examination by Mr. Lane:

Q. What is your business? A. Photographer.

Q. Did you take these photographs which I show you, Exhibits D-3, D-4, D-1, of June, 23rd? A. A. Yes, sir.

Q. When did you take them? A. I don't remember the date.

Q. About? A. About three months ago.

Q. Take each one separately and tell me what it represents and where you took it from.

The Court: It is perfectly obvious where they were taken from. Let Mr. Child look at them.

Mr. Child: I am not familiar with the location.

Q. Take Exhibit D-3 of June 23 and tell me where that was taken from and what it represents. A. I don't know what side of the building it would be. Taken from the yard—

The Court: How does Washington Street run, north and south or east and west?

Mr. Fleischman: North and south.

The Court: Where is this house, on the west side?

Mr. Fleischman: East side of the street.

The Court: Looking south, in the yard.

Q. Was that taken from the yard of the Cummings house? A. No, from the next yard.

Q. From the yard of the house next door? A. Yes, sir.

Q. Looking towards the Cummings house? A. Yes, sir.

Q. Is this house here, which has been marked already with an X, the Cummings house? A. Yes, sir.

The Court: Bushes in the next yard—are in the next yard?

Witness: This is from the Cummings yard (indicating); the house isn't Cummings, that is the next door house.

Q. It is taken from the next house, looking towards the house next door and showing the bushes in the corner, is that right? A. That is what it is.

The Court: Obviously. You would have these people jumping the fence.

Q. Take Exhibit D-4 of June 23. A. This is taken from the yard next door.

Q. That is taken from the yard next door looking towards the Cummings house with the tree and the bushes in the left hand corner, is that right? A. Yes, sir.

Q. Now, Exhibit D-1, is that taken from the Cummings yard, looking across the street and showing the garage? A. Yes, sir; that is so.

Q. Is that the only garage opposite that house? A. The only one I seen.

Mr. Lane: I offer the pictures in evidence.

(Pictures marked in evidence by striking out the words "For identification".)

Q. Do you remember when they were taken? A. Yes, sir; three or four months ago.

The Court: They were winter pictures; taken before the foliage came on.

HELEN KEATING, sworn for defendant.

Direct-examination by Mr. Lane:

Q. Mrs. Keating, where do you live? A. 25 North Broad Street.

Q. Are you related to Mrs. Cummings? A. No, sir.

Q. Do you know Mrs. Cummings? A. Yes, sir. I worked with her in the A. & P.

Q. When did you work with her in the A. & P.? A. Three years ago.

Q. Did you work with her there during the month of August? A. Yes, sir.

Q. What year? A. 1924—1923.

Q. Both 1923 and 1924? A. Yes, sir.

Q. Now, take your mind back to the month of August 23rd, 1924. Were you present there the first week of that month? A. No; I was home on account of a death.

Q. When did you quit there—when did you quit working there? A. I am still working there; haven't quit yet.

Q. I thought you said you quit. A. No.

Q. You did not work the first week in August, 1924. A. No.

Q. Do you remember why you didn't? A. Yes, sir.

Q. Why? A. My cousin had died.

Q. When did you go back to work there, in August, 1924? A. I think I went back the 7th of August.

Q. From that time on did you work during the month of August? A. Yes, sir.

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

Q. Do you remember whether or not there were

any days that Mrs. Cummings did not work? A. No.

Q. Were there any days that she did not work during that month except the first week? A. No.

Cross-examination by Mr. Child:

Q. How can you remember whether she worked every day or not? A. Because I worked every day myself and I remember the girls that were working on the machines with me.

Q. Do you remember any other girl that worked every day? A. Yes, sir.

Q. Who? A. Mrs. Panco and Mrs. Beever.

Q. Where were you on August 16 and 17 in the evening? A. I was working.

Q. Do you remember taking a trip to Coney Island in the middle of that month? A. No, sir; I never went to Coney Island.

Q. Never went to Coney Island? A. No.

Q. Never have been there? A. No.

Q. Don't you remember taking a trip to Coney Island with Mrs. Cummings and Mr. Grimm, some friend of yours? A. No; I never went out with Mrs. Cummings.

Q. Never went out with her? A. No; never been out with her.

Q. Did you ever go to the Dreamland Park with her? A. No; I have never been out with Mrs. Cummings at all.

Q. Is she a friend of yours? A. Yes, sir, just through working with her.

Q. Eh? A. Just through working with her, yes, sir.

Q. Never went with her at all? A. No.

FRANK T. SHEPHERD, sworn for defendant.

Direct-examination by Mr. Lane:

Q. What is your profession? A. I am a civil engineer and surveyor.

Q. Did you survey the property 175 Washington Avenue? A. I did.

Q. I show you a survey and ask you whether you made this survey of that property. A. I did.

Q. Everything is self explanatory upon that survey, is it not, Mr. Shepherd, except the figures 41.7, 8.21, 11.71, and so forth? Will you tell me what they mean—what they indicate? A. The figures 41.7 indicate the width of the lot. The figures in the circle, starting from datum three cipers, indicates the height above the curb of these various points that are enclosed in the circle?

Mr. Lane: I offer the survey.

Cross-examination by Mr. Child:

Q. When did you make that? A. Yesterday morning.

Mr. Child: No objection.

(Paper marked Exhibit D-1.)

Q. How far back is the porch from the street? A. Forty one feet and sixteen hundredths.

Q. And how wide is the porch? A. Ten feet.

OWEN CUMMINGS, recalled for the defendant.

Direct-examination by Mr. Lane:

Q. How much did you pay the Corbally Detective Agency? A. I don't know right away. I can figure it up; about four hundred dollars.

Q. How much have you paid the Kopp sisters? A. Five hundred and fifty dollars.

Q. And when did you pay them? A. I paid them in four installments.

Q. When, the first installment? A. Latter part of June, 1925.

Q. That is when you retained them? A. Yes, sir.

Q. How much was that? A. A hundred and fifty dollars.

Q. When did you pay them the next installment? A. About a month after.

Q. Was that after they had gotten some evidence? A. I don't recollect.

Q. What was your arrangement with respect to pay? A. What was the arrangement?

Q. Yes. A. Five hundred and fifty dollars.

Q. How was it to be paid? What was the arrangement? A. I paid it in installments.

Q. I know you did, but what was the arrangement at the time you made the contract?

The Court: What was your arrangement as to how much?

Witness: I paid them a hundred and fifty dollars and as I went along I paid the rest of it.

Q. Well, did you make the fee of five hundred

and fifty dollars in the beginning? A. Yes, sir.

Q. For what? A. For getting evidence.

The Court: Whether they got it or not?

Witness: No, sir.

The Court: Only if they got it?

Witness: Yes, sir, if—(interrupted)

The Court: What? Whether they got it or not?

Witness: No, sir; for working.

Q. A certain amount was to be paid in the beginning and a certain other amount to be paid when they got the evidence, is that right? A. If they got the evidence.

Q. If they got it? A. Yes, sir.

Q. And a certain amount is to be paid after this suit is finished if you get a decree, isn't it? A. No, sir; I have the full amount paid.

Q. Did you have a written agreement with them. A. Why, yes, sir.

Q. Where is it? A. She gave me a receipt for what she gave to me.

Q. Where is it? A. It is up at my house, I believe.

Q. Did you have any other writing except that receipt? A. No, sir.

Q. Does that receipt show how much—when did you get that receipt? A. When I first retained them.

Q. Does that receipt show how much the whole bill was going to be? A. Yes, sir.

Q. And showed how much you paid on account? A. Yes, sir.

Q. What is the language of the receipt as you recollect it now? A. Received a hundred and fif-

ty dollars deposit on account, balance, a hundred and fifty, five hundred and fifty—four hundred dollars.

Q. To be paid when? A. Didn't say. It was just written on the back of a card. I paid them in an automobile down here in Newark and she took a card out of her pocket and I just wrote it on the back of the card.

Q. Will you produce that receipt this afternoon? A. I am not quite sure whether I can get it or not.

Q. Why not? A. Well, it is laying up in my room. If I can find it, all right.

Cross-examination by Mr. Child:

Q. Why did you pay that hundred and fifty dollars in July before they had gotten any evidence? A. As a retainer.

Q. And when did you pay them the last money? A. About two or three months ago—about four months ago, I guess.

Q. Was your agreement with them that they would return this money if they didn't get the evidence? A. No. No agreement whatever.

Q. I understood you to say that your agreement with the Kopp sisters was that if they didn't get the evidence they wouldn't get any money and I am asking you now if that was the agreement. A. Well, my understanding—you advised me that I had enough evidence, and I took it for granted, and I paid them—I paid out the money.

Q. I am not asking you what I advised you. I am asking you whether your agreement with the Kopp sisters was that they would work for nothing if they didn't get the evidence. A. No, sir.

Q. Were they to be paid whether they got the

evidence or not—were they to be paid for their services? A. Yes, sir.

Q. The total amount, however, that they were to be paid was limited, is that right? A. Yes, sir.

By the Court:

Q. Now tell me what the arrangement was. A. Five hundred and fifty dollars.

Q. No. You didn't simply say to her, "Five hundred and fifty dollars." What talk did you have with her? A. I went up to her house and she told me what it would cost.

Q. How long was she to work? A. Until she would get enough evidence to secure what I was looking for, a divorce.

Q. She was to work until that time for five hundred and fifty dollars? A. That was the understanding.

Q. Was that your agreement? A. Yes, sir.

Q. Whether it took one year or ten years she was to work? A. No, half the amount.

Q. Half the amount what? A. Half the amount of five hundred and fifty dollars.

Q. For what? A. If she didn't get the evidence.

Q. Yes. If it wasn't possible to get it, what? A. If it wasn't possible to get the evidence.

Q. How much was she to get if she didn't get the evidence? A. Half of five hundred and fifty, and I paid her a hundred and fifty on account.

Q. That she got outright? A. Yes, sir.

Q. To induce her to go to work. A. Yes, sir.

Q. And then when did she get—then when did you pay her the next? A. Next was about a couple of months after.

Q. How much? You said a month afterwards,

next, I understood. A. I have the checks. I am not quite sure.

Q. How much did you pay her? A. I believe it was a hundred and fifty dollars.

Q. That would be three hundred dollars. Had she any evidence at that time? A. Yes, sir.

Q. Enough, as you understood? A. I am not quite sure of how much she had at that time.

Q. She reported to you weekly? A. Yes, sir.

Q. When did you pay the next? A. I believe it was some time around Christmas.

Q. How much? A. The next was a hundred and fifty dollars.

Q. Four hundred and fifty dollars. A. Yes, sir.

Q. Had she produced at that time all the evidence you wanted? A. She was still working on the case.

Q. Why did you pay her any more than half of the five hundred and fifty—why did you pay her more than two hundred and fifty dollars when you say your bargain with her was that unless she produced testimony she was only to get two hundred and fifty? A. Because I was satisfied she had enough testimony.

Q. Eh? A. Because I was satisfied she had enough.

Redirect-examination by Mr. Lane:

Q. And you did not make the last payment to her until you were told by counsel that you had enough, is that right? A. No, sir; counsel didn't tell me anything at all about those payments.

Q. I say you didn't make your last payment until after you had been told by counsel that you had enough. I don't care anything about whether

counsel told you about payments. Counsel told you you had enough before you, in fact, had made your last payment, is that right? A. My counsel told me he had enough when he first started the case.

The Court: When what?

Witness: When he first started the suit.

Q. You were not satisfied with that, was that right? A. I wanted to prove my wife was unfit to have custody of my child, the way she was running around.

Recross-examination by Mr. Child:

Q. You came to me right after the Corbally Agency abandoned the case. A. Yes, sir.

Q. That was the time when I stated to you that in my judgment the evidence the Corbally people had was sufficient. A. Yes, sir.

SADIE CUMMINGS, sworn in her own behalf.

Direct-examination by Mr. Lane:

Q. Where do you live at the present time? A. With my mother. 110 Washington Street, Belleville.

Q. How old are you? A. Twenty eight.

Q. How old is your husband? A. Why, I believe he is about six years older than I am.

Q. After your marriage where did you first go to live? A. We went to live 66 Hinsdale Place, Newark.

Q. How did your husband treat you? What was your family life? A. Why, shortly after we

were married he commenced to be cruel to me and he received word that he was going to be drafted in the Army and he didn't want to go in the Army and he complained to me he would have to go because there wasn't a child coming, and he pointed out to me several couples that had been married the same time that he, and that they didn't have to go, but he did—because he had such a good position, he was drawing good money and he didn't want to leave it—and he was very cruel and part of the time he wouldn't speak to me and used vile names to me. First time he called me out of my name I got up from the table and ran to the bathroom and closed the door and he ordered me to come out and when I didn't come out he up—he threw a dish right through the window of the bathroom, and he cut his own wrist.

Q. When was that? A. That was around May, 1918.

Q. Had he called you any names before that? A. No—well, he started in about a month after we were married.

Q. What did he call you? A. Well, they were vile names.

Q. What? A. Called me a whore and cock sucker and a common prostitute, and all such things as that.

Q. When, do you recollect, did he go to the Army? A. Yes, sir; he was drafted in June, but two weeks before he was drafted he was discharged from the job that he didn't want to leave, for stealing.

Q. Then did he come home? A. He came to Camp Dix after being a year in France and didn't let me know.

The Court: What?

Witness: Didn't let me know he came from France—didn't let me know. He didn't inform me after he had arrived in Camp Dix until a friend told me my husband was at Camp Dix, his regiment was there. I then went down there to see him and asked him why he didn't let me know. He says, "What's the use?" He didn't think he would take up housekeeping—so I stayed at Camp Dix for a day at the Y. M. C. A.

The Court: Was he drafted?

Witness: Yes, sir; and went to France for a year. When he came back he came to Camp Dix. He was in Camp Dix a day or so and I received word that he was there from a friend and I went down there to see him and so I asked him why didn't he tell me that he had come from France. He says, "Oh,"—he didn't think—"what was the use" he says, "I don't intend to take up housekeeping." So then I stayed there a day and finally I coaxed him to come back, and he was willing to come back, and I came back to Newark and I rented four rooms there at 19 Washington Avenue; I went down and I bought some furniture myself—he came home and after he came home for a short while he was all right and he took a position as bar tender for Murray.

The Court: When was this?

Witness: This was in 1919.

The Court: When?

Witness: July, 1919. And shortly after that he commenced to drink and he came

home any time he felt and sometimes he stayed away for three days at a time and I would go down and stand outside, one o'clock in the morning, when he'd come out of Murray's and wait for him. Sometimes he'd come up to me and when he'd see me he'd go across the street; then I would go down the next morning and he would come up to me and say, "What the hell do you want?" I said, "I want you to come home." Then I would have to follow him around, and even followed right into the restaurant and sat down at the same table with him, and I have—(interrupted)

Q. While he was in Europe did he write you any letters? A. No; he wrote me some, and he accused me of sending him to France—being the cause of sending him to France.

Q. What happened to those letters? A. He destroyed them when he came from France.

Q. Now in 1920 where were you living? A. At 66 Hinsdale Place.

Q. What happened there? A. Why, we moved in there in April and in May he had altered the third floor of the two family house to rent it to a tenant; there were three rooms, and they didn't allow cooking on the third floor, so he put gas up there and he wanted it to pass with the building inspector knowing it, and he had a friend that was going to pass it for him—(interrupted)

Mr. Child: I object on the ground that it is immaterial.

Witness: And there was a deposit to pay ——(interrupted)

Q. What did he do and what did he say? A. He gave me a deposit—the tenant gave me a deposit to pay for the gas and to have the gas turned on and Mr. Cummings had asked a friend of his to see that it was put through, and the deposit wasn't paid as soon as Mr. Cummings thought I did, and he came home—it was on Saturday; he was working twenty four hours, and he had an hour's time off—he came home and said, "Did you pay the deposit on the gas?" I said, "Yes." He says, "You are a liar; you did not;" and he grabbed hold of my arm and he says, "What do you mean by lying to me?" I said, "I did pay the gas," and so he, when he left—I had his lunch and a bottle of tea fixed up for him to take and he dashed the tea at me and threw the sandwiches in my face.

Q. Did you leave him then? A. No; I didn't leave him. He came home the next day and he told me I would have to get out. I told him I wouldn't. He said he'd see that I got out, and he took the mattress off the bed and threw it down the back stairs and it landed at the back door of the first floor, and after he had gone I went down and brought the mattress up again and when he came back home he took it off the bed again and threw it back down. I then took some quilts and put them on the spring and that is the way I lived for about three days, that way.

Q. This last mattress episode, you didn't tell me when that occurred. A. That occurred in about June, 1920.

Q. Now I show you an advertisement, D-10 for identification, June 23, 1926, and ask you whether you saw that advertisement. A. Yes, sir; I did.

Q. How did you come to see that advertisement? A. Why, I didn't know anything about that until

I got home from work—I worked since I was married—and I got home about half past—about quarter after five. When I got home there were three women on the street. They were tenants from the house. They said, "Mrs. Cummings, did you know your furniture is advertised?" I said, "No." So the one on the first floor showed me the advertisement in the paper and she said how many couples had been there and that Mr. Cummings had seen them and had been talking to them.

Q. Did you then get this advertisement? A. Yes, sir.

Q. Did you have a talk with your husband about it? A. Yes, sir.

Q. Tell us what he said. A. Why, he told me that he wanted to sell the furniture out, that he wanted to break up, and that was his main thing to me all the time, he would say, "If you don't like what I do, get out. I am not satisfied with the rooms. I have always been used to furnished rooms. If you don't like what I do, get out." And he never gave me any money, while I was working, to run the house. I made then twenty four dollars and I used it and he kept all his money. Then I worked up until a few months before our baby was born, and then when I quit work and had no money he didn't even—he just gave me enough to buy the eats and part of the time he bought the eats that came into the home, lots of things, or, if it was his day off he would run out and get some from the delicatessen store and bring it in. He allowed me enough money to pay for all the things and I got a quart of milk every other day—that is all he allowed me for—even sometimes went to his pocket and took fifty cents out and he would give me a call down for it.

Mr. Lane: I offer in evidence Exhibit D-10 for identification of yesterday.

(Paper marked by striking out the words, "For identification".)

Mr. Lane: (Reading.) Item from Newark Evening News, Wednesday, June 30, 1920. "Household goods and furniture for sale, dining room suite.....mahogany, cost $1300, sell for half; also mahogany cane back velour living room suite; cost $1100, sell for $750 and other things. Afternoon until 5:00 p. m., 66 Hinsdale Place, second floor."

The Court: Did you have expensive furniture?

Witness: Yes, sir. It wasn't as expensive as that. That is about the price that he did pay for it.

The Court: You mean the selling price.

Witness: Yes, sir.

Q. Now, do you remember anything that happened on the 27th day of June, 1920? A. 27th?

Q. Fix it by reference to a wake you attended. A. Oh, my uncle had died and I wanted to go to the wake, so I asked Mr. Cummings if he would come with me and—it was only on the next street and he refused—he said he didn't want to go, and after arguing I said it looked so bad, it was my uncle, and we should attend it, so finally he came over with me and he went out in the kitchen where the men were and I stayed in the living room and I sat there until eleven—half past eleven, and I still thought he was out in the kitchen—it became one o'clock and I said to my cousin, "Tell Owen

to come in," that we would go home; so she said, "Owen went at half past ten" that he went out the back way with another man, so I went home myself and when I got home Mr. Cummings was up sitting in the living room reading the paper. I then asked him—I said, "Why did you do that? Why did you make a fool out of me in front of my people?" And he said—he started an argument and started to call me vile names and he told me he was going to smash up everything in the house, and he went over to the lamp shade that I was making—it wasn't quite finished—and he tore it up. We had draperies between the door and he tore them down and cleared the side board of everything that was on it and then went in the bathroom and locked himself in there for a couple of hours, I guess. In the morning—he slept in the living room the rest of the night.

The Court: Drunk or sober?
Witness: No; he was sober.

Q. Now, do you remember any quarrel which occurred in August? A. There was a quarrel in August that I remember that—it was something about money—giving me money, or something, and he got mad and he just went over and took the gas plate—he told me I'd have to leave and he was going to see that I would leave—went over and took the gas plate and threw it down the back stairs.

Q. What do you mean by "gas plate"? A. Gas plate in our kitchen, we cooked on—just had three burners, on top of the table. He took that—undone it from the hose and ran over and threw it down the back stairs, right from the top he let it go down. It landed on the first floor.

Q. What effect did that have on the gas? A. We didn't have any gas stove, we just had a three burner gas plate, like that, and it sat on top of the table with zinc underneath it.

Mr. Lane: Your Honor knows what she means, don't you? They call that a gas plate; it is a small gas stove.

Witness: Little legs on it are only that big, and you sit it on top of the table.

The Court: The whole contrivance?

Witness: It is just about that wide and that high (indicating)

The Court: Threw the whole thing down?

Witness: Yes, sir.

The Court: Why do you say the plate?

Witness: You call it a plate; it is called that name.

Q. Did any of the neighbors ever come in during any of these quarrels? A. Yes, sir; Mrs. Von lived on the first floor—(interrupted)

Q. I don't want anything unless they came when he was there. A. Yes, sir; Mrs. Winzel—she lived on the third floor—she visited my bathroom—she had to come down to the bathroom to use the bathroom on our floor.

Q. Do you remember anything that occurred in the month of October? A. October—yes; we had —Mr. Cummings—we had a quarrel. I wouldn't just exactly say what it was over, but we had a quarrel and Mr. Cummings left and went away for a week. At that time I was pregnant and Mr. Cummings struck me and blackened my leg and blackened my arm from where he struck me, because he struck me I called him a coward and he

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said if I called it again he would hit me, which he did. He says, "If you call me again every time you call me I am going to hit you. My arm was black all the way down through."

The Court: You kept on calling him.

Witness: No; I called the second time—I did call him the second time. I called him a coward, he struck me; he says, "If you call it to me again," and I did call it to him again.

Q. Was there any furniture destroyed at that time or was that another time? A. We never could keep alarm clocks or a clock in the house, which is the first thing he'd go to when he'd be mad.

Q. Why? A. Like if I had a box of powder he'd throw it all over the room—scatter it all over and he'd just clean the dresser off with his hand, then he would say to me often that he was going to use the axe on the furniture and all such stuff as that to me.

Q. Was there an occasion some time in 1920 then when he destroyed a bed? A. No; that was in 1922.

Q. When was your child born? A. June, 1921.

Q. After the birth of your child how did he treat you? A. Why, when the baby was born I didn't have anything for it; he didn't give me enough money and I didn't have hardly anything to prepare for the baby. The tenant on the first floor, after the baby was a day old, she went downtown and bought stuff and made it up for the baby on her machine, and after the baby was born he wasn't so bad until—(interrupted)

Q. What was your husband's position at that time? A. He was a fireman.

Q. Now, what was the next trouble between you that you recollect? A. Why, he decided he wanted to sell the home that we were in and there was a party that was interested in buying it and they wanted the building and loan to appraise it. The building and loan men came and Mr. Cummings, when he was leaving the home he says, "When the man from the building and loan comes here, you tell him that the owner doesn't live here," so when the man came I done as Mr. Cummings directed and when Mr. Cummings got back I told him what the building and loan man had said and he said that he didn't tell me to say that, that he told me to say that he wasn't home. I said, "I misunderstood you," and that started the argument, so during the argument he stepped in and he took down the bed and he took it and he left it on the back porch and he left the mattress on the floor and he made such a noise I told him, "I am going to call up Mrs. Ward after you are gone and I am going to tell her what all this racket is about." He says, "You don't have to." He opened the door and called up the tenant on the first floor, Mrs. Ward. Mrs. Ward came in; he started telling her that I was going to call her up, so he decided to tell himself what it was about. He then told Mrs. Ward, and I listened, that—he says, "Long before we ever had that child," he says, "I didn't want to live with her," and he says, "Any time she doesn't feel satisfied, why, let her see her lawyer," and then when he went to work I put the bed back up again and Mrs. Ward stood there and watched me put it back up. She wanted to help me but she was sick and I wouldn't let her. The next morning he

came home, he took the bed down again and put it out on the back porch and he slept about three weeks on the floor on top of the mattress in the bed room.

Q. Now when was this, Mrs. Cummings—when was this? A. That was about in—that was in May.

Q. Of what year? A. May, 1922.

Q. Go on; then what happened? A. Why, the next day—well, he slept about two or three weeks on the mattress and I occupied the other room—the baby and I occupied the other room; then on March 15th I received a letter, came addressed to me but he opened it and left it on the table, and it was from Judge Quigley and it asked me if I would kindly call and see him about a matter which my husband had spoken to him about, so I went down to see Mr. Quigley and he told me—he told me that my husband was there and he said that we didn't get along and he wanted to separate, and he asked me how much a week did I want. I said, "Well, I didn't know what I wanted a week and that I wouldn't take it because," I said, "I didn't know anything about the case." So I started to explain to him and he said he didn't want to hear it. He says, "Of course," he said, "I am a friend of Cummings and I don't want the other Cummings brother to know anything about this."

Q. Did you have a talk with your husband that day? A. Yes, sir.

Q. What was that? A. I came back again to him and he said he was going to get out, that his lawyer told him to get out. He then packed up and left. He left on March 15th and he stayed away until May 3rd and May 3rd he kept running in every once in a while; when he would come in

he would call me vile names and one time he grabbed hold of me and I pulled away from him and he tore my hand with his nails, and he threatened to kill me.

Q. Did he leave on March 15th? A. On March 15th.

Q. Of what year? A. 1922.

Q. Now, was there any discussion at that time about some check which he said you had gotten? A. Yes; he accused me of signing—he was getting an allotment from the Government, nine dollars a month, and he accused me of signing the check. So after he had left, a man called one day to see him and told me he was from the Government and he asked me my name and everything and he said —(interrupted)

Q. Never mind. Had you taken the check and endorsed it? A. No, sir.

Q. Now after he left, how often did he come in? A. Why, he used to come in maybe about twice a week.

Q. Do you remember any of the details of what he did when he came there? A. Yes, sir; he came in one time and I had a building and loan of my own; the book was laying on the table, and, of course, he didn't leave any money and I didn't have any money to pay it, and it was then two months in arrears—and it was laying on the table when he came in, so he picked it up and went over and he said—put it on the gas stove in a bent shape and he lit the gas underneath it and it burned—the cover didn't burn—then he took a kettle of hot water which was prepared for the baby's bath and he poured it on top of the book; then went over and took a little mahogany clock on the mantle

piece and threw it on top of the kitchen range, and broke that, and went into the bed room—and cleaned everything off the dresser and pulled everything around in the bedroom and walked out.

Q. Did he call you any names at that time? A. Yes, sir; he always called me names.

Q. What did he call you then? A. He has always called me the names that I just repeated.

Q. Now when did he next come to the house? Do you remember anything happened on May 15th? A. You mean when he came back to live with me?

Q. Yes; what happened then? A. Why, when he came back to live with me he came in one day and he said to me, "I have sold the house," and he said I have taken a deposit on it of three hundred dollars;" and then maybe a couple of days later he came back with his things into the house.

Q. In the meantime had he been supporting you at all? A. Yes, sir; he gave me fifteen dollars a month.

Q. Month or a week? A. No; fifteen dollars every two weeks. He got paid every two weeks and he gave me a check of fifteen dollars every two weeks.

Q. Now you went back to live again? A. Yes, sir.

Q. Where? A. Right in the same house, he came back.

Q. And how did he treat you then? A. Why, we sold our house then and we moved to 114 Washington Avenue. That would be around September, 1922, and then we moved from 114 to 96 Washington Avenue—it was an apartment house—why we only was there a short time when Mr. Cummings bought the house at 114 Washington Avenue. It

was a one family house and had all parquet floors throughout the house, and he decided one day that he didn't need the dining room rug that we had. He set fire to it, and after he set fire to it, why he sent for the fire people—I don't just know what—the insurance man, and they came and they looked at it and he collected fire insurance for the rug and also collected fire insurance for a parlor cover for our parlor suite, which we never owned it—we never had a parlor suite cover, and he told them that was destroyed.

Q. Did he strike you about that time? A. Yes, sir.

Q. Why? A. Well, one day he went in, the baby was sleeping, in the room and I had the shade down—it was dark in the bed room, and he went in and laid down and I went in afterwards and I said, "Owen, why did you lay on the white spread?" He says, "You son of a bitch, can't you see I am not laying on the spread?" So that raised an argument and he struck me. I said to him—I told him he was getting away with murder on the stuff he was—when I told him I was going to tell about his setting fire to our carpet—rug—he said if I ever told it he would kill me.

Q. Now, what happened in November, 1922, do you remember? A. November, 1922?

Q. You moved to your house on Washington—(interrupted) A. Oh, 1923? November, 1922, we moved to 114 Washington Avenue.

Q. What was the condition of your health? A. Why, I had been sick for about six months, was under the doctor's care for about six months.

Q. What doctor? A. Dr. Kern.

Q. What was the condition of Olive? A. Olive was sick. She first had the grippe, then she had

trouble with her stomach. She was very sick for two weeks, the doctor attended her every day for two weeks.

Q. What kind of a house was that? A. It was a one-family—(interrupted)

Q. I know, but what— A. Mr. Cummings started—no more than we moved in, he started to change it to a two family house, and he cut windows out and cut a part of the house off and started a cellar. He then had a disagreement with the man that built it and the work stopped, so he went out—he went out and nailed some boxes up at the window and the back of the house was cut through to make an addition to the cellar, and they had taken the cellar door and part of the cellar away, and that was in cold weather, and it remained that way until after I left Mr. Cummings, and when I moved there, there was two tons of coal in the cellar which he bought off from the woman, and that was all the coal that came into the house, and the doctor told him when he visited me, he said it was no fit place to keep me and the baby.

Q. Did the doctor speak to your husband? A. Yes, sir.

Q. In your presence? A. Yes, sir; in my presence.

Q. What did he say? A. He told him I was in a very run down condition and that—he ordered me into the hospital, and told Mr. Cummings that my blood was in such terrible condition that I couldn't stand an operation.

Q. What was the matter with Olive? A. She had the grippe.

Q. Now, do you remember any episode that took place about that time, that he struck you? Come

down to April, 1923. A. Why, that was when I left, around April.

Q. Come down to that date. What happened just before you left? A. Mr. Cummings—we had bought the place, see, and the place was to be put in my name and his, because we both owned the other house; so one day I got a letter that came and it was from Mr. Quigley, and I opened it and I found out that Owen had changed the house into another man's name, a Mr. Ettinger, so when he came home I asked him why he had done that, I thought the property was being put into my name and his, and he then told me that he had me just where he wanted me and that I could go to hell now and go home and see how long my people would keep me.

Q. Did he strike you at that time? A. He then asked me to go down to Mr. Quigley's office the next morning—he wanted me to go down to Mr. Quigley's office to sign some paper to get a loan on the house, and I was sitting with my back towards him; I said to him, "No; I am not going down." I said, "You got twelve hundred in the bank which belongs to me and you have it in your name," and I said, "when you use that up on fixing the house, then I will sign for a loan on it." And I said, "Anyway, you done me wrong by putting the house in another man's name," and he turned around and he struck me. He struck me twice in the head. So he then left the house.

Q. Where was Olive then? A. Olive was sitting on my lap. She was sick at the time.

Q. What did you do then? A. Why, the next morning he went out, and I guess went to work and the next morning he came in about twenty minutes after eight, and I had his breakfast ready

for him and he came in the back door and went to the closet and he just changed his collar or shirt or something and he went out the front way and he didn't stop to eat, so after he was gone I sat down and I ate, was sitting at the table; then he came back in the back way with a paper under his arm and he said, "What do you mean by putting this over on me?" he said, and he up with the plate and just flopped it down on the table and it broke. He then grabbed hold of the table cloth and everything went up in the corner of the kitchen.

Q. Do you remember about that time, before you left, his pulling anything in respect to the table cloths?

The Court: She is just telling that.

Q. Is that what you were telling, when he pulled the table cloth off? A. Yes, sir.

Q. That was before you left, wasn't it? A. Yes, sir; that was before—day or so before I left.

Q. Now, when you left, where did you go?

The Court: Why did you leave?

Witness: Why, he struck me; and that Saturday,—that Sunday that I left him I was supposed to go into Dr. Kern's Hospital, and I went home instead.

The Court: Tell me what caused you to leave.

Witness: Why, his abuse.

The Court: No, but what happened just at that time?

Witness: Why, he struck me.

The Court: Well, that doesn't tell me anything.

in and wanted—I had his breakfast ready, and he didn't eat it; he went right out the front door; he then went—and was away maybe about fifteen minutes, and he came in the back way and had the paper in his hand, and I was eating at the table; I had Olive in her arm chair, and he came over to me and took the plate that was in front of me and lifted it up and smashed it down on the table; then he grabbed ahold of the table cloth and just yanked it and landed all the stuff over in the corner.

The Court: You have repeated what you said before.

Witness: He struck me in the head.

The Court: You haven't told me about that.

Witness: Well, he came in and a short time—(interrupted)

The Court: No use repeating. When did he strike you? You haven't said a word about that.

Witness: Why, during the argument he struck me—struck me three or four times.

The Court: Where?

Witness: He struck me in the knee, in the arm and in the body.

The Court: With what?

Witness: With his fist.

The Court: You seem to have omitted that end of the circumstances. Go on.

Q. How long did you stay at your mother's? A. I am there now.

Q. I know, but how long after you left was it before you saw your husband again? A. I had

only went home, and I sent my mother down on Monday—I went home Sunday and sent her down to talk to him on Monday.

Q. Then what happened? A. She came home and she told me—(interrupted)

Q. Never mind what she told you. A. Then I went down in a couple of days to see him and he was in the place; it was being altered then; he had a lot of men working around. I took the child and went down to see him and I asked him what was he going to do? He said for me to get out and stay out, and I tried to talk to him and talked to him about the child and everything and tried to show him where he is wrong and he told me he wouldn't admit to any woman he was wrong and no woman would ever walk out of his home and come back again and when I went I could stay out.

Q. Was there a time when you went to the house and he was on a ladder and something happened with respect to the ladder? A. Yes, sir. I went down one day, he was taking the paper off the dining room; he was on the ladder up on the wall and I asked him—I didn't have five cents when I left him—I used to walk from Belleville into Newark to see him about three times a week with the baby and the stroller, and when I went in he was on the ladder taking the wall paper off, and I said to him —I asked him if he was going to give me some money, I told him that the baby needed shoes, and he said—he turned around and said, "Get the hell out of here," and he threw the brush at me and it didn't hit me, then he come down off the ladder and came over to me. He says, "What are you coming in here for?" He says, "When you went out, why the hell didn't you stay out?" And he argued and argued, and he got mad and struck me.

When he struck me I fell into the closet that was under the stairs going in and he knocked me out, because when I came to he was gone—I don't know where he was gone to.

Q. Now, did you observe at any one of those times, and if so, when, anything about the gas range—what he had done with the gas range? A. Why, I came down when he refused to take me—why I came down one day and I cleaned—they had been taking the adamant and cement, you know, —was all over the place, that the men had been carrying—I swept the whole first floor and wiped up the hall and the stairs, and so then—Mr. Cummings wasn't there when I done that—so I went down the next morning and I took Olives' crib and I wiped it off and took some of the kitchen chairs and wiped them all off—they had been dirty and dusty—and after I got it done, or, I was doing it at the time, and Mr. Cummings came in, and he took the child's crib and brought it down in the cellar, then came up and took the chairs—and one chair I was cleaning, he snatched it out of my hand and raised it and said, "If you don't get out of here I'll let you have it," and he then disconnected the gas range. I said I was going to stay—he then went over and pulled the gas range from the wall, and went downstairs—whatever he done—and came up and uncoupled it and pulled the gas range right from where it was connected.

Q. Was there any time that you were there that he tried to push you? A. I know, yes. It was on Sunday, shortly after I left him. I went down, and I brought Olive—I didn't bring her in; she was asleep in the stroller outside, and I went in to him and when I went in I tried to talk to him, and he kept going from one room to another and

I followed him. Then he kept ordering me out; he told me if I didn't stay out he would see that I would be put out. So he backed me up into the kitchen—I wouldn't go out for him, and he backed me up into the kitchen where they had cut a new place to put the stairway—stairs running from the second floor to the cellar—he backed me up so I had no place to move, with his fists back and I had to scream, because if I didn't I would have gone down to the cellar floor.

Q. Any time that you went there that he told you anything about a gun? A. Yes, sir; there was an old gun in the house, left by the former people that owned the house and lived there; they left the gun in the bathroom in a medicine chest and I was there and he told me if I didn't get out he would use it on me, and he did run up the front stairs, and when he run up the front stairs I left.

Q. Now, did you know when he started to sell the furniture? A. Yes, sir. I wasn't out of there three days when he sold my dresser and my bed room chairs that had been given to me as a wedding gift. He had sold that—I wasn't out of there fully three days, I don't believe, when that was gone, and he also sold an ice box.

Q. Did he support you at all during that time? A. No, sir.

Q. When did he give you any money after? A. Well, I kept going down to the fire house to see him and when I would go down to the fire house he would always say to me, "Take it into court, the best man wins." That is all the satisfaction I could get out of him. He says, "If you think you can get money out of me, take it into court." So then I went to Mr. Lesser and Mr. Lesser wrote

three letters to him before he replied and then he replied, "See Judge Quigley" and then he offered to give me fifteen dollars a week, which he did give me about—he started about maybe three months after I had left him, was the first time I got any money from him—he then started to give me fifteen dollars a week which he continued for about —well from June until the following February. He then stopped.

Q. Now, when did he first make any effort to come to see his daughter? A. He never made any effort until October the 23rd, 1923, when I received a letter off of him.

Q. Did you reply to that? A. He stopped support—(interrupted).

Q. Did you reply to that letter?

The Court: Did you answer the letter?

Witness: I don't know as I did.

Q. Was there an arrangement made as to his seeing the child at that time? A. Yes, sir.

Q. What was the arrangement? A. Why, it was made through Judge Brennan.

Q. What was it? A. He was to see the child. I was to bring the child down to his home once a week.

Q. Well, did you do it? A. Yes, sir; I did, until Mr. Cummings demanded that I should go up —the arrangement was made for me to bring the child down to the house, and then he demanded —when I went down there three or four times— he didn't show up and he said that the reason why, he wanted me to go up and ring the door bell of his home, and the arrangement was for the child to meet him at the corner. Then Judge

Witness: Why, he came in and—he came

Brennan changed it and he told him he could see the child at the Probation Office once a week, in the hall of the Probation Office.

Q. Now, go back to October when he first made the statement that he wanted to see his child; was there any arrangement made at that time that he could see it at your mother's house? A. Yes, sir.

Q. That is what I want to get at first. What was that arrangement? A. Why, he was allowed to come to see the child any time he wanted.

Q. Did he ever come? A. Yes, sir.

Q. When? A. He came about—well, I guess about once a week in the morning about ten o'clock at my home.

Q. Now, did anything happen at your mother's house in February of 1924 when he came there? A. Yes, sir.

Q. What happened? A. Well, he didn't come in the morning then; he came in the evening, and he took the child from bed and she was asleep and he woke her up and he took her out in just her night gown and down to Belleville there he was stopped by the police and I was on the way down —I went after him to take the child back off him and when I wanted to take the child off of him he kicked me and struck me in the face and before he left the home he picked up the chair and fired it at me.

Q. Did the officer—the Belleville police come back to the house with you? A. Yes, sir.

Q. Did he say what he was going to do with the child? A. Yes, sir.

Q. Did your husband say what he was going to do with the child? A. Yes, sir.

Q. What did he say? A. He told me he was going to take her.

Q. What was the condition of your husband that night as to sobriety? A. Why, he was taken to the Belleville court.

Q. What you observed as to whether he was intoxicated or not. A. Well, he was drunk, I think.

Q. Now, up to that date had your husband ever requested you to go back and live with him? A. He never asked me once.

The Court: That is up until March?

Mr. Lane: February 4th.

Witness: No, sir; he never asked me once to go back until February 4th and then after him being taken over to the Police Court in Belleville and Judge Kennedy spoke to him there.

Q. Were you there? A. Yes, sir; and Judge Kennedy spoke to him and told him that he should be ashamed of himself, and all like this—about the child, and he says, "I don't know you, nor I don't know your wife, but you have no right to ever take a child out at night in such weather. "Why, you are liable to kill the child." He then ordered—he asked me—Cummings kicked me; I was all black; so the judge asked me if I would press the charge; I said, no, I didn't care to press the charge, but just to talk to Mr. Cummings to leave me alone and not to abuse me, which he did, and told him if he ever seen him in Belleville that he himself would put him away.

Q. Did you about that time receive a letter from your husband? A. Yes, sir; two days later.

Q. Where is the letter? A. You have it. It was addressed to me as "Dear Madam: You say I never asked you back. I am asking you now

provided you do what is right." It was typewritten; his name signed at the bottom. That is the first and only letter Mr. Cummings ever asked me to come back, and I talked to him and even ran after him.

Q. I show you a paper dated October 25th, 1923.

The Court: Is that one that you introduced yesterday?

Mr. Lane: No.

Q. I show you letter October 25, 1923, Exhibit D-9, June 23rd, and ask you whether that is the letter that you referred to as the first one that your husband wrote with reference to seeing the child. A. Yes, sir.

Mr. Lane: I offer that in evidence.

(Paper marked by striking out the words "For identification")

Q. I show you a little note, Exhibit D-6, June 23, 1926, and ask you when you got that from your husband. A. I received it two days—about two days after I had seen him down at his home when I asked him—I wanted to make up with him and come back; he told me "No," that he wanted a divorce. I asked him, well, what could he charge me with; he says, "When I get through with you" he was going to make a common, ordinary prostitute out of me.

Q. When was it; that's what I am trying to get at. A. This was about—maybe around October sometime, about when I left him—about six months after I left him.

Q. What year? A. 1923.

Mr. Lane: I offer that in evidence.

(Paper marked by striking out the words, "For identification".)

Mr. Lane: (Reading.) "Inform me how many suits you are going to start, also what you are going to do in the future in regard to your domestic troubles.")

Q. I show you Exhibit D-5 of yesterday and ask you when you received that from your husband and under what circumstances. A. I received this from Mr. Cummings about in September, 1923. The house was then finished, and he had advertised the furniture from June—advertised once a week from June to September to sell it. That was when I was there the day he rented the flat to the woman.

The Court: What?

Witness: I was there seeing him the day he rented our flat to a woman that came in.

The Court: That he rented your flat to a woman?

Witness: Yes, sir.

Mr. Lane: Reading, ("Any belongings of yours take them out of here before the first of September.")

Q. I show you Exhibit D-4 of yesterday and ask you when you received that and under what conditions? A. Well, this was pinned on a doll that Mr. Cummings—it was tied on the doll that Mr. Cummings sent Olive for Christmas.

Q. What year? A. 1925.

Q. This last Christmas? A. Yes, sir, this last Christmas.

The Court: Do you offer these in evidence?

Mr. Lane: Yes, sir.

(Papers marked by striking out the words, "For identification".)

Mr. Lane: (Reading.) "Next Christmas I expect to have you out of the house of degenerates."

Q. I show you two envelopes, Exhibit D-8 and D-7 of January—June 23, and ask you whether you can tell me which one of these letters, if either of them, were enclosed in the respective envelopes. A. This here—(interrupted).

Q. This here is Exhxibit D-8. A. Came with this (indicating) This was September, I received this.

Q. Came with Exhibit D-5. A. And this here (indicating), came here.

Mr. Lane: I am trying to fix the dates, if your Honor please.

Q. Exhibit D-7 came with Exhibit D-6. Now, I show you the typewritten letter signed by Owen Cummings, February 4, 1924, and ask you if that is the letter that you referred to? A. Yes, sir. This is the letter I received after taking the child out—a couple of days later.

Q. And is that the only letter—(interrupted) A. That is the first and only letter I received from Mr. Cummings.

Q. In which anything was said about going back. A. No; it came registered to me.

Q. Is that the registry receipt? A. Yes, sir.

Mr. Lane: I offer the envelope and the letter.

(Papers marked by striking out the words, "For identification".)

Q. Now, as I understand it, he stopped this weekly allowance in February. A. Yes, sir.

Q. What did you do then? A. He stopped for about eleven weeks. I then went to see him again at the fire house and he was kind of half way decent to me and he said—he talked like this—he said, "Now, Sadie, wait a minute." He then went in the fire house and came back, and when he came back he says, "Now, listen," he says, "the best thing you can do is to take it into Court," he said, with another man standing there; he says, "Say Jim, come over here," he says, "I am asking my wife to come back and live with me," and he had never even asked me, but that was the answer I got when I was down to him.

Q. Then what happened? A. Then I went to the Domestic Relations Court.

Q. What happened there? A. Why, Mr. Cummings came there with Judge Quigley and I was just there by myself and Judge Quigley—or Judge Brennan said for him to give me twelve dollars a week for the child, and he told him that if I would bring in any witnesses to show that Mr. Cummings was cruel to me, he would reopen the case, and Mr. Cummings then continued to give twelve dollars a week for a short time and then he cut it down to ten dollars, which he is giving now, ten dollars a week.

The Court: Application made in this case?

Mr. Fleischman: We made application yesterday.

The Court: No application made at the time the bill was filed?

Mr. Fleischman: No.

Q. Did you meet your husband from time to time at the Probation office? A. Yes, sir. Judge Brennan told him he could see his child in the Probation Office once every six days.

Q. Yes; and did you take the child down there? A. Yes, sir.

Q. And what happened? A. Well, Mr. Cummings was very nasty because I had started a suit to try and get the property that he had put in Mr. Ettinger's name—I tried to get the share of it—he became very nasty. He told me—he used to call me vile names. He said he was going to surprise me in a few days—I would get something. That was the first time I had been informed about the divorce and he used to call me all kind of names—the names I have mentioned, and he was going to prove it. I told him he couldn't prove it. He said he was going to prove it and he was going to spend the rest of the money, the other half, to prove that I was a common ordinary prostitute.

Q. When was that property suit settled, do you remember? You did bring suit, did you? A. Yes, sir, Mr. Cummings settled with me.

Q. Do you know when that was, when it was settled? A. Well, it was settled some time in 1924, about November, or might be December, 1924.

The Court: That was after he brought this suit against you.

Witness: No; he made arrangements to settle it, but it wasn't—(interrupted)

The Court: After he brought this suit against you for divorce.

Witness: No, sir; we had the suit going on for the property before the divorce.

The Court: Did you settle after the divorce suit?

Witness: Yes, sir.

Q. How much did you get out of that settlement? A. I got thirty seven hundred dollars.

Q. How much did your husband get out of the settlement? A. I don't know.

Q. Was it half and half? A. Yes, sir; half and half.

Q. Now, during the time that you lived with your husband did he give you any money for clothes? A. No, sir. When I quit work Mr. Cummings never gave me five dollars for a hat. My mother bought me a suit and a hat after I left him—or, I mean while I was living with him, and I got down so I even had to wear Mr. Cummings shirt around in the house with a skirt.

Q. Did he give you any money for clothing for Olive or for her expenses while you were living together? A. Well, very little.

Q. What were you making? A. When I was working?

Q. Yes. A. I made twenty three dollars a week.

Q. What were you making at that time? A. I wasn't working at that time. I stopped work just shortly before my child was born.

Q. Then you didn't work any more? A. No; I didn't work any more.

Q. Until when? A. Until around—(interrupted)

Q. After you left him? A. After I left him; yes, sir.

Q. What date—when did you go to work again? A. January.

Q. Of what year? A. 1924.

Q. And where did you go to work? A. I went to work at the A. & P.

Q. As what? A. As bread wrapper.

Q. Where? A. On Cortland Street, Belleville.

Q. And how long did you continue to work there? A. Well, I worked there over a year.

The Court: What time did she leave him? I thought she said she left him in February.

Witness: I left him in April, 1923, and I did not start to work until January, 1924.

Q. And you worked during the year 1924? A. Yes, sir.

Q. Now, in 1925 were you working? A. Yes, sir.

Q. Where? A. At the A. & P.

Q. Had you also worked at the A. & P.—are you still working there? A. No, sir.

Q. When did you stop? A. I stopped in June after my husband came up there and the superintendent of the place told me that my husband had called.

The Court: June, 1925.

Witness: Yes, sir; and he told me that my husband had called there and was wanting to know my hours and different things about me.

Q. And you left? A. Yes, sir; I left then because I heard that he had gotten—(interrupted)

Q. Never mind. You left in June, 1925? A. Yes, sir.

Q. Then where did you go to work? A. I went to work for Garot.

Q. Are you working there—how long did you work there? A. Why, I have been working there —I worked up to shortly before the last time we came into court.

Q. Do you remember what date that was, about? A. Sometime—no, I couldn't exactly tell you the date, but it was sometime in February.

Q. Of this year? A. Yes, sir.

Q. When you were working at the A. & P., what were your hours? A. I started around five and worked until two for five days a week and on the sixth day I always worked two hours overtime; that would be going into Friday morning, like into Saturday; I worked two hours overtime.

Q. That is every day except Friday? A. Every day except Friday and Friday I always—(interrupted)

Q. But every day except Friday it was five o'clock in the afternoon until two o'clock the next day morning. A. Yes, sir.

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

Q. Now, it was Friday five o'clock until what time the succeeding morning? A. Until about four; sometimes I would work two hours and a half.

Q. Saturday? A. Yes, sir.

Q. Saturday afternoons you didn't work? A. No.

Q. And Sundays? A. Sundays I went in again at five.

Q. And worked until two o'clock Monday morning? A. Yes, sir.

The Court: Then you worked six days a week.

Witness: Yes, sir.

The Court: You said five days a week.

Witness: No; I said I worked five days from five to two and on the sixth day I worked from five until four.

The Court: All right.

Q. While you were working for the A. & P. did your hours ever change? A. No, sir.

The Court: What?

Witness: No, sir.

Q. During the month of August, 1924, and September, 1924 were your hours those which you have now given us? A. Yes, sir.

Q. Do you know a man named Grimm? A. Yes, sir.

Q. Where did you meet him—his first name and where did you meet him? A. Frank Grimm. I met him at—I was introduced to him at the A. & P. by a Miss Keating.

Q. The witness who was on the stand here before? A. Yes, sir.

Q. Did you ever go out with Frank Grimm? A. No, sir; I was never out with Frank Grimm.

Q. Were you ever at Dreamland Park?

The Court: Didn't meet him in front of the City Hall?

Q. Did you ever meet him in front of the Central Railroad station on Broad Street and go out with him to Dreamland Park? A. No, sir; I never was out with him, I never met him anywhere.

Q. Do you know where you were on the 6th of August, 1924? A. If it was any day but Saturday night I was working.

Q. Why do you say that? A. Because, I think I have only missed one day in a year at the A. & P.

Q. Do you remember missing any days at the A. & P. on—did you miss any days at the A. & P. in August, 1924? A. No, sir.

Q. What? A. No, sir.

Q. Do you remember on some occasion seeing your husband on Broad Street at a place about the Central Railroad station?

The Court: About the 6th of August, 1924?

Q. Forepart of August, 1924? A. I remember it, yes, sir. I remember meeting him. It was—I think it was on Saturday. I don't know the date. I am not sure about the date, but I met him. I was at the Branford Theater and I came out and Mr. Cummings was on the corner of Branford Place and Broad Street and I came up—and I walked up to him and when I walked up to him he ran across, or walked across the street to the bank there on the opposite side of the street. I then crossed the street over to where he was and when I did he walked down Mechanic Street and that was the last I seen of him. I boarded a north Newark jitney and I got off at North Newark and Mr. Cummings passed me then in a taxi cab, but he had removed his coat, he was sitting there in his shirt—he had removed his coat. That was the only time I met Mr. Cummings downtown.

By the Court:

Q. What day of the week was August 6th?

Mr. Lane: August 6th was on Wednesday, I think.

The Court: Take her on August 6th down to Dreamland Park.

Q. Did you on the 6th day of August, 1924, go to Dreamland Park in the City of Newark with the man known as Frank Grimm or any other man? A. No; I did not.

Q. Did you on the 24th day of August, 1924—or were you about 1:15 o'clock in the morning of either the 24th or 25th of August in Belleville on a street with Frank Grimm? A. No, sir; I was not.

Q. Standing up against a tree. A. No, sir; I never was out with Frank Grimm.

Q. Or at a cemetery? A. No, sir.

Q. Or with any other man? A. No, sir.

The Court: At those places.

Witness: No, sir.

Q. Were you on the 29th day of August, 1924, about eleven o'clock—(interrupted). A. No, sir.

Q. Wait a minute. —at night on John Street and Bridge Street in Belleville? A. No, sir.

Q. With Frank Grimm? A. No, sir.

Q. Nor were you there with any other man at that time? A. No, sir.

The Court: What is your answer?

Witness: No.

Q. Do you know Frank Corbally? A. No, sir.

Q. Do you know Stephen Flarity? A. Yes, sir.

Q. When did you see Stephen Flarity? A.

Why, I heard that the Corballies were following me, that Mr. Cummings had hired the Corballies to follow me—in fact, Chief Flynn of Belleville stopped me one night and he asked me if I was Mrs. Cummings—I was coming home from work —and I said yes, and he said, "Do you know that your husband is having you followed?" And I said, "No." He says, "Yes they are. They were in Belleville here the other night," and, he said, "my men followed them." And, he said, "He brought them in." And he said, "I asked them what they were doing in Belleville and they said they were following Mrs. Cummings of 10 Washington Street for Cummings for divorce" and he asked them why they didn't let him know that they were in Belleville, as they should.

Mr. Child: I object.

Q. What did you do? Did you go down and see? A. Yes, sir; I went down the next day to Mr. Cummings and I went to the fire house and asked him. I said, "Are you having the Corballies follow me?" He said, "No." He says, "You are crazy," he said, and I said, "Well, I am going to find out for myself, and I went down to Mr. Corbally's office and when I entered, why, Mr. Flarity was in the office and Mr. Corbally. I told them who I was and I asked them—I said, "Are you following me?" And he said, "No". He says, "Why, you are mistaken; we are not following you." And I then, now, told him that he was and he asked me if I would tell him who tipped me off. He says, "I'll bet fifty dollars the police of Belleville told you." And I said, "No," that the police of Belleville didn't tell me. So then he did tell me he was following me and also said to

me, "What does Mr. Cummings want to get a divorce for?" I said, "I don't know." And he says, "Why don't you give him the child?" And I said no; I would never give up Olive, and he said, "Why not?" I said, "I couldn't." And he said, "What would you do; would you sue him if he took the child off of you?" And he said to me, "Why don't you have Mr. Cummings followed?" I said, no, I didn't have money nor I didn't care what Mr. Cummings done or where he went; and Mr. Flarity came—he was typewriting, and he came over to me—he stood up and came over and he said, "Did you ever see me in Belleville?" he says, "Am I Mr. Corbally's son?" I said, "I don't know." He says, "Did you ever see me in Belleville?" I said, "No, I don't know"—I said, "No." And then I left.

The Court: When was all this?

Witness: This was right after I heard—(interrupted)

The Court: Well, when was it?

Witness: It was in about, well, maybe, July, 1924.

Q. Up to that time had you been out with Grimm? A. No, sir.

Q. After that were you out with him? A. No, sir.

Q. On the 16th of August, 1924, were you with Frank Grimm? A. I was not.

Q. At Coney Island? A. No, sir.

Q. The 16th of August was on Saturday night, one of your nights off. A. Yes, sir.

Q. Do you know where you were?

The Court: What year?

Mr. Lane: 1924.

Q. Have you any idea as to where you were that night? A. No, sir.

Q. Might you have been to Coney Island that night? A. No, sir; I haven't been to Coney Island. The first I was to Coney Island was last year; I went with Mrs. Young, and I haven't been to Coney Island since I was a child.

The Court: Where is Frank Grimm?

Mr. Fleischman: He is in Court.

Q. On the 23rd of August, 1924, were you with Frank Grimm at Dreamland Park in Newark or anyone else? That again was Saturday night, your night off. A. No, sir.

Q. Have you any recollection at the present time as to where you were on that date? A. Well, I mostly always went to a movie on my night off, in Belleville. I generally either went with Olive to the Capitol on Washington Avenue, Belleville.

The Court: Ever been to Dreamland Park?

Witness: Yes, sir; I went there with Mrs. Young.

Q. Did you know Mrs. Young at that time? A. Yes, sir.

Q. Did you know Mr. Young at that time? A. No, sir—yes, I did know Mr. Young, yes, sir.

Q. May you have been at Dreamland Park on some of these nights? A. No, not that time I wasn't with Mrs. Young.

Q. May you have been at Dreamland Park one of these nights? Have you any recollection of what you did on your Saturday nights in August

of 1924? A. No. I used to just go to the movies. I didn't keep track of my days, where I was.

Q. Do you remember upon any occasion of seeing your husband in Dreamland Park? A. No, sir; not at that time.

The Court: At any time, he is asking you.

Witness: No, sir; not at Dreamland Park. I seen him at the Riviera Park.

Q. That was 1925? A. Yes, sir.

Q. I am talking about Dreamland Park now. A. No, sir.

Q. Now, when did you first become acquainted with Mrs. Young? A. I became acquainted with Mrs. Young in 1923.

Q. Withdraw that for a moment and I will ask you a general question. Did you ever kiss Frank Grimm or did he ever have his arms around you or any other affection? A. No, sir; because I never was out with Mr. Grimm.

Q. Did you ever commit adultery with him? A. No, sir.

Q. When did you first meet Mrs. Young? A. In 1923.

Q. How did you meet her and under what circumstances? A. I became acquainted with Mrs. Young through the store—I met her at the stores I used to go to the store for my mother and I became acquainted with her through the child.

Q. And where did they live? A. They live at 175 Washington Avenue.

Q. And how close is that to where you live? A. About five minutes walk.

Q. By the way, there has been some statement

here about a house called 10 Washington Street, I think Newark. Do you know that place? A. Yes, sir.

Q. What is that place? A. It is a six family house.

The Court: That is where you lived, isn't it?

Witness: No, sir.

The Court: 10 Washington Street?

Witness: 10 Washington Avenue, Newark, you mean.

Q. I mean 10 Washington Avenue, Newark, then.

The Court: You lived at 10 Washington Street.

Witness: Yes, sir, Belleville.

Q. What kind of a house is this 10 Washington Avenue? A. It is a six family house.

Q. And who lives in there that you know? A. Why, Mrs. Beers.

Q. Where does she live? A. She lives on the second floor, left hand side.

Q. And is that house one you enter from the street?

The Court: To get to the second floor?

Witness: There is a front entrance and there is a rear entrance. I lived in the house—I was married from that house.

Q. What floor did you live in in that house? A. On the first floor and Mrs. Beers then lived on the second floor at that time too.

Q. And who lived on the second floor left as

you go in from the street, in August, 1925? A. Mrs. Beers.

Q. Do you know Mrs. Beers? A. I have known her all my life.

Q. Do you remember being at that house? A. I always visit Mrs. Beers.

The Court: Won't you answer the questions?

Q. Do you remember being at that house in August, 1925, at different times? A. Yes, sir; I made have visited Mrs. Beers in August.

Q. When you go in the house do you go in from the rear entrance? A. No, sir; I go in the front way, because Mrs. Beers leaves a key in the letter box so she doesn't have to come down and I used that key to open the vestibule door.

Q. Do you ever remember going in there through the rear entrance during August, 1925? A. No, sir; I never go around the back.

Q. Or during July, 1925? A. No, sir.

The Court: With Grimm.

Q. Were you ever in that house with Harold Young? A. No, sir; I never was in that house with Harold Young.

Q. Did you go into that house on the 10th day of July, 1925 with Harold Young? A. No, sir.

Q. Going in by the rear way? A. No, sir.

Q. Now, you told me that you have known—you told me you met Mrs. Young in 1923. How close did your acquaintance with Mrs. Young become? A. Why, she asked me to come up to her house, to bring Olive up some time and I did bring Olive up to visit her.

Q. Who are in the Young family—how many?

A. Well, Mr. and Mrs. Young and then Mildred Young.

Q. How old is Mr. Young? A. Well, I judge around forty five—forty six.

Q. Years old. What is his business? A. Letter carrier.

Q. What are his hours, do you know? A. Well, I think, if I am not mistaken, I think he gets up around four o'clock or three in the morning—very early.

Q. And then works until when? A. Early in the afternoon he gets home.

Q. And then after that he stays home?

The Court: You are speaking of the husband or the son of Mrs. Young?

Witness: The husband.

Q. Then there is Mrs. Young? A. Yes, sir.

Q. And Mildred Young. A. Yes, sir.

Q. How old is Mildred? A. I guess sixteen years old.

Q. What does Mildred do—does she go to school or—(interrupted) A. Well, she is working in an office.

The Court: In 1925.

Witness: She just left high school.

Q. In 1925? A. Yes, sir.

Q. Who else is in the family, Harold Young? Yes, sir.

Q. Their house, 175 Washington Avenue or street, which part of the house do they occupy? A. It is a two family house and they occupy the first floor.

Q. And is this Exhibit D-2 of June 23, 1926 a correct representation of that house, the middle

one, from the street? A. Yes, sir; this is Young's flat here (indicating).

Mr. Lane: I offer it in evidence.

(Paper marked by striking out the words "For identification".)

Q. How long have you known Harold Young? A. I didn't become acquainted with Harold Young until around February, 1924.

Q. Did you know him during the year 1924? A. Yes, sir.

Q. During the year 1924 did you at any time go out with the Youngs? A. Yes, sir.

Q. During that year did you at any time go out with Harold Young alone without the other members of the family? A. No, sir; I never was with Harold Young alone, unless he had his mother with him.

Q. Do you remember the year 1924, now, during the summer of that year, of any places that you went.

The Court: You have got the year wrong, haven't you?

Mr. Lane: No, sir. I mean in 1924, during the summer. I do not mean last year, the year before, 1924.

Q. The year they said you were going around with Frank Grimm. A. Yes, sir.

Q. Do you remember the year 1924 at any time going out with Mr. Young and Mrs. Young and the Young family? A. In 1924, I just couldn't tell you.

Q. Did you go to their house?

The Court: What is your answer?

Witness: I said I couldn't remember any particular place I was. Did I go to their house?

Q. I don't mean any particular place that you were. I want the general statement as to whether you remember going out with them at different times. A. The first time I was to the Young's home was in January. The first time I visited their home was in January, 1925.

Q. How did you come to visit the home? A. Why, Mrs. Young asked me to take Olive up to see the Christmas tree.

Q. Do you remember what day that was? A. No, sir.

Q. After you went there to see them the first time, how often did you go to the Youngs' house? A. Why, I used to go once a week or maybe every other week.

Q. When was it that you first went out with Mrs. Young or Mrs. Young and Harold Young, I mean, or any of that family? A. Why, shortly after that Mrs. Young—I went up there one evening, and Mrs. Young, when I got there, asked me if I wanted to go to the movies, they were going to the moving pictures—she asked me if I wanted to go along, and I said "Yes" and I went along with Mr. Young and Harold and Mrs. Young.

Q. How about the baby? A. I always took the baby with me.

Q. Now, do you remember the 4th day of July, 1925? A. Yes, sir; I do.

Q. Where were you then? A. Why, I was down at Young's house.

Q. Do you remember what time you got there? A. Yes, sir.

Q. What time? A. Well, I judge around half past seven.

Q. That was Saturday. Do you remember who were there? A. Yes, sir.

Q. Who? A. When I got there there were about five or six people on the stoop, the family upstairs, and there was also Mr. Young and Mr. Harold Young and Mildred Young and Mrs. Young.

Q. Was there another party there too? A. Yes, sir; there was a little boy by the name of Edward.

Q. What did you all do there? A. Why they were shooting off fire works. They had quite a lot of fire works that they were shooting off and Olive was scared of the fire works. She started to cry so I had to leave. I left—(interrupted)

Q. When did you leave? A. I left, well—I left maybe about nine thirty. Olive got scared and we took her inside; then she was crying so when they would shoot the cannon off—it worried her, so I came home—I left.

The Court: Came home where?

Witness: I didn't come home to my own home; I left and went down to my brother's home on John Street and my mother was there.

Q. Then where did you go? A. Then we went home.

Q. Where? A. Home to my home, 10 Washington Street.

Q. About what time was it that you left? A. As soon as I got down there my mother left with me and came home.

Q. Did Harold Young and you kiss each other there on that occasion? A. No, sir.

Q. Or did he embrace you? A. There were about fifteen, at least ten, people, anyway, on the stoop.

Q. Were you at any time during that day alone with Harold Young in that house? A. No, sir.

Q. Was Mr. Young there during all the time that you were there? A. Yes, sir.

Q. Do you remember where you were on the 26th of July, 1925, on Sunday? A. I do not know.

Q. Do you remember being at Riviera Park? A. Yes, sir; Mrs. Young, Mildred Young and Mr. Young and a girl by the name of Grace Gormon and Olive and I.

Q. You say "Mr. Young" this time, you mean —(interrupted) A. Harold Young.

Q. Do you remember what time you went there? A. It was some time in the afternoon.

Q. Where did you go after you—how long did you stay there? A. Why, it was around, maybe five thirty. That is the time I seen Mr. Cummings up at the park.

Q. Hiding in the bushes? A. No, sir; he was outside in front of a saloon.

Q. How did you come to see him? A. When I came out I seen him.

Q. What time about did you come out? A. It was about half past five.

Q. And then where did you go? A. I came on down and came home to my own home.

Q. And then where did you go? Do you remember whether you went to Young's house on that night? A. I may have. I am not positive. I guess so.

Q. Have you any definite recollection as to

whether that was the night? A. Yes, sir; I think I did go there.

Q. Do you know who were there at that time? A. Yes, sir; Mr. Young and Mrs. Young, Harold Young and Mildred Young and Olive and I.

Q. Did you on the 26th day of July either at Riviera Park or at Young's home kiss Mr. Young? A. No. I did not. I never kissed Mr. Young.

Q. Or anything of the kind? A. No, sir.

Q. Or were there any affectionate greetings between you? A. No, sir.

Q. Or did you have your arm around him or did he have his arm around you? A. No, sir.

Q. When you appeared at the Youngs' house on the 4th of July 1925, did Mr. Harold Young meet you at the head of the steps and put his arms around you? A. No, sir. The first person—(interrupted)

The Court: Or at the foot of the steps. One of the witnesses said it was down at the foot of the steps.

Mr. Lane: Norma said it was at the head.

Q. Either at the foot of the steps or at the head of the steps? A. No, sir; the first person I met was Mr. Young, senior.

The Court: Did you kiss Harold at either place?

Witness: No, sir.

The Court: At the top of the steps or at the foot of the steps?

Witness: No, sir.

Q. On the 26th day of July, 1925, when you were

at Riviera Park and on the way home or after you got home—after you got to 175 Washington Avenue, do you remember whether Harold Young took you to your house that night? A. No, sir.

The Court: You say you do not remember or he did not.

Witness: He did not.

Q. Did he take you to your house or do you have any recollection about it at all? A. No. Harold Young never took me home alone.

Q. Have you any recollection of that specific fact, or are you just saying he did not take you home that night because he never did take you home? A. Yes, sir; he never did take me home alone.

The Court: Take you home with the baby?

Witness: Yes, sir.

The Court: Never?

Witness: He walked home with Mrs. Young.

The Court: No, but him alone and the baby.

Witness: No, sir.

The Court: At no time?

Witness: At no time.

Q. Do you remember on the 26th of July—or did you on the 26th day of July, 1925, go and stand in front of the delicatessen store in Belleville Avenue? A. No, sir.

Q. With Harold Young and kiss him? A. No, sir.

Q. Or did he kiss you? A. No.

Q. Did that occur at any time? A. No, sir; I never kissed Harold Young.

The Court: Did he ever kiss you?
Witness: No, sir.

Q. Have you any recollection as to where you were on August 28th at six o'clock on that night —August 28th, Friday—have you any recollection of that date? A. No.

Q. May you have been at Mrs. Young's house on that night? A. Yes, sir; I may have.

Q. If you were at Mrs. Young's house that night did you meet Harold Young on the porch and did he put his arms around you and kiss you? A. No, sir; Harold Young never kissed me.

Q. He may have met you on the porch, I suppose? A. Well, I don't say that he might not have let me in.

Q. But did he kiss you? A. No, sir.

The Court: Put his arms around you?
Witness: No, sir.

Q. Did you on that night go into the house at 175 Washington Street and did the lights in that house go out while you and Harold Young were in it—were the lights put out? A. No, sir.

Q. Were you in there—do you know of any occasion when you were in the house alone with Harold Young? A. I never was in Harold Young's house with him alone.

Q. Do you know of any occasion when you were in that house alone with anybody else in the house that the lights were, after dark, put out for a space of time and then lit for another space of time? A. No, sir.

Q. Putting on and off the lights after ten

minutes or fifteen minutes, something of that kind —did anything of that kind ever occur? A. No, sir.

Q. Whether Harold Young and you were there alone or whether you were there with others did that ever occur? A. No, sir.

Q. Did you go to a theater with Harold Young on the 29th day of August, 1925, alone? A. No, sir.

The Court: Name of the theater.

Q. Newark Theater. A. No; not alone; but I have been in the theater with Mrs. Young and Harold Young and Mildred Young, at the Newark Theater, when there was a stock company there playing last summer, I think it was.

Q. Summer of 1925? A. Yes, sir. I was there, I think twice. I seen two plays there with Mrs. Young, Mrs. Young one time alone and then I seen another play when Harold Young was with us and Mildred Young.

Q. Do you remember the date? A. No, sir; I cannot tell you the date.

Q. Were you at any one of these occasions or on any other occasion in that theater or any other theater where you went with them, did you ever sit with your arms around Harold Young?

The Court: His arms around her.

Q. Or his arms around you, or anything of that kind. A. No, sir.

Q. Did you ever—did he ever kiss you on the back of the neck in the theater, or any other affectionate—(interrupted). A. No, sir.

Q. —motion of any kind? A. No, sir.

Q. Do you remember of any occasion in which

you, after leaving the theater, went to some chop suey place? A. No, sir; I never patronized a chop suey place, because I do not eat Chinese stuff.

Q. Did you go with Harold Young alone to any restaurant? A. No, sir.

Q. After the theater. A. No, sir.

Q. During the months of July, August or September or any other time in 1925? A. No, sir.

Q. Did you go after the theater with the others to any place to eat? A. No, sir.

Q. When you did go to the theater with them where did you go after the theater? A. I came right home.

Q. Do you remember any occasion that you went after the theater to any other place—any restaurant, for supper? A. No, sir.

The Court: Down on Mulberry Street with him—with Harold.

Wtness: No, sr.

Q. Do you remember any occasion of going down Market Street from Broad to Mulberry and then along Mulberry Street and going into arcades here and there with Harold Young and kissing each other or something of that kind? A. No, sir; I wouldn't go on that street at night.

Q. Were you ever on that street? A. No, sir.

Q. Wait. Were you ever on that street with Harold Young alone or in company? A. No, sir. I never remember being on Mulberry Street this side of Market in my life.

The Court: The other side of Market Street.

Witness: That is the side I mean. I

never was on that side of Mulberry Street. I have been right by the Market there.

The Court: This is the other way; through Chinatown.

Witness: No, sir; I have never been over that way in my life.

The Court: Towards the City Hall.

Witness: No, sir.

Q. Do you know where the Eagle Chop Suey is? A. No, sir.

The Court: On Market Street.

Witness: I know there is a lot of places there, but I don't know them by name.

The Court: Ever been in them?

Witness: No, sir.

Q. Were you, on the 12th day of September, 1925, in Coney Island? A. Yes, sir; I went to Coney Island with Mrs. Young and Harold Young.

Q. Have you any recollection of the date yourself except as it has been refreshed? A. No, sir. There are some I remember and some I do not.

Q. Well, do you remember anything about—would you remember this Coney Island trip by date except by refreshing your recollection? A. Yes, sir; I would remember something of the date because Mrs. Young said she was going to go to Coney Island when her husband was on his vacation and she would take me down with her; and that was during the beginning of September sometime.

Q. Have you had access to a diary of Miss Mildred Young which fixes some of these dates in your mind? A. I never seen that diary until

about two—three weeks—wait—I think before we were in the court here and then I got the new date of this adultery charge against me with Harold Young and then they looked up the diary when I told the Youngs about the date—Mr. Fleischman gave me the list of the dates. That was the first time I ever seen that diary.

Q. You have seen that diary since? A. No, sir.

Q. And refreshed your recollection? A. No, sir, I never—(interrupted)

Q. On the 12th of September when you went to Coney Island with these people, who was in the party? A. Mrs. Young and Harold Young and I.

Q. And what time did you leave? A. Well, I should say about six o'clock.

Q. Mrs. Cummings, do you remember where you were on January 10, 1926, by date? A. No, sir; not by date.

Q. Do you remember an episode, the falling of a Christmas tree when you were at the Young's house? A. Yes, sir.

Q. Can you tell me about when that was? A. Well, we were in the dining room—(interrupted)

Q. Can you tell me about when it was? A. It was some time in January, shortly after Christmas.

Q. Go ahead and tell us then—what time did you get to the Youngs' house? A. I got there about half past seven and about nine o'clock we had coffee. Mrs. Young served coffee in the dining room and we were at the table having coffee, Mrs. Young, Mildred Young, Harold Young and Olive and myself. Mr. Young was there, but he didn't have coffee with us in the dining room. We were sitting at the table and we heard like a creak

sound, and before we knew it, why, the crash came and the Christmas tree had fallen over.

Q. Then what did you do? A. Why, we got up and we started picking up all the ornaments we could save off the floor and I helped to pick the ornaments up and packed them in the boxes.

Q. And how late did you stay there that night, do you remember? A. I imagine—I judge I left there about eleven o'clock, because I had helped to pick up the things and helped to put them in the boxes.

Q. Now, at or about that time or any other time were you in the Youngs' house sitting at a piano with your arm around Mr. Young or Mr. Young's arms around you? I mean, by "Mr. Young", Harold Young—or anything of that kind? A. No, sir.

Q. Or did you ever at or about that time or any other time sit on the floor with Harold Young and play something which looked like checkers or any other game or anything of that kind? A. No, sir; I never played checkers at Harold Young's home.

Q. Did you play any other game? A. Yes, sir, I did; played cards.

Q. Did you play any other game on the floor? A. No, sir.

Q. Or any game on the floor? A. No, sir.

Q. Did you at any time ride in a trolley car—open trolley car—with Mr. Harold Young and Olive alone? A. No, sir; I did not.

Q. Did you on June 4, 1924, or at any other time ride in a trolley car with Harold Young and he called you over from the seat opposite the seat in which he was sitting and you go over and then sit there and he fondling your breast or stroking

your breast of anything of that kind? A. No, sir; I did not.

Q. Or fondling the top of the child's head? A. No, sir.

Q. Or anything of that kind? Did any incident of that kind ever occur? A. No, sir.

Q. On January 12, 1926—do you know a man named Kaiser? A. Yes, sir; I do.

Q. Do you remember on January 12, 1926 or at any other time seeing Kaiser—January 12, 1926—see him in a trolley car and shake your fist at him or anything of that kind, do you remember? A. No; I didn't see Mr. Kaiser in a trolley car, but I seen Mr. Kaiser several times waiting outside of the library for Mr. Cummings when I visited there with the child. When I went in he was standing there and when I came out he was standing there, and shortly before the trial Kaiser was there with two other men and pointed me out, or pointed and said something to these two men, one I recognized as Mr. Wood, another fireman which I recognized as being following me at a time when I went to the theater.

Q. How long had you known these firemen were following you? A. I knew all along. Neighbors from down around the firehouse had sent me word.

Q. When was that? A. Well, in the summer time around June or July and August; them months.

Q. Did you ever shake your fist at Kaiser? A. No, sir. Mr. Kaiser was in my home one time, too, when I lived at 66 Hinsdale Place; he came in with Owen Cummings' brother.

Q. When was that? A. That was in around 1921.

Q. While you were living together? A. Yes, sir.

Q. Do you remember on June 10, 1925, being at the Regent Theater with Mr. Young? A. I do not remember by date.

The Court: With Mr. Young alone.

Witness: No, sir.

The Court: You say you don't remember?

Witness: No, sir. I was never in a theater with Mr. Young alone. I was there with his mother.

Q. Do you remember being at the movies on or about June 10 with Mr. Harold Young, Mildred and your daughter, when Mrs. Young was not along? A. Yes, sir.

Q. Do you remember what show you saw on that date? A. No; I can't recall by date, but I can remember when I was with them by the name of the play.

Q. Do you remember seeing "Cheap Kisses"?

The Court: A movie called "Cheap Kisses"?

Witness: Yes, sir; I do.

Q. Do you remember when it was that you saw "Cheap Kisses"? A. No, sir; not by date.

Q. Do you know whether it was in the month of June, 1925 or summer of last year? A. No; I just can't tell you by date.

Q. Well, when you went to the show "Cheap Kisses" who did you go with, do you remember? A. Mildred Young, Olive and myself and Harold Young.

Q. Do you remember—do you know what

theater that was played at; was that at the Regent? A. Yes, sir.

Q. Did you at that time sit with Harold Young and was there any affection displayed between you of any kind, nature or description whatever? A. No, sir.

Q. Do you remember what time you got there? A. Yes, sir; I imagine it was around—maybe quarter to eight, eight o'clock, somewheres around that time.

Q. Do you remember what time you left? A. Well, maybe it got out after ten.

Q. Do you remember what you did after that? A. Yes, sir; boarded a trolley car and I got off at William Street, Olive and I.

Q. Went home? A. Yes, sir.

Q. Do you remember meeting your husband on that date? A. I can't tell you. I wouldn't know by date.

Q. Do you remember the time you went to see "Cheap Kisses" with Mildred whether you met your husband on that day? Have you any recollection of that? A. I think that I did meet Mr. Cummings and Mildred Young came with me to the Library and then, now, met Mr. Young in front of the Regent Theater; it was about quarter after eight. I left Mr. Cummings about eight o'clock. And Mildred Young did come once with me to the Library when I met Mr. Cummings.

Q. And was that the only occasion that Mildred Young went to the Library with you? A. Yes, sir.

Q. Did Mr. Harold Young go to the Library with you when you went down to meet your husband? A. No, sir.

Q. To take the child down? A. No, sir.

Q. Now, do you remember—did you upon any occasion go behind the bushes that are shown there in your yard at your house with Harold Young—did you? A. No, sir.

Q. Are these bushes which are shown on Exhibit D-3 the only bushes that there are in that corner of the yard? A. Yes, sir; they are the only two bushes that are there and they have got a sort of flower on them and they are not much higher than the fence that is there.

Q. Have those bushes been cut or anything since 1924? A. No, sir; they are exactly that way today; just as they are.

Q. Were they that way in 1925? A. Yes, sir; they were that way when we took the place, they were there—at least when my mother took the place.

Q. Did you ever go to your home at 10 Washington Street, Belleville with Harold Young and put the child in the dark house, or the child in the house and then stay outside? A. No, sir; Harold Young never came up on my front porch with me.

Q. Did you on December 13, 1924, or at any other time after seeing your husband at the Library, meet Mr. Young and say to him any words to the effect that you had gotten rid of your husband in a hurry or something of that kind? A. I remember on December 13 I did meet Mr. Cummings at the Library and we stayed a short time and then left, and I had made arrangements with Mrs. Young—she was going to the theater, the Regent, and I had made arrangements right after I left Mr. Cummings that I would go to the theater, which I did, and they were to sit up in front of the left hand side of the theater, a few seats from

the front. After I left Mr. Cummings I boarded the trolley car and got off at Bloomfield Avenue; I went over and purchased two tickets, one for Olive, and I, and I then entered the theater—it was on the left hand up towards the front—I didn't find seats though. Mrs. Young sat at the other aisle—it was the middle aisle they were sitting on; I sat on the other side for a little while and they didn't know I was there. When people got up, I got up and crossed and sat with Mrs. Young, and Mildred Young was there and Harold Young was there.

Q. When you met Harold Young or the Youngs or any one of the Youngs that night did you say you got rid of your husband very quickly, or something of that kind? A. No, sir; I did not. I always stayed the length of time with the child that was required, or either Mr. Cummings would take out his watch and say, "Well, Olive, I am going; good bye."

Q. Do you remember what movie—was that a movie? A. Yes, sir.

Q. Do you remember what movie you saw that night? A. Yes, sir.

Q. What was it? A. It was "The Phantom of the Opera" I think.

Q. Did you, upon any occasion when you met your husband at the Library say to your husband, "Don't you want to meet Olive's new papa?" or words to that effect, or anything of that kind? A. I didn't ever. Mr. Cummings used very vile language every time I went—(interrupted)

Q. Answer my question. When Mr. Cummings met you at the library did he speak pleasantly to you? A. No, sir; he did not.

Q. How recently has it been that he met you at

the Library and said anything to you that was not pleasant? A. Why, right up—the first time I met him after we being in here the last time I was in court—why the next time I met him I met him outside of the Library—it wasn't inside—he was on the steps of the Library when I came up to him and the cop in the Library was putting two little boys out, and it seems that Olive thought that the cop was going to chase her, so she asked me if the cop would arrest her and I said "No" and at that her father said, "What would you do, Olive, if I told the cop to arrest you?" She started to whine and said, "They won't arrest me, will they mother?" I said, "No." He says, "No, not unless you go behind the bushes like your mother does." And I said, "You'll have to prove that." Then he started in and called me the same names that I have repeated before and he said whether I went or not, he says, "You are not going to get one G— d— cent off me," he says, "I will clear out before I give you one cent."

Q. On September 13th, after you saw the Phantom, did you go back to the house, 10 Washington Street and then meet Mrs.—or rather—with Harold Young, go behind these bushes? A. No, sir; I did not. They all got off the trolley car at William Street, Mrs. Young and Mildred and Olive and I and we all went to our home. They came just as far as the gate and I left them there.

Q. Did you at any time stand with Harold Young at your house 10 Washington Street close together and you lift your dress? A. I never stood on my stoop with Harold Young. He never was on the stoop with me.

Q. Stand at any telegraph pole or tree at any time? A. No, sir; I never did.

Q. During your acquaintance with Harold Young? A. No, sir.

Q. And remain there in an affectionate attitude. A. No, sir; I did not.

Q. Did you, with Frank Grimm during the summer— You have already said you haven't been out with him. What did your acquaintace with Frank Grimm consist of? How well did you know him? A. I didn't know Frank Grimm very well at all. I met Frank through Mrs. Keating and we had a half hour for lunch at the A. & P.; it was between nine and half past nine and I went out with Mrs. Keating to the corner while she met Frank Grimm and spoke to him a few minutes.

Q. Do you know a Mr. Riess? A. No, sir.

Q. The name of the man that was mentioned yesterday your being in the theater with. A. No, sir; I don't know him.

Q. The name of the man mentioned yesterday of your being in the theater with. A. No, sir; I don't know him, but I have heard of him.

Q. Were you ever in the theater with that man? A. No, sir.

Q. Sitting and loving each other? A. No, sir; I don't even know the man.

The Court: Is he here?

Mr. Lane: No, sir. The first time we knew his name was yesterday.

Q. Did you ever go out with him at all? A. No, sir.

Q. Do you know where he lives? A. No, sir.

Q. Did you, upon any occasion at any time at any place commit adultery with Frank Grimm? A. I never committed adultery with Frank Grimm.

Q. Yes or no. A. No.

Q. Did you at any time or any place or under any circumstances commit adultery with Harold Young? A. No, sir.

Cross-examination by Mr. Child:

Q. When was your husband employed in Murray's saloon? A. Why, he was employed after he came out of the Army.

Q. And when was that? A. Why, he came out July 5th, I think, 1918.

Q. Then how long did he continue to be employed there? A. Until he was put on the fire department, or took that position.

Q. When was that? A. Well, I judge about maybe three or four months after he came home from the Army. I am not sure, but I think three or four months.

Q. Now, you have stated in your answer, and I think in your testimony, that your husband over a long period of time became intoxicated and while drunk beat and abused you, is that correct? A. Yes, sir.

Q. For how many years did his intoxication continue—drinking continue? A. Well, every once in a while he would come home drunk.

Q. Down to what time? A. After he came home from the Army.

Q. That is when it started. A. No, sir; he started before that. I was only fifteen days married when he—we were married November 15th and it was on Christmas Eve he came home paralyzed drunk.

Q. Well, after he came back from the Army you say his condition got worse—he drank more, did

he? A. No; he didn't drink heavy. Once in a while he was under the influence of liquor.

Q. Then he wasn't an habitual user of liquor, was he. A. No; only once in a while. I only remember Mr. Cummings being drunk, that I could say I positively knew he was drunk, was about four times while I was married to him.

Q. Now, you have stated in your answer, and I think in an affidavit that your husband, after his return from the Army was afflicted with a venereal disease. A. I did not.

Q. You didn't state that in any of the papers in this case? A. No, sir; I did not. I said that Mr. Cummings had a French itch which I took from him. He came home and he had piles and he had the French itch when he came out of the Army and was treated at the Red Cross for it.

Q. You know what a venereal disease is, don't you? A. No, sir; I do not; I never seen it.

The Court: You know what that means, do you, venereal disease? Is that what you mean?

Mr. Child: That is what I mean, yes, sir.

The Court: Do you know what it means, a venereal disease?

Q. Do you know what it means? A. What?

Q. What a venereal disease is. A. Yes, sir.

Q. In your answer and counter claim filed here you have charged him with suffering from a venereal disease. Why did you make that charge? A. I didn't make that charge.

The Court: Sworn to?

Mr. Child: There is an affidavit annexed to the counter petition.

Q. You charged your husband with suffering from a venereal disease. A. Yes, sir; I didn't charge him with suffering from a venereal disease. I told Mr. Fleischman about my taking something from Mr. Cummings when he came home from the Army and I was treated for it by Dr. Kern and Dr. Kern would never give me any definite answer —tell me what it was—only told me that my child could also catch it from him, and which Dr. Kern said still will come back on me.

Q. Have you ever received treatment for that disease? A. Yes, sir; I have been treated for it six months straight.

Q. Then you now say it was or was not a venereal disease? A. I say it was the French itch. I don't know that that is a disease or what it is, but that is what the doctor told me it was.

Q. A venereal disease, Mrs. Cummings, is a disease which is acquired by immorality, generally—from acts of immorality. A. I don't understand anything about that. I just know what the doctor told me.

Q. You put that in your amended petition or in your original cross petition. A. I told Mr. Fleischman about it and Mr. Fleischman thought that that was what it was.

Q. Your husband worked for Mr. Schueller for a short time, did he? A. Yes, sir; when I married him.

Q. Mr. Anthony Schueller of Arlington? A. I don't know—yes, I guess that is him.

Q. Mr. Schueller, you know, is dead now, don't you? A. I don't know.

Q. Now, in June, 1920, you and your husband had some difficulty, did you not, with regard to

your mother being a member of your household? A. No, sir; we didn't have any difficulty.

Q. Ever? A. No, sir; not with my mother.

Q. Did Mr. Cummings ask you to have your mother live somewhere else after she had recovered from an illness? A. No, sir; he did not.

Q. And wasn't it your mother's bed that Mr. Cummings finally removed from the house? A. No, sir; the bed that Mr. Cummings removed was in my home—I bought it just before—at least, I got it given to me just before my child, Olive, was born so that the friend that was staying with me could use the bed.

Q. Your mother gave you the bed, didn't she? A. Yes, sir.

Q. Now, Mr. Cummings left you at different times while you were living together, didn't he? A. Yes, sir, about four—well, I judge about four times.

Q. And that was because you and he were having disagreements wasn't it? A. Yes, sir.

Q. And it was because you broke dishes, wasn't it? A. No, sir.

Q. Didn't you ever break any dishes? A. No, sir.

Q. Do you remember—(interrupted) A. I did fire a milk bottle at him the day I left him.

Q. Yes. And after you left him, do you remember returning in the month of September while his sister was in the house, coming into the house and breaking all the dishes in the house. A. I remember coming in while his sister was there, but I never broke any dishes.

Q. Never broke one? A. No, sir; I did not. His sister was there, and packed all my things up and my baby's things we had left, and had them

in a sheet like, and left them standing in the corner, and he had taken my dishes out of the china closet—the two of them—and when I entered she pretended she didn't know there was any trouble at all. I asked her why she was in my home taking things I had worked for and even bought before Mr. Cummings had come out of the Army. She said she didn't know there was any trouble in the home, that Mr. Cummings told her I was home because I had been sick, and she then apologized for being in my home and said if she could do anything in the world for me she would have.

Q. Now, I think you said in the month of October, 1920, at the time when Mr. Cummings left that you were pregnant, is that right? A. At what time?

Q. October, 1920, that you were pregnant, you stated on your direct. A. When he left?

Q. When he kicked you in the side and when he left you—knocked you around and otherwise abused you. A. Yes, sir; he left me a week.

Q. That was in October, 1920. A. Yes, sir.

Q. When did you say your child was born? A. My child was born—she is five years old today.

Q. She was born then in June? A. Yes, sir.

Q. What part of the month of October, was it, that this happened? A. Well, it must be in the end of the month of June, or the end of October.

Q. (By the Court.) How did you come to fire the milk bottle at him? A. Because he was going to hit me and I told him—that was the only thing I could pick up to save myself and I did fire it and he ducked it.

Q. Now, at the time you left him you have testified you had no money whatever, is that right?

A. I testified I had no money. I didn't have a quarter to my name.

Q. Didn't you take some money out of the house at that time? A. I didn't take any money out of the house.

Q. At that time you had a building and loan, didn't you, about five hundred dollars available in it? A. Yes, sir; I didn't draw it until the following July.

Q. And so you did have funds available? A. Yes, sir; but I had to have Mr. Cummings down to the office—he took my certificate to the building and loan and I couldn't get it, and had some—had an affidavit for it in Quigley's office that he would be responsible for the money I drew in the building and loan on account of being destroyed, and he destroyed the book. He done that at Quigley's office—he had to go bondsman or something for it.

Q. Your mother was ill, wasn't she, when she lived with you? A. Yes, sir. My mother was ill.

Q. And for how long a time did she live with you? A. About six weeks.

Q. And then she recovered? A. No, sir; my mother was very sick—ill in bed and just as soon as she was able to get out of the bed she went back home.

Q. And Mr. Cummings asked her to go, didn't he? A. No, sir; Mr. Cummings asked her to come. I asked my mother to come so I could take care of her and he willingly said yes.

Q. Do you remember a time about that time when you and your mother were having a dispute and Mr. Cummings said unless the dispute stopped that your mother would have to go, that he wouldn't stand for the trouble in the house? A.

My mother couldn't stand a dispute at that time, she was so ill.

Q. Do you remember any time while your mother was in the house that she and you were quarrelling and Mr. Cummings said the quarreling would have to stop or she would have to get out? A. No, sir.

Q. That never happened then? A. No, sir; that never happened.

Q. Do you remember at that time both you and your mother attacked Mr. Cummings, do you? A. I attacked Mr. Cummings?

The Court: You and your mother.

Q. The two of you. A. No; I never attacked Mr. Cummings in my life.

Q. You and your mother. A. No, sir.

Q. That never happened? A. No, sir; never happened.

Q. Now, you have testified here that Mr. Cummings deliberately set fire to his house.

The Court: Rug.

Witness: Set the rug, he did, and I seen him.

Q. Isn't it a fact that the oil stove upset and the oil ran all over the rug? A. It did not. He deliberately set fire to it and I seen him.

Q. What did he set fire to it with? A. Set fire to it with kerosene oil.

Q. Didn't the oil stove upset? A. No, sir. He fixed it so when he called in the men it would look like that, he turned the oil meter that way.

Q. Did you have a fire extinguisher in the house at that time? A. No, sir; he stood right there

while it burned. It only burned a small hole in the rug.

Q. Where did the oil come from? A. Why, he put it on—he fixed it—when he started in to fix it he took the oil meter and he upset it, so it looked like the oil meter, and he told the man that came that Olive pushed back the stroller and it upset the oil meter and that is what started the fire—it was the child that pushed the stroller back.

The Court: How did he get it afire?

Witness: He lit it with a match himself.

The Court: You mean to say your husband a fireman—was he a fireman then?

Witness: Yes, he was.

Q. You have testified that there was some trouble over Mr. Cummings taking a house in the name of Mr. Ettinger. Do you remember testifying to that? A. Yes, sir.

Q. Don't you know that the reason why the house was taken in his name was because you wouldn't sign a mortgage—join with Mr. Cummings in signing a mortgage? A. Well, when he bought the house the house was immediately put into Mr. Ettinger's name.

Q. Didn't you state this morning that you declined to sign a mortgage? A. I said the day before I left Mr. Cummings that he asked me to go down and sign a mortgage to get a loan of some money, that he wanted to complete fixing the house; I told him that he had twelve hundred dollars in the bank which formerly belonged to both of us, but he took it out and put it in his own name.

Q. That was the same house that Mr. Ettinger had the title to, wasn't it? A. Yes, sir.

Q. Now, you appeared before Judge Brennan and asked for support. A. Yes, sir.

Q. For yourself and child, is that right? A. Yes, sir.

Q. And Judge Brennan told you that if you could show any acts of cruelty, that he would compel Mr. Cummings to support you, didn't he? A. Yes, sir.

Q. Why didn't you produce any acts of cruelty while you were there? A. Because I had started suit for the property—yes; I had started suit for the property and then after the suit was over I intended to bring in and get support for myself, but before that was done and settled, Mr. Cummings had already brought in this charge of adultery against me.

Q. How long was it after you made the charge before Judge Brennan that the suit was started with regard to the property? A. I just couldn't tell you, but the suit was hanging on for a long while, because Mr. Quigley—I went to his office in regard to the suit and Mr. Quigley wanted—offered me seven hundred dollars, if I would take seven hundred dollars and I refused to take seven hundred dollars, and he told me as long as I refused I would be without money for a long time.

Q. Why then didn't you go to the Domestic Relations Court as Judge Brennan had told you to do? A. What is that?

Q. Why didn't you go to the Domestic Relations Court and produce the evidence of cruelty that Judge Brennan told you to? A. I wanted to wait until I got one suit over about the property,

and I didn't intend to bring it into the Domestic Relations Court; I wanted to bring it into the Chancery for support.

Q. Why didn't you go into Chancery first then, instead of making your complaint—(interrupted) A. Because I didn't know enough and I didn't have money.

Q. You had a lawyer, did you not, in the law suit about the property? A. Yes, sir; but I didn't have money.

Q. When did you first go to work for the A. & P? A. In January sometime.

Q. Of what year? A. 1924.

Q. Did you work there constantly from that time down to the time you finally left in June, 1925? A. Yes, sir; I worked there constantly, only I got hurt once; I had my foot broke open, and that's the only time that I stayed home.

Q. How did that happen? A. I let a box fall on it.

Q. Weren't you discharged from the A. & P? A. I never was discharged from the A. & P.

Q. Weren't you discharged from the A. & P. because of a row that you and some other woman or man had with reference to this man Riess? A. No, sir.

Q. Nor Young? A. No, sir; I did not; I was never discharged from the A. & P.

Q. Weren't you out two month from the A. & P.? A. Yes, sir; I was. I was out maybe longer than that with my foot.

Q. You say you don't know Riess at all? A. No, sir. I have heard of him, but I don't know him.

Q. And where did you hear of him? A. Why, I heard his name mentioned here.

Q. Didn't you know him before you heard his name mentioned here? A. No, sir; I did not.

Q. Do you remember this man working for the A. & P. as a driver? A. No, sir.

Q. And do you remember that he took you to work in the mornings on the truck? A. No, sir; he did not.

Q. At any time? A. At no time; I never rode on the truck to work.

Q. What time was it that you were out of the employ of the Atlantic & Pacific Tea Company for two months—what period of time did that cover? A. What time was I out?

Q. Yes; what month? A. I couldn't just tell you. It was sometime in—around maybe April or some time like that.

Q. Of what year? A. 1924.

Q. And you were hurt while in their employ? A. Yes, sir.

Q. Did you receive compensation? A. Yes, sir.

Q. You say that you never met Harold Young alone or went on the trolley car alone with him or with Olive, your daughter? A. No, sir; I never was alone with Harold Young.

Q. Were you ever with Harold Young in company with your daughter and no one else present? A. No, sir.

Q. Didn't Harold Young make it a practice of meeting you after the visitation nights at the public library and go home with you? A. No, sir.

Q. He never did? A. He never did.

Q. You were never at Dreamland Park with Grimm? A. No, sir.

Q. Were you ever there with Harold Young alone? A. No, sir, not alone.

Q. Why would you call at the house #10 Wash-

ington Avenue, Newark? A. Why did I call there?

Q. Yes. A. I always called there for the last ten or fifteen years, and for four years—three years I never missed a day to go in and see Mrs. Beers' sick daughter.

Q. And you always went in the front door? A. I always went in the front door.

Q. When you and Harold Young and the others of the Young family went to the theater and to Coney Island and to various places who paid for your expenses? A. Why, whoever I was with. If I went with Mrs. Young and Mildred and all of them, Mr. Harold Young paid the expenses.

Q. From January, 1925, you and the Youngs got very intimate, didn't you? A. Well, I visited their home.

Q. Very frequently? A. Yes, sir.

Q. How frequently? A. Well, sometimes once a week; maybe I would skip a week, and maybe I would be there twice a week.

Q. And why would you go there? A. Why did I go there?

Q. Yes. A. Why, I went there because I was a friend of Mrs. Youngs and I liked Mrs. Young and Mildred too.

Q. Mrs. Young was considerably older that you? A. Yes, sir.

Q. And Mildred is considerably younger than you. A. Yes, sir.

Q. And when you went there in the evenings you would keep your daughter up until ten and eleven o'clock, wouldn't you? A. Well, if I was there—sometimes I left at half past nine—yes, she was there.

Q. Wasn't there anyone at your home that you could leave your daughter with? A. I always took her every place I went. I very seldom ever left her after me.

Q. Were you ever in a Chinese Restaurant on Broad Street, just south of Central Avenue in Newark with Harold Young alone? A. No, sir.

Q. You never were in any retaurant in Newark alone with either Harold Young or Grimm, is that correct? A. No, sir; and I never go in a Chinese restaurant.

Q. Do you know where the Eagle Restaurant on Market Street is? A. No, sir; I do not.

Q. Do you know a man named Harold Doughty? A. No, sir.

Q. Do you recall where you sat in the train on your trip to Coney Island last summer when you went along with Mrs. Young and Harold Young? A. Yes, sir.

Q. Who did you sit next to? A. I sat next to Mrs. Young and Harold Young sat in the next seat reading a newspaper.

Q. What are your hours of working at the A. & P.—what were they? A. They were five until two.

Q. Five in the afternoon until two in the night? A. Yes, sir; and on Friday I generally worked maybe two hours overtime—two and a half—it is according to the orders.

Q. Why did you leave the A. & P.? A. I left the A. & P. in June around—maybe around the 8th or 10th, or something like that—I left after I found out Mr. Cummings had been up there and was talking to the superintendent and the superintendent came and told me that Cummings was there and was finding out—wanted to know if I

bothered with the fellows, and he asked the hours; I then heard of Edison Seal.

Q. How long were you out of work after you left the A. & P. in June, 1925? A. I went to work in September.

Q. And you were out of work then from June to September 1925? A. Yes, sir; I went to the seashore.

Q. This last year. I see. You were not in town at all? A. Well, no; I only went from the first of August until the 16th of August—I was at the shore.

Q. You were at the seashore during that time. A. Yes, sir.

Q. And where did you stay? A. I stayed with a friend, a Mrs. Smith.

Q. Where did she live? A. She lived—I just couldn't tell you the number, but it is on Hillsdale Place.

Q. What apartment or hotel did you go to? A. No, sir; we had a small bungalow, her and I, just two rooms.

Q. Where? A. On 18th Avenue.

Q. What city? A. Belmar.

Q. And you were there constantly from—(interrupted) A. From August 1st until August 16th.

Q. How long have you known Edison Seal? A. I knew him—I got acquainted with him at the A. & P.

Q. When was that? A. I knew his family, sisters and all that for years, but I met Edison—I just can't tell you, but it was sometime—he asked me one night—he stopped me and said, "Are you Mrs. Cummings?" I said, "Yes;" he says, "Isa-

bell Irwin asked me if you were working here;" that was all.

Q. You didn't go to school with Edison Seal? A. No, sir; I did not.

Q. Did you know a man named Williams that testified here yesterday? A. Yes, sir.

Q. How long have you known him? A. I went to school with him when I was little, but I have never spoken to Joe Williams in years until I found out he was in this mix-up.

Q. And how did you find out he was in this mix-up? A. Why, a woman by the name of Mrs. Reilly sent for my mother and told her what was going on among the fellows at the corner.

Q. That is Joe Reilly's mother? A. That is Joe Reilly's mother—John Reilly.

Q. That is how you learned about it? A. Yes, sir.

Q. When did you learn about that? A. That was in June sometime, last year.

Q. You were, on several occasions, at the Newark Theater with the Youngs, weren't you? A. I recall I was there. It was in the afternoon. There was a stock company last summer and I went in the afternoon.

Q. Were you ever there in the evening? A. No, sir; I was never there in the evening with none of the Youngses.

Q. Nor with anybody else? A. No, sir.

Q. Do you recall being in the Newark Theater with any man? A. No, sir; I was never in the Newark Theater with any man.

Redirect-examination by Mr. Lane:

Q. Mrs. Cummings, do you remember something

about this charge of venereal disease, that when the counter claim came to be amended that I advised that that be withdrawn because I didn't think it could be corroborated? A. Yes, sir.

Q. And that is the reason why it is absent on the amended petition? A. Yes, sir.

Q. Do you remember an occasion (which I omitted to ask) at which you and the Young family went up to a fire which turned out to be a false alarm? A. Yes, sir.

Q. Do you remember about when that was? A. That was in the summer—last summer, I think in August.

Q. Who were in the party—who went to this fire? A. Well, there was Olive, Mildred, Mrs. Young and Harold Young. I had just come down to the Youngs' home and was at the bottom of the steps when the fire engine went by and we said, "Let's go to the fire." We walked down, just across the street and down a block, and when we got there, there was no fire and we turned around and came up and I stood talking at the foot of Mrs. Young's stoop for a while and then I went home.

Q. When you walked down the street did you go arm in arm with Harold Young or did he have his arm around you, or anything of that kind? A. No; we ran down.

Q. Coming back did you have your arm around him or he have his arms around you? A. No, sir; we came right up with the public, quite a crowd had gathered.

Q. When did you first know, Mrs. Cummings, that the house had been put in Ettinger's name? A. I didn't know until I had opened the letter that Quigley had sent Mr. Cummings. That is the let-

ter I kept which Mr. Fleischman had to show that the house was being changed—had been turned over to Mr. Ettinger. I opened the letter and it was addressed to Mr. Cummings and it was from Judge Quigley and it said that he had put the property in the name of Mr. Ettinger and his wife and so I kept the paper and I didn't give it to him and then I asked him about it and he said, "Oh, I got you just where I want you."

Q. Is that the time you retained Mr. Fleischman, about that time? Then you employed Mr. Fleischman? A. For the suit of the house? No. I hadn't left Mr. Cummings when I found this out.

Q. When was it you first employed Mr. Fleischman about the property, do you remember? A. Yes, sir; I think it was sometime around August.

Q. Of what year? A. Of 1923, I think.

Q. Two or three months after you separated? A. Well, it was longer than that.

Q. The year you were separated. A. No; we weren't quite a year; maybe nine months, something like that.

Q. You separated in April, didn't you? A. Yes, sir; this would be about the following August, I guess; or September. Something like that.

Q. 1924 then. A. No; that would be the same year, wouldn't it? I separated April 25, 1923.

Q. Yes. A. And then I started this in maybe August or September.

Q. 1923? A. Of 1923.

Recross-examination by Mr. Child:

Mr. Child: I omitted to ask one thing.

Q. I show you Exhibit C-1 for identification and

ask you if that is in your handwriting? You needn't read it. You can tell whether it is in your handwriting or not. A. Yes, sir; it is mine.

Q. Now, I show you Exhibit C-2 and ask you if that is in your handwriting. A. No, that is not my handwriting.

Q. I show you Exhibit C-3 and ask you if that is your handwriting. A. No, sir; that is not mine, no.

Q. Did you know that Exhibit C-2 had been written? A. No; I never wrote that; never seen it before.

Q. Did you know that it had been written? A. No, sir.

Q. And you knew nothing about it? A. No, sir.

Q. Did you, shortly after January 15, 1926, ask Frank Grimm to go down to the fire house where Owen Cummings was employed and talked to him? A. No, sir; I did not.

Q. I ask you if you recognize the paper on which Exhibit C-2 is written? A. No, sir; I do not.

Q. I call your attention to the fact that the paper on which Exhibit C-2 is written is identical to the paper on which Exhibit C-1 is written. Do you see that it is? A. I don't know. I can't tell.

Q. Just look at that and see if you can't tell. A. I cannot tell.

Q. Did you know that Frank Grimm was going down to the Newark fire house shortly after January 15, 1926? A. No; I did not.

Q. When did you last talk to Frank Grimm about this case? A. I didn't talk to him. I called him up and asked him to come to Mr. Fleischman's office which he did. I didn't talk to Mr. Grimm personally. I called him up on the phone and told

him that Mr. Fleischman—to call at Mr. Fleischman's office, which he did.

Q. When did you last communicate with Mr. Frank Grimm with regard to this case? A. I didn't communicate with him at all. I called him up —I didn't talk to him anything about the case until about four weeks before it was to come into court; then I called him up and told him he was named in the case and he said it was impossible; I said, "You better call and see Mr. Fleischman, he wants to speak to you." That was all the conversation I had and that was over the phone.

Q. You are sure you knew nothing whatever about Exhibit C-2 being written? A. No, sir; I did not.

The Court: That is this one (indicating).
Witness: No, sir; I did not.

Q. And you say Exhibit C-2 is not in your handwriting? A. No, sir.

Q. And the envelope, Exhibit C-3 is not in your writing, the address on that? A. No, sir; that is not my writing.

Q. I don't mean the file marks; I mean the address. A. I know what you mean.

The Court: Who is C-1 written to?
Mr. Child: Mr. Cummings.
Witness: Mr. Cummings.

Q. When did you tell Frank Grimm that he was named as co-respondent in this case? A. About four weeks before we came in—might be maybe five; something like that. Short time before we came into court.

Q. Do you remember when the last hearing was, about? A. Yes, sir.

Q. That was when? A. Well, that was February 18th, was the first hearing.

Q. And you communicated with him about four weeks before that time? A. Yes, sir; about that, four—maybe five weeks before.

Q. What is Frank Grimm's right name; is it Grimm or Grims? A. I think Grimm.

Q. And where did you phone to him? A. I phoned to where he was working.

Q. And the first you communicated with him in regard to this case then was in January, 1926, is that right? A. Yes, sir; I believe so, yes, sir.

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

Q. He knew nothing about the case before that time? A. Not that I know of.

Q. Why did you wait from the time these papers were filed and served upon you until January, 1926, before you communicated with Mr. Grimm who is charged with you? A. Because we didn't know whether Grimm—who Grimm was—I didn't know whether he was with Cummings or not.

Q. You said you knew Frank Grimm before this suit was started. A. Yes, sir; but I didn't know whether he was in with Mr. Cummings, because I had heard of Edison Seal and Joe Williams—I didn't know whether he was one the same as they were.

Q. Didn't you know from the time you filed your answer that Frank Grimm was actively opposing this case or would deny this charge? A. I didn't know, sir—I didn't know whether he would answer, but I knew he was named in it.

Q. You didn't take the trouble to find out whether he was going to deny the charges. A. No, sir, not until four weeks before and then I called up

to ask him to come in and see Mr. Fleischman.

Q. When was it that you learned about this alleged conspiracy of Edison Seal and the rest of them? A. Last June.

Q. Edison Seal knew Grimm, didn't he? A. I don't know.

Redirect-examination by Mr. Lane:

Q. Were you during this time with respect to your communicating with Grimm and so forth, acting under the advice of counsel or not? A. Yes, sir; I was.

Q. And had you told your counsel at that time as to what you had heard in June, 1925, as to Edison Seal and Williams? A. Yes, sir; I did.

The Court: Where did you get the paper?

Witness: That is my brother's paper.

The Court: C-1, June 23, where did you get this paper, that is the note you wrote your husband?

Witness: Yes, sir; that is my brother.

The Court: Written on the letter head of David McDermott.

Witness: Yes, sir; that was my brother I lived with.

The Court: Stock paper, Mr. Child.

Mr. Child: I understand it is stock paper, but I call attention to the similarity of some of the lines.

The Court: Stock papers, all printers use it.

Mr. Child: Yes; I know it is stock paper. That is all.

I offer the letter in evidence.

Mr. Lane: I don't suppose it is admissible.

Mr. Child: I offer the letter in evidence.

Mr. Lane: I object to the two that have not been identified.

Mr. Child: Mr. Cummings has sworn that the unsigned note is in the handwriting of his wife.

(Papers marked by striking out the words "For identification".)

MILDRED YOUNG, sworn for defendant.

Direct-examination by Mr. Lane:

Q. Miss Young, how old are you? A. I am sixteen.

Q. Where do you live? A. I live at 175 Washington Avenue, Belleville.

Q. And who are in your family? A. My mother and Dad and my brother Harold.

Q. And your father, what is his business? A. My father is a letter carrier.

Q. And what is your father's hours? A. Well, he rises very early. I think he starts to work at five, and he usually gets home about quarter to four or four o'clock.

Q. Then what does he do, usually? A. He is very handy around the house and he—now, he is just painting the house and we have quite a lawn and he usually cuts the grass or else he sits in the house and he reads quite a lot.

Q. Does he go out usually alone without you, or is that his habit? A. No.

Q. Does he go out most of the time or does he

stay home? A. My father usually stays home.

Q. Do you know Mrs. Cummings? A. Yes, sir; I do.

Q. How long have you known Mrs. Cummings? A. Well, I don't know just how long.

Q. Can you tell me—it has been some years? A. A. Yes, sir; it is a few years I have known her.

Q. And do you know the child Olive? A Yes, sir; I do.

Q. What do you think of the child, Olive? A. I think a lot of her.

Q. And how long have you been thinking a lot of the child, Olive? A. Well, ever since she started coming to my house.

Q. When did Mrs. Cummings start coming to your house about? A. Well, it was not long after my mother met her—my mother met her quite frequently at the store and she took to the child—she liked her—and she had Mrs. Cummings and the child come to our house, and I am very fond of children and I took to Olive right away.

The Court: Put Mrs. Cummings back on the stand.

SADIE CUMMINGS, recalled.

The Court: Write "Cummings," will you; write "Will bring Olive down Tuesday." Now, next line, "Here's a good tip, so use your brains."

Witness: (Complying.)

The Court: You say you did not write Exhibit 2?

Witness: No, sir; I did not.

Sadie Cummings—Recalled.

The Court: How do you write "Here's"?

Witness: Hear?

The Court: Now, C-2, has "Heare's" as well—no, you spell it here h-e-r-e-'s. That is all.

(Paper marked Exhibit C-10 of this date).

MILDRED YOUNG resumes the stand for further

Direct-examination by Mr. Lane:

Q. After Mrs. Cummings started coming to your house how often did she come? A. Well, she usually came once a week or maybe sometimes she wouldn't come until every two weeks.

Q. How is your house arranged—how many rooms have you got and who occupies the rooms? A. Well, we have a parlor, dining room and a kitchen and two bedrooms.

Q. And are those all the rooms in the house on that floor? A. And a bath, that is all.

Q. And you occupy the lower floor? A. Yes, sir.

Q. The bedrooms are located in what part of the flat? A. Well, one bedroom is in the back and on the side and the other is in the front.

Q. Where is the dining room with reference to what you call the parlor? A. Well, the parlor is first on the left hand side and next is the dining room and the bedrooms are on the other side of the house.

Q. Did you ever go out with Mrs. Cummings and your mother and Harold? A. Yes, sir; we went out.

Q. Have you gone quite often with them? A.

Well, yes, sir, we did go out quite often. We went to the Capitol quite a lot—Capitol Theater.

Q. Do you keep a diary? A. Yes, sir; I do.

Q. I show you four books and ask you what they are. A. Four books of my wiaries that I have kept.

Q. And those are diaries kept for the years 1923, 1924, 1925 and 1926 up to date, are they not? A. They are.

Q. And when did you make the entries in these diaries with respect to the times of the occurrence of the events which are recorded. A. Well, if I wasn't too tired—it wasn't too late—I usually tried to write them the nights—at night before I went to bed.

Q. And if you didn't do it at that night, did you do it soon after? A. Yes, sir; I did.

Q. When the matters were fresh in your mind? A. Yes, sir; usually did it the next day.

Q. Now, I want to direct your attention to the diary in 1926 to the date of Sunday, January 10th and ask you whether you made any memorandum in that diary at or about the time of the happening of the event which involved Mrs. Cummings. A. Why, yes, sir; Mrs. Cummings was at our house that Sunday.

Q. And what happened? A. Well, Mrs. Cummings came to our house that night and we were having coffee in the dining room—

The Court: Having what?

Witness: Coffee in the dining room and we heard a very soft sound and we didn't pay any attention to it and we just commenced to talk and then we heard a very loud crash and we looked in the other room and the tree had fallen; so we all started

picking up the pieces and we put them in the boxes and shortly after that Mrs. Cummings left.

Q. Who were at your house at that time—who all were in the party? A. Well, my whole family was there, my father, my mother and my brother, Mrs. Cummings and Olive and myself.

Q. And do you remember what time Mrs. Cummings and Olive left that night? A. Yes, sir; they left about ten thirty, later than usual because they had helped us pick up the pieces.

Q. Were you present during all the time that Mrs. Cummings and Olive were at the house that night? A. Yes, sir; I was.

Q. Did Mrs. Cummings and Harold Young at any time play any game on the floor of the front room in that house? A. No.

Q. That night? A. No, sir.

Q. Could they have played any game on the floor of that front room without you knowing it? A. No, sir; I was present all the time.

Q. Were you on the floor of that room that night picking up these things from the Christmas tree? A. Yes, sir; we went; we were stooping over, of course, and we had to kneel on the floor, the boves were low, to put the things away.

Q. Did you see any evidences of affection between Harold Young and Mrs. Cummings that night in that house? A. No, sir.

Q. Now, did you make a memorandum in this book at the time with respect to what had occurred that night as to the falling of the Christmas tree and when Mrs. Cummings went home—the hour she went home? A. Yes, sir; I did.

Q. And did you also make a memorandum as to when you retired? A. Yes, sir.

Mr. Lane: I ask that this book of January 10, this page of this book be marked for identification.

(Paper marked Exhibit D-11 of this date).

Q. Now, can you by reference to your diary of December 13th, 1925—Sunday, December 13, 1925—tell me where you were that day. A. Yes, sir; that was the night I went to the Regent Theater.

Q. And who did you go with? A. My mother, my brother, Mrs. Cummings and Olive.

Q. What time did you go and where did you meet Mrs. Cummings that night? A. Why, I don't know just what time it was, but we met Mrs. Cummings in the theater.

Q. Where did she come from? What time did you meet her there in the theater? A. I couldn't say what time it was, but she was to have met Mr. Cummings that night.

The Court: What?

Witness: She was to have met her husband, Mr. Cummings that night with Olive.

Q. One of the days of visitation? A. Yes, sir.

Q. And she came to the theater? A. Yes, sir.

Q. Do you remember how you all met in the theater on that occasion? A. No, sir; I do not, but my brother and my mother and myself, we didn't—we sat together, and then Mrs. Cummings came in and we didn't know until later on, when the first performance was out that she was there; she had sat over on the other side.

Q. And how did you go home that night, do you remember? A. No; I do not remember.

Q. Do you remember whether you went to any restaurant after the theater that night? A. No, sir; we never went to any restaurant.

Q. When you were out to the theater with Mrs. Cummings and Harold Young, your brother Harold, did you ever go to a restaurant afterwards? A. No, sir; we never went to the restaurant.

Q. Was there any time that you went out with your brother Harold and Mrs. Cummings that Mrs. Cummings and Harold did not go home with you? A. No, sir.

Q. They always went home? A. Yes, sir.

Q. Does your diary show, and can you tell me, what show it was that you saw that night? A. Yes, sir; we saw the Phantom of the Opera.

Q. According to your diary you liked it very well, didn't you? A. Yes, sir; I did.

Mr. Lane: I ask that that diary entry be marked.

(Paper marked Exhibit D-12 of this date for identification).

Q. Now, I show you your diary for October 26th, 1925, and ask you whether you can tell by that whether Mrs. Cummings and Olive were at the house that night? A. Yes, sir; they were at the house.

Q. Where were your mother and father that night; does your diary show that? I mean, with reference to whether they were home or not. A. No, sir; they were not home.

Q. Do you know whether Harold Young was

home that night or not? A. No, sir; I do not remember.

Q. Your diary shows that you were there. A. Yes; Mrs. Cummings frequently stopped in when we did not expect her.

Q. And does your diary show when she went home that night? A. Yes, sir.

Q. What time did she go home that night? A. Mrs. Cummings went home nine thirty.

Q. Were you present with her from the—all the time that she was in the house that night? A. Yes, sir; as far as I remember.

Q. Now you met a girl friend, according to the diary, called to see you that night, didn't she? A. Yes, sir.

Q. What is the name of that girl friend? A. Grace Gorman.

Q. Can you by reference to your diary—How old a girl is she? A. Grace is just sixteen Monday.

Q. Can you by reference to your diary tell me what Grace and you did there that day? A. Yes, sir.

Q. What did you do? A. Well, it was quite a fad in school to exchange dresses, so that day Grace and I exchanged dresses.

Q. And do you remember that after Mrs. Cummings came Grace went home, by reference to your diary? A. No, sir; I do not remember.

Q. At any rate you say in your diary "tonight she came to the house." A. Yes, sir.

Q. That is, Grace came to the house. A. Yes, sir.

Q. Do you remember how long she stayed? A. No, sir; I do not.

Q. Have you any independent recollection or

helped by your diary as to whether she left before Mrs. Cummings or whether Mrs. Cummings and Olive left first? A. I couldn't say. I do not know.

Mr. Lane: I ask that that be marked for identification.

(Paper marked Exhibit D-13 of this date for identification).

Q. I show you diary for September 12, 1925, and ask you whether, by reference to your diary you can tell where your brother Harry and your mother were that day. A. That day my mother and brother had gone to Coney Island.

Q. You stayed home? A. Yes, sir; I was working at that time. I was working on Saturday, I believe, yes, sir.

Q. That is in your diary, isn't it? A. Yes, sir.

Mr. Lane: I ask that that be marked.

(Paper marked Exhibit D-14 of this date for identification).

Q. Have you any independent recollection of these various events you have been testifying to except what you got in your diary, Miss Young? A. Just a few facts I remember.

The Court: I do not hear you.

Witness: I only remember a few facts just from looking—(interrupted).

The Court: Do you remember these things without referring to your diary?

Witness: No, sir; I do not.

The Court: Does the diary refresh your memory?

Witness: I haven't been reading them, no.

The Court: I say, does the diary bring back the incidents?

Witness: Yes, sir.

The Court: All of them?

Witness: Well, most of them.

Mr. Lane: I offer these that I have had marked for identification, in evidence.

Mr. Child: I object as not material and not binding on this complainant.

Mr. Lane: I shall not press it. I made the offer.

The Court: I will admit some and refuse some, but you will have to qualify the testimony. I suggest, to save time, that you withdraw your objection.

Mr. Child: Objection withdrawn.

(Papers marked in evidence by striking out the words "For identification."

Q. I show you your diary for Saturday, July 4, 1925, and ask you by reference to that diary whether you can say who all were at the house that day? A. Yes, sir. My whole family was on the porch, and the family upstairs was on the porch. My family was on the porch and the family upstairs—it happens to be my uncle and aunt, and Mrs. Cummings and Olive came in the house and the fire works were started, and Olive was afraid, so we took her in the house thinking perhaps it would pass over, but Olive seemed to be afraid of a cannon we had that made a very loud noise, so she was crying and Mrs. Cummings was forced to take her to her mother's, who, I believe, was at her brother's home—I don't know just what it was, but I believe it was her brother's home, and then I guess they went on home.

Q. When did they come to your house, do you remember that, about, that day? A. About seven thirty, I believe.

Q. Do you know when it was that Mrs. Cummings took Olive home? A. Well, it was just a little after nine o'clock.

Q. And did the fact that she took Olive home appear in the diary, because she was afraid? A. Yes, sir.

Q. And after that statement there is some more about what you did, isn't there? A. Yes, sir.

Q. Which has no connection with Mrs. Cummings at all. A. No, sir.

Q. Were you present during all of the time that Mrs. Cummings and Olive were there at the house that 4th of July night? A. Yes, sir; I was present.

Q. At any time during that night did you see Mrs. Cummings and Harold Young embracing or kissing each other at the foot of the steps or at the head of the steps or on the porch or anywhere else? A. No, sir; I did not.

The Court: Did you ever see your brother kiss Mrs. Cummings?

Witness: No, sir; I never noticed any affection at all.

The Court: Or embracing her?

Witness: No, sir.

The Court: Never saw any affection displayed between them?

Witness: No, sir.

The Court: One toward the other?

Witness: No, sir.

The Court: You were with them a great deal?

Witness: Well, yes.

The Court: When they were together?

Witness: Yes, sir; someone was always there.

The Court: They were together a great deal.

Witness: Well, not a great deal; there was always somebody else there.

The Court: How did your brother address Mrs. Cummings, what did he call her?

Witness: Well, we all know her as Sadie.

The Court: Sadie?

Witness: Yes, sir.

The Court: And how did she address your brother; what did she call him?

Witness: She called him Harold.

The Court: No words of affection ever used between them?

Witness: No, sir.

The Court: No endearing terms that you ever heard?

Witness: No, sir.

Q. And in the book here, in the diary you have used the term "Sadie" as referring to Mrs. Cummings. A. Yes, sir.

Q. You haven't said Mrs. Cummings, you have said Sadie and Olive. A. Yes, sir. We all know her as Sadie.

Q. During that time did Mrs. Cummings and your brother Harold go into the house away from the others and stay there for any length of time? A. No, sir; I don't believe Mrs. Cummings entered the house only when she took Olive in the house, and then my mother and I were present.

Q. Do you remember whether it got so dark that

night before Mrs. Cummings went that it was necessary to light the light? A. No, sir; I don't remember.

Q. You don't remember. You say she left shortly after nine o'clock. A. Yes, sir.

Q. And this was on the 4th of July? A. Yes, sir.

Q. Have you got a dog in your house? A. Yes, sir; we have.

Q. How long have you had him? A. We have had him five years, I believe.

Q. What kind of a dog is it? A. Fox terrier.

Q. And where did the fox terrier usually stay? A. He is usually in the house.

Q. Does the fox terrier usually bark if anybody comes on the porch or anything of that kind? A. Yes, sir; he is a very good watch dog.

Q. You consider him a good watch dog? A. Yes, sir.

Q. Why do you consider him a good watch dog? A. Well, anybody comes in the alley we know it.

Q. How? A. He rushes through the house, if he is at the other end and he barks whenever anybody goes to visit the people upstairs.

The Court: The dog would hear them long before you would know they are there?

Witness: Yes, sir.

Q. And did you have that dog during June, July, August, September, October, November and December, 1925? A. Yes, sir.

Q. Have you got that dog yet? A. Yes, sir; we have.

Q. Now I show you your diary of July 26, 1925, and ask you by reference to that diary whether you

can tell where your family were on the afternoon of that Sunday. A. My mother and brother and Mrs. Cummings and Olive were up to Riviera Park.

Q. Were you up there at all that day? A. Yes, sir.

Q. Were you up with them? A. No, sir; I was up with my girl friend Grace.

Q. You saw them up there? A. Yes, sir; I did.

Q. How long did you stay up there? A. Well, about five o'clock, I believe.

Q. And did you leave your family up there or had they already come home? A. I do not remember.

Q. Now that night do you remember where Mrs. Cummings and Olive were, from your diary? A. Yes, sir; Mrs. Cummings and Olive came down to our house in the evening.

The Court: Do you know that aside from your diary?

Witness: No, sir; I wouldn't remember that. My aunt was also present that evening.

Q. That is all shown in your diary? A. Yes, sir.

Q. Your diary doesn't show when Mrs. Cummings went home that night. Have you any independent recollection of it? A. No, sir; I have not. It may have been around ten; that is the time she usually went home.

Q. Does the diary show what you were doing there that night with respect to Olive? A. Yes, sir; I was fooling with Olive quite a lot that evening.

Q. And you wrote in your diary you had fun with Olive, didn't you? A. Yes, sir.

Q. Throughout this diary there are several statements to that effect, either "had fun with Olive" or "playing with Olive" is that so? A. Yes, sir.

Q. Did you, upon that occasion see your brother Harold and Mrs. Cummings retire to any part of the house away from the others? A. No, sir; they were always with the others.

Q. Or did you see any indication of affection on that night? A. No, sir; I did not.

Q. Was there any occasion that you were with them that they went off together alone by themselves? A. No, sir.

Q. Away from the rest? A. No, sir; there was always somebody with them.

Q. Was there any part of the house that they could go away alone except into the bedrooms? A. No, sir; because the dining room and parlor are right together.

Q. Open? A. Yes, sir; and the bedrooms are at the other end—the other side of the house.

Q. You or some member of the family would know that they were there. A. Yes, sir.

Q. Are those bedrooms closed from the rest of the house—closed doors, or were they open? A. They have doors, but—

Q. Open or closed as a rule? A. The doors are always open.

Q. And the kitchen. A. The kitchen is at the back of the house; it is next to the dining room. The bedrooms are at one side of the kitchen and the dining room at the other.

Mr. Lane: I offer the entries for July 4th.

(Marked Exhibit D-15 of this date).

Mr. Lane: Also July 26th.

(Marked Exhibit D-16 of this date).

Q. Now, I show you the entry in your diary for August 28, 1925, and ask you by reference to that diary whether you can tell where Mrs. Cummings and Olive were? A. Mrs. Cummings and Olive were to my house.

Q. And you were there? A. Yes, sir; I must have been.

Q. And you would not—there is no entry, nothing to bring your mind back to anything that took place except the entry "Tonight Sadie and Olive came." A. Yes, sir; that is all I recall.

Q. The entry before that shows you had been to the Newark Theater after lunch, doesn't it—shows where you were before lunch. A. Yes, sir; I went with my mother.

Q. Do you remember upon an occasion going to Coney Island with your mother and Mrs. Cummings? A. No, sir.

Q. Do you remeber going to a theater and seeing, I think it is known as "The Cheap Kisses"?

(Adjourned until December 15th, 1926).

IN CHANCERY OF NEW JERSEY.

December 15, 1926.

Between

OWEN CUMMINGS,
Petitioner,

and

SADIE CUMMINGS,
Defendant.

Continuation of hearing pursuant to adjournment at the place and in the presence of the parties as before.

MILDRED YOUNG, resumes the stand for further

Direct-examination by Mr. Lane:

Q. The last question was unanswered at the close of the last hearing and was whether you remembered at any time going to a theater and seeing a play or a movie known as "Cheap Kisses" Do you remember that, or don't you? A. No; I don't remember seeing "Cheap Kisses".

Q. I show you your diary for July 10—no, for July 24th, and ask you whether by reference to it you can tell where you were on that day and who was with you or who were with you? A. On that day my mother and my brother and Mrs. Cummings and myself went on an excursion to Asbury Park.

Q. Can you tell what time you got home or what you did after you went to Asbury Park? A. We arrived home 10:30.

Q. Do you remember that incident? Refreshing your recollection from the diary do you remember going to Asbury Park? A. No; I don't remember anything about it.

Mr. Lane: I offer it in evidence.

Mr. Child: It seems to me it is objectionable if she has no recollection whatever of having gone there—if the diary does not refresh her.

Mr. Lane: Under the rule if the recollection is not refreshed by the diary entry, the diary entry becomes evidence. She has already testified these entries were made immediately or at the time of the happening of the events, when they were fresh in her mind, and they accurately represent what took place. It becomes, therefore, probative evidence if she says she doesn't remember anything about it.

The Court: I will let it in and rule it out if you can show me I am wrong. You may offer the diary in evidence limiting the offer to that particular item.

(Page of the book marked Exhibit D-1 of this date.)

The Court: Did you show her the entry?

Mr. Lane: She has already testified with respect to it.

The Court: What does she say about that entry?

Mr. Lane: She says she has no recollection with respect to the entry.

The Court: Did you look at it?

Witness: Yes, sir, I did, but I do not remember it.

The Court: Any doubt about being there?

Witness: No; I have no doubt I was there, but I have no recollection.

Q. I show you your entry in your diary for August 28, 1925, and ask you to read that and tell me whether you have any independent recollection of what is there recited? A. No; just by looking at the diary I remember that in the morning my mother and I went downtown and ate lunch at Loft's and later on went to the Newark Theater and probably came home then, and in the evening Mrs. Cummings and Olive came to the house.

Mr. Lane: I offer that in evidence.

(Page of book marked Ex. D-2 of this date.)

Q. Have you any recollection of Mrs. Cummings and Olive coming to the house on the night of August 28th except what you find in this diary? A. No, I have not.

Q. Doesn't the diary bring the matter back to you? Does the diary help to bring back recollection? A. Well, no, I don't recall anything that happened, but just by looking at it I remember that.

Mr. Child: The same objection.

The Court: Read it into the record.

Mr. Lane: (Reading) "Dear Diary: This A. M. Mother and I went downtown; ate lunch in Loft's; went to Newark Theater; tonight Sadie and Olive came."

The Court: Won't you read the previous one?

Mr. Lane: (Reading.) "Diary dear: This A. M. Harry, Mother, Sadie and I went on an excursion to Asbury Park; went in bathing; saw some of my boy friends in the merry-go-round house; when we came home I stopped in Gay's house; home 10:30."

Q. I show you your diary entry for December 12, 1925, and ask you if you have any recollection outside of that entry, what happened upon that day. A. No; I don't remember anything besides that. In the evening—(interrupted).

The Court: What?

Witness: I do not remember anything besides what it says in the diary.

The Court: What?

Witness: I don't remember anything else besides what it says here, "Tonight Sadie and Olive came to the house."

The Court: You do remember what you said there?

Witness: I just remember that Sadie and Olive came to the house.

The Court: You just remember or do you simply see it there?

Witness: I do remember it.

The Court: Then tell us about it from your memory.

Witness: I remember Olive had a little toy poodle she just got around that time and she brought it with her down to the house.

The Court: Do you remember what time she came there?

Witness: No, I do not.

The Court: Or left?

Witness: No. I haven't written the time; I don't remember.

Q. Now you have a recollection that at some time or another she came to the house and had some toy poodle? A. Yes, sir.

Q. Any recollection as to the date except what that—except what the diary says? A. No, I have not.

Q. You wouldn't know if you didn't have that diary whether it was December 12, 13, 15 or 26th, would you? A. No, I wouldn't.

Mr. Child: Same objection.

The Court: What date is it there?

Witness: December 12.

The Court: Testimony of that character would have to be taken with great caution.

Mr. Lane: Undoubtedly.

Q. I will ask you the general question—I think it has been asked before—At any time, Miss Young, when you saw your brother and Mrs. Cummings together, was there any evidence of affection, or display of affection, rather, between them? A. Not that I noticed.

Q. Or calling each other endearing names or anything of that kind? A. No.

Q. Were you always near enough to notice when they were in your presence? A. Yes, sir; certainly; sure.

Q. There never was any occasion when they—when you were sent out of the room or that they attempted to go into a room by themselves or any-

thing of that kind that you noticed? A. No, sir; if I wasn't in the room there was always someone else, either my mother or father.

The Court: You never took them by surprise or anything of that kind or saw anything unusual?

Witness: No, sir.

Cross-examination by Mr. Child:

Q. How many years have you been keeping a diary? A. Since 1923.

Q. And have you kept rather a full diary since 1923? A. Yes, sir; I have.

Q. When would you make the entries in this diary or these diaries? A. Well, I would make them as soon as possible. I tried to make them the same night, but if it happened to be too late I would write them in as soon as possible.

The Court: The next day?

Witness: Yes, sir.

Q. Have you a good or poor memory? A. Poor, I should say.

The Court: Poor, because she cannot remember.

Witness: Yes, sir.

Q. How far back does your recollection carry you, how many years back can you remember? Any incident of importance, as perhaps—How long have you lived in Belleville—how many years? A. I think it will be six years in April.

Q. Six years in April? A. I believe so.

The Court: Is the young lady's age on the record?

Mr. Child: I think she said she was sixteen.

Witness: Yes, sir; I was seventeen in October.

Q. Do you remember where you lived before you moved to Belleville? A. Yes, sir; I lived in Newark.

Q. Do you remember the street? A. Yes, sir; I lived on 11th Avenue.

Q. And how long did you live on 11th Avenue, do you remember? A. I do not remember.

Q. Do you remember the number you lived at 11th Avenue? A. Yes, sir; it was 100.

The Court: You say you lived there so long that your memory does not serve you?

Witness: No; I am not sure—it was just a few years, I believe.

Q. You have lived about six years in Belleville? A. Yes, sir.

Q. You began keeping this diary when you were about twelve years old, is that correct? A. Yes, sir; around twelve.

Q. Well, now, in your diaries have you made an entry of the various important things that happened in your family, or anything unusual, during all this course of years? A. Yes, sir; I have.

Q. Have you put down in the diaries the birthdays of the different members of the family? A. I have.

Q. What is the date of your fathers' birthday? A. In June, I believe.

Q. Do you remember the date in June? A. No; I don't even know if the month is correct.

Q. Do you remember the date of your mother's birthday? A. 22nd of December, I believe.

Q. And did you put down that date in your diary? A. Yes, sir; I did.

Q. And since you have been keeping a diary did you put down the date of the birth, in your diary, of different ones? A. Yes, sir; I have.

Q. All of them? A. I believe so, because I was in the habit of putting everyone's birthday down.

Q. Let me see the diary of 1923. December 22nd is the date of your mother's birthday? A. 22nd or 23rd; I am not sure.

Q. I ask you to look at the diary entry of 1923 and ask you if any reference to your mother's birthday appears there under the date of December 22nd or 23rd? A. No; I haven't any reference here.

The Court: 21st?

Witness: No.

The Court: Do you know that is her birthday?

Witness: Either the 22nd or 23rd, I am quite sure.

The Court: Any record under date of December 22nd?

Witness: Not in this year I haven't.

Q. I show you the year 1924, and I see you have written "Mother's birthday" in there on December 22nd, and 1925 you have the same. Now, what is the date of your father's birthday?

The Court: She says she doesn't know.

Witness: I believe it was in June. I don't know.

Q. I show you a diary entry of June 22nd, 1924, in which the words, "Dad's birthday" appear above the date, and I ask you when you wrote "Dad's birthday" with reference to the rest of that diary on that page? A. Well, it doesn't seem to be written the same day, but I usually wrote it—if I didn't have anything else to do I looked at it and wrote in the different birthdays.

The Court: Ahead?
Witness: Yes, sir.
The Court: In advance.
Witness: Yes, sir.

Q. You will notice the ink is not the same in the two. A. No; it is not.

Q. How many bottles of ink did you have in that house?

The Court: Used as a reminder.
Mr. Child: The other is blacker.
Witness: I might have blotted it; that makes a difference.

Q. Now what is your brother Harold's birthday? A. In July sometime. Beginning of July, I believe.

Q. When did you change from using a pencil to make your entries generally in the diary to making it in ink? A. I don't know that definitely, because I changed quite a few times.

Q. Yes. I notice that your diary of 924 is written throughout in ink; that your diary of 1923 is written in pencil; that your diary of 1925 is in pencil—part in pencil and part in ink. I am now referring to your diary of April 22nd, 1926, and April 23rd, 1926, and I ask you to explain, if you

can, why the writing appears to be different on the one page than on the other—quite a different character of writing? A. Well, I don't write the same all the time. The writing is different throughout the whole book.

The Court: You mean some is forehand and other backhand?

Witness: Yes, sir.

The Court: Is that the criticism?

Mr. Childs: Yes; one is smooth round hand and the other is cramped.

Q. How many brothers have you? A. One brother.

Q. Only one? A. Yes, sir.

Q. What is his name, Harry or Harold? A. His name is Harry, but we sometimes call him Harold.

Q. How long have you been calling him Harold? A. I don't usually call him Harold, but my mother seems to.

Q. Do any of these diaries contain an entry of when you went to work—first went to work? A. You mean at Kresge's?

Q. Wherever you first went to work; I don't know where you went. A. Oh, yes.

Q. Do you know what date that was approximately, when you first obtained employment? A. No, I do not.

Q. Do you remember the month? A. No. I started to work on Saturdays at Kresge's while I was going to school.

Q. Are you holding a position now? A. Yes, sir; I am.

Q. And occupy all your time in that position, I presume? A. Yes, sir.

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Q. When did you go to work there?

The Court: Where are you working?

Witness: I am working in the Mutual Benefit.

Q. When did you go to work there? A. First of May I started.

Q. What year? A. 1926.

Q. Does your diary show an entry when you went to work for the Mutual Benefit? A. Yes, sir, I believe this is the one.

Q. What position do you hold in the Mutual Benefit? A. I am addressograph operator.

The Court: What does that mean?

Witness: Well, it is a machine that I operate; it is called an addressograph machine.

The Court: Operate like a typewriter?

Witness: No, it is different—it is run by electricity.

The Court: The addresses of people to whom they mail circulars or something of that kind?

Witness: Yes, sir; it is people whose addresses are changed, right on a small tin plate.

The Court: For use in the office?

Witness: Yes, sir.

Q. Have you entered in your diary other items of the doings of other members of the family besides yourself, such as when your brother changed his position or anything like that? A. Well, I believe I have, when he obtained a position right after he came home.

Q. Yes, and where did he obtain that position? A. In the A. & P. Bakery.

Q. And when was that? A. I believe it was in February. It was right after he came home in January.

Q. In what year? A. I do not remember.

Q. Well, how many years ago? A. I don't know.

Q. You say he came home, where did he come from? A. Well, he had been at a camp in Texas, I think it was.

Q. What camp? A. I don't know.

The Court: Military camp?

Witness: Yes, sir.

Q. Now does your diary show every date when Mrs. Cummings came to your house with Olive? A. Yes, sir.

Q. You have testified to certain dates when Mrs. Cummings came in the year 1925. I will give you the dates in just a moment. One date was July 24th, 1925, and another date was August 28th, 1925, and another July 26th, 1925. Will you refer to your diary and tell us what dates in the month of June Mrs. Cummings, according to your diary record, was at your house? A. June 7th.

Q. June 7th? A. Yes, sir.

Q. What other date in June? A. June 9th Mrs. Cummings went to the theater with my mother and brother and June 10 I went to the theater with Mrs. Cummings; June 14th I went to the theater with Mrs. Cummings; June 16th Mrs. Cummings was to the house.

Q. Please turn back to the month of May and tell us what dates Mrs. Cummings was at the house.

The Court: She hasn't finished with June.

Mr. Child: I am satisfied with June.

Witness: May 13th Sadie and Olive were at the house. That is all in May.

Q. Only once in May? A. Yes, sir.

Q. Now take April. What does your record show as to the number of times she was at the house? A. April 27th Mrs. Cummings went with my mother and brother and father to my aunts' in Irvington; that is all.

Q. Only once in April? A. Yes, sir.

Q. Now take March. A. March 4th Sadie was to the house and March 23rd Sadie and Olive came to the house.

Q. Is that all in March—is that all you find in March? A. Yes, sir.

Q. Now take February. A. February 23rd Mrs. Cummings was to the house. That is all.

Q. Is that all in February? A. Yes, sir.

Q. When did you first become acquainted with Mrs. Cummings? A. I don't know just exactly when it was.

Q. Well, about when? A. I really haven't any idea when it was.

Q. Was the time that she came to the house and saw the Christmas tree the first time she had ever been at the house? A. When was that, in 1926?

The Court: In 1925.

Witness: I mean 1925. No; she was before that.

Q. She was before that? A. Yes, sir.

Q. How long before that? A. I don't know, but

she was to the house quite a few times before that.

Q. How did you first become acquainted with Mrs. Cummings? A. Well, my mother had met Mrs. Cummings at the stores and she had become interested in her little girl and she took a liking to the child and she had Mrs. Cummings come up to the house, and then when I saw the little girl I became fond of her and that is how we became acquainted.

Q. Your mother introduced you to Mrs. Cummings, is that correct? A. Yes, sir; but I had met Mrs. Cummings at the stores also.

Q. Where was Mrs. Cummings working when you first met her or became acquainted with her? A. Well, I don't know whether she was working then.

Q. Where was it that you first saw her? A. Well, I first saw her at the stores.

Q. What store? A. I don't remember; there is a few stores along the avenue that we both went to.

Q. A. & P. have a store there? A. A. & P. Grocery?

Q. Yes. A. Yes, sir.

Q. Was it in that store? A. I don't know.

Q. How did your brother Harry or Harold become acquainted with Mrs. Cummings, if you know? A. Well, he became acquainted with Mrs. Cummings when she came to the house.

Q. That was the first that he knew her? A. Yes, sir.

Q. You introduced him to her? A. My mother did.

Q. And that was about when? A. As I said before I don't know just when she started coming.

Q. It was subsequent to January, 1925, was it? A. Yes, sir.

Q. The time the tree fell. It was after that? A. No; it was before that.

Q. I thought you said that that was the first time she had come to the house. A. No; I said she had come before that.

Q. Do you remember how long before that? A. No, I do not.

Q. Did your brother, Harold, know Mrs. Cummings before you introduced her to him?

The Court: She did not introduce her to him; her mother did.

Q. Well, before your mother introduced him. A. No.

Q. He did not? A. No.

The Court: Why are you so positive about that?

Witness: All I know of he just became acquainted through my mother introducing him.

Q. Did you see your mother introduce him? A. Yes, sir; I was there.

Q. Where was your brother working at the time that he first met Mrs. Cummings? A. I believe

Q. What bakery? A. The A. & P. Bakery.

Q. Were you working during the summer of 1925? A. No, I don't believe I was.

Q. When did you go to work for Kresge? A. I don't remember when I first started there, but I worked off and on and last winter I went back. I worked during the holidays one year, I remember.

Q. Did you ever work there during the summer? A. Yes, sir; I did.

Q. Have you a diary entry as to when you worked at Kresge's? A. I don't remember, but I am quite sure I have.

Q. What were your hours at Kresge's? A. On Saturdays, do you mean?

Q. Yes. A. From quarter to nine, I believe it was in the morning until nine at night.

Q. I show you your diary of August 8th, 1925, and ask you if it shows that at that time you worked for Kresge's on that day? A. Yes, sir; I was working at that time.

Q. And turn to your diary of August 16th, 1925, and see if it shows that you worked that day. A. Yes, sir; I was working then, yes, sir.

Q. Turn to your diary of the 22nd of August, 1925. A. Yes, sir.

Q. And 29th of August, 1925? A. Yes, sir; I was working then.

Q. September 5th, 1925? A. Yes, sir.

Q. September 12, 1925? A. Yes, sir; I was working then.

Q. And 19th and 26th of September, 1926? A. Yes, sir.

Q. And your hours were—(interrupted).

The Court: From quarter to nine.

Q. Until what time? A. Nine o'clock.

Q. Was this the first position that you obtained that summer? A. Yes, sir.

Q. Was it the only position you had that summer? A. Yes, sir.

Q. Did Mrs. Cummings visit your house regularly during the summer of 1925? A. I believe she came a few times, yes, sir.

Q. I think you have testified on direct-examina-

tion that she came sometimes once, sometimes twice a week, averaging possibly once a week. A. Yes, sir.

Q. During the time you have known her, is that correct?

The Court: During the time she has known her?

Mr. Child: Yes, sir; from the time Mrs. Cummings first started to come to your house.

Witness: I really do not know how often she came exactly.

Q. Did you have a vacation in the summer of 1925? A. I beg pardon?

Q. Did you have a vacation in the summer of 1925, a year ago last summer? A. Yes, sir; I went to the shore.

Q. And when did you go and when did you return—how long were you there? A. I was there one week, I believe.

The Court: Is that what you want?

Mr. Child: Yes.

Q. Do you know where Mrs. Cummings spent the summer of 1925? A. No, I do not.

Q. What is your father's name? A. Gustav Young.

Q. And your mother? A. Charlotte Young.

Q. Do you remember when your brother left the employ of the A. & P.? A. No, I do not.

Q. Did you put any diary entry down when he left? A. I don't remember whether I did or not.

Q. For whom did he work after leaving the A. & P.? A. Otis Elevator Company.

Q. When did your brother go to work for the

Atlantic & Pacific Company in Belleville? A. Right after he came home in January. I believe he started to work the beginning of February.

Q. Of what year—how many years ago? A. 1924, I believe.

Q. 1924, that is two years ago last February. A. Yes, sir.

Q. When you and your brother and mother and Mrs. Cummings went out to the theater and what not—movies—who paid the bills—who paid the expenses? A. My brother did.

Q. Always? A. Yes, sir—yes, always.

Q. Did your brother and Mrs. Cummings and you and your mother ever go out of the city on excursions? A. Yes, sir; we went to Asbury Park.

Q. And upon that occasion did your brother pay the expenses? A. I believe he did.

Q. Everybody's expenses? A. Yes, sir.

The Court: That includes railroad fare?

Witness: Yes, sir; I believe so. Mrs. Cummings was our guest, therefore he—(interrupted).

Q. Your diary entries show that during the summer of 1925 and from that time on to January, 1926 that Mrs. Cummings was at your house much more frequently than she had been in the early part of her acquaintance with you; is that correct? A. Yes, sir.

Q. During July, August and September, 1925, Mrs. Cummings was at your house almost daily, wasn't she? A. Well, frequently, but I wouldn't say daily.

The Court: During what time?

Mr. Child: July, August and September, 1925.

Q. And who was she a friend of? What was the reason of her coming there with such frequency? A. She was a friend of the whole family.

Q. She is very much older than you are; that is correct, isn't it? A. Yes, sir.

Q. Was she an intimate friend of yours? A. Yes, she was.

The Court: Was she about your mothers' age?

Witness: What is it?

The Court: Was she about your mother's age?

Witness: No, she is younger than my mother.

Q. How much younger than your mother is Mrs. Cummings? A. Why, I don't know that; she is quite some younger.

Q. Do you know how old Mrs. Cummings is? A. No, I do not.

Q. Mrs. Cummings is about your brother's age, isn't she? A. I don't know; I believe she is older.

Q. How long was your brother Harold away from home before he came back in 1924? A. Three years, I believe.

Q. And during that time did you write to him? A. Yes, sir, I did.

Q. Did you make any entries or memoranda of receiving letters or writing to your brother while he was away? A. Not that I remember. I might have entered into it when he sent me a letter.

Redirect-examination:

Q. I refer to your diary of 1923, on the date of May 30 you got above it written in your own hand-

writing "Decoration Day" haven't you? A. Yes, sir.

Q. On June 14th you've got "Grace Gormand's birthday". A. Yes, sir.

Q. And on June 16th you've got "Selina Young's birthday"; on June 22nd—July 3rd you've got "Brother Harry's birthday" and on July 4th you've got "4th of July", and on June 22nd you have got "Dad's birthday". A. Yes, sir.

Q. That is all true, isn't it? A. Yes, sir.

Q. And that applies equally to your diary for 1924, as I have looked at it, and in your diary in 1924 you've also got on December 22nd "Mother's birthday". A. Yes, sir.

The Court: Do you offer all the diaries?

Mr. Lane: I do not, except for inspection. They are brought to show that there is no differentiation in the way they have been kept.

The Court: Have you submitted them to the other side?

Mr. Lane: Except here in court.

Mr. Child: They have not, sir.

The Court: I assumed from your cross-examination that you had inspected them. Have you entries in your diaries of the visits of other people to your home?

Witness: Yes, sir.

The Court: Always?

Witness: Yes, sir.

The Court: As much and as accurately as you have Mrs. Cummings?

Witness: Yes, sir. I have, whenever we had visitors.

The Court: Well, why did you always en-

ter Mrs. Cummings' appearance at your house when she was such a close friend and a constant visitor. What was the idea of that?

Witness: Well, I don't know, but I always did, whenever any friends of ours came, I was always in the habit of entering it into the diary.

The Court: Well, Mrs. Cummings was a frequent visitor. Why did you put every visit that she had made down in your diary?

Witness: Well, I really never had anything else very important to put into it and I didn't like to leave a space, and I was always in the habit of putting down whenever we had any visitors.

The Court: You were not at pains to note her visits to your home? Do you understand me?

Witness: No, sir; I do not.

The Court: You were not particular in noting her visits.

Witness: Yes, sir. I put in whenever she came the same as I would anyone else.

The Court: Was there any particular reason for putting hers in?

Witness: No, there really isn't, no.

The Court: And you hadn't any reason at the time for each time noting her presence at your home?

Witness: No. No particular reason than I would anyone else.

The Court: You know that you made a note of every visit she made?

Witness: Yes, sir.

The Court: Quite sure of that, eh?

Witness: Yes; I am.

The Court: What was the reason for it?

Witness: No particular reason, but I was just in the habit of doing it the same as when anyone else came.

Recross-examination:

Q. Referring to your diaries can you show us in your diary any entry in the year 1924—the early part of the year 1924 where you have noted other visitors than Mrs. Cummings?

Mr. Lane: 1924 or 1925?

Mr. Child: 1924. The latter part of 1924.

Q. (Showing witness diary). A. I don't just understand what you mean.

Q. Is there anything in your diary of 1924 of the visits to your home of other persons? A. Yes, sir; I guess there are. I put down whenever anyone comes.

Q. Can you pick out one in the early part of the year 1924? I do not care when she became acquainted with Mrs. Cummings; I am asking to determine whether she did put down or not other people the early part of 1924. Take New Year's Day. A. Well, no. We spent New Year's day at my aunt's.

The Court: Run through and see if there are any records of other people coming to your house.

Witness: My girl friends came in.

The Court: Are they recorded there?

Witness: Yes, sir.

The Court: Why not for that purpose offer them all in the record and you can make your own argument.

Mr. Child: I will offer all of these diaries in the record.

GUSTAV YOUNG, sworn for defendant.

Direct-examination by Mr. Lane:

Q. Mr. Young, where do you live? A. 175 Washington Avenue, Belleville.

Q. What is your business? A. Letter carrier.

Q. How long have you been a letter carrier? A. Twenty-five years last July.

Q. How old are you? A. Forty-seven years.

Q. What is your birthday? A. June 22nd.

Q. Do you know Mrs. Cummings? A. Yes, sir.

Q. How long have you been acquainted with her? A. I guess it must be close on to three years.

Q. How did you first become acquainted with her? A. At the house, although I had seen Mrs. Cummings when she was returning to her home from work in the morning. Of course, I hadn't spoken to her. But I leave my house very early in the morning to go to work and Mrs. Cummings used to quit her work, as I found later, at an early hour and I would meet her and her friends on her way home very frequently, when I left my house. Although, as I said before, I had never spoken to her.

Q. During the year 1925, what were your hours? A. I reported for work ten minutes to six in the morning and finished my day's work about—any-

where from three thirty to three forty-five in the afternoon, with an hour and three quarters or so for lunch time.

Q. And then what was your habit—your custom to do? A. Usually to get on a car and go home..

Q. And then what was your daily habit, what would you do? A. Read the newspaper or a magazine.

The Court: Stick around the house?

The Witness: Stick around the house most of the time; yes, sir.

Q. And during the summer time, during the months of June, July and August of 1925, what was your practice? A. About the same.

Q. Did you know that Mrs. Cummings came to your house? A. Oh, yes, very frequently.

Q. How frequently did she come to the house during the months of June, July and August, September and October? A. Well, I should judge possibly once a week or possibly oftener.

Q. Now when she came what would happen? A. Why, my wife and daughter and sometimes Harry sometimes, as a usual thing I didn't mix in with the party; I would possibly sit in the dining room while they were in the living room, because I liked to read my magazine or newspaper and kill time that way.

Q. But you knew they were there? A. I knew they were there, positively.

Q. Do you remember the 4th of July, 1925? A. I remember that particularly because Harry had a cannon.

Q. Was Mrs. Cummings at the house? A. Mrs. Cummings arrived at about—this was 1925?

Q. Yes. A. Arrived at the house, I should judge about quarter to eight with Olive.

Q. At night? A. In the evening, yes, sir.

Q. And then what happened? A. Why, Harry went to the head of the terrace there—we live on a terrace about eleven steps up from the sidewalk —and picked up Olive and kissed her. I remember that particularly. If you question me further I will tell you—(interrupted).

Q. Who is Olive? A. Olive is the little girl, the child.

Q. Go on. A. At that time—I remember this particularly because Harry had a cannon up there —they were a little more lax on the 4th of July than they are here—and was shooting it. I was keeping an eye out so that no children would be injured. And we were sitting on the front stairs when he says, "Here comes Olive and Sadie." We always called Mrs. Cummings "Sadie." And he went to the head of the stairs and picked up Olive and kissed her. Mrs. Cummings later took Olive away because she was afraid of the noise.

Q. Do you know how long it was that Mrs. Cummings was there with Olive? A. Why, she was there at best only a short time, until it just got about dark, that would be about eight thirty, I believe, or fairly dark and took Olive away. I don't know where she took her. And came back later.

Q. And then how long did she stay? A. Well, I should judge until about half past ten or so that night. Harry had bought quite a few fireworks and was celebrating the old fashioned way.

Q. Were you in that party all of the time? A. Absolutely.

Q. When Harry met Olive and Mrs. Cummings

at the head of the terrace did Harry kiss Mrs. Cummings or anything of that kind take place? A. No, sir.

Q. Was there any time during that evening when Mrs. Cummings and Harry were out of your view? A. No.

Q. During any part of that time were there any exhibitions or evidences of affection? A. Well, at that time—(interrupted).

Q. That you could see? A. No, sir; there was not.

The Court: You do not mean that literally, do you; they were not outside of your gaze? They were not outside of your senses, is that what you mean? You knew they were around all the time, but you weren't looking all the time.

Witness: Well, I was looking— Can I tell you the circumstances, the reason why this was fixed in my mind? There were so many on the porch—we have a large porch there, and there was—well, my wife and the daughter, Harry, Mrs. Cummings, my brother's family that lived upstairs and some of her relatives were all on the porch, because we were having these fireworks, don't you know? And I remember that particularly on account of that and we all spent the entire evening on the porch even later on, when we had ice cream out there.

Q. Now do you remember some time in January, I think it was, in 1926, when a Christmas tree fell over? A. I do.

Q. Have you any recollection as to the precise

date of that? A. I should judge it was just about a week after New Year's, possibly January the 8th.

Q. Was Mrs. Cummings at the house on that occasion? A. Mrs. Cummings was at the house on the occasion of the tree falling; yes, sir.

Q. And was Olive there also? A. Olive was there.

Q. Tell us what happened. A. Why, they had spent the evening in the living room, had the tree lighted, and about nine thirty my wife made coffee and had a little refreshment and we were sitting in the dining room and all of a sudden we heard a creak and we looked and there was the tree swaying over and it wound up with a beautiful crash. All hands went in and we stripped the tree and got it out, cleaned up the floor, and Mrs. Cummings and all hands helped to pick up the ornaments and take those that were not smashed off the tree.

Q. Now, on that night were Mrs. Cummings and Harold on the floor playing some game of checkers or something on the floor? A. No. I will tell you what did happen. Olive and Harry was sitting on the floor and he was running the little train that runs around the tree for the amusement of the child.

Q. Were you present at the time the ornaments were picked up? A. I assisted.

Q. And who else were all around there? A. Mildred, my wife, Harry, and even Mrs. Cummings—and even the youngster.

Q. Did you ever attend the theater with Harold or Harry and Mrs. Cummings? A. Yes, sir.

Q. Do you remember any specific times when you did? A. Well, I couldn't remember the date, but there was one occasion I remember going to the

theater there on Belleville Avenue at Bloomfield Avenue. What is the name of it?

Q. Regent? A. Yes, sir, Regent.

Q. Do you remember when that was, about? A. No, I couldn't say that date. It didn't make any particular impression on my mind.

Q. Do you know what you did afterwards? A. Why, we went into the confectionery store and had soda.

Q. Do you remember what you did after that? A. After that I believe we went—my wife stopped at the bakery and bought some cakes and we went home as I remember right.

Q. Who were in that party? A. There was Mrs. Young, myself, Harry and Mrs. Cummings, and I am not sure whether Olive was there or not.

Q. Do you remember any other occasion when you have gone to the theater with Mrs. Cummings? A. I have accompanied her—at least Mrs. Cummings has gone with my wife and I in the theater in Belleville and also to the Mosque theater too—from distinct memory I cannot give the date, although I can give the approximate date of the time we went to the Mosque because it was towards the end of my vacation in 1925.

Q. Who were in that party? A. Just my wife and I and Mrs. Cummings.

Q. Now, were there other occasions when your wife and you and Mrs. Cummings—Harry wasn't there? A. Harry was not there.

Q. Were there other occasions when your wife and you and Mrs. Cummings went anywhere else when Harry was not present? A. Yes, sir, at the theater in Belleville.

Q. On one or more occasions? A. On more than

one occasion. I couldn't remember any date or what the picture was, but if Mrs. Cummings happened to be around we asked her to go along.

Q. Were there any occasions when you and Mrs. Cummings and your wife, that you recollect now, went anywhere else without Harry? A. No, I cannot say that just at present.

Q. Have you a dog in your house or did you have in 1925? A. Yes, sir, we have had him about five years, yes, sir.

Q. What kind of a dog is it? A. Fox terrier so they say, although I am no dog fancier.

Q. What is his disposition with respect to strangers or visitors coming around the house? A. If I told you what some people say—(interrupted).

Q. Never mind about that.

The Court: Sharp?

Witness: He is very sharp, yes, sir.

Q. Does he make a noise? A. He would wake up a dead man.

Q. Well, when Mrs. Cummings and Olive come to the house what does he do? A. He invariably barks, growls and does everything else that would attract anyone's attention.

Q. Now when Mrs. Cummings and Olive came to the house and your son Harry was there did they ever go out of the room alone or were they ever alone together that you noticed? A. No, sir.

Q. Did you notice any disposition on their part to withdraw to themselves? A. No; I did not.

Q. Did you at any time see anything which indicated to you any affection between them? A. Not particularly; positively not.

Q. Did you notice any undue attention by Harry to Mrs. Cummings or Mrs. Cummings to Harry?

A. No more than he would to any other person that came there.

Q. Any more attention paid by Harry to Mrs. Cummings than you paid to her? A. Oh, yes, because I very seldom paid any attention.

The Court: You are Dad around the house.

Witness: I am the Old Man.

The Court: Did you ever go out alone with Mrs. Cummings?

Witness: No.

The Court: Take her to her home?

Witness: No; never.

The Court: I don't mean alone; I mean with the child.

Witness: No, sir.

The Court: Did you ever accompany her home?

Witness: No, sir; I never did.

The Court: The reason I ask you is that your son and you are very much alike.

Witness: No, she never got us mixed or nobody else ever got us mixed as much as that.

Q. How late would Mrs. Cummings usually stay? A. Why Mrs. Cummings usually left around ten or even earlier.

The Court: Harry sometimes take her home.

The Witness: I don't recollect.

The Court: Would it have attracted your attention had he gone home with her, she and the little child?

Witness: I suppose it would have attracted my attention if he had made a practice of it or anything. I really can't say that he has taken her home. I have known that my wife has gone out with her, not very frequently — walked around home—walked down towards her house.

The Court: Do you remember Harry doing anything of that kind?

Witness: No.

The Court: You never did, at ten o'clock or late at night?

Witness: No, sir.

Cross-examination by Mr. Child:

Q. When the Christmas tree fell in January did it make a loud noise? A. Well, I'll tell you. It wasn't a loud noise, but it was a noise enough to startle one, you know, very easy.

Q. Was it more than a soft sound? A. Oh, yes.

Q. When it fell did the ornaments break and crash on the floor? A. Quite a number of them broke; yes, sir.

Q. They were made of glass? A. The ordinary tree ornaments.

Q. Now how long before the tree fell had the electric train or whatever it was, been working on the floor? A. Oh, I couldn't say. Possibly an hour before or more.

Q. Do you remember what time the tree fell? A. I should judge around ten o'clock.

Q. And that night Mrs. Cummings was there when it fell? A. Absolutely.

Q. Was Olive there when it fell? A. Yes, sir.

Q. And didn't your son Harry take Mrs. Cum-

mings home that night to her home? A. I couldn't say; I don't think so.

Q. Are you sure or don't you know? A. I don't know, but I don't think so.

Q. He might have without your knowing? A. Possibly. Bare possibly. It was later that night than usual when she left there on account of the picking up of the ornaments.

Q. Did you know in January, 1925, that Mrs. Cummings was being sued for divorce? A. I really couldn't say whether I knew it at that time or not.

Q. Did you know it at the time it was commenced—did you hear of it early? A. Yes, sir. I don't know just when it was commenced, but I think Mrs. Cummings mentioned it immediately.

Q. Did you hear of it and know of it before the complaint or petition was so amended as to include your son Harry as a co-respondent? A. I don't know whether I heard of it previous to that or not.

Mr. Lane: I think counsel referred to the episode of the Christmas tree as January, 1925. It is not 1925, it was 1926.

Witness: Yes, sir; it should have been 1926.

The Court: Last Christmas.

Witness: Yes, sir.

Q. Did you know prior to the falling of the Christmas tree that Mrs. Cummings was being sued for divorce by her husband? A. That I can't tell you; I couldn't say. I don't know. I don't know just when I became acquainted with the fact that she was being sued, but it was some time—must have been some time shortly after the suit

had been started and the papers filed, whichever you call it.

The Court: Did you change your relations with her?

Witness: No, sir.

The Court: Your household relations with her.

Witness: No.

Q. Now how frequently would your son kiss Olive Cummings?

The Court: The baby?

Mr. Child: Yes.

A. Why possibly when she came in and when she went. He didn't make a practice of holding the child and mushing her.

Q. Was your son very fond of children? A. He is.

Q. Have you ever been down to the Newark Public Library with Mrs. Cummings on visitation night? A. Me, never.

Q. How long has your son been home, living home? A. Why he returned home in January, 1924.

Q. And where did he go to work then? A. He went to work in the A. & P. Bakery.

Q. Did you know Mrs. Cummings before January, 1924? A. I didn't know her personally, but I had met her, as I said before, as she was returning from work.

Q. Had she ever been to the house prior to January, 1924? A. No.

Q. How did your son Harry become acquainted with Mrs. Cummings, if you know? A. I don't

know. I don't know if my wife introduced him or whether he became acquainted with her when he went to work in the same place she worked.

Q. Do you remember when your son left the A. & P.? A. I think he left there in about May or June.

Q. Of what year, please? A. In 1924, I guess it was.

Q. He worked there about four months? A. That is about all, yes, sir.

Q. He never worked there since? A. No.

EMILY BEER, sworn for defendant.

Direct-examination by Mr. Lane:

Q. Where do you live? A. 11 Washington Avenue.

Q. How long have you lived at 11 Washington Avenue? A. Well, it will be fourteen years this coming June.

Q. How many children have you got? A. I have three living now.

Q. Who were you living with at that place in the fall of 1924—summer and fall of 1925. A. With my son.

Q. And were the children there too? A. Yes, sir.

Q. How many children? A. Well, I have two sons that lived home at the time, the other one is married and lives upstairs over me.

Q. How long have you known Mrs. Cummings? A. I have known her from childhood, but she has always visited our home for about twenty years or twenty-two.

Q. Did you have a daughter who was her friend? A. Very much so. They were very close.

Q. Is that daughter now deceased? A. Yes, sir.

Q. During the summer and fall of 1925 did Mrs. Cummings visit you? A. She always used to visit at our home since she was a little girl.

The Court: Your answer is "Yes"?

Witness: Yes, sir.

Q. How often would she visit you? A. Well, she came frequently; all the time. I couldn't say just when; maybe once a week or twice a week she would drop in.

Q. Did you know Mr. Cummings? A. Yes, sir; I met him there with Mrs. Cummings when they were keeping company.

Q. And how long have you known him? A. Since she first introduced me to him.

Q. Was he a visitor at your house? A. Yes, sir; always with Mrs. Cummings.

Q. Did he come, when they were living together, come to your house, and how long would he stay there? A. Sometimes he would stay in the evening and sometimes he would go on down to his work and come back again, and sometimes he wouldn't.

Q. Now, do you know Mr. Young? (Mr. Young: Stand up.) Harold Young? A. Well, I never knew—saw him until I saw him here in the court room—not here, but in the Prudential Building.

Q. Was that man ever at your house with Mrs. Cummings? A. Never.

Q. What kind of a house is the house in which you reside? A. Six family house; six families live in the apartments; there are six apartments, two on each floor.

Q. And which apartment do you occupy? A. Well, I live on the second floor.

Q. Or did you in July, 1925? A. Yes, sir; I have lived there for fourteen years this coming June.

Q. Who lives above you? A. My son William lives above; and the landlady lives on the other side.

The Court: Three story house I understand you?

Witness: Yes, sir.

The Court: Two families on a floor?

Witness: Yes, sir; two families on each floor.

Q. Who lives beneath you, who did then in July, 1925? A. Mrs. Johnson.

Q. On one side, and who on the other side? A. Mrs. Durkin.

Q. Who above Mrs. Durkin? A. Mrs. Steel.

Q. Who above that? A. Mr. Kaufer, the landlord.

Q. Have you told us all the people who live in the house? A. Yes, sir.

Q. How do you get to your apartment? A. Well, we can enter from the front door, the vestibule, or we can go through the back entrance—there is quite a wide alley way, say, eight feet wide, that separates two houses. The same landlord owns the two; double—two houses, you know, and we call it an alleyway, an entrance to the back between the two houses.

Q. And when you go in back of the house is there a pair of steps that leads—or steps, rather, that lead from the ground up to your apartment? A. Yes, sir.

Q. Outside? A. Yes, sir, and the porch runs the whole length.

Q. Of the rear of the house? A. Yes, sir.

Q. And is that porch so that your rooms could be reached from it? A. Yes, sir, of course; there is a back door entrance there.

Q. Right there? A. Yes, sir; most people use it.

Q. Are you home all the time? A. I am always home; I very seldom go out.

Q. Did Mrs. Cummings ever come up there with a man other than her husband? A. Never; never any man but her husband. He came before he was married, when she introduced me, and he came afterwards; he came until this trouble, but not since. He has been once since. He called for my son-in-law once.

Q. Called for the son-in-law with a subpoena? A. I couldn't say. Mr. Cummings has never visited since there was trouble.

Q. What is there that keeps you home? A. Well, my son lost his wife and then my daughter and I take care of the four grand-children.

Q. And their ages are what? A. They are from two years—the baby now is two years old—

The Court: You are tied down to the house.

Witness: Yes, sir; I am.

The Court: And you were then?

Witness: Yes, sir; I have been for four years now, since my daughter left a little boy and then my son's wife died and she left three babies, so I take care of them all.

Q. And Mrs. Cummings is a frequent visitor to your house now and was in August? A. Always,

and she came daily during my daughter's sickness; sometimes twice a day.

Q. When was your daughter sick? A. Well, she has been dead five years.

Cross-examination by Mr. Child:

Q. When people go to your apartment, Mrs. Beers, which do they use generally, the front entrance or the rear entrance? A. Well, lots of people use the front and ring the bell and others just come to the back; some people come to the back. The trades people always come to the back, they are supposed to.

Q. Did Mrs. Cummings when she visited you use the front entrance or rear entrance? A. Well, she always came the front way.

Q. Why? A. Well, I don't know, she always seemed—she brought almost always Olive with her.

EMMA ALT, sworn for defendant.

Direct-examination by Mr. Lane:

Q. Where do you live? A. 185 Montgomery Street, Bloomfield, New Jersey.

Q. And are you a relative of Mrs. Young? A. Yes, sir.

Q. What? A. Sister.

Q. Do you know Mrs. Cummings? A. Yes, sir.

Q. How long have you known Mrs. Cummings? A. About three years, as far as I can remember.

Q. Have you visited the Young house at a time when Mrs. Cummings was there? A. Yes, sir.

Q. How often? A. Very often; I couldn't remember.

Q. What would be done when Mrs. Cummings was there; how did you spend the evening? A. Why, in a pleasant way, the same as any other place you visited; especially my sister and Mrs. Cummings and little daughter all were friendly.

Q. And did you, when you were there—who left first, did you leave or did Mrs. Cummings usually leave first? A. Sometimes Mrs. Cummings, then again I would leave. It all depended on—(interrupted).

Q. Were there times when you left together? A. Yes, sir.

Q. Were you there when Mr. Harold Young or Harry Young was present? A. Yes, sir.

Q. What did he do when he happened to be there and Mrs. Cummings was there? A. Why, he would read and fool and carry on; we'd have a good time, all of us together.

Q. Did you ever see anything which indicated to your mind any affection between Harold Young and Mrs. Cummings? A. No, sir; I did not. Harry is my nephew; I am very fond of him and he is fond of me. He was very affectionate to anybody around.

Q. Did you ever hear them call each other endearing names or anything of that kind? A. No, I did not.

The Court: Did he pay any undue attention to Mrs. Cummings?

Witness: Harry?

The Court: Yes, to you.

Witness: To me?

The Court: More to you than to Mrs. Cummings?

Witness: Not more.

The Court: Treat you all alike?

Witness: Yes, sir.

The Court: Mrs. Cummings always behaved herself—conducted herself properly?

Witness: We all did; everybody behaved themselves.

The Court: She conducted herself the same as you did and Mrs. Young?

Witness: Yes, sir.

Q. Did you ever go out to the movies with Mrs. Cummings and—(interrupted). A. Yes, sir; I did.

Q. —and did Mrs. Cummings and Harry Young ever accompany you? A. Yes, sir.

Q. What movies would you go to or did you go to? A. Oh, we went to Belleville and then we went up to Mt. Pleasant Avenue, Summer Avenue —I couldn't tell you. Up—(interrupted).

Q. How often did you go? A. I made no note of it; didn't commit it to memory. When a few times.

Q. Did you go more than once? A. Yes, sir, we did.

Q. When you went to the movies or theater in that way did you see any exhibition of affection between Mrs. Cummings and Harold Young or Harry Young? A. No, sir.

Q. Or anything of that kind? A. No; I never did.

Q. Who footed the bill? A. Harry did; paid my way and all.

Q. Did you ever go with Mr. Young and Mrs. Cummings? A. No.

Cross-examination by Mr. Child:

Q. How many times were you at the theater with Harry Young and Mrs. Cummings, Mrs. Alt? A. I couldn't say.

Q. More than once? A. Yes, sir.

Q. More than twice? A. Yes, sir.

Q. How frequently would you go? A. Oh, often.

Q. What days of the week would you go? A. I couldn't say.

The Court: Any day you were asked, eh?
Witness: Yes, sir.

Q. Did you go any day but Saturday? A. I didn't expect to be called to answer that and I made no note of it or committed it to memory. Yes, I went on Saturday—we did go on Saturday.

Q. Did you go other days besides Saturday? A. Yes, sir.

Q. Other days besides Sunday? A. Yes, sir.

Q. At night? A. Yes, sir.

Q. With Mrs. Cummings? A. Yes, sir.

Q. During the year 1925—the early part of the year 1925 were you at the theater with them? A. I believe so.

Q. And did you go to the theater any other day except Saturday or Sunday in the evening? A. Yes, sir.

Q. With Mrs. Cummings? A. Yes, sir.

Q. And can you fix any of the months when you went to the theater with Mrs. Cummings in the early part of the year 1925? A. No, sir; they were all months, spring, fall, summer and winter.

Q. You are sure you went to the theater with her on other times than Saturday or Sunday nights? A. Yes, sir.

Q. Other nights? A. Other nights.

The Court: Since this trouble began?
Witness: Yes, sir; we made no difference. It didn't make any difference to us.
The Court: You had confiidence in her?
Witness: Surely.

Q. When did you meet Mrs. Cummings? A. As far as I can remember about three years ago; I really couldn't say.

Q. Who introduced her to you if you know? A. My sister.

Q. Mrs. Young? A. Yes, sir.

Q. And where? A. In her home.

Q. Do you remember what part of the year that was? A. No, sir; I do not.

FRANK GRIMM, sworn for defendant.

Direct-examination by Mr. Lane:

Q. Mr. Grimm, where do you live? A. 103 Belmont Avenue, North Arlington.

Q. What is your business? A. I am a chauffeur.

Q. And do you know Mrs. Cummings— How old are you now, by the way? A. Thirty-one.

Q. Do you know Mrs. Cummings? A. I do.

Q. When did you first meet Mrs. Cummings, do you know when? A. In July, 1924, I believe.

Q. How? A. I was introduced to her by a friend of mine, a Mrs. Keating, or Miss Keating.

Q. Miss Keating? A. Miss Keating.

Q. Where were you working at that time? A. Charles Buchanan & Brother, 169 Chestnut Street.

Q. How well did you know Miss Keating? A. I knew her quite well.

Q. And how did it come about that Miss Keating introduced Mrs. Cummings to you? A. Why, I used to go to the bakery to see Miss Keating.

Q. Now after you saw Mrs. Cummings for the first time how often did you see her after that? A. Why, I would see her whenever I would go to the bakery. She nearly always came out, I believe.

The Court: What did she nearly always do?

Witness: Nearly always came out of the bakery during their lunch hour.

Q. Did you see her anywhere else except at the bakery? A. No, sir.

Q. Was there any occasion that you saw her when Miss Keating wasn't present? A. No, sir.

Q. Did you meet her—were there any occasions when you saw her on the street accidentally? A. I do not recall any; no, sir.

Q. Did you at any time go out with Mrs. Cummings either in the daytime or at night? A. No, sir.

Q. Either alone or in company with anybody else? A. No, sir.

Mr. Lane: Vice Chancellor, I can take this witness over every one of these occasions and the answer will be "No."

The Court: Do you expect to go into it on cross-examination?

Mr. Child: I do, but I see that my notes that I expected to use with this witness are not here.

The Court: It will save time if you are going to examine into it. It will be useless to go over the same ground twice.

Mr. Child: I think so.

The Court: If you run short of information Mr. Lane will remind you of the occasions. Judge Child says he hasn't his notes.

Q. Mr. Grimm, when was it that you first knew you had been named as corespondent in this suit? A. Why, it was several months before Mrs. Cummings notified me, that I had the first inkling—that I had the first idea that I was named. I met Miss Keating and she told me that she had heard that I was named as corespondent in the divorce suit between Mr. and Mrs. Cummings.

Q. And then what did you do? A. Nothing.

Q. Did you see Mr. Cummings or go to see Mr. Cummings? A. Not then.

Q. Did you subsequently? A. I did.

Q. When? A. That was several days—it was about two or three days after Mrs. Cummings called me up, I believe, something like that.

Q. And what did you do? A. I went to the fire house.

Q. And did you see Cummings? A. I did.

Q. What did you tell him? A. I asked him to come outside.

Q. And then what happened? A. He wouldn't.

The Court: What?

Witness: He wouldn't; he refused. I says, "Come out," and he wouldn't come out with me.

Q. Did you tell him what you wanted? A. No.

When I first went in—when I first got to the firehouse there was a fireman outside, and I didn't know Mr. Cummings and I asked him was Mr. Cummings in and he said that he thought he was. I asked him would he please ask him to step outside, and he went in and came out and said Mr. Cummings said I should come in, so I said I rather see him out here, and he went in again. He says Mr. Cummings says, "You should come in," so I went in, and as we walked through the small room where all the firemen were, we come into the room with the truck. Mr. Cummings was in there and the fireman waved his hand toward Mr. Cummings and then I asked him—(interrupted).

Q. The man over here? A. That is the man right there, so I said, "Are you Mr. Cummings?" He says, "Yes. What do you want of me?" I said, "Do you know me?" "No." I says, "Well, my name is Grimm," and he says, "Get out," he says, "I don't want to talk to you." I said, "Come on out." I didn't want to come in, "Come on out with me." So he wouldn't do it. He turned around and walked towards the back.

Q. Now did he indicate at that time that he knew you at all? A. He did not.

Q. What were your hours during the month of August, 1924? A. My starting hour always has been seven o'clock.

Q. In the morning? A. In the morning.

Q. And what was your—when was your employment over? A. Well, that varied according to the time I got in, but of course, it was never before five and it was half past six or seven.

Q. What did you drive? A. A coal truck.

Q. And where did you live at that time? A. On

Warren Street, I believe the number was 391 or 397. I wouldn't be positive. It was right near Second Street.

Q. How far was that from the place you got your truck to go out in the morning? A. Oh, it was several miles. Where I got the truck is where I am employed, 169 Chestnut Street. That meant I had to—well, I took an Orange car and then down at the Tube I transferred to I believe it was a Kinney car ran there then—Springfield Avenue now, but the Kinney car ran there—over that way then, and I took the Kinney car from the Pennsylvania depot.

Q. What time did you have to leave your house to get to your employment in time to go out? A. Well, it was generally quarter after six—half past six.

Q. What was your habit with respect to going to bed at that time; what time did you go to bed? A. Nine o'clock—ten o'clock.

Q. Do you shovel coal too? A. Well, I do, yes, sir.

Q. Your work is hard work. A. Yes, sir.

Q. Laboring work. A. Carry coal too; I always help the carrier to carry the coal.

Q. Do you work all day long? A. Yes, sir.

Q. Did at that time? A. Yes, sir.

Q. How long have you been employed by the same concern? A. Going on nine years.

Q. You are still employed by them? A. Yes, sir.

Cross-examination by Mr. Child:

Q. How long do you say you have been employed by Buchanan? A. It is going on nine years.

Q. Now when was it that you went up to the fire house to see Cummings? A. That was—I couldn't remember the date—it was a couple of days after Mrs. Cummings had called me up.

Q. Did Mrs. Cummings tell you that she had written a letter to Mr. Cummings with regard to your visiting the firehouse? A. No, sir.

Q. You know nothing about any letter that was written by Mrs. Cummings to Mr. Cummings? A. No, sir.

Q. Just a moment—that he could get your evidence if he bought it? A. No, sir.

Q. You know nothing about it? A. No, sir.

Q. Where did you say you became acquainted—(interrupted).

The Court: Do you know what the lawyer is talking about?

Witness: Yes, sir.

The Court: You were here in court when that letter was shown?

Witness: Yes, sir.

The Court: You know what he is talking about.

Witness: Yes, sir.

Q. Why did you go up there to see Cummings? A. I thought that was the right thing to do.

Q. Well, what was your object in going to see Cummings? A. Well, he had named me.

Q. Yes. A. And I thought it would be a good idea to go up and settle it.

Q. Settle it how? A. Any way he saw fit.

Q. What do you mean by that? A. Just what I say, any way that he saw fit.

The Court: You mean physically?

Witnesses: Any way, your Honor.

The Court: Fight it out, is that what you mean?

Witness: If he thought that way.

Q. Well, now, what other way did you think he might see fit to settle it? A. Well, I didn't have any idea of any other way, except there was a possibility of a mistake, and I couldn't understand anything about it.

Q. That was in January, 1926, you went to the firehouse, wasn't it?

The Court: A year ago?

Witness: I think it was; yes, sir, I wouldn't be positive of the date, I can't remember.

Q. How long after was it you had learned from Miss Keating that you had been named as corespondent that you went to the firehouse? A. That was several months.

Q. Why did you wait several months to find out if a mistake had been made? A. Because I really paid no attention to it, because when Miss Keating told me that, my answer to her was, "Now I will tell you one." That is just how much I thought of it.

The Court: Tell her one what?

Witness: Joke.

Q. And yet you thought there was enough to it to go down there afterwards; why did you do that? A. Well, that is when Mrs. Cummings had called me up.

Q. You never heard from Mrs. Cummings or from anyone until about November, 1925, that you

had been named as corespondent in this case? A. It was about that, yes, sir.

Q. About November. And then you waited until the middle of January before you made any investigation whatever, right? A. Well, until Mrs. Cummings called me up, whenever that was.

Q. Now, how long after Mrs. Cummings called you up was it that you went to the firehouse? A. That was about two or three days.

Q. Two or three daws, and was it your intention of giving Cummings a thrashing? A. Well, I wouldn't exactly say that, no; I am not a fighting man or rowdy or anything like that, but I really wanted to have it out.

Q. This case was coming on for trial very shortly, wasn't it? A. It was, I believe.

Q. Mrs. Cummings told you that, didn't she? A. She asked me to go and see her lawyer.

Q. Did you go and see her lawyer? A. I did, but not then; I saw Mr. Cummings first.

Q. And Mr. Cummings told you to get out? A. Yes, sir, he said, "Get out."

Q. Where did you meet Mrs. Cummings? A. At the bakery.

Q. How did you happen to be at the bakery? A. To see Miss Keating.

Q. Was Miss Keating a friend of yours? A. She was.

The Court: Sweetheart?

Witness: Well, I did keep company with her, yes, sir.

The Court: How long had you been keeping company with her?

Witness: From the early part of July until the end of September, I believe.

Q. What year? A. 1924.

Q. 1924? A. Yes, sir.

Q. Then you ceased keeping company with her? A. Yes, sir.

Q. Now during the time you were keeping company with Miss Keating did you take her around? A. Yes, sir.

Q. Do you remember the date you visited Coney Island with Miss Kating? A. I never visited Coney Island.

Q. Never visited Coney Island with her? Do you remember the date you visited Dreamland Park with her? A. No, sir.

Q. Did you go to Dreamland Park with her? A. Yes, sir; yes, your Honor.

Q. You went to Dreamland Park with her, did you? A. Yes, sir.

Q. How many times? A. Oh, I wouldn't know exactly; I know it was several times I went there with her.

Q. And you were at Dreamland Park several times during the summer of 1924? A. Yes, sir.

Q. Was that before or after you met Mrs. Cummings? A. After. I believe I was there afterwords.

Q. What? A. I believe I was there after I met Mrs. Cummings.

Q. Do you remember meeting Miss Keating in front of the Newark Post Office and going from there down to Dreamland Park? A. No, sir.

Q. Do you remember meeting Mrs. Cummings in front of the Newark Post Office and going down to Dreamland Park? A. No, sir.

The Court: Did you?

Witness: No, sir.

Q. Have you any way of telling where you were on the 7th of August, 1924? A. No, sir.

Q. When you came back from Dreamland Park —(interrupted).

The Court: Where was he supposed to have been?

Q. Were you down to Dreamland Park on the 7th of August, 1924? A. I don't know.

Q. With Mrs. Cummings? A. No, sir.

Q. With Mrs. Cummings or anyone? A. I don't know if I was there on that date with Miss Keating or not, but I wasn't there with Mrs. Cummings.

Q. When you came back from Dreamland Park how did you come back? A. Well, we took a trolley or a bus.

The Court: Was Miss Keating on the witness stand?

Mr. Child: Yes, sir.

The Court: Is she here now?

Mr. Child: I don't know where she is.

The Court: Is she the small girl?

Mr. Child: Yes, sir.

The Court: Not nearly the height of Mrs. Cummings.

Mr. Lane: Couldn't very well mistake them.

The Court: Miss Keating is a little woman.

Mr. Lane: Yes, sir.

The Court: Little thin woman, dark complexion.

Mr. Lane: Well, she has red hair.

The Court: Oh, I see; she is the red head. I remember.

Q. Where did Miss Keating live? A. On Little Street, Belleville.

Q. Where? A. Little Street, Belleville.

Q. Were you down to Dreamland Park to the bull fight with anybody? A. No.

Q. Never saw the bull fights? A. Never saw the bull fights; I heard of them though; I heard that there were bull fights there, but I never went to see.

The Court: Do you know the chauffeur?

Mr. Child: The chauffeur is here. He wouldn't know the chauffeur.

The Court: Marinello. Do you know that man? Ever see him?

Witness: Only here.

The Court: He is the chauffeur who identified him?

Mr. Child: Yes; he is the one.

Q. Were you on the night of August 24th in a lot in Belleville on Washington Avenue? A. No, sir.

Q. With a woman? A. No, sir.

Q. With any woman? A. No, sir.

The Court: Mrs. Cummings is the woman we are interested in.

Q. With Mrs. Cummings or any other woman?

The Court: No. We are not interested in any other woman. With Mrs. Cummings. It may have been improper to take this course, it may put you to disadvantage to go into these particulars, but you assumed it.

Mr. Child: It does place me at a disadvantage.

The Court: You, probably, and I did not realize it at the time. It was only to save time. I didn't want counsel to go over the same thing. It may give Mr. Lane the benefit of denials he is not entitled to. Do you want to discontinue?

Mr. Child: I will ask you to discontinue and let Mr. Lane go on with his case.

Further Direct-Examination:

Q. Do you know where Mrs. Cummings lives, or did you know at the time? A. I don't think I did; no, sir; no, I didn't know then.

Q. Were you ever at her house? A. No, sir.

Q. Or at a lot anywhere near her house? A. No.

Q. In the lot of her house? A. No, sir.

Q. In the lot on which the house is built, behind bushes? A. No.

Q. Did you at any time commit adultery with Mrs. Cummings? A. No, sir.

Mr. Lane: I am going to be content with my examination as it is. He has denied absolutely that he was out with Mrs. Cummings. Now that covers the whole ground.

The Court: All right.

Further Cross-examination:

Q. Were you ever in a restaurant on Market Street, Newark, in the evening with Mrs. Cummings? A. No, sir.

Q. Do you know where the Royal Chinese Restaurant is on Market Street? A. Royal? I be-

lieve there is one on Market Street, I believe I've seen the sign, but that is all. I believe I recall the sign, a Royal Restaurant, I believe I do.

Q. And that is where? A. That is where what?

Q. Where is that restaurant? A. On Market Street, I think, a Chinese Restaurant.

Q. Where on Market Street? A. It is between Broad and Washington there somewhere. I have been on Market Street thousands of times and I have seen it there, I am almost certain.

The Court: That is west of Broad Street then, that would be west of Broad?

Witness: Yes, sir.

Q. Were you ever in a taxi cab in the evening with Mrs. Cummings driving up from Dreamland Park? A. No, sir.

Q. You never met Mrs. Cummings at any time at any place in the evening; is that correct? A. That is right.

Q. Either when you were in company with anyone else or alone? A. No, sir.

Q. Do you remember an occasion when you were at Dreamland Park being out in the picnic ground with Mrs. Cummings and a special officer walking by you in the picnic grounds and after that getting up and walking out? A. No, sir.

Q. Did that ever happen? A. No, sir.

The Court: You may have forgotten. You know you asked him whether he remembered.

Q. Going back to this visit at the firehouse, what did you expect to accomplish there besides starting a fight, if you went to see Cummings? A.

Well, I was really there for any purpose that Mr. Cummings saw fit; in fact, I wanted information more than anything else.

Q. You went up there, did you not, at the request of Mrs. Cummings or someone on her behalf for the purpose of endeavoring to get Cummings to offer you money to testify on his behalf, didn't you? A. I did not.

Q. Well, then, what was the other purpose, or for any purpose that you were there, as you put it? A. Well, Mrs. Cummings would tell me very little and she told me to go and see her lawyer, and I asked her who her husband was and where he was and she told me, so then I thought it over, and the night that I went to see Mr. Cummings I started out to go to a barber and on the car I changed my mind that I would go to see Mr. Cummings. Just that way it happened.

Q. Well, what made you change your mind? A. Just thinking about it.

Q. How did Mrs. Cummings communicate with you, Mr. Grimm, that you had been named as co-respondent? A. By telephone.

Q. And did you afterwards see her? A. No, sir.

Q. Didn't see her before you went to the firehouse? A. No, sir.

Q. Did you go to the firehouse with the idea of having a physical encounter with Cummings, fight? A. That was solely up to Mr. Cummings.

Q. You knew he was a fireman, didn't you? A. Yes, sir.

The Court: Fire fighter.

Q. And that the fire fighters usually are at the firehouse? A. Yes, sir.

Q. You say you went up there with the intention

of having a fight with him in his ownfirehouse, or outside of it? A. Well, as I said I wasn't afraid of that part of it provided Mr. Cummings wasn't. I really didn't know.

Q. Had you ever seen Mr. Cummings before? A. No, sir.

Q. Didn't know how large or how small he was? A. No, sir.

The Court: You were ready for a fight if one was coming off.

Witness: That is it.

The Court: What?

Witness: Yes, sir.

Q. Why was it after Miss Keating told you you were named as corespondent in the Cummings divirce case that you didn't pay any attention to it? A. Because I just didn't put any faith into it at all. It was just that way; I didn't want to bother.

Q. Wasn't it a matter of sufficient importance for you to investigate and find out if you were named? A. Well, to me at the time it wasn't.

Q. You don't care then whether you are named as a corespondent in a divorce suit or not, is that right? A. I do when I find out for certain I was, but I didn't put any faith in Miss Keating's statement.

The Court: Thought she was joshing you?

Witness: That is what I thought more than anything else.

Q. Didn't you make statements to persons who were employed by the same people that you were employed by—(interrupted).

The Court: Is this for the purpose of contradiction?

Mr. Child: Yes, sir.

The Court: Time, place and persons present.

Q. In the presence of a man named Cox, boast that you had been made a corespondent in a divorce suit?

The Court: Time, place and persons.

Q. Shortly after you learned of this fact that you were a corespondent? A. Shortly after?

Q. Yes. A. It may have been.

Q. Why did you do that? A. Well, I told Mr. Buchanan also; told several people about it.

Q. But you were not sufficiently concerned with your good name to find out whether the charges were true or not. A. Well—

Q. That you had been so named. A. I figured at the time that it was more a joke than anything else; I really didn't put much faith in it.

Q. You were going with Miss Keating and she told you a fact affecting your morals and you didn't think that was of sufficient importance to find out about it.

Q. Did she ask you about it? A. No. She just told me. She couldn't very well ask me; I didn't know myself.

Q. And you were not sufficiently interested to find out? A. Not at that time; no, sir.

Q. And it was three or four months after that you first made any effort to find out about the charges.

The Court: We have had that. Do not repeat.

Who did you live with at that time?

Witness: With my brother. I board with him.

The Court: You are a single man?

Witness: Yes, sir.

Redirect-examination:

Q. Mr. Grimm; what was it that you may have said in the presence of this fireman or this man Cox, I think, that is referred to?

The Court: The same as he told Buchanan, he says.

Mr. Lane: What did you tell Buchanan?

Witness: I believe what I told them was —I wouldn't exactly say the words—it was something to the effect merely that I had been named corespondent in the divorce suit, and of course they all had a good laugh.

Q. The expression you used "Now, I will tell you another" that is a familiar slang expression.

The Court: If it had not been said on the witness stand I would have recognized it at once. You have done it and so have I. Something absurd told you, you will say, "I will tell you one."

Mr. Lane: I wanted the record to show that that is what it meant.

The Court: Oh, yes.

Q. When was it that you first saw counsel for Mrs. Cummings, do you remember? A. It was a

couple of days after I had visited Mr. Cummings at the firehouse. I know there was a big snow storm on that day.

Q. Who did you see? A. Mr. Fleischman.

Q. And how often did you see Mr. Fleischman? A. Just that once.

Q. And did you sign an affidavit at that time? A. I believe I did.

Q. I show you a paper and ask you if that is your signature?

Mr. Child: I object as not being proper redirect; self serving declaration and irrelevant.

A. Yes, sir.

The Court: What is your objection?

Mr. Child: My objection is showing this witness an affidavit that he has signed.

The Court: Objection overruled.

Q. Now, I ask you whether by reference to that affidavit you signed on that day you can tell the date that you were there? A. Yes, sir; it says, "This tenth day of February, 1926."

The Court: Is that about the time you were there?

Witness: I guess so.

Mr. Child: That is at Mr. Fleischman's office.

Witness: Yes, sir.

CHARLOTTE YOUNG, sworn for defendant.

Direct-examination by Mr. Lane:

Q. Mrs. Young, you are the mother of Harry Young? A. Yes, sir.

Q. You are the mother of Harry Young. A. Yes, sir.

Q. And where do you live? A. 175 Washington Avenue, Belleville.

Q. Will you describe that house for me?

The Court: Haven't we had it described?

Mr. Lane: I don't think it has been described, the inside.

A. Well, the living room is on the front of the house; there is a porch right across the house; one side of the house is the living room, in back of that is the dining room and across the back of the house is the kitchen, and next—then there is a private hall, and on one side is the bedroom, and then the bath is between, and then there is a bedroom on the back.

Q. Is there a second floor? A. Yes, sir; two family house.

Q. Another family lives upstairs? A. Yes, sir.

Q. When did you first meet Mrs. Cummings? A. Oh, quite a while—about three years or more.

Q. How did you come to meet her? A. I met her going to the stores, and she went to the same butcher I did and same grocer and same baker—they are all right on the one block there on Washington Avenue, and I started talking to the little girl and I got to talking to Mrs. Cummings, so I asked her to come and see me, and I made dresses for Olive—Mrs. Cummings came and used my

machine—she hasn't a machine—sometimes she used the sister-in-law's downstairs, sometimes the sister-in-law needed the machine so I asked her to come to use mine, and I made Olive a few dresses out of Mildred's dresses that she had out grown.

Q. Nowd o you know the other members of Mrs. Cummings' family? A. Oh, yes.

Q. Now do you know the other members of Mrs. know the sister-in-law downstairs, Grace; we call her "Grace", Mrs. McDermott, and her husband, that is Mrs. Cummings' brother Tom, I believe his name is, and there is a brother Willie, I know him. Of course, I haven't visited the others.

Q. How long have you known those members of her family? A. I couldn't say, quite a long time. I went up to Mrs. Cummings' house and met them there, and one sister-in-law lives downstairs. I know her very well, of course.

Q. Downstairs? A. At Mrs. Cummings.

Q. Where does she live? A. 10 Washington Street, Belleville.

Q. In the same house that Mrs. Cummings lives? A. Same house as Mrs. Cummings.

The Court: Did you visit her there while she was living with her husband?

Witness: Oh, no.

Q. How long have you been visiting Mrs. Cummings, going to the house that Mrs. Cummings lives in? A. I don't know; I couldn't say that.

Q. About how long? A. Right after Mrs. Cummings came to see me she invited me up to her house.

Q. Who does Mrs. Cummings live with? A. Lives with her mother.

The Court: Who did she then?

Witness: With her mother and her brother, on Washington Street; single brother she had.

Q. That is where you went to see her? A. Yes, sir.

Q. At 10 Washington Street? A. Yes, sir; Belleville.

Q. And it was at this house that her brother-in-law or sister lived underneath? A. Her brother and sister-in-law, has three children, little boy—(interrupted).

Q. When was it that Mrs. Cummings started to come to your house? A. Well, right after I asked her to come to see me she came; she came afternoons sometimes. She worked at night in the bakery; she came sometimes in the afternoon and did some sewing.

Q. How frequently would she be there? A. Oh. I couldn't say that.

Q. Who would be there? A. Just myself, Mildred went to school.

Q. Now did she come in the evening? A. Oh, yes, she came in the evening with—(interrupted).

Q. Who were at the house in the evening when she was there? A. She came before my son came home, she visited me. My son was in the army. He came in January and Mrs. Cummings was working in the bakery then.

Q. Before your son came home from where? A. From the army, in Texas.

Q. During the summer of 1925 did you go out with Mrs. Cummings and your son to various places? A. Yes, sir.

Q. Do you remember a trip that you took to Coney Island? A. Yes, sir; I do.

Q. Who was on the trip to Coney Island? A. Mrs. Cummings and my son and I; Mr. Young was on his vacation, he was away.

Q. At what time did you go and where did you go? First place let me ask you, can you tell me about when that was? A. I think it was either the end of August or beginning of September. Mr. Young was on a vacation to a convention.

Q. Which Mr. Young? A. My husband, and we went then because we didn't care what time we got home, because he usually worries if I come home late; he thinks something happens. I said, "We needn't worry because Mr. Young isn't home," and Mildred was working in Kresge's on Saturday. She would have loved to go too, but she was working at the time.

Q. What time did you go and where did you go? A. I couldn't say what time. We wanted to go when the lights were lit.

Q. How did you go? A. We went with the Tube.

The Court: You wanted to go when the lights were lit in Coney Island?

Witness: Well, we wanted to get there when the lights were lit. We went by the Tubes—took the Tube.

Q. Tube to where? A. To the Hudson or Manhattan Transfer and got in another train. We did-didn't go out of that building at all.

Q. You went on the Long Island railroad? A. I guess that is the one.

Q. How long did you stay there and where did you go when you were there, or do you remember

where you went when you were there? A. Yes, sir; I do. Mrs. Cummings and I went in the Incubator to see the little babies.

Q. Baby incubator? A. Yes, sir; my son didn't care for that, he stood outside smoking.

The Court: Who?

Witness: My son. So he was quite provoked when we came out because we stayed in there so long. We didn't want to go out, we were so interested in the little babies; they were telling all about the babies, how much they weighed at birth, and we were very much interested; so he was quite angry when we came out. And we walked around sightseeing. We didn't go on anything. Mrs. Cummings doesn't care—didn't care for the roller coaster, I didn't either, and—(interrupted).

Q. Did you do the shoot the chutes? A. No. I used to like those things, but I am too old now.

Q. What time did you get home? Did you come home the same way you went? A. Why, no, we took a sightseeing bus.

Q. To where? A. I think to the end—wherever it went; I don't know; and then I think we took the Tubes home. It cost more but—(interrupted).

Q. What time did you get home? A. Well, I couldn't say that. We were in no hurry coming home; it was pretty late, I know.

Q. What do you mean by late? A. Well, I guess it was twelve o'clock.

Q. When you left there? A. Oh, no, when we got home. We took the long way; the bus takes

much longer than the Tube did; cost more and took longer, but we wanted to come a different way.

Q. Going down where did you sit; can you remember how you sat in the train? A. Why, yes, I sat—Mrs. Cummings and I sat together and my son had a seat over across from us; it was quite crowded. It was on Saturday, I think—yes, it was Saturday night, because Mildred worked.

Q. Was there any exhibition of affection between your son and Mrs. Cummings on the way down? A. No; never.

Q. Was there any exhibition of affection in Coney Island at any place when you were at Coney Island or coming back? A. No, never. That was the last of their thoughts. They never thought of such a thing. We were out for pleasure and sightseeing.

Q. Were you in their company all during the evening? A. All the time, yes, sir.

Q. Do you remember a time when you and Mrs. Cummings and your son went to some fire that turned out to be a false alarm? A. When did this happen?

Q. In August, 1925, it is supposed to havehappened. A. I don't know; I don't just remember.

The Court: You have heard it testified to.

Witness: Yes, sir; I did.

The Court: You can't remember it now?

Witness: I will try to think of it. I believe we did run to a fire and my nephew upstairs—we met him—and he said it was a false alarm so we didn't go.

Q. Who is that nephew, upstairs? A. A little

fellow, my nephew, he was only about eight years old at the time. He is dead.

Q. Have you any present recollection of that occurrence? A. I couldn't say positive, but there was one time we did start to go down to a fire and Edward said, "False alarm."

Q. Now do you remember some time after Christmas of 1925, that Mrs. Cummings was at your house upon an occasion when a Christmas tree fell; do you remember that occasion? A. Yes, I do remember that very well.

Q. Tell us about it. A. Why, we were—we had just finished having coffee and we usually sit there a while, and Mrs. Cummings was speaking about going home and then we heard this cracking and it fell over onto the piano stool and onto an arm chair and it saved quite a few ornaments by not smashing right down to the floor and we all helped take the ornaments off. Little Olive got quite —(interrupted).

Q. Now was Mrs. Cummings and your son in your presence all that evening? A. Yes, sir; Mr. Young too and Mildred.

Q. Was there any time they were on the floor together, exhibiting affection one to the other or anything like that? A. No.

Q. Let me ask you whether on the way to Coney Island or in Coney Island or on the way home you said to Mrs. Cummings in words or to the effect, "We will make a home for you here in the attic if need be" or words to that effect? A. No, I did not.

Q. Did any such conversation take place at that time or at any other time? A. No, because that is impossible—that would be so impossible.

The Court: What?

Witness: It would be impossible.

The Court: You haven't got a garret?

Witness: Yes; we have an attic.

The Court: Why would it be impossible?

Witness: Why, I wouldn't think of such a thing; there was no occasion for it anyway; she had a home with her mother.

The Court: You never said it.

Witness: No; I never said it.

Q. Do you remember attending theaters with Mrs. Cummings and your son? A. Yes, I do.

Q. Can you remember any specific occasion? Can you remember any special occasion you have in mind? A. Well, I remember the Phantom of the Opera. We went to see that. I didn't care for it.

Q. Was there any time that you went with Mrs. Cummings, or, rather, went with your son, and Mrs. Cummings came in later; do you remember any occasion of that kind? A. Yes, sir; that was the time.

Q. That was the time. Well, tell us about that time. A. Well, we went down in the car and met Mrs. Cummings and it was visitation night, and she came afterwards and it was very crowded and Mildred and I sat on one side and we took Olive over with us and—no, that was another night.

Q. That was what? A. It was another night, when it was so crowded.

Q. Get your mind back to that time when Mrs. Cummings did not go with you but came into the theater after. A. Well, she came in afterwards.

Q. Do you remember where you were sitting that night? A. Well, we usually sat down front

because my son's eyes are not very good and he likes to sit close to the screen.

Q. Do you recall on that night whether Mrs. Cummings was sitting with you or not or was sitting in another part of the house? A. She always sat with me and always sat alongside of me.

Q. Do you remember any other specific occasion —any special occasion when you were at the theater? A. With my son?

Q. With your son and Mrs. Cummings. A. Yes, sir; we went lots of times together, very often.

Q. But you can't remember any special time, can you? A. No, I cannot, because we went very often.

Q. Were there any exhibitions of affection between your son and Mrs. Cummings on those occasions when you went to the theater? A. No; my son thought too much of me to do any such thing as that.

Q. Would you be in a position where, if such a thing had happened, you would see it? A. Yes; certainly would.

Q. Was there any way by which they could do it without your seeing it, the way you went? A. No.

Q. So at Coney Island could they have done that thing without your knowing it? A. No.

The Court: Did you ever realize that you were a party to anything of that kind?

Witness: Why, no. Mrs. Cummings was a friend of mine. That is as far as I thought of it. I never thought of such a thing until I heard that Mr. Cummings had named that adultery was committed at our house.

Q. Were there occasions when you went to the theater with your husband and Mrs. Cummings without your son? A. Yes, sir; we went to the Mosque to see the Ten Commandments.

Q. Any other time? A. Yes, sir; we went up to the Capitol at night a few times. I don't remember what the pictures were, but I remember the Ten Commandments very well.

Q. It has been testified here on some occasion—I have forgotten the date—you were at the theater, Mrs. Cummings and somebody else and went into a store; do you remember—do you know what I am referring to? Went into a store and Mrs. Cummings stayed outside with Harold Young and went into a recess of the store next door and stayed there and kissed and hugged and so forth. A. Yes, sir; we all went in—my son—we usually have coffee at night before we go to bed, he and I; and Mr. Young eats cake or sandwiches. He went in with me—we all went in and he told me what kind of cake to buy.

Q. Who? A. My son.

Q. Do you remember the night you went to see the Phantom of the Opera at the Regent Theater? A. Yes, sir; I said that before.

Q. That night where did you go—do you remember where you went that night after you had seen that? A. No; I couldn't say. Sometimes we had ice cream; sometimes I went to the delicatessen to get something for Mr. Young's lunch. I always put his lunch up at night. He goes away so very early. I don't get up, so I put up the lunch at night and I always get the meat for the sandwiches as late as I can so it doesn't dry up before I put it in the sandwiches, and usually when Mrs. Cummings came to the house I walked out with her, or

if we went to the movies, I went to the delicatessen store after we were through in the ice cream store—delicatessen or bakery, I couldn't say.

Q. Was there any time you went and Mrs. Cummings and your son stayed outside on the sidewalk? A. No.

Q. Did they always go in with you when you did go in the store? A. Yes, sir; they always went in.

Q. Would it have attracted your attention if they hadn't gone in with you? A. Yes, sir; I would think it strange because my son usually tells me what to get.

Q. How late did Mrs. Cummings usually stay at your house when she did come? A. About ten o'clock; sometimes, if we had company and playing games or something she would stay a little later.

Q. Who took her home, if anybody? A. Well, I always walked—if I took her—walked as far as William Street and Washington and she would go up William because she lived nearer William Street than John Street; John Street is nearer our house; William Street is nearer Mrs. Cummings' house on Washington Street; then I would go on to the delicatessen, because that was past William Street on Washington Avenue. Usually Mrs. Cummings went home alone. If I had anything in the house I didn't bother going out, then Mrs. Cummings would go home alone.

The Court: What kind of a spoken woman is Mrs. Cummings? How did she conduct herself in conversation?

Witness: Why, very nicely; I never saw anything out of the way; I wouldn't let her

come to the house if she wasn't a lady or didn't act like a lady when she got there.

The Court: Well, how did her thoughts run, clean or—(interrupted).

Witness: Oh, yes, positively.

The Court: Always.

Witness: Yes, sir.

The Court: Never heard any evil from her?

Witness: No.

The Court: You women can tell pretty quickly, can't you?

Witness: Certainly; I could tell, yes, sir.

Q. Did your son ever go home with her? A. No—Yes, he has, but never to her house. We have left her at William Street and he has went to get cigarettes—he would get cigarettes and I would get the other, the lunch.

Q. How near would that be to her home? A. Where we left her?

Q. Yes. A. One block up—she would have to go one block from Washington Avenue to Washington Street and then over a quarter of a block.

Q. All well lighted? A. Yes, sir; William Street is quite light. She used to say, "Never mind."

Q. Did you go down as far as you went for her protection or what? A. No; I would go to the store anyway. I didn't usually wait until ten o'clock to go, but as long as Mrs. Cummings was there I would wait until she went home and then walk down.

Q. To get the delicatessen stuff for your husband's lunch. A. Yes, sir.

Q. Do you know of any occasion when your son

went with you and Mrs. Cummings and left you and went to her house and then did not come home until some time later? A. My son wouldn't do that; he would go out with me and bring me home.

The Court: Did he?

Witness: No, he did not.

Q. What attitude did Mrs. Cummings take as to your taking her home—all the way home? A. Well, I didn't take her all the way home; I just went that far.

Q. What would she say about it? A. She said, "Never mind, but I would go to the store anyway and I will wait until you go home then I will go."

Q. Do you remember the instance of the 4th of July? Do you remember 4th of July, rather, 1925? A. Yes, sir; I do.

Q. Was Mrs. Cummings and Olive there at that time? A. Yes, sir; she was.

Q. Did you see Mrs. Cummings come to the house? A. Yes, sir; I did.

Q. What time was it when she got there? A. I couldn't say the time. I have a very poor memory for time and dates.

Q. Did your son kiss her or greet her at the top of the steps or terrace with a kiss and so forth? A. No, he did not.

The Court: How do you know that?

Witness: Because I was there and we had a lot of company. I know my son wouldn't do such a thing.

The Court: Wouldn't do such a thing as what?

Witness: As kiss Mrs. Cummings or any married woman or anyone out on the street that way.

Q. How many people were there who could have seen it or might have seen it if it had occurred?

Q. Do you know whether Mrs. Cummings at any time after she austensibly left the house came back to the house? A. No, she did not.

Q. How would you know it if she did? A. We had a dog and no one comes in the alley that he don't bark.

Q. How long have you had that dog? A. It will be this month five years.

Q. What kind of a dog is it? A. Fox terrier; not genuine fox terrier but mixed with bull.

Q. Does he bark at every stranger who is around the house? A. Yes, sir; everything.

Cross-examination by Mr. Child:

Q. Where did you first meet Mrs. Cummings? A. At the stores in Belleville.

Q. And did you introduce Mrs. Cummings to your son? A. Yes, sir.

Q. And he didn't know her before that time? A. A. No, he didn't; he was away.

Q. What? A. He was away.

Q. He was away, and when did he come back? A. He came back in the end of January.

Q. Of what year? A. It will be three years next January.

Q. This coming January; 1924, then. And did you know Mrs. Cummings before your son came back home? A. Yes, sir; I did; surely.

Q. Had she ever been at the house before that time? A. Oh, yes.

Q. And how frequently? A. Quite often.

Q. How long before January, 1924, was it that

Mrs. Cummings began to come to the house? A. I couldn't say.

Q. Was it a matter of months or a year? A. I know her about three years.

Q. Well, how long—about how long was it before she began to come to the house after you met her? A. I met her a few times and then I invited her to the house.

Q. And prior to January, 1924, can you give us an idea as to how many times she came to the house? A. No, I cannot.

Q. How frequently would she come to the house? A. Well, I would ask her to come down—I couldn't say.

Q. Once a week? A. Oftener.

Q. Oftener than once a week? A. Yes, sir, but she would come in the afternoons then.

Q. And she kept that up right along up to the present time? A. Yes, sir; she still comes to the house.

Q. She still comes to the house, and the first time she met Harold was when you introduced her? A. Yes, sir.

Q. And that had to be after January, 1925. A. Well, three years he will be home next January.

Q. 1924. Now, when you took these trips to Coney Island and wherever you went to the theater and whatnot, who was it that paid the expenses? A. My son did. Mrs. Cummings offered to pay her own way but my son invited her so he thought it was his place to pay, as he did anybody that he took along.

Q. Yes. Now, did I understand you to say on direct-examination that your son never went around or escorted married ladies anywhere since he lived with you, is that right?

The Court: No.

A. No, I didn't say that; kissed them.

Q. Did he ever entertain any other ladies aside from relatives other than Mrs. Cummings? A. Yes; he did.

Q. Who else did he entertain? A. Irene her name was; she is married now; she lives in Massachusetts.

The Court: Some young girl he was going with?

Witness: Yes, sir; before he went to the army he went with her in Newark.

Mr. Roessler; I represent Mr. Young, one of the corespondents and I would like to call him at this time.

HARRY YOUNG, sworn in his own behalf.

Direct-examination by Mr. Roessler:

Q. How old are you? A. Twenty-five.

Q. And you live at 175 Washington Street, Belleville? A. Washington Avenue.

Q. Washington Avenue—with your parents. A. Yes, sir.

Q. And do you know Mrs. Cummings the defendant in this suit? A. I do.

Q. When did you first meet her? A. Why, it was shortly after I came home, the exact date I don't know.

Q. Came home from the army, is that right? A. Yes, sir.

Q. And when did you return from the army? A. It was some time at the end of January, 1924.

Q. And you returned to your home 175 Washington Avenue, Belleville. A. Yes, sir.

Q. How soon after January, 1924, did you meet Mrs. Cummings? A. Well, it was one or two days.

Q. Who introduced you to her? A. My mother.

Q. Where was she when you met her, at your home? A. It was at the home, yes, sir.

Q. Did she call at your home frequently after that time? A. Well, not at first, on account of her working, you know. I think she did come to see my mother occasionally afternoons, but usually in the afternoon I was out.

Q. And did you call her by her Christian name or did you call her Mrs. Cummings? A. Well, I called her Mrs. Cummings—most of the time I called her Sadie.

Q. And your mother called her Sadie. A. Yes, sir.

Q. And your sister Mildred called her Sadie. A. Yes, sir.

Q. And your father? A. Yes, sir.

Q. Were you at any time employed by the Atlantic & Pacific Tea Company? A. I was.

Q. In what capacity? A. I was supposed to be a baker.

Q. Were you a baker? A. No, sir.

Q. What work did you do there? A. When the bakers brought the bread from the ovens they dumped it in pans that held four loaves and I took the four loaves and put it in the rack and when the rack was filled push it away.

Q. When did you go to work for the A. & P.? A. I guess maybe a week after I came home.

Q. And was Mrs. Cummings employed there at that time? A. She was.

Q. How long did you continue in the employ of

the A. & P.? A. I think it was about four or five months; I am not sure.

Q. And then you severed your connection with the company, is that right? A. I did.

Q. Mr. Young, it has been testified to by several witnesses that you met Mrs. Cummings on various occasions at the Public Library on the occasion of Mr. Cummings' visitations of the child. You have heard that testimony, have you? A. I have.

Q. I ask you now, did you ever meet Mrs. Cummings at the Library or at any other place in connection with the visitations? A. No, sir; I did not.

Q. Were you there? A. No, sir.

Q. Were you there at any time? A. No, sir.

Q. Did you ever meet Mrs. Cummings in front of the Library—near the Library or near Washington Park? A. I did not.

Q. On the occasion when Mr. Cummings visited the child? A. No, I did not.

Q. Are you certain of that? A. Positive.

Q. Do you recall June 4, 1925? It has been testified to that on that date you met Mrs. Cummings on a trolley car, on an open trolley car going to Belleville and at that time you took certain liberties with Mrs. Cummings, played with her breast, I believe. Do you recall that testimony? A. I recall the testimony, yes, sir.

Q. Did any such instance occur on June 4th or on any other date? A. I wouldn't say that I didn't meet Mrs. Cummings on the car. I have met her occasionally on the trolley going to Belleville, but I do deny I ever put my hands on her in any way.

Q. When you met her on those occasions or any other occasions was it pursuant to any appoint-

ment that you had with her or was it an accidental meeting? A. It was an accidental meeting.

Q. Did you ever make an appointment to meet Mrs. Cummings away from your parents' home? A. I did not, unless my mother and I had some appointment with her.

Q. Do you recall the incident of June 10, 1925, when you and your mother and Mildred, I believe, attended a performance, I believe the Phantom of the Opera, at the Regent Theater? A. I did.

Q. Do you recall that incident? A. I do.

Q. And do you recall who was in that party that night or who were in that party? A. I do.

Q. Will you tell us? A. My mother and I and I am not sure about Mildred that night, I think she was, and Mrs. Cummings and her little girl and I—no—that is right. Mrs. Cummings wasn't with us that night; she was not. She came into the show later. I remember we were sitting down in front and it was quite crowded and she came in later and Olive came over and pulled on my sleeve and I said "Hello" to her; I said, "Where are you sitting?" And they were sitting over on the other side, so my mother moved over next to Mrs. Cummings and we brought Olive in our seat with us.

Q. Were you sitting alongside of Mrs. Cummings at any time that evening? A. No, not that evening at all.

Q. Did you take any liberties with her in the theater that evening? A. I did not.

Q. Did you touch her person at any time? A. No, sir; I did not.

Q. Do you recall after leaving the theater walking to a delicatessen store somewhere in the neighborhood? A. Yes, sir; we did.

Q. And was your mother with you at the time? A. She was.

Q. It has been testified to that while your mother was in the store selecting groceries or delicatessen —(interrupted).

The Court: Ask him where he was.

Q. Where were you at that time? A. When my mother was in the delicatessen store I was with her.

Q. Are you certain? A. Positively.

Q. Did you remain outside at any time with Mrs. Cummings? A. I did not.

Q. Did you stand there at the entrance to this store or alongside of it and—(interrupted).

The Court: He said he was inside with her, so he couldn't have been outside, if he was inside.

Q. Now do you recall June 16th? Did you meet Mrs.—I think you have already testified that at no time you met her in front of the Library, is that correct? A. That is correct.

Q. Do you recall meeting Mrs. Cummings on July 22nd on Plane Street and walking with her or taking her home to Belleville? A. No, I did not. I never met Mrs. Cummings on any street and I do not recall going through Plane Street with her at any time.

Q. Do you remember the incident of visiting the armory? A. Yes, sir.

Q. At the time of the fashion show in 1925? A. I do.

Q. And who was in your party? A. My mother and Mrs. Cummings and little girl and I.

Q. And with whom did you walk to the armory? A. I think I had Olive by the hand.

Q. And was Mrs. Cummings in the party? A. Mrs. Cummings was, yes, sir.

Q. With whom did she walk? A. Why, I think she walked in back with my mother or else they walked in front. I remember having Olive by the hand though.

Q. Did you on that occasion at any time that evening kiss or caress Mrs. Cummings? A. I did not.

Q. Or put your arm around her? A. No, I did not.

Q. Do you recall the incident when you went to Riviera Park with Mrs. Cummings, your mother and Mildred? A. I remember going several times.

Q. Several times? A. Yes, sir.

Q. Did you on any of those occasions kiss Mrs. Cummings, put your arm around her? A. I did not.

Q. Do you recall the incident of August 28th, 1925, when you attended a performance at the Newark Theater? A. I do not remember the date. I attended the performance at the Newark Theater several times.

Q. And was Mrs. Cummings with you on any of those occasions? A. Yes, sir; I think she was with us three times.

Q. And who was in the party? A. My mother, and I think on one occasion, Mildred was along with us too.

Q. Did you ever go with Mrs. Cummings alone, that is you and Mrs. Cummings without any other members of your family to any theater or any other place? A. No, I did not.

Q. Now on this occasion do you recall where

you were seated in the Newark Theater? A. No, I do not recall. I know it was somewhere in front, that is all I remember about it, because I cannot see if I sit back any distance from the stage.

Q. Was Mrs. Cummings sitting alongside of you? A. I don't know how—I couldn't say how we were sitting at the time, I don't remember.

Q. Did you on that occasion or any other occasion—(interrupted).

The Court: Keep down to that.

Q. On August 28th on the occasion of the visit to the Newark Theater, did you kiss Mrs. Cummings? A. I did not, no.

Q. Did you put your arms around her? A. No, I did not.

Q. Did you on August 28th after leaving the Newark Theater visit the Eagle Restaurant on Market Street with Mrs. Cummings? A. No, I did not.

Q. Did you ever take Mrs. Cummings to the arcade on Mulberry Street? A. No; positively no.

Q. Are you certain of that? A. Positively.

Q. And do you remember any occasion when you ran three quarters of a block as has been testified to, for a bus after leaving the arcade on Mulberry Street in company with Mrs. Cummings? A. I did not.

Q. Do you remember somebody stopping you that night and handing you a package? A. No; positively no; I wasn't in the neighborhood.

Q. Did you after returning to Belleville that evening, after visiting, as has been testified, the arcade or any other place of amusement, accom-

panying Mrs. Cummings to the lot in the rear of her house? A. Never.

Q. It has been testified to that on that occasion at about one o'clock or one thirty in the morning you disappeared in the bushes in the rear of your home, is that true, alongside of her home.

The Court: That is different.

Q. Alongside of Mrs. Cummings' home.

The Court: The former question was directed to his home. I do not remember any such testimony.

Q. Did you take her to the bushes alongside of her house? A. I did not.

Q. At no time? A. At no time.

Q. Now, Mr. Young, do you recall the Coney Island trip? A. I do.

Q. Can you fix the date? A. I cannot fix the date, no.

Q. Do you know whether it was in the fall of 1925? A. Well, it was at the end of the Coney Island season, just before the Mardi Gras.

Q. Who were in the party on that trip? A. My mother and Mrs. Cummings and I.

Q. Do you recall what time of day you left Newark, or Belleville, rather? A. No; I don't know whether it was before supper or after supper, I couldn't say.

Q. Do you recall how you went to Coney Island? A. I do.

Q. Will you tell us? A. We went to the Tubes here in Newark and went over to New York to the Terminal and there walked through and got on the express that goes direct to Coney Island.

Q. Do you recall where you were seated on the trip to Coney Island from New York with reference to Mrs. Cummings? A. I do.

Q. Will you tell us? A. Well, there was long seats, like that, just before the seats are faced this way start, and we couldn't get together, so my mother and Mrs. Cummings sat there and I sat on one of the seats that faced in the direction the car was going, not a side seat, and I had found a newspaper on the car and I read that almost all the way down to Coney Island.

Q. Did you engage Mrs. Cummings in conversation at any time on that trip? A. No; I don't believe I spoke a word to either my mother or her on the way down.

Q. Did you kiss her on that trip to Coney Island? A. I did not.

Q. Did you touch her breast or any other part of her body? A. I never at any time put my hands on Mrs. Cummings.

Q. Do you recall what happened when you reached Coney Island? A. Why, yes; I think the first thing they took in was the incubator—I believe that was the first, and my mother and Mrs. Cummings went in there and stayed—and they stayed quite a while. I know I was standing outside waiting for them and when they came out of there, why we—neither of the ladies wanted to take on any tobaggans or anything like that, so we spent the rest of the evening taking in the sights, and we went in a couple of these here wax works, the remains of the Eden Musee that was down there, and we went into that and one or two others we went into; that was about all we did, except walking up along Surf Avenue there.

Q. And was your mother in your party at all times from the time you left Newark until you returned home? A. She was.

Q. Were you with Mrs. Cummings at any time without your mother accompanying you? A. No; positively not.

Q. Do you recall what hour of the night you returned home? A. No; I guess it was twelve, one o'clock when we did get home.

Q. How did Mrs. Cummings get home that evening? A. We stayed on the car and she got off the car and walked right up to her house.

Q. And you didn't leave your mother to take Mrs. Cummings home? A. I did not.

Q. Let me ask you, did you at any time, since you first met Mrs. Cummings, escort her to her home after she left your home in the evening? A. No, sir; I did not.

Q. Did you ever escort her in the company of your mother? A. I did.

Q. All the way to her home? A. Not all the way. We have gone up there once or twice—(interrupted).

The Court: He asked you whether you escorted her to her home.

Witness: I have, on one or two occasions, gone up as far as her house, but mostly we dropped her off at William Street, I think it is—I always got them mixed, John and Williams.

Q. With your mother or alone? A. No; with my mother.

Q. Now, Mr. Young, do you recall the 4th of July celebration at your home last year? A. I do.

Q. Do you recall who were at your home on that day? A. I do.

Q. Was Mrs. Cummings there? A. She was.

Q. And your mother? A. My mother, father, sister, aunt, uncle and their three children and my aunt's sister and her daughter were there.

Q. And do you recall that day when Mrs. Cummings arrived? A. I think she came around eight o'clock.

Q. And were you at home at the time? A. I was.

Q. Did you greet her when she arrived? A. Why, yes; I think I said "Hello" to her.

Q. Did you kiss her? A. No; I did not. I kissed Olive.

Q. Did you throw your arm around her? A. I did not.

Q. Now, what happened on that day, if anything? What did you do after Mrs. Cummings arrived? A. Well, Mrs. Cummings went upstairs onto the front porch and I was shooting off the cannon and Olive did not like that very much and she started to cry and by that time it had got a little darker and I started to shoot off the night fireworks and that scared Olive worse, so Mrs. Cummings said, "I think I better take her home," she said, "it is a shame to have to take and miss everything;" she says, "I will take her home," she says, "my mother will take care of her and maybe if she is all right and quieted down, maybe I will be back." So they were gone, I guess about half an hour, and they returned again and went back on the porch.

The Court: Who returned?

Witness: My mother and Mrs. Cummings; and I finished shooting off the fireworks.

I think after that we had ice cream.

Q. I think it has been testified at the head of the staircase or head of the terrace you kissed her or threw your arms around her.

The Court: You have already asked him that.

Witness: I did not.

Q. Did you kiss her at any time? A. Never.

Q. Or give any evidence of affection towards Mrs. Cummings on that day? A. Never; at no time.

Q. I think it has been testified to that on that occasion you were seen playing checkers with Mrs. Cummings on the floor, is that true? A. It is not. I played games with Mrs. Cummings, but the games were always played on the dining room table and checkers was never played.

Q. Do you recall playing with the child that day on the floor? A. Yes, sir; I do. On other occasions I have played with Olive on the floor.

Q. Do you recall the Christmas tree incident, Mr. Young? A. I do.

Q. Will you tell us what happened on that occasion? A. Well, towards the end of the evening; I guess it was around about nine or nine thirty and we were in the dining room and having coffee and cake; we were already finished, sitting there, I was smoking and my father was, and Mrs. Cummings and my mother was talking and the parlor is a room which is like these two places here, here is the parlor, here is the dining room and a large doorway between so you can look right through, and while we were sitting there we heard some-

thing go "creak" and it attracted our attention, and we looked in there and there was the tree going over slowly and all of a sudden it landed on to the piano and somebody hollered, "There goes the Christmas tree"; I don't know who it was; but we all went in there and we started to pick up the remains of the ornaments that remained and had not been broken.

Q. Did you on that day kiss Mrs. Cummings? A. I did not.

The Court: He never kissed her.

Q. Or did you throw your arms around her on that day? A. No, I did not.

Q. Were you in her company alone at any time that day? A. No.

Q. Were you on the floor with her? A. No; I was on the floor with Olive.

The Court: What?

Witness: I was playing on the floor with Olive.

Q. I didn't ask you about Olive; I am asking you about the mother. A. No, I was not.

Q. Do you recall August 26th, 1925? Did you meet her at a gasoline station near your home? A. No, I did not.

Q. Do you recall any incident which occurred on December 13, 1925? A. No, I do not, not by the date, I do not.

Q. Do you remember—did Mrs. Cummings tell you on that day, after a visitation, "I got rid of him in a hurry." A. I never heard Mrs. Cummings make any remark of that kind.

Q. And did you take her anywheres that even-

ing? A. I do not—I don't remember whether we went anywheres that evening or not.

The Court: That is the night that you all went to the show, wasn't it?

Mr. Lane: Regent Theater.

The Court: Now before going did she tell you that she got rid of him, meaning her husband?

Witness: At the Regent Theater?

The Court: Before you went to the Regent Theater.

Witness: No, sir.

Q. Are you sure of that?

The Court: He said so.

Q. Do you recall meeting Mrs. Cummings on September 19th in front of the Catholic Church as has been testified to? A. No, I do not. I did not, in fact.

Q. You did not? A. I did not.

Q. Mr. Young, did you at any time since you met Mrs. Cummings commit adultery with her? A. I did not; positively not.

Q. Did you ever give evidence of affection or love for Mrs. Cummings? A. No, I did not.

Q. What were your relations? A. Well, she—friendly, that is all I can say; she was a friend.

Q. Whose friend? A. Well, a friend of all of us—friend of the whole family.

Cross-examination by Mr. Child:

Q. You knew when you met Mrs. Cummings that she was a married woman, didn't you? A. I did.

Q. Living apart from her husband? A. Yes, sir.

Q. And when did you first learn that she was being followed? A. I don't know when it was..

Q. What was the occasion of your learning? How did it come to you, the knowledge? A. Why, Mrs. Cummings told us she had heard that she was being followed.

The Court: Told who?

Witness: Told the whole family.

Q. Did you know previous to being named as corespondent in this case that Mrs. Cummings was being sued for a divorce? A. Why, yes.

Q. When did you learn that? A. I couldn't say when it was.

Q. Where are you now employed? A. I am now employed by the Otis Elevator Company.

Q. How long have you been there? A. I have been there—let me see, it is over two years; will be three years this coming summer.

Q. When did you leave the employ of the A. & P.? A. In May or June, I believe it was, about, 1924.

Q. Do you know a man named Marshale? A Yes, sir—Marshall—I know a man named Marshall.

Q. And you and he were both employed by the A. & P., weren't you? A. We were.

Q. Do you remember an altercation that you had with Marshall? A. I do.

Q. And you immediately left the A. & P. after that altercation. A. I came back the next night and quit—worked part of the next night and quit.

Q. And you came to blows, didn't you? A. We did.

Q. And that fight was over your attentions to Mrs. Cummings or Marshall's attentions to Mrs. Cummings, wasn't it? A. It was not.

Q. What was it? A. The fight was over pans.

Q. Over pans? A. Yes, sir.

Q. And Mrs. Cummings quit at once, didn't she? A. I don't know when Mrs. Cummings quit, whether she quit at once or quit the next day.

Q. You say that the fight was over bread pans? A. It certainly was.

Q. And Mrs. Cummings had nothing to do with it? A. Mrs. Cummings had nothing to do with it. Mrs. Cummings at the time of the fight was working up at the other end of the building.

Q. I am talking about Marshall. Marshall was going to run with Mrs. Cummings too at that time, wasn't he? A. I don't know anything about it, whether Marshall was going with Mrs. Cummings or not.

Q. You say that that altercation you had was not over Mrs. Cummings? A. I say it was not.

Q. Did you ever call at the Kresge store where your sister was working on a Saturday afternoon? A. I called at the Kresge store where my sister was working when she was in there.

Q. Did you call on the afternoon of August 29th or evening of August 29th, 1925? A. I couldn't say whether I called there on that date or not.

Q. Didn't you after calling there on your sister meet Mrs. Cummings? A. I did not. I never met Mrs. Cummings after meeting my sister at any other time.

Q. Have you ever at any time or place aside from an accidental meeting on the trolley car, as you have testified to, been with Mrs. Cummings alone

or with Mrs. Cummings and Olive without other persons being present? A. No, I have not.

Q. You have never been at the Public Library to meet Mrs. Cummings or while Mrs. Cummings was across the street at the Public Library? A. I have not; never been told when she was there.

Q. You have never been at the Public Library when she was there, either alone or in company with others? A. No.

Q. Who was the superintendent of the A. & P. Bakery at the time you were working there? A. Mr. Baum.

Q. Why did you go around and spend money on Mrs. Cummings knowing she was married and living separate and apart from her husband? What was your reason for doing it? A. Why, no particular reason, except when anyone goes with me I usually take and pay the way.

Q. Well, you went with her very frequently, didn't you, in company with others? A. I did.

Q. Almost weekly, isn't it a fact? A. Yes, sir.

The Court: The others were always your own immediate family?

Witness: Sir?

The Court: The others always were your own immediate family.

Witness: Yes, sir.

Q. How much were you making in the year 1925? A. Well, that would be hard to tell.

Q. Approximately, per week. A. Twenty-five —well, I was working for the Otis' at that time; I got paid when I worked. If somebody calls up and says their elevator isn't working, we go ont on the job; if we get five hours we get paid for five

hours; eight hours is considered a full day; some days I work eight hours, some days fifteen; I have worked forty-eight hours at a stretch. It would be hard to tell.

Q. How much did you then get per hour? A. A dollar and twelve and a half cents per hour.

Q. What did your earnings average per week? A. Well, I suppose at the end of the year the average was about forty-nine dollars and fifty cents a week—that is what they call a full week.

The Court: Nine dollars a day?

Witness: Yes, sir.

Q. How much were you getting at the A. & P. as baker? A. Twenty-seven fifty, but it usually came to thirty, because we worked overtime on one of the nights.

Q. How many times did you and Mrs. Cummings and your mother go home from your mother's house to Mrs. Cummings' house? A. I couldn't say.

Q. Why did you always have your mother go along with Mrs. Cummings from your house to hers?

The Court: Why did the mother always go along?

Witness: My mother went along with Mrs. Cummings partly, I guess, for protection of her in a way, but mostly because she had to go to the store every night.

Q. Why did your mother feel it incumbent upon her to go along instead of letting you go alone? A. Why, I never tried to go alone; I usually went to bed after Mrs. Cummings come to the house. I offered to go to the store lots of times with my

mother and she is very particular what she gets; if one thing doesn't look good, if it looks as if it had been in the case too long, why, something else —(interrupted).

Q. I am not talking about the times you went to bed; I am talking about the times you and your mother went around to Mrs. Cummings' house; why did your mother always go along? A. Why, I don't know as my mother went along—I went along with my mother, would be a better way of putting that.

Q. I don't care—why was she taken along then? A. Why was my mother taken along?

Q. Yes. A. My mother wasn't taken along; I was taken along or asked along.

Q. Why didn't you ever walk home alone with Mrs. Cummings? A. Why, I don't know.

Q. How many times, on an average, would Mrs. Cummings come to your house in a week? A. I don't know; sometimes once, sometimes twice, sometimes she didn't come for a couple of weeks.

Q. And every time she came would one of you go home with her? A. Not always, no.

Q. Either you or—(interrupted). A. Not always, no.

Q. But every time you went with her your mother went along is that right? A. Yes; I never went home with her alone.

Q. Now, Mr. Young, now have you ever been convicted of a crime? A. I have been convicted of a military court martial.

Q. Crime of what? A. Violation of the 93rd article of war.

Q. That means a great many things; what was the specific violation? A. Assault.

Q. Was that what you were convicted of? A. It was.

Q. What is your name? A. Harry G. Young.

Q. And where did you live at the time you enlisted in the United States Service? A. 100 11th Avenue, Newark, New Jersey.

Q. You say that the reason for your conviction was assault? A. Yes, sir.

Q. The charge upon which you were convicted was assault? A. Yes, sir.

Q. No other charge? A. That is all.

Q. Sure about that? A. Positively; with the exception of being absent without leave.

Q. That isn't a ground for court martial—summary court martial. A. Yes, is is a court martial offense.

Q. I show you a certificate from the United States War Department and ask you if that certificate refers to you? A. Well?

The Court: Does it refer to you?

Witness: Yes, sir.

Q. What does that certificate state is the reason for your conviction? A. For having been convicted of larceny, Private Company F, 23 Infantry.

Redirect-examination:

Q. Mr. Young, did you on any occasion—do you recall sitting at the piano in your home?

The Court: That larceny may have been a cigarette.

Witness: Five cents or a beer check.

The Court: Not for a general court martial.

Mr. Roessler: May I see that certificate?

Mr. Child: It is right there before you.

Q. Will you tell us more about the charge referred to in this certificate?

Mr. Child: I object. I am not concerned with the details of the charge, but I merely introduced it.

The Court: You asked this young man whether he was charged with this crime so as to produce an impression on me that the Federal Government has convicted him of being a thief, and you are not in a position to prove it.

Mr. Child: By the record.

The Court: That record isn't admissible.

Mr. Child: I understand it is admissible, a record under the certificate of the Secretary of War.

The Court: It isn't any more than it is under the certificate of the President of the United States. The officer don't make the law. The law is made by another source. The law may make a certain certificate of a certain party evidence. That has been decided in this court time and again. If you find some authority—some law that makes it evidence, then I will have to submit to it. But the mere fact that some War Department member or the President of the United States makes a certificate, that doesn't make it evidence.

Mr. Child: It certifies that is what the offense was.

The Court: It doesn't make it evidence unless you find some statute or some law

that makes it evidence. Do you know of any?

Mr. Child: The Federal Statute, which makes it competent evidence.

Mr. Roessler: This paper hasn't been offered in evidence, as I understand it, but it has been used by counsel and I think the Court will permit me to use it.

The Court: You can use it. If you use it too much it will go in.

Q. What was the crime, Mr. Young? A. The crime was highway robbery.

Q. Give us the details. A. The details which were given at the court martial or what really happened to me and the fellows I was with?

Q. What is that? A. Do you want the details as they were given at the court martial or what really happened?

Q. I want to know what really happened? A. Four of us went downtown one night, one of the fellows had an automatic pistol and on the way home, we came home late from San Antonio to Camp Travis and a colored man came along, and the fellow says, "Here's where I scare this bucko"; he pulled the gun and shoved it at him and backed him up into the corner and went through him and when he come out we all hollered, "Beat it," we went back up to the camp laughing. When we arrived there there was a cavalry detachment there waiting for us and there was a couple of what I learned later was department of criminal investigation men, and they grabbed us, brought this colored man over and said, "Is those the men?" The colored man says, "Yes, that's them"; and they allowed me and another young fellow by the name of

Ellard to go back to our barracks, which we did. We went back to our barracks and the next day a soldier in civilian clothes a member of the D. P. I. said we were arrested and took us downtown and put us in the civilian jail and kept us until about twelve o'clock at night and they brought me downstairs and Captain Stratton of the military police told me to confess everything. I said, "I have nothing to confess; we didn't do anything to that bucko but scare him," he says, "What do you think about this?" And he showed me a statement about that long (indicating) made by Harry Lauder—that is what he was called, Harry Lauder—former soldier in the British Army that had been with us, he says, "Read it through," and I did, and Harry Lauder told him that before we went downtown we sat in the barracks and planned this crime, that one of the men had purposely stolen this pistol and he made it look bad and we were given five years apiece and Harry Lauder was turned loose and was shortly discharged when the reduction of the army was put through in 1921, I believe it was. He took advantage of the discharge and I was sent to the Federal Prison at Leavenworth and was later transferred to the United States Disciplinary Barracks at Leavenworth, Kansas, where I went through the military board and my sentence was cut down a year, I believe it was, and I was discharged four months after that.

Q. Honorably? A. No, sir; dishonorably.

Q. Now, Mr. Young, was there ever an occasion when you sat at the piano in your home in Belleville with Mrs. Cummings alongside of you when you had your arm around her? A. I never remember sitting at the piano with Mrs. Cummings. I sat at the piano often and played it.

The Court: This is not redirect.

Mr. Roessler: I neglected to ask him that question. With the Court's permission I would like to ask one more question.

Q. Was there ever an occasion when Mrs. Cummings was at your home in Belleville when you turned out the lights and kissed Mrs. Cummings or gave any other evidence of affection?

The Court: Kissed her in the dark.

Witness: I never kissed Mrs. Cummings either in the light or dark.

SARAH McDERMOTT, sworn for defendant.

Direct-examination by Mr. Lane:

Q. Where do you live? A. 10 Washington Street, Belleville.

Q. You are the mother of Mrs. Cummings? A. Yes, sir.

Q. Where did Mrs. Cummings live in 1925? A. She lived with me.

Q. Where? A. In 10 Washington Street, Belleville.

Q. Where does she live now? A. She lives with me.

Q. Has she continued to live there? A. Yes, sir.

Q. How long has she lived there with you? A. Ever since she left Mr. Cummings.

Q. Which was when? A. I think it was 1923, if I can remember, my daughter always lived with me.

Q. Who else lived in that family? A. My son

and Olive and myself; we live on the second floor.

Q. Are you usually home? A. Always home because my health isn't so good, I very seldom go out.

Q. You remember the marriage of your daughter, of course. A. Yes, sir.

Q. When did you first know that there was any trouble between your daughter and her husband? A. When they were about four months married, the first; they were four months married—three months married, I mean to say.

Q. After the marriage did your daughter continue to work or not? A. She continued to work from the second day she was married she started to work.

Q. What did she work at? A. She worked then I think in Clark's.

Q. How long did she continue to work? A. She worked there until I left my own home; she came to live with me, her and her husband, at 66 Hinsdale Place. When Mr. Cummings got married and my daughter, they come in to live with me. I seen they were not getting along—they were arguing, and I thought it was no good for my health and I moved up to my son in Belleville and I stayed there and never went back any more to them.

Q. What do you mean about their coming to your house? A. They came in to live with me after they got married.

Q. And then you left? A. Then I left. They got married in November and I left about January.

Q. Now do you remember—did you live in the same house? Did you visit your daughter after you—(interrupted). A. Yes, sir; but not so often, because Mr. Cummings was very disagreeable when I would be there and I thought it was on account

of me being there that he acted that way.

Q. Now did you hear at any time, or did it come to your knowledge at any time of any trouble between your daughter and her husband? A. Yes, sir; it did. I heard them arguing one time; it was about going to church. Mr. Cummings wouldn't go to Mass with her and went out and left, and then my daughter and he argued and argued—come back again, and didn't come to dinner, they argued again.

The Court: Will you speak louder, please?

Witness: Yes, sir. I knew that they were having trouble between them; that is why I left.

The Court: Yes; I heard that.

Witness: And then I left and once in a while I went back to visit them but not very often.

The Court: Was that 10 Washington Street?

Witness: 66 Hinsdale Place; that was my own home.

Q. Do you remember getting some information from a woman named Van Bucco? A. Yes, sir; that was in 1920, I think; that is the best I can recall. I went down one evening to see my daughter; I went upstairs where she lived on the second floor; she wasn't in. As I came back—(interrupted).

Q. Never mind telling what Mrs. Bucco said. Did you get some information from Mrs. Bucco at that time? A. Yes, sir; I did.

The Court: How is this competent?

Mr. Lane: On the counter petition on the ground of cruelty.

The Court: There has been no proof except in the history that she gave of her life.

Mr. Lane: I think the history she gave she proved cruelty. This is an attempt to corroborate what she has said.

Q. Now, was there a time when you—did you while you were living or while they were living at the house with you, before you went away, did you hear any statements, or your son-in-law call his wife any name or anything of that kind? A. No, not then, no.

Q. When did you first hear that, if ever? A. Well, he did when they lived there on 66 Hinsdale Place, they moved up on the third floor when I was very sick, I heard Mr. Cummings use—(interrupted).

The Court: You will have to speak more distinctly.

Witness: Not then, when I first started to live with him I didn't hear Mr. Cummings call her no names.

Q. Then you left. A. Then I left.

Q. Did you hear, while you were away, did you at any time while you were visiting the house did you hear Mr. Cummings call—(interrupted). A. Yes, sir; he used to call her things and made fun of how she cooked—he said, "That is how the Irish cook" make fun of what she was cooking and make the visit there disagreeable.

Q. What name did he call her? A. He called her one time "Old son-of-a-bitch" she didn't know how to cook for a dog let alone a man.

Q. Was there a time when you went back to live with them? A. No, sir; I never went back. I

went back at the time I had blood poisoning.

Q. That is what I mean. When was it you had blood poisoning? A. I can't remember when it was.

Q. Try to fix it as near as you can. A. I think it was in 1921, as near as I can come to it.

Q. Can you tell me the month? A. I cannot.

Q. What happened when you had blood poisoning? A. Well, I got a needle in my hand and I went to St. Barnabas' Hospital.

Q. Did you go back with your daughter? A. She came down to St. Barnabas' and invited me to her home until I'd be well; there I was confined for seven or eight weeks, maybe more, in one room, and my daughter attended to me.

Q. You were there seven or eight weeks? A. Yes, sir.

Q. During that time did you hear the way in which your son-in-law treated his wife? A. I heard in the kitchen arguing when I was in my room. I didn't give much heed to what was going on; I was too sick.

Q. What did you hear? A. I didn't hear nothing at all. Only heard them arguing. I didn't hear what they were saying because I was really too sick to know.

The Court: You heard the noise?

Witness: That is it, heard the noise.

Q. Did you, while you were there, at any time hear Mr. Cummings use vile language to his wife? A. No, sir; I did not.

Q. To Mrs. Cummings. How was it you came to leave? A. Well, when I was well—(interrupted).

Q. Was there any quarrel about it? A. No, sir; not a thing.

Q. Did Mr. Cummings order you out of the house? A. No, sir; he never did.

Q. Who paid your board? A. I paid my own board myself.

Q. Now did you, after you left and went back to your own house did you visit your daughter? A. Once in a while; very seldom; not so often because I didn't visit her very often.

Q. Did you ever visit them when they were together? A. Yes, sir; I did.

Q. Did you see the way in which Mr. Cummings treated his wife? A. Well, I did. I seen he didn't treat his wife well. In the first place she didn't have no clothes and in the next place she was pretty near half naked, no shoes on her feet and she was an awful sight for the way he was treating her.

Q. Did you hear him—how did he address her, how did he speak to her; did you hear anything of that kind? A. He called her "Sadie".

Q. Did you hear him use any vile language or any names to her at that time? A. He used to use names once in a while.

Q. What? A. Called her out of her name once in a while.

Q. I don't know what you mean by calling her out of her name. A. He used to call her a black rat and other different names that I wouldn't very well want to mention.

Q. I want to know what they were.

The Court: While he was mad?

Witness: Yes, sir; while he was mad he used to call her names I wouldn't mention

here; I couldn't mention or any woman; I don't think it is fit to mention.

Q. When did he do that? A. He did that when he came to my home in 10 Washington Street, he called her the terriblest names you ever heard.

Q. What is that? A. 10 Washington Street, he came there.

Q. That was afterwards? A. Yes, sir; that was afterwards.

Q. I am not talking about after your daughter left your husband, I am talking of before your daughter left her husband. A. No; I didn't hear no bad names then, no.

Q. Now do you know when it was that the separation took place? A. Well, I think it was 1923; I think she came home to me in April.

Q. Did she come right to you? A. Yes, sir; right back to me.

Q. Did you see Mr. Cummings after that? A. Well, not for quite some—(interrupted).

The Court: Did you see him after that?

Witness: Yes, sir; about six days, five or six.

Q. Where did you meet him? A. Right down in his own house, Washington Avenue.

Q. And what did you say to him and what did he say to you? A. I went in there to see what he would do about it, his taking back his wife and child or what was the trouble between them. I couldn't speak to Mr. Cummings.

Q. What? A. I couldn't speak to Mr. Cummings, he used such terrible language; told me what his wife was; she was an old rat; she was

like a mill stone tied around his neck and that he didn't intend to ever live with her when he come from France; he never expected to live with her again. I said, "Why did you?" I said, "You got a child now," I said, "I think you both ought to be happy with the little girl, and ought not to use such terrible names to your wife," and I thought to bring back my daughter the next day; he says, "No, don't take her back; if you do, I will beat her brains out, and I want you to get it right;" so I said, "All right." And as I went in Mr. Cummings stood up, got up and went to the closet and threw out some clothes belonging to Mrs. Cummings and he says, "Take these clothes with you." I said, "No."

Q. Where were you at this time? A. I was in Mr. Cummings' house on Washington Avenue.

Q. Where they had been living together? A. Yes, sir.

Q. You were in Washington Avenue, not number 10? A. No; number 10 Washington Avenue.

The Court: You were speaking in response to a question by Mr. Lane as to what occurred at your house.

Mr. Lane: No, sir.

Witness: Washington Avenue, where Mr. Cummings lived.

The Court: I can't get what she says, all of it.

Mr. Lane: What she has said is that after the separation Mrs. Cummings came to live with her, and then about six days later she went to see Mr. Cummings at Mr. Cummings' house.

The Court: I understood her to say Mr.

Cummings came to her house.

Mr. Lane: No; she went to his house, and then this conversation took place.

Q. Now, go on. A. Then Mr. Cummings threw the clothes on a table in the dining room and asked me to take the clothes with me. I said, "No." I wouldn't take the clothes with me. I didn't feel like carrying clothes. So I walked down to the front where Mr. Cummings argued with me and we stood on the porch. Mr. Cummings said, "Do you know," he says, "that your daughter was nothing but an old whore when I married her." I said, "Can you prove that?" He says, "It is none of your damned business whether I can or not. Get down the porch. Get down the stoop," and I got down the stoop and come on home. That is the last I seen of Mr. Cummings until he came up to my home.

Q. Now, did you in your conversation that you had at that time—did Mr. Cummings say anything about a gun? A. Well, before his wife left he said he had a gun—the morning she left him, and in the argument between them if he had brought that down when he went upstairs he would have blowed her brains out.

Q. Did he call his wife or did he say anything about his wife other than she was a whore before she married him? A. He called her a black rat and said she was no good and never was any good, and all this kind of names. I couldn't think of half the man said; he just kept on talking. I couldn't get to talk to him at all. All I could hear was him talking.

Q. When did you next see Mr. Cummings? A. I haven't seen Mr. Cummings then I think for at

least a month, when he came to my home.

Q. When did you next see him at your home? A. I think it was 1924, I can't tell you the date.

Q. Can you tell me about when? A. Well, he come, but I don't know what month it was; I can't remember.

Q. Was it in the early part of the year? A. It must be the early part of the year. I can't remember to tell the truth, but I know that he came up for to see the child.

Q. Tell us what happened? A. And then I was putting the child to bed; after leaving the child down to sleep in the bedroom Mr. Cummings came upstairs and came into the bed—into the bedroom and Olive was asleep. I said, "Owen," I said, "don't wake her, she is just after lying down to have a sleep, maybe she will only be an hour to sleep and then she will be up again." With that he went in and run his finger up and down the child's leg and woke her up. Then he started to speak to the child. He says, "Olive," he says, "where do you sleep? Don't you sleep on that couch there," he says and the child said, "Yes." I said, "No, she doesn't sleep on that couch; she sleeps on the bed where you just picked her up from." He says, "Never mind; let the child tell; she knows what she is speaking about," he says, "Olive," again, "where do you sleep?" The child pointed again to the couch, and I said, "No," and Mr. Cummings spoke up. "You are a God damned liar," he says; "the child knows what she is speaking about; she does sleep on that couch. I am paying enough money," he says, "to have the child in a comfortable position, not to sleep on that couch." And the child slept on the bed with my daughter.

Q. Now, did he destroy anything there? A. He pulled the whole covering of the couch on the floor, and then my son downstairs heard the racket and he came upstairs; he wanted to know what the trouble was about and Mr. Cummings said, "Nothing." So he says, "What is the matter? Every time you come here in the place looking for your child," he says, "you are looking for trouble." So he says, "If you don't want to call here in a decent kind of way and not running through the rooms and making trouble and scrapping with my mother," he says, "I don't want you to come here at all," so Mr. Cummings said, "All right" and turned and went downstairs and went and I have not seen Mr. Cummings in my home since.

Q. Did he say anything about his wife at that time? A. No, he didn't mention the wife at all.

Q. Did he say anything when his wife's name was mentioned? A. I don't remember, I don't think so. No, I don't think so.

Q. Do you remember the time when a policeman was called in? A. Yes, sir; I do.

Q. Was that before this occasion you have referred to? A. No; this was after.

Q. Then what happened then? A. Well, I left the house and went to the movies. I don't know what time, maybe about seven o'clock or quarter to seven and I went to the movies and when I came out of the movies why I came up the street and my daughter—as I crossed Washington Street to go up William my daughter called to me and I turned around and she was coming behind, so I said, "Where were you?" She says, "I was to the drug store;" and then we walked down William Street, the two together, and as we turned Washington a man walked on awful fast, so my daughter said,

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"That is Owen" and went on quick ahead of me, because I couldn't walk so very fast—so she went on ahead. The minute I went to the front I heard an awful noise inside in the kitchen.

Q. In your house? A. Yes, sir; in my house. So I went to the door and there Mr. Cummings was with the child; no clothes on it, trying to take it out, as I thought, and I said, "What is the trouble about, Mr. Cummings?" I said, "What is the matter?" He says, "Oh, you," he says, "you old son-of-a-bitch." "I ain't no son-of-a-bitch," I said. I went right over to him. He says, "Yes, you are; you are nothing but an old-son-of-a-bitch, that is all you are," then he went to take the child and my daughter pushed him back and put her back against the door that he wouldn't take Olive, and Owen Cummings raised his fist and struck her and knocked her hat off.

The Court: Whose hat?

Witness: Mr. Cummings, that is her husband.

The Court: Knocked whose hat off?

Witness: My daughter's hat; trying to prevent her from taking the child. Then I run out and seen Mr. Cummings striking his wife. I ran out and—(interrupted).

The Court: What did you see him do?

Witness: He struck his wife and knocked her hat off. Then I ran out and down to the corner and got a policeman and told him there was trouble up in the house, Mr. Cummings was there, and—just told him the truth, and if he could come up. He said, no, he couldn't go up, but he would get a man. As I turned I seen Mr. Cummings

coming down with the child in his arms without any clothes on, and Mrs. Cummings, both coming down William Street; so then the policeman met them and I went on up to the house. Don't know no more.

Q. Did you go to the station house that day? A. That night when I went up to my own home—I walked up to my own home after I left them arguing with the child on the corner—I went up to my own home and then when Mr. Cummings and the policeman came up to the house, I had to go to the station house—not that I wanted to, because I had to go, because they wouldn't take Mr. Cummings out of the house, they said there had to be a charge or they couldn't take Mr. Cummings out of the house.

Q. What happened? A. We went over to the town hall and told the story there. I don't know what did happen. Mrs. Cummings wouldn't make no charge against her husband and then Judge Kennedy asked me if I would make a charge and I said, no, I wanted him to keep away from my home that was all I wanted; I wanted peace.

Q. Did you take the child back to the house then? A. The child was left in the house, it wasn't taken out the second time. Once the policeman took it back to the house it stood there.

Q. What time of night was this? A. I think it was about half past nine.

Q. Now do you remember what date that was approximately? A. Well, I think that was in February.

Q. Of 1924? A. 1924, yes, sir.

Q. Now, when you got back to the house did you hear what Cummings was saying to his wife, if

anything? A. No, I didn't, because I was too excited. They were all in the kitchen all around the child.

Q. He called you—you heard him call you the names you have told us. Did you hear, during any part of that fracas, him call his wife any names or say anything? A. No, sir; I didn't, because the argument was going on before I got in there.

Q. Now, did you see Mr. Cummings do anything to her than knock her hat off; did he kick her or anything of that kind? A. No, sir; he didn't, but she had a black side—she told me he kicked her when she got outside of the door, he kicked her in the side, and my daughter's side was black for maybe two weeks afterward.

Mr. Child: I object.

Q. You didn't see the kicking, did you? A. No, sir; I seen the side.

Q. When did you see your daughter's side? A. Well, about the second day after that happened.

Q. And what did you see? A. Her side black and I done my best to get the doctor for her.

Q. Now has Mr. Cummings been at the house since then? A. No, sir.

Q. Previous to this occasion had he been coming to the house? A. Once in a while he comes to see the child.

Q. When he came what did he do? A. He always ran through the house whether the child was there or not; if he didn't find her he always called names and was very abusive.

Q. Called names to who? A. To anybody who was there.

Q. Did he ever call names to you while you were there? A. That one time.

Q. I am talking about the other times. A. Several times—the first time he came to see the child he called something terrible to the wife.

Q. Called her what? A. Old whore; she was making a living on the streets and terrible talk.

Q. Did he call her those names more often than once when he came to the house? A. The first time he came to see the child he talked all these names I am telling you, every time, she had to go out to make a living, she was going with men and those things I don't want to mention; it isn't fit for me to mention.

Q. Do you know when your daughter was employed by the A. & P.? A. I can't remember, sir, when she was.

Q. When she was employed by the A. & P. do you know what her hours were? A. Well, I think she went out at five and then she didn't come back until sometimes two and after two if she worked overtime. Now that is as far as I remember her time.

Q. That is five in the afternoon, you mean. A. Yes, sir.

Q. And two in the morning. A. Yes, sir.

Q. Who took care of Olive? A. I took care of Olive all the time.

Q. Now did your daughter and you ever go out together? A. Yes, sir; often me and my daughter went out together, and Olive, quite often, to the movies and downtown, quite often. On one occasion me and my daughter-in-law went downtown and Mr. Cummings followed us on Broad Street and used profane language to his wife—and this

dirty language, how she was making money to pay her bills and such.

Q. How making money to pay her bills, what do you mean? A. Going around with men.

Q. And when was that? A. Well, that was sometime after.

The Court: What?

Witness: That was sometime after Mr. Cummings came to see his child first.

The Court: It was after the separation?

Witness: No—it was, I guess pretty near a year before he came to see the child after the separation.

The Court: It was after the separation.

Witness: Yes; this was quite a while; it might be a year.

Q. Did Mrs. Cummings ever bring any man to that house where you are living now and were living then? A. No; she did not.

Q. Could she have brought a man there without your knowing it? A. No, sir; she could not without my knowing it.

Q. Why not? A. Because I am most of the time there; very seldom do I go out, very seldom, because, as I said before, my health isn't so good. I didn't go out at night but very very seldom.

Q. Do you remember any occasion when the child was put into a dark hall or a dark place on the porch? A. No, sir; I do not.

The Court: Describe the downstairs.

Witness: Downstairs is a small one family house; and there is only a small little hall and you go inside.

Q. Your son lives downstairs? A. Yes, sir.

Q. Describe the downstairs. A. There are three rooms downstairs.

The Court: As you enter the front door what do you step in?

Witness: Walk into the small hall and then into the dining room and then walk right into the kitchen and then you turn and walk into the parlor or sitting room—living room.

The Court: Is that in the back?

Witness: This is in the front.

The Court: Where is the living room?

Witness: In the front.

The Court: Where do you go upstairs?

Witness: Turn then and go right upstairs.

The Court: Door right at the foot of the stairs?

Witness: Right as you go in you turn right up, very small hall, in fact, no hall—landing—small hall, not a big hall, very small.

The Court: The front door is at the foot of the steps, is it?

Witness: Yes, sir.

The Court: Who lives downstairs, your son and who else?

Witness: My son and his wife, and three children.

The Court: Babies?

Witness: Babies, yes, sir.

Q. Was there any time when Olive came there without her mother late at night? A. No, sir.

Q. Having been put into the house by her mother? A. No, sir; because there was hardly a night that Mrs. Cummings would be ought or the child, that I would go to bed until she came home, and there is always a light burning on the top of the stairs, the light is always kept burning until the last one is in—light in the hall.

Q. Did you ever know of the child coming in and going to bed alone? A. No, sir; I did not.

The Court: Was the child able to undress itself?

The Witness: No, the child was never able to undress itself.

The Court: How old is the child now?

Witness: It is over five.

Q. In 1925 it was about four years old—three and a half to four years old. Does the child dress and undress itself now? A. No, sir, it does not, has to be undressed and dressed.

Q. Did the child know enough a year ago to go to bed alone? A. No, sir, did not. It even has to be put to bed now, the child.

Q. What is your practice as to when you go to bed with respect to the time your daughter comes in?

The Court: What is your habit?

Witness: Sometimes maybe I would lie down in the same room with the child—maybe I would lie there for half an hour until the child was asleep and then I would get up again and take the paper and read it until my daughter came in.

The Court: You mean until two o'clock in the morning?

Witness: No, not at that time.

The Court: I mean when she was working.

Witness: I used to go to bed.

Q. What was your habit in December, 1925? A. That I don't know.

Q. Where was your daughter working then, a year ago? A. Well, I don't think she was working any place.

Q. What was your habit then if your daughter went out? A. As I say I used to sit up until she came in.

Q. Always? A. Most of the time.

Q. Never went to bed? A. She didn't happen to be out until after twelve o'clock—very seldom twelve o'clock.

Q. Would you see her then? A. Yes, sir, because she slept in the one room with me and I would have to see her.

Q. How many bedrooms have you? A. We have two bedrooms upstairs; my son sleeps in one.

Q. You and your daughter and baby sleep in the other? A. Yes, sir; until Mrs. Cummings came home to me I occupied one bed myself and my single son occupied the other.

Q. After she came to live there. A. I had to give Mrs. Cummings my bed, and the child.

Q. You slept with her? A. No, sir; I gave up my bed to her and the child and I slept on the couch.

Q. In the same room? A. Yes, sir.

Q. Mrs. Cummings ever come to bed without you being in the room, without you knowing she was coming in? A. No, sir; she never did, because I

am a very light sleeper, the least little sound I can tell it.

Q. Never asked her in the morning what time she came in? A. I didn't have to ask her, because I knew what time she came in.

Q. You always knew when she came in? A. Yes, sir; I always knew when she came in.

Q. Didn't she at any time ever send the baby up to go to bed when she herself didn't come with her? A. No, sir; never did, they always came, baby and all, together.

Q. If she put the baby in the door downstairs where could the baby go? A. Stay in the hall, that is all.

Q. Couldn't go in any of the rooms downstairs? A. No, sir; she could not.

Q. Why? A. She would have to come upstairs.

Q. Why? A. Because the child doesn't go in the room.

Q. Are the rooms locked? A. No, they are not, but she would come where she belonged; the child belongs upstairs, that's where she would come. If she went into the rooms downstairs they probably would be dark, and she would come upstairs along with me.

Cross-examination by Mr. Child:

Q. You say that Mrs. Cummings worked from the time she got married? A. Yes, sir; pretty near.

Q. Well, what do you mean by "pretty near"? A. Well, there might be sometime she remained—didn't work—she couldn't work steady, it might be a couple of weeks she couldn't go in, but she worked pretty near the whole time.

Q. Where was she working at the time she got married? A. She was working in Clark's.

Q. At Clark's? A. Yes, sir.

Q. How long did she continue to work at Clark's after she got married? A. That I can't tell you, because I left three months after she got married; I went home to board with my son and I didn't know where my daughter worked after that.

Q. Then you don't know whether she did work after three month from the date of her marriage. A. I knew she worked; I didn't know where she worked.

Q. How do you know? A. She told me so, but I never inquired where she worked.

Q. At the time she was married she was working in Clark's, is that right? A. Yes, sir.

Q. Now, did they live with you right after they got married? A. Yes, sir; when they got married they came right in to live with me.

Q. How long did they live with you? A. How long did they live with me? How long did I live with them, you mean.

Q. I don't care. A. I lived with them three months, then I went to my son in Belleville.

Q. Why did you leave then? A. Why did I leave then?

Q. Yes. A. Because I didn't just like how the daughter and Mr. Cummings was getting along and I wanted to get out some place—(interrupted).

Q. And isn't it a fact that you left because you wanted to keep chickens or something of that kind? A. No, sir; it is not a fact at all; I left just because I wanted to leave. I kept no chickens.

Q. Did you ever have poultry and pigs and other animals like that? A. I have poultry now.

Q. Isn't it a fact that you left there because you wanted to raise poultry? A. No, sir; I did not.

Q. Well, you did go to raising poultry right afterwards, didn't you? A. No, sir; there was poultry there when I went there; I didn't have to raise them.

Q. Did you raise pigs right after that? A. No, sir; my son did, not me.

Q. And you lived with your son. A. Yes, sir; I lived with my son.

Q. Now, how long did you live with your son until you came back to live with Mr. and Mrs. Cummings? A. Well, I lived there quite a while. I got the blood poisoning in my hand—I think I must have lived there about three or four years with my son, then I got the blood poisoning in my hand and went to Cummings house until I was well.

Q. Now, Mr. and Mrs. Cummings came up to St. Barnabas' Hospital, didn't they? A. Yes, sir.

Q. And they both asked you to come to live with them, didn't they? A. Yes, sir.

Q. And you lived there seven or eight weeks? A. Yes, sir; maybe longer. Seven or eight weeks, we will say.

Q. What date was that if you can remember? A. I can't remember.

Q. About how many years ago? A. Well, I think that was in 1920 as far as I can remember.

Q. And after seven or eight weeks you left them —why did you leave them? A. Why did I leave them? When I was well I thought it was time for me to leave.

Q. Merely because you were well? A. Yes, sir; I was well.

Q. Now, during the time that Mr. and Mrs. Cummings lived together while you were there, at

least, you never saw Mr. Cummings strike his wife, did you? A. No, sir; I never saw Mr. Cummings strike his wife.

Q. And the only time that you ever saw him strike his wife was the time when there was an altercation or row over the child; is that right? A. Yes, sir.

Q. Then he knocked her hat off? A. Then he struck her and knocked her hat off.

Q. And there was a .general altercation there that night—there was several in the trouble. A. Yes, sir; I guess there was several people there. I don't know, because I was quite excited.

Q. Now, had Mr. Cummings complained to you about his wife running around while they were living there? A. Why, he certainly did not complain to me about his wife running around.

Q. Did he ever complain to you before she finally left him about his wife running around? A. No, sir; absolutely no; he did not; his wife running around or—(interrupted).

The Court: Stop.

Q. Now where did your daughter work after she left the A. & P.? A. Well, she worked in the place they call the Radio.

Q. Now, Mrs. McDermott, how often did Mr. and Mrs. Cummings come to your house? A. Well, Mrs. Cummings and her daughter came to my house several times in the daytime, and Mr. Young never came to my home.

The Court: Senior, you mean, or the son?
Witness: The son.

Q. The son never came to your home at all? A. No, sir; never came to my home.

Q. Did Mrs. Young and Mr. Young—Mr. Harry Young ever come as far as the door of your home escorting Mrs. Cummings home? A. No, sir; he did not; never, not that I ever seen him.

Q. You would have seen him if he came? A. No, I might not, but I never seen him.

Q. Did you ever see Mrs. Young and your daughter and Harry Young coming down the street from Young's home towards your house? A. No, sir; I did not, but my daughter told me that they did take her home, but I never seen them.

Q. Did Mrs. Young ever bring your daughter as far as your door? A. Yes, sir; and then come into the house with her.

Q. At night? A. Yes, sir, at night; when they would come home at night they would come in.

Q. How often would that happen? A. That might not happen so often, but if they came down Mrs. Young would come into the house with my daughter.

Q. How long have you known the Young family? A. I think I have known the Young family three or four—three years.

Q. How did you become acquainted with them? A. Through the store and through the child—Mrs. Young and the child—that's how I got acquainted with them.

Q. Did you ever visit their house? A. No, sir, but I was invited a number of times but I didn't visit.

Q. Why didn't you visit? A. I am not fond of visiting, because I am satisfied home.

Q. Do you know how often Mrs. Cummings would be over to the Youngs' house in the evening? A. No, sir; I do not.

Q. Was Mrs. Cummings out of the house evenings, frequently at night? A. Why, frequently? Once in a while.

Q. What do you mean by "once in a while"? A. Once in a while her and the child would go out together the two of them, to the movies.

Q. Once a week? A. Maybe once a week; maybe twice a week.

Q. What time would she come home? A. She generally got home, generally about ten or half past ten, according to the time to go to the movies.

Q. Do you know how many times a week she went to the Youngs? A. No, sir; I couldn't tell you; I couldn't tell you that.

Q. She didn't tell you when she was going to the Youngs'? A. Yes, sir; I knew when she was going up to see Mrs. Young. Mrs. Young and herself cut out a coat at our house—(interrupted).

The Court: Never mind.

CATHERINE WARD, sworn for defendant.

Direct-examination by Mr. Lane:

Q. Where do you live? A. 76 Grove Terrace, Irvington.

Q. Did you ever live at the same house that the Cummings did? A. Yes, sir; 66 Hinsdale Place.

Q. When did you move into that house? A. October 1st, 1920.

Q. 1920 or 1921? A. 1921.

Q. What floor did you occupy? A. On the ground floor.

Q. Who consisted of your family? A. My husband and one child and myself.

Q. And how long did you live there? A. One year.

Q. Did the Cummings move away before you did or not? A. Yes, sir; they moved away before I did.

Q. Do you remember when it was that the Cummings moved away or about? A. Well, it was in the fall—early in the fall.

The Court: When was the separation?

Mr. Lane: The separation was not until 1923, I think, April.

Q. Did you hear during the time that you were there, or see—(interrupted). A. Yes, sir.

Q. Just a minute, Mrs. Ward. —any trouble. A. Yes, sir; they continually quarrelled.

Q. Did you at any time hear Mr. Cummings address any vile names? A. Yes, sir; very vile.

Q. What now? A. I wouldn't repeat it.

Q. Well, Mrs. Ward, I would like to have you repeat them. A. I couldn't repeat it, because it is terrible.

Q. Well, what did he call her? A. I couldn't repeat it.

The Court: You will have to.

Witness: Oh, I couldn't; I didn't think that I would know such names.

The Court: What was it?

Witness: It is terrible to repeat such names.

Q. What was it? A. Not only swore at her, that isn't so bad, but he called her such dirty foul —(interrupted).

Q. What did he call her, Mrs. Ward? A. Call-

ed her a son-of-a-B, whore, bastard, and all that kind of stuff. He used terrible words, too.

Q. Worse than that? A. I don't mean swear words, but dirty words.

Q. Such as? A. I told Mr. Fleischman I wouldn't repeat it and he told me it wasn't necessary.

The Court: What is that?

Witness: I told Mr. Fleischman I wouldn't repeat it and he told me it wasn't necessary.

Q. Will you write them down for us? A. All right. (Handing counsel paper.) That is just one of them. I didn't spell it right anyway.

Mr. Lane: I offer this as part of the testimony.

The Court: No; put the question right to her.

Q. Did he call her a cock sucker? A. Yes, sir.

Q. Did he call her words of similar kind and nature to that? A. Yes, sir.

Q. How often was that—did you hear that? A. They started to quarrel in February—end of February, and it lasted until the balance of March.

Q. Were you ever at the house, in Mrs. Cummings' house when they were quarrelling? A. Yes, sir; I was in Mrs. Cummings' house every day.

Q. Were you ever there when Mr. Cummings was there and present at any of their quarrels? A. Yes, sir; he called me to one of their quarrels.

Q. Tell us about that. A. Why, I heard a loud noise upstairs and I thought the baby fell out of her arm chair and Mr. Cummings came and open-

ed the back door and called me up to witness the scrap.

The Court: Well?

Witness: Then he kept calling her vile names.

The Court: He called you up?

Witness: He called me up.

The Court: You went up?

Witness: I went upstairs to see what it was about. There was some man from the building and loan coming and he told Mrs. Cummings, as far as I understood, to tell him that Mr. Cummings wasn't living there and Mrs. Cummings told him that he did live there. That is as far as I knew of the scrap. He told me she was no good, why should I bother with her, and all kinds of stuff.

Q. Did he swear at her? A. Yes, sir.

Q. What did he say? A. Called her a son-of-a-bitch.

Q. Right in your presence? A. Yes, sir; right in my presence.

Q. Did he do anything with the bed at that time? A. Yes, sir; he went in the room and took the bed, brought it out and threw it down the front stairs and after that he went out. When he threw the bed out he went out, and I helped Mrs. Cummings up with the bed and put it back on again, and in about an hour after he came back again and took the bed and put it out on the back porch.

The Court: The bedding?

Witness: The mattress.

The Court: The bedding.

Witness: The bedding.

Q. Did he do anything the next morning with the bedding? A. He threw it down the front stairs again.

Q. Is there anything that fixes that date in your mind, about when that took place? A. Yes, sir; my baby was born on March 8th, that is how I remember, and two days after that Mr. Cummings came in the bedroom to me to see my baby and he knew the nurse that was taking care of me and Mrs. Cummings had gotten a letter from her lawyer and he asked me if I knew anything about the letter. I told him, "No." He said, yes, I did know about the letter. I said, "No, I do not, Mr. Cummings," and he said, "Well, I wanted to get rid of her before we ever had a child."

Q. What year was that? A. That was 1921.

Q. In March? A. In March, 1921.

Q. Now, do you remember an occasion on Easter Sunday of that year? A. Yes, sir.

Q. Tell me. A. On Easter Sunday her dinner was ready—and I fixed the tray with Mrs. Cummings' dinner on and I went upstairs and I stood in the back hall and the door was open and Mr. Cummings came up the front way and I heard him just as I got half way up—I heard Mr. Cummings quarrelling and I stood in the back hall and he took the building and loan book and he burned the inside of it and then took the kettle of boiling water off the stove and put the fire out with the boiling water and then threw the water all over the floor and there was a little clock on the mantel and he took that and smashed it on the stove.

Q. You say you moved there October, 1921? A. 1920.

Q. Now is it 1920 or 1921? A. I can tell by my baby. He is four and a half years old and he was born March 8th.

The Court: The baby is four and a half years old, that was 1922, then.

Witness: Is it? I don't know the dates exactly, but I remember that Easter Sunday.

Q. You moved there the fall preceding the spring that you heard this, didn't you? A. Yes, sir.

Q. And your baby was born March 8th, 1922? A. 1922.

Q. Did you see this building and loan book that was destroyed? A. Yes, sir; I did see it. Mr. Cummings went in the bedroom—there is a window in the back and it was open—Mr. Cummings went in, he took the cover of the dresser and pulled everything off all over the floor. Mrs. Cummings was standing at the sink; he came out and grabbed her wrist; he says, "I will kill you yet." I stood in the back hall. I was so excited I didn't know whether to go downstairs or to stay upstairs. Then Mr. Cummings went out the front way and I went in the room and her hands—her wrists were bruised and bleeding.

Q. Did he during that time call her names that you heard? A. Yes, sir; the same names he always—something terrible.

Q. Why was it you were sending up food to Mrs. Cummings? A. That day there was no reason, only I knew that she was alone. I knew Mr. Cummings wasn't living there. I knew Mr. Cummings had left her.

Q. In March? A. Yes, sir; he left around the

15th of March and stayed away for about a month and a half.

Q. Now, did you—after he came back did you hear his—how did he treat his wife? Did you hear anything between them after he came back? A. When he was away for a month and a half?

Q. Yes. A. Why, they quarrelled—they always quarrelled—I would hear when he would go downstairs Mrs. Cummings—of course my door was open, it was in the summer—that is, warm—and Mrs. Cummings said, "Aren't you going to leave me any money, Owen?" And he would say, "Go to hell and try to get it."

Q. Do you remember when it was he told you that he wanted to get rid of her before the baby was born? A. Yes, sir; I was in bed with my baby at the time. He said, "I never want to live with her."

Q. On this Easter Sunday that you have told us about the burning of the book and so forth, was he intoxicated at that time or not? A. No, sir; I don't think so. He didn't—I never saw Mr. Cummings intoxicated.

Q. Did you give Mrs. Cummings any underwear? A. Yes, sir; I gave her underwear and I gave her two dresses; I gave her underwear and I gave her stockings.

Q. Why? A. Because she didn't have anything to wear.

Q. How do you know she didn't have anything to wear? A. I could see. She went around with his shirt on that he wore in the firehouse; I felt sorry for her.

Cross-examination by Mr. Child:

Q. Were you living in the house when Mrs. Cummings finally left? A. Not when she—no; they moved from 66 Hinsdale Place.

Q. When did they move from there? A. Why, it was in the beginning of the fall.

Q. Of what year? A. I guess it was 1922.

Q. And when did you say this quarreling took place, during what period of time. A. Why, it started at the end of February and it continued until around the 8th of March.

Q. 1922? A. Yes, sir.

Q. And then did Mr. Cummings leave, you say? A. He left around the 15th of March.

Q. Now, how had things been before that particular period? A. Why, they were continually quarrelling all the time.

Q. And what was the source or reason for the quarrels, if you know? A. Why, the only reason —(interrupted).

Q. From what you could hear, what was it about? A. Only when she asked him for money when he was coming down the back stairs. She would ask him if he wasn't going to leave her money; he would answer her, "Go to hell and try to get it."

Q. That was the only source of quarrels that you know? A. That I ever heard, only when the building and loan men were there. When he was there he called me upstairs.

Q. Why did he call you upstairs? A. I don't know why he called me upstairs, except Mrs. Cummings told me after that she had said if he didn't stop, "I will call Mrs. Ward up" and he said he would call me up instead of her.

Q. Now, Mrs. Cummings' mother was living at

the house at that time, wasn't she? A. At that time? No; I don't think so.

Q. Wasn't she living there in 1922? A. Well, I know she lived there for a while, but just what date—I think it was in October Mrs. McDermott lived there.

Q. And do you remember whose bed it was, or bedding it was that was put out? A. It was Mrs. Cummings' bed.

Q. It was Mr. Cummings' bed? A. Mrs. Cummings'.

Q. It wasn't Mrs. McDermott's bed? A. No, sir; it wasn't Mrs. McDermott's bed.

Q. You are not sure, however, whether Mrs. McDermott was there at the time the bed was put out or not? A. No, Mrs. McDermott was not there.

Q. Down to this period of about five weeks that you testified this about quarrelling and bad language was used, you heard nothing objectionable, did you, except quarrelling—the ordinary quarrelling? A. Only the names that he called her.

Q. Did he ever call her that name except during that period of five weeks? A. Yes, sir, the whole time I lived there.

Q. Used that particular name? A. The whole time I lived there.

Q. Right along? A. Yes, sir.

Q. And she didn't resent it apparently? A. Well, she didn't use any vile language.

Q. Did she resent it? A. She used to tell him that the neighbors would hear it, to stop quarrelling, that the neighbors would hear him; he said he didn't care for the neighbors.

Q. Did she ever complain in your presence about his using that bad language to her, other than the

fact that the neighbors would hear him? A. After Mr. Cummings would go she'd ask me if I heard it.

Q. Did she ever object in your presence and say, "You ought to be ashamed of yourself to use such language to me?" A. Yes; she did.

Q. She did? A. Yes, sir.

Q. How many times? A. On one occasion when there was some quarrel about the gas bill being paid she told him in front of me he ought to be ashamed of himself, that the little girl would soon understand what he was talking about.

Q. That is the only time you ever heard her resent it? A. No; I heard her several times resent it.

Q. You were very intimate with Mrs. Cummings, weren't you? A. Yes, sir.

Q. Saw her every day? A. Yes, sir.

Q. Still keep up the intimacy? A. Yes, sir.

Q. You are a personal friend of hers? A. Yes, sir. Of course, I don't see her nearly as often as I did then.

(Adjourned until tomorrow morning at ten A. M.)

IN CHANCERY OF NEW JERSEY.

December 16, 1926.

Between

OWEN CUMMINGS,
Complainant,

and

SADIE CUMMINGS,
Defendant.

Continuation of hearing pursuant to adjournment at the place and in the presence of the parties as before.

LUCY E. VON BUCKOW, sworn for defendant.

Direct-examination by Mr. Lane:

Q. Mrs. Von Buckow, where do you live? A. Berkeley Heights, New Providence, suburb of Summit.

Q. Do you know Mr. and Mrs. Cummings? A. Yes, sir.

Q. Did you at any time live at the house number 66 Hinsdale Place, Newark? A. Yes, sir.

Q. When? A. In 1920.

Q. And how long did you live there? A. About ten months.

Q. Whose house was that? A. Belonged to Mr. Cummings and Mrs. Cummings.

Q. What part of the house did you occupy? A. I had the first floor—first flat.

Q. And what part of the house did the Cummingses occupy? A. When I moved in there they didn't occupy any of it.

Q. When did they come there? A. I think about two months after I moved in.

Q. And what part of the house did they occupy then? A. The floor above me.

Q. Now did you, during the time that you lived there, hear Mr. Cummings address any vile language to his wife? A. Only once. I remember him calling her a bastard.

Q. And when was that?

The Court: A what?

Witness: A bastard.

Q. When was that? A. I couldn't just tell you. It was six years ago and I couldn't place the date or the day, but it was during that fall and winter when I lived there.

Q. Do you remember a quarrel that took place between Mr. and Mrs. Cummings with reference to a deposit of the Public Service? A. Yes, sir.

Q. In May of 1920? A. I remember a little of it; I didn't hear it all.

Q. Will you tell me what you did hear? A. Well, he rushed up the stairs—he came in the front door, as a usual thing, and rushed through, and if she was home then they quarrelled; but if she wasn't home he would rush down the back and that would be the last of him for a while, but this time he came home and the next thing I heard was loud voices and things flying around up there and glass breaking, and he called her a liar, but I never

could hear what she said. She always spoke in a quiet voice.

Q. What else did he call her except a liar? A. That is all I heard him say that day.

Q. Did you hear anything that day with respect to some tea? A. She was putting up his lunch that day and he took the bottle and threw it at her, that is the glass I heard. And when she came downstairs I said, "My goodness, what happened now?" She says, "Oh, nothing; he just threw a bottle of tea at me."

Q. Do you know anything about a quarrel in which some doors were broken? A. The bathroom door.

Q. When was that? A. I think that was in August—month of August.

Q. Tell us about it. A. Well, I didn't know anything about that until I heard him shouting, "Let me in, let me in; come out of there; let me in," and then I heard her say, "No, I won't." The two bathrooms were together, you know, one above the other. She says, "No, I won't let you in." He says, "If you don't let me in, I will break the door." She says, "No, I won't let you in." Then he smashed the glass of the door, it had a glass door. I heard her run out then and go into her bedroom.

Q. Did you see Mrs. Cummings that day? A. No, I don't remember whether I did or not. I think probably I did, but I don't remember distinctly. I saw her the next day probably. I couldn't very well help to see her, because she went to work every morning and I would see her going down the back stairs.

Q. Did you hear anything in the bedroom that Mrs. Cummings went into? A. I heard a noise,

and the next day I think it was, or the day after she told me he—(interrupted).

Q. Never mind what she told you. Did you go up to see her? A. No.

Q. What next did you hear? A. Something falling heavy; that is all. I never went upstairs.

Q. Now do you remember on June 27th, 1920, or, to fix the incident, do you remember the funeral service of her uncle—of Mrs. Cummings' uncle? A. No! I don't know anything about it, except there was a quarrel that night half past one or two o'clock.

Q. Did you see anything on that occasion? A. No, sir.

Q. Did you see the advertisement in the newspaper of Mrs. Cummings—of the sale of the property? A. Yes, sir; I had to answer the bell.

Q. Not the sale of the property, the sale of the personal property. A. They came to the door and rang the bell, three or four people, and showed me the paper, asked if I had the furniture to sell; I said no, I knew nothing about it. They left one of the papers there and I showed Mrs. Cummings that night—I said, "Are you selling your lovely new furniture?" And she didn't know anything about it.

Q. How long after the quarrel at the time of the funeral services of the uncle was this, do you know? A. No, I couldn't—

Q. That the advertisement was. A. I couldn't place that, not the time. It is a good while ago.

Q. Do you remember the incident of a gas plate landing on your back door? A. Yes, sir; it went all the way downstairs and landed on the landing.

Q. When was that? A. I think that was in August, too.

Q. Did you say anything to Mr. Cummings about that? A. No; I seldom saw him.

Q. Did you—what do you know about that gas plate except that it landed at your back door? A. That is all I know about it.

Q. Did you see Mrs. McDermott, or do you know Mrs. McDermott, Mrs. Cummings' mother? A. Yes, sir.

Q. Did you tell her about the trouble? A. I did, on her second visit there, but not the first. She asked me how they were getting along and I told her, "Not very—"

Mr. Child: I object to what she told her.

Q. You gave her certain information. A. She asked me how her daughter was.

Q. Answer the question. You gave her certain information. A. Yes, sir; I did.

Q. Do you remember an incident of a mattress being thrown downstairs? A. Yes, sir.

Q. What do you know about that? A. Why, only that it was in the early morning hours and I heard a frightful noise, such a funny noise that it frightened me to death; it sounded as if a dead body was being dragged across the floor and being thrown downstairs. I was frightened to death. I was going to wake the family up and then I changed my mind. I stood at the back door a long time before I could open it. I opened it and it was nothing but a mattress. I expected to see a body.

The Court: Why?

Witness: It was such a noise.

The Court: Why did you think that?

Witness: They had been quarrelling. I expected that every time they quarrelled.

Q. Do you remember when that was? A. I think that was a little later than August. No, it was before August—it was before August—was pretty warm weather. I said to my husband the next morning—(interrupted).

Mr. Child: I object.

Q. Do you know whether Mrs. Cummings worked during that time? A. Yes, sir; she worked.

Q. Where, do you know? A. Clark's Thread Mills.

Q. Do you know when she left in the morning and when she got home at night? A. She generally got home at six at night and left at six in the morning—no, she left seven in the morning—little before seven.

Q. Did you take any precautions yourself with respect to your own rooms? A. Only shutting my door whenever I heard it start.

The Court: What?

Witness: I would shut and lock my doors when I heard them quarrelling; that was all.

Cross-examination by Mr. Child:

Q. The only bad language you heard was once when you heard him call her a bastard in the entire eight months? A. About all that I remember; yes, sir.

Q. The only thing you know about the glass bottle of lunch or tea or whatever it was, that you have testified to, was what Mrs. Cummings told you. A. Yes, sir; that is all.

Q. Was Mrs. McDermott living with the Cum-

mingses at this time? A. Not at that time; no, sir.

Q. Did she live there at any time during the period you were there? A. No, sir; not that I know.

FRANK CHRISTIANO, sworn for the defendant.

Direct-examination by Mr. Lane:

Q. You are a traffic officer of what town? A. Town of Belleville.

Q. Do you remember an incident in the month of February, 1924, when you saw Mr. and Mrs. Cummings? A. I do.

Q. Tell us in your own language what happened. A. I was doing traffic on the corner of Williams and Washington Avenues, Belleville and this lady and this man—(interrupted).

Q. This lady referring to Mrs. Cummings? A. Mrs. Cummings and Mr. Cummings were standing on the corner, so the lady—I seen the lady trying to grab for Mr. Cummings, he had a child in his arms, so it attracted my attention, so I went over; I thought there was an argument. When I got there she said, "This man has got my child and he is going to get on this trolley car; please don't let him on that car with that child." I tried to ask what was the trouble, and she says he had taken the child from her house. I noticed the child was partly undressed, didn't have any shoes on. I told the man, I said, "Walk to the curb and explain yourself," so he did that—didn't get on the trolley car, so finally he insisted on taking the child away. I said, "Now, you let the mother have

it tonight," I said, "and when you want the child, why, you go the right way about it." So finally Mr. and Mrs. Cummings went back to her mother's house, and I went there too; so Mrs. Cummings' mother didn't want this man in the house, or told him to get out; he wouldn't get out in time for them, but by that time another police officer came there to find out what the trouble was, so we took Mr. Cummings to the police station. That is all I know.

Q. Left the child with the mother? A. Left the child with the mother at the home.

Q. Do you know what hour that was; have you any recollection? A. Well, it must have been around half past nine, nine thirty in the evening.

Q. Do you remember whether that was a cold night or not? A. Yes, sir; it was a pretty cold night, snow on the ground.

Q. You said the child had no shoes on? A. No, sir.

Q. What clothes did it have on? A. The only thing I could recollect she did have on was a wihte —like a kimona, see, no hat or no shoes; I seen that. I told Mr. Cummings, "You will kill that child by taking her out dressed in the way she is now."

Cross-examination by Mr. Child:

Q. Mrs. McDermott insisted that Mr. Cummings be arrested that night, didn't she? A. After we got to the house; that is, Mrs. McDermott, Mrs. Cummings' mother.

FRANK J. CARRAGHER, sworn for defendant.

Direct-examination by Mr. Lane:

Q. What is your business? A. Building business.

Q. And you are commissioner of the Town of Belleville at the present time? A. Yes, sir.

Q. Do you know Mr. and Mrs. Cummings? A. Yes, sir.

Q. In the month of January, 1923, did you go to their house for appraisal purposes? A. Yes, sir.

Q. What was the purpose that you went there? A. They had a one family house and they were going to overhaul and turn it into a two family house and he wanted an estimate on it.

Q. At the time you went to the house did you go through it? A. Yes, sir.

Q. Will you tell me what the condition of the house was? A. Well, it seemed to me someone had started the job before I went there and upstairs there was some of the windows was cut out; some of the stairs down the back, and they were going to overhaul the whole thing complete, and it was in no shape at all—he was waiting to get an estimation on it.

Q. Now, take the third floor, was that cut through, do you remember, burlap being nailed across? A. Windows cut through and burlap on them.

Q. Now on the second floor, do you remember whether the walls were torn down? A. Yes, sir; there were walls torn down where Mr. Cummings had started the job and didn't finish it.

Q. Do you remember a window in the kitchen

being cut out? A. There was some window cut out; we had a dispute over it. I said that wasn't up to the code. We had a dispute over it. I said it was against the Building Code—something, I just forget what it is.

Q. What was the condition of the cellar? A. The cellar I didn't pay much attention to. I did my estimation for the first, second and attic.

Q. Do you remember whether the cellar doors had been taken off? A. The cellar doors were off.

Q. Do you remember on the first floor whether there was a stairway in the kitchen torn away? A. In the rear—I wouldn't want to swear that was the kitchen—the stair was away, steps at the back, stairs.

Q. Now when you called the first time who admitted you? A. I think Mrs. Cummings did.

Q. Did she have a baby with her at that time? A. Yes, sir.

Q. How was that baby dressed at that time? A. I don't know; they had it wrapped up in something.

Q. Was there any heat in the house? A. Only in the kitchen.

Q. Did you call there upon any other occasion? A. I went back with the estimate; I was there about three times, I think.

Q. At any time that you went there was there any heat in that house except in the kitchen? A. No, sir.

Q. Was the weather at that time cold? A. About like today.

The Court: And today is what?

Witness: It ain't warm.

The Court: What is it today—what is the thermometer?

Witness: I didn't look at that.

The Court: Fourteen?

Witness: I only go by—I just go by my hands and my feelings.

The Court: Is this a pretty cold morning?

Witness: Yes, sir.

The Court: And it was then?

Witness: I wouldn't say, probably as cold. It was pretty cold. I was glad to get out of the place measuring up the stuff.

Cross-examination by Mr. Child:

Q. That was the winter when there was a coal shortage, wasn't there? A. I had plenty of coal.

Q. I say, there was a coal shortage that winter, wasn't there?

The Court: What winter?

Mr. Child: 1923, he says.

Witness: I guess you could get coal though.

Q. And wasn't it a fact that the bottom floor was shut off and there was heat in the kitchen of that house? A. That is the only place there was heat.

Q. There was heat in the kitchen and they were living there in two or three rooms on the ground floor? A. One room was all I seen with heat.

The Court: The coal strike was last year.

Mr. Child: In 1923, too.

JENNIE HANDLEY, sworn for defendant.

Direct-examination by Mr. Lane:

Q. Where do you live? A. 298 Davis Avenue, Arlington.

Q. Do you know Mr. and Mrs. Cummings? A. Yes, sir.

Q. Did you ever live in the house at Hinsdale Place? A. Yes, sir.

Q. When did you live there? A. 1920.

Q. Do you remember from what month? A. From June until November.

Q. Did you hear Mr. Cummings address any language to his wife? A. Yes, sir.

Q. What did you hear him say to her? A. Oh, I heard him call her a son-of-a-bitch and a bastard.

Q. And what else? A. And cock sucker.

Q. Did you hear that more than once? A. No, sir.

Q. Do you remember an incident of a gas plate? A. Yes, sir.

Q. What was it? Tell us what you know about that. A. Well, I had to use their bathroom, and I went down in the morning and Mrs. Cummings told me—showed me the gas plate where it had been brought up and patched up so that she could use it.

Q. You saw it patched? A. Yes, sir.

The Court: What is a gas plate?

Witness: Little gas plate that she cooked on; two burner gas plate.

Mr. Lane: It is a gas stove that you set on a table or something of that kind. They call it a plate. It really has two or three

plates, but it is called a plate. It is only about that high (indicating) that wide, that you set on a table. Small gas stove is what it is.

The Court: Gas plate—a small gas stove?

Witness: We always call it a plate; some call it a stove; it has just two places to set on to cook anything with.

Q. Do you remember the time when those were the only gas stoves that there were before these high stoves with ovens came in? A. Yes, sir.

Mr. Lane: The first thing that came out was the plate.

The Court: If it is the whole structure I know what you mean.

Mr. Lane: It is the whole thing; they call them plates now.

Q. Did you hear any noise that night or at the time the plate that you say was patched was broken? A. Yes.

Q. Did you see the advertisement in the News, advertising this furniture for sale? A. No, sir; I did not, but the crowd was there when I came home that night.

Q. Where was the crowd? A. On the front porch.

Q. Do you remember when there was an occasion to take the furniture away? A. That was the night the ad. was in the paper.

Q. Did you see Mrs. Cummings that night? A. I did when she came home.

Q. Did you say anything to her about it? A. I asked her what all the crowd was here for. I said,

"The other tenants told me that the furniture was advertised."

Mr. Child: I object to what she said to Mrs. Cummings.

Q. Did she know about this advertisement? A. No, sir.

Q. Did you take any precautions in that house to secure your own premises? A. I don't just understand you.

The Court: Lock your own doors?

Witness: I couldn't lock them; there were no keys.

The Court: Did you do something such as—(interrupted).

Witness: Yes, sir; I shoved my dresser up against the bedroom door at nights.

Q. Why did you do that? A. Well, because I just had a fear, that was all; the front door was never locked downstairs.

Q. What part of the house did you live in with reference to the Cummingses? A. I had the three top rooms in the attic part.

Cross-examination by Mr. Child:

Q. How long did you say you lived in that house? A. From June 1st until November 1st.

The Court: What year?

Witness: 1920.

Q. Who did you live with? A. I lived by myself.

Q. When you rented those rooms you told Mr. Cummings that your husband lived with you, did-

n't you? A. No, sir; I did not.

Q. You told Mr. Cummings that your husband lived with you. A. No, sir; I did not.

Q. What did you tell him? A. I told him my husband visited me occasionally.

Q. Yes, and after you had been there a certain length of time Mr. Cummings told you to get out, didn't he? A. No, sir; he did not.

Q. Didn't he remonstrate with you about entertaining visitors in that house? A. No, sir.

Q. Never? A. No, sir.

Q. You never received any visitors there in that house? A. Only my own family.

Q. What time of night was it that the gas plate noise took place? A. That is something I just can't remember.

Q. How large was this plate? A. Two burner.

Q. What time of day or night was it Mrs. Cummings showed you the bruise on her arm? A. It was in the morning.

FLORENCE WALKER, sworn for defendant

Direct-examination by Mr. Lane:

Q. Mrs. Walker, where do you live? A. 73 Hinsdale Place.

Q. Do you know Mr. and Mrs. Cummings? A. I do.

Q. And did you ever live in the property on Hinsdale Place or Hinsdale Avenue, Newark? A. Yes, sir; first floor.

Q. In the Cummings property? A. Yes, sir.

Q. From what date to what date? A. December, 1920—December, 1920, until October, 1921.

Q. Did you ever while you were there supply Mrs. Cummings with clothing? A. I did.

Q. What kind of clothing and during what period of time? A. I gave Mrs. Cummings two pairs of shoes, underwear, stockings and waists.

Q. Did you give Mrs. Cummings clothing for the child? A. Well, I provided her with napkins for the baby, towels, and a clothes basket to put the baby in, for sleeping purposes and basin, soap and powder.

Q. Why did you do that? A. Well, she didn't have the necessary articles.

The Court: Napkins—diapers?

Witness: Yes, sir.

Q. Now, did you perform any services for Mrs. Cummings? A. Well, I furnished her with the largest part of her meals during her confinement.

Q. Why did you do that? A. Well, I don't think she had the necessary food. She depended entirely on what Mr. Cummings brought in at lunch when there was no time to prepare proper food for her. I went up there one day when all she had to eat was mashed potatoes, and another day she had a small piece of Taylor ham and fried cake; I couldn't see that that was the proper food for a sick woman.

Q. Did you do anything with reference to the furnace? A. Many a time I fixed the furnace for her.

Q. When? A. Well, she was pregnant at the time and there was no one else to take care of it.

Q. Did she take care of the furnace by taking the ashes out when she was in a pregnant condition? A. Why, she could; other times my husband did it.

Q. Did Mr. Cummings ever take care of the furnace? A. I think he did go down occasionally, but many a time the furnace was out.

Q. What? A. Many a time the furnace was out.

Q. The furnace fire was out? A. Yes, sir; the fire.

Q. What condition did you find Mrs. Cummings in with respect to the necessary clothes for the child at the time the child was born? A. I don't know what she had to put on the baby, but I know there was nothing to wash the baby in but a dish pan and the second day the baby was here there were no diapers, so I went downtown and purchased the material and made them.

Cross-examination by Mr. Child:

Q. You lived there approximately ten months? A. Yes, sir.

Q. And during that ten months did you know the Cummings family fairly intimately? A. Yes. sir.

Q. What floor did you live on? A. First floor.

Q. What floor did they live on? A. Second.

Q. And did you ever hear any vile language or talk during the time you were there? A. No; I heard loud talking occasionally, but I couldn't say it was quarrelling.

Q. You never heard any vile language? A. No.

Q. Now, the napkins and the basket for the baby and things like that, those were given by you as presents, weren't they at the time? A. No, sir; indeed, it was a necessity.

Q. At the time of the baby's birth. A. She returned them to me afterwards.

Q. What say? A. She returned the basket afterwards.

Q. During Mrs. Cummings' confinement did she have a nurse there? A. Practical nurse, yes, sir.

Q. For how long a time? A. I should think between ten days and two weeks; no longer.

Q. So that there was someone to look after her? A. Yes, sir.

Q. Now, what were Mr. Cummings' hours, if you recall, when you were living there? What were his hours at that time? A. Well, the night the baby was born—the night she was taken ill, one o'clock in the morning, there was no one with her; she came down to my door. I think he was working at the time. Yes, I know he was, because my husband got up and telephoned for him.

Q. What was the arrangement of this house, how many floors were there, three? A. Yes, sir.

Q. That were rented out? A. Yes, sir; there were three rented out.

Q. What was the arrangement with regard to taking care of the furnace, if any? A. I was supposed to take care of my own; they were supposed to take care of their own. The heater on the second floor furnished heat for the third floor.

Q. And did you have a heater of your own to take care of? A. Yes, sir.

THOMAS McDERMOTT, sworn for defendant.

Direct-examination by Mr. Lane:

Q. Mr. McDermott, where do you live? A. 10 Washington Street, Belleville.

Q. What is your business? A. Motorman.

Q. Are you a brother of Mrs. Cummings? A. Yes, sir.

Q. You know when they were married, of course? A. Yes, sir.

Q. Did you ever visit them when they were living together? A. Yes, sir.

Q. Were you present at a time when Mr. Cummings came to your mother's house after the separation? A. Yes, sir.

Q. Can you tell me when that was? A. That was some time in June.

Q. Of what year? A. 1924.

Q. Will you tell me what happened? A. Why, I was sitting at the stove; I heard the front door open; heard somebody running upstairs; so the first thing you know I heard something crash; so I heard the voice call my mother, "you old son-of-a-bitch," so with that I got out of the chair and went upstairs. So I found Mr. Cummings with the cot threw over, and I asked him what the trouble was; so I don't know what he said, so I told him if he couldn't come to see his child in a decenter manner than that why he better not come at all, so at that he said—didn't say nothing—"All right, Tom," so he walked downstairs and went out and from that day to this he never came.

Q. During the course of that talk that you had with him there did he say anything with reference to his wife as to living with her again? A. Yes, sir; I told him—he said that, now, that he was paying enough, or something, for his child. I told him if he didn't like the way the child was kept he better provide better quarters for him and his wife. He said, "I wouldn't live with the son-of-a-so and so no more—son-of-a-bitch any more," and

with that he run down the stairs and run out.

Q. Were there any other times when Mr. Cummings came to your house looking for Olive that you saw him? A. No; I never seen him after that.

Q. No, before that. A. No, not at my times.

Q. What is the position of your rooms with respect to Mrs. Cummings, where Mrs. Cummings lives? A. Why, we were on the first floor.

Q. Where is your bedroom? A. Why, first floor, front part of the house.

Q. Can anybody get upstairs—

The Court: Front room?

Witness: Yes, sir; front part.

The Court: Not the front part, the front room?

Witness: Yes, sir; front part of the house; bedroom.

The Court: What is the next room to it?

Witness: The house is on an L shape, the dining room would be the next this side and then the kitchen.

The Court: Three rooms on the first floor?

Witness: Yes, sir, three rooms on the first floor.

Q. Can anyone get up to the apartment of Mrs. Cummings without passing your door? A. No, they cannot; they got to come through—pass the hall.

Q. They have to pass your door, do they? A. Yes, sir.

Q. The bottom of the steps right at the front door? A. No; you open the front door and you go upstairs. The kitchen is one side and the other rooms run off at an angle from the hall. There

are three doors to the other three rooms on the ground floor.

The Court: They wouldn't have to pass your door to reach the steps.

The Witness: Oh, no.

The Court: Wouldn't have to pass any of your doors to reach the steps or stairs, is that right?

The Witness: Yes, sir.

Q. What is your practice with respect to locking that house at night? A. What do you mean by that, what time?

Q. Yes.

The Court: The front door.

The Witness: I don't quite get it.

Q. What is your habit in locking the front door? A. The doors are all locked. I am the last one home.

Q. After you lock them can't anybody get in with a key? A. Yes, sir; I got a key.

Q. After you get in and lock it, can anybody get in with a key? A. If they have a key they can get in.

Q. What kind of a lock have you on it—got a dead latch? A. I wouldn't say it was; I couldn't exactly describe it what kind of a lock it is.

Q. Is there a latch? A. No; regular lock.

Q. Regular lock, not a latch. A. No latch.

Q. When you lock the door from the inside do you leave the key in the lock or take it out? A. Take it out.

Q. So that anyone having a key can get in? A. Yes, sir.

Q. Are there any bolts on those doors? A. Yes, sir; kitchen door.

Q. Front door? A. No. There is a bolt I think on the front door; very seldom used.

Q. But you do use the bolt on the kitchen door? A. Yes, sir.

Q. So that the way to get in the house after dark is in the front door? A. Yes, sir.

Q. What time do you get home in the morning usually? A. About two o'clock.

Q. In the morning? A. In the morning.

Q. What time do you go to work? A. Four thirty three; half past four.

Q. In the afternoon? A. Afternoon.

Q. In August, 1924, what was your business? A. I was in the same business.

Q. Were you a motorman on the trolley car? A. Nineteen years.

Q. Oh, yes; you have told us that. At that time do you know whether there were open trolley cars on the Roseville trolley line, on August of 1924, on Roseville Avenue? A. Not at that time.

Q. That is what I am talking about. That time in August 1924. A. No.

Q. (By the Court.) How do you know that? How do you know that? A. Open cars? Because they had not at that time any open cars, payee cars, one man cars—had all box cars.

Q. Do you know whether or not there is a light on the street near your house, the house that you live in? A. Well, the light is quite a distance there; well, there is one light there, put there recently.

Q. I am not talking about recently. I am only interested in August of 1924. A. No, there was no light there.

The Court: No light there?
Witness: Near the house.

Cross-examination by Mr. Child:

Q. Didn't they have any open cars on the Roseville line before the "pay as you enter" came in? A. Pay as you enter?

Q. Yes. A. Well, pay as you enters have been running for the last sixteen years.

Q. Yes. And they have been running open cars for many years, haven't they? A. They have been running open cars, yes.

Q. And they have been running them on the Roseville line for many years. A. Certain times; yes.

Q. Yes. And how do you know they were not running open cars in August, 1924? A. Well, because they had no—Elizabeth line at that time was a one man car and at that time they had no open cars at that time, one man.

Q. I am not talking about one man open cars—I am talking—(interrupted). A. And that was that, there were box cars.

Q. The Roseville cars run to Elizabeth? A. Eh?

Q. The Roseville cars run to Elizabeth? A. Yes, sir.

Q. The Roseville line in 1924 ran to Elizabeth? A. I think they did.

Q. You are not sure? A. Not quite sure.

Q. Do you know what month any other cars in the line or any other line was changed to the present type of one man cars, aside from the line you run on yourself? A. No, not exactly.

Q. Do you know when your own line was made a one man proposition? A. Yes, sir.

Q. What date was that? A. That was around December. It will be two years this month.

Q. What date was that? A. That was around December. It will be two years this month.

Q. Two years this month. And what fixes your mind in regard to the time when it went on the Roseville line? Why do you say August? A. Well, because our line—the line I work on and the Union line were the two last lines to be converted into one man cars and the Elizabeth line was the ones, was ahead of them.

Q. You are certain that in August, 1924, there were no open cars of any kind running on the Roseville line, are you, to Elizabeth? I am talking about the Roseville line. You said the Roseville line ran to Elizabeth. Did it—does it? A. Yes; it does now, yes.

Q. Did it before? A. Well, that I couldn't exactly say where they did run, whether it run to the terminal or to Roseville.

Q. Now, where were you when the difficulty started with Mr. Cummings in June, 1924?

The Court: The witness said, "Downstairs in the kitchen".

Witness: Sitting reading the newspaper.

Q. And where was the difficulty? Where did that take place? A. Why, I was sitting there. I heard the front door—(interrupted).

Q. (By the Court). Where was the trouble? A. Why, upstairs.

Q. And you heard a crash? A. Yes.

Q. Was that when your mother threw a candle stick at Cummings?

The Court: He was downstairs.

Q. Didn't you learn that that was the trouble? A. No; I didn't know.

Q. You don't know what the crash came from, do you? A. Yes; I went upstairs. I know what the crash came from. I found the cot up there and found the cot threw on the floor.

Q. What?

The Court: Cot.

A. Found the cot threw on the floor.

The Court: I—

Witness: And dresser pulled out.

Q. Didn't you resent the language of Cummings, the language that Cummings used to your mother? A. Well, that is what drew me upstairs.

Q. Yes. You spoke to him perfectly—in a perfectly friendly way and said, "Owen, don't use such language." A. Absolutely never.

Q. No? A. I told him if he couldn't come to see his child in a better manner than that, why, to not come at all. To take him and his wife and to provide a better quarter for them.

Q. Didn't you tell him he ought to be ashamed of himself to use such language to your mother? A. I told him enough. I told him not to come there no more, if he couldn't come in a decenter manner than that. Of course, the man was under the influence of liquor.

Q. He was? A. (Witness nods yes.)

The Court: That is all.

Mr. Lane: Dr. Kerns.

FRANCIS KERNS, sworn for the defendant.

Direct-examination by Mr. Lane:

Q. Doctor, you are a physician and have been practicing your profession in the city of Newark for how many years? A. Twenty one years.

Q. And do you know Mrs. Cummings? A. I do.

Q. Do you know Mrs. McDermott? A. I do.

Q. How long have you known them? A. Nineteen years.

Q. Did you attend Mrs. McDermitt for any illness at one time with reference to a poisoning? A. I did.

Q. Can you tell me when? A. Well—

The Court: We have had that before, haven't we? The date of Mrs. McDermitt—

Mr. Lane: I think the doctor can fix the dates definitely.

Witness: The date I can fix very exactly by the time that—

Q. (By the Court.) When was it, when was it? A. When they first moved into the house on Washington Avenue. I haven't that exact date with me regarding Mrs.—(interrupted).

The Court: I don't want to—

Q. What was the matter with Mrs. McDermott? A. She had the itch.

Q. Mrs. McDermitt! A. Oh, Mrs. McDermott, pardon me. I thought you said Mrs. Cummings.

Q. No. I am talking about Mrs. McDermott. A. I have got Mrs. McDermott's history here.

Q. That is what I am talking about. A. My record shows I saw Mrs. McDermott—I better get

my glasses—I have got to read—Mrs. McDermott I had seen for an infection of her hand.

Q. (By the Court.) When? A. In 1921.

Q. And extending to when? A. Well, she was confined to the house and I visited her at the house up until March, or February, 1922, February the 28th, for that infection, was the last time I saw her in her home. She came to my office afterwards to be treated.

Q. Now, what was her condition during that time? A. When I first saw this woman she had a terrible infection of her hand, extending to her arm. She was in bed running temperatures from 102 to 104 continuously; in a very serious condition. She had been operated on previously for, I believe, a needle in her hand, at some institution, I don't know where, and she came home and I—(interrupted).

Q. How long did that condition last? A. What do you mean, her serious condition?

Q. Yes. A. Well, as I say, she was confined in the house until February 28th with that condition, and it was serious up to that time. After that time she came to my office and was treated.

Q. Was she in any condition to engage in an assault upon anybody during that period of time? A. Not while she was confined in her house.

Q. That is what I mean. A. Why, until March 28th—or, February 28th—pardon me.

Q. Did you see Mrs. Cummings at a time when you noticed the condition of the house as to the exposure to the weather, and so forth? A. Well, that is a—this infection—people were living at 66 Hinsdale Place at the time.

Q. Yes? A. And then Mrs. Cummings and her

husband moved to Washington Avenue and they were remodeling that house at the time. I was called in to see the baby who was sick, and, of course, the upper section of the house was somewhat exposed, around the bathroom was exposed, they were tearing out and rebuilding and extending.

Q. Did you say anything or make any suggestion with respect to the way they should keep the child? A. Yes. I figured that that child should be kept downstairs in the rear of the house where it was warmest in the best section, the least exposed.

Q. Have you operated on Mrs. Cummings? A. Yes, I operated on her about two months ago.

Q. For what? A. Hemorrhoids.

Q. Was she suffering from that same trouble when you saw her when she was at Hinsdale Place? A. I don't know anything about her at Hinsdale Place.

Q. When was it? Was she in Washington Street? A. Yes, sir.

Q. Did you give her any advice at that time? A. She came to my office and consulted me; I advised an operation then; she refused.

Q. What was her physical condition? A. She had a bad condition of hemorrhoids.

Q. What was her general phycisal condition? A. Well, she wasn't any too well; she was suffering from bleeding and protruding hemorrhoids. It kept her condition somewhat run down more or less.

Q. Did her husband know that she was suffering that way? A. Yes.

Q. Was it a serious condition? A. Well, I don't think at that time you could say it was serious to

take her life or anything like that; she was suffering all the time.

Q. I don't mean that. I mean serious condition, a serious affect upon her health? A. Well, it keeps them run down, to be suffering from hemorrhoids.

Q. Did you also prescribe for Mrs. Cummings for what has been called in this case the itch? A. I did.

Q. What was that, doctor? A. Why, it was an irritation of the skin due to an itch that she had.

Q. And how did that come—or rather, how does that come usually? What is the cause of it? A. Well, it is caused by a germ, little bacteria.

Q. Is it what the Army brought back from France, is what I am trying to get at? A. Oh, well, it is what they call the French Itch.

Q. Well, that is what I am talking about.

Q. It is not a venereal disease, is it? A. Absolutely no. At one time I thought, in the early stages, this condition they have—when I first saw her I think it might have come from a fur that she had, but afterwards that proved that it didn't exist at all.

Q. Now, when you examined her in—at the time you operated on her, did you ascertain whether she was, in fact, suffering or had suffered from any verereal disease? A. As near as we could find we had her blood examined, and conditions like that.

Q. (By the Court.) She was not— A. That is within two months.

Q. (By the Court.) What? A. Two months ago I had her blood condition examined, specimens examined; I operated on this woman two months ago.

Examined by the Court:

Q. Yes. Did you—do you know the condition of the blood two, three years ago, as to venereal disorder? A. It would to a syphiletic condition.

Q. But— A. To any other venereal disease it would not.

Q. There is only one other venereal disease. A. Yes, that we classify. That is gonorrhea.

Q. That wouldn't show itself? Two years in the blood? A. Not on a—

Q. In the blood? A. No, sir.

Q. It wouldn't show itself in the blood at all? A. No, sir.

Q. That is sure? A. Absolutely.

Examined by Mr. Lane: ?

Q. At any rate, this itch that she was suffering from was not gonorrhea, it was not the result of gonorrhea? A. Oh, no. It was not the itch—her condition around her neck.

Examined by the Court:

Q. Was there a rash? A. Not with gonorrhea, no.

Q. Was there a rash on this woman? A. Oh, yes.

Q. Where? A. On her neck and her arm.

Q. Anywhere else? A. And her legs, lower extremities.

Q. Gonorrhea does not produce— A. No, sir.

Q. —a rash, does it? A. No.

The Court: Any question?

Mr. Child: Yes.

The Court: Go on.

Mr. Child: I didn't know counsel had finished.

Mr. Lane: One more question.

Q. Do you know what care Mrs. Cummings gave her mother? A. She was the nurse for her mother during the period of her illness.

Cross-examination by Mr. Child:

Q. Doctor, during the time you attended Mrs. McDermott for some three or four month, from September to February, where was she living? A. Hinsdale Place.

Q. With Mrs. Cummings?

The Court: Yes, yes.

Q. With the Cummingses? A. I should judge so.

Q. I mean, it was in the same house? A. In the Cummings house. Originally Mrs. McDermott lived there; some time before. I didn't know he —(interrupted).

Q. Well, it was with the Cummingses? A. Absolutely. They were living together.

Q. And during your visits there did you come across Cummings? A. Oh, yes.

Q. Was his treatment of his mother-in-law and his family anything that anyone would take exception to, while you were there? A. I never saw anything to take exception to.

Q. Now, the time that you examined his wife in 1922, or whenever it was, the first time she went to your office for hemorrhoids— A. Yes.

Q. —Cummings came with her, didn't he? A. Yes, he did.

Q. And did you advise Mrs. Cummings to wean the baby at that time, do you remember? A. Maybe, I can't remember.

Q. And didn't Mr. Cummings urge his wife then to have an operation performed to relieve her condition? A. He may have. I—I can't answer that thing; it is a possibility.

Q. He didn't object, did he, to any— A. No.

Q. —operation? A. Not that day.

Q. Or any other day? A. Not to my knowledge, no, sir.

Q. Did you attend the birth of the Cummings child? A. I did not.

Q. Now, coming down to the French itch. Is the French Itch syphilis? A. No, sir.

Q. Is it in any way allied to syphilis? A. No, sir.

Q. It is not a venereal disease, is it? A. No, sir.

Q. Did you ever tell Mrs. Cummings that the French Itch was a blood disease? A. No, sir.

Q. Or ever tell her it was the result of immorality? A. No, sir.

Q. You did tell her, did you not, that you believed it might come from an infection from an undercured skin, a fur around the neck? A. That was the first thing when they had that skin infected by the Board of Health.

Q. Did Mrs. Cummings ever inquire of you as to whether this itch she had was a venereal disease or not? A. Not to my knowledge.

Q. Did you advise her what it was? A. On the second or third visit, yes.

Q. Then you diagnosed it? A. Yes, sir.

Examined by the Court:

Q. With any certainty? A. Eh?

Q. With any degree of certainty? A. As certain as I could be.

Q. All itches look alike? A. Very much.

Q. How do you describe or distinguish the French Itch from the German or Italian itch? A. That is just a name that came because the boys happened to come from France and a great many of them had it.

Q. Could you distinguish one itch from any other itch? A. Not very well, sir.

Q. French Itch and American Itch? A. They are all about the same. It is just a name.

Examined by Mr. Child

Q. There is nothing about this itch that resembles the symptoms of syphilis— A. Not— Yes, sir.

Q. —is there? A. There is a rash appears, but the itch would more or less eliminate it.

Examined by the Court:

Q. How long after infection does the rash appear in syphilis? A. Oh—

Q. About? A. About three weeks.

Q. Not three months? A. Three months.

Q. Three months. A. I was thinking of the period of incubation.

Q. And how long does it last? A. The rash?

Q. Yes. A. It may disappear very quickly and it may keep reoccurring.

Q. If it doesn't disappear within a week or two? A. Yes.

Q. And may come back? A. May come back again.

Q. Often? A. Well, it has been known to reoccur at intervals of two or three years and it may never come back. It depends on the care the patient takes of themselves.

Q. That is the second manifestation? A. Yes.

Examined by Mr. Child:

Q. But the itch that Mrs. Cummings had at that time was not the itch or syphilis? A. Absolutely no.

Q. And, if a person had contracted syphilis, and had had no treatment, medicinal treatment, or treatment with salvarsan, would the syphiletic germs, the spiorella, I think you call them, be present in the blood for a number of years afterwards? A. That may disappear and may reoccur.

Q. But it is very unusual to have it disappear without treatment, isn't it? A. Very unusual to disappear without treatment.

Q. And when I say "treatment", I mean either the taking of salvarsan or— A. Mercury.

Q. —or some treatment with mercury? A. Correct.

Q. How long a time did you treat Mrs. Cummings? A. Probably saw her for two or three weeks.

Q. Did you see her after that time as a patient? A. Oh, I didn't see her for quite a while.

Q. Well, you have been her family physician, haven't you? A. Well, I have at times. I didn't deliver her of her baby.

Q. No. A. I treated her before she got married and I have treated her since. There have been intervals when I haven't.

Q. There is nothing about her condition that you have seen, during the time of your treatment,

that would lead you to believe she had syphilis? A. Absolutely I have never seen any symptoms.

Examined by the Court:

Q. What test did you give her? A. (Witness pauses.)

Q. Wasserman. Did you give her— A. Yes, sir.

Q. —the Wasserman test two months ago? A. Yes, sir.

Q. Are the symptoms of syphilis ever eliminated from the blood so as to escape the Wasserman test? A. Yes.

Q. With treatment, eh? A. Yes, with treatment we have got them. I have got cases right now where they have been under treatment for a year and a half and we have had three cultures in the last—or three Wassermans done in the last three months and they are all negative.

Q. It is liable to recur? A. It is liable to reoccur.

Q. At any time? A. At any time.

Q. And likely? A. Well, if the patient keeps under treatment and has blood examinations.

Q. Well, if he doesn't keep under treatment they are likely? A. They are likely to reoccur, yes.

Examined by Mr. Child:

Q. Now, in connection with the condition of the house at the time you visited the baby, the house at 66 Washington Place—no, 10 Washington Avenue—I think you visited the baby at 10 Washington Avenue? A. No.

Q. Or was it 66 Hinsdale Place? A. No, it was after that. It was the new home they were re-

building on Washington Avenue. I don't know the exact number.

Q. They were living on the ground floor, were they not, or afterwards lived on the ground floor, when you visited there? A. I don't know that. They were occupying the whole house when I was there.

Q. You advised them to move down to the ground floor? A. For the baby's sake; the baby was ill. I picked out a room in the rear of the house that I thought was the best room for the baby while it was there.

Q. And that floor was tenantable, wasn't it? A. That room was very well adapted for the baby. It was the warmest and best room. The upstairs rooms were terrible.

Q. Yes, but that room was all right? A. That room was all right.

Redirect-examination by Mr. Lane:

Q. Doctor, what did you tell Mrs. Cummings was the matter with her, with reference to this French Itch?

The Court: Itch?

Mr. Lane: So called.

Witness: I didn't get that.

Q. (By the Court.) What did you tell her was the matter with her? A. I told her she had an itch, on the second or third visit; I forget which. The first time I didn't know what it was. I suspected she might have got a condition from the fur.

Q. That was all that you told her? Was that as

far as you went into detail that that was what this was, except it was an itch? A. Well, I told her I supposed it was the French Itch.

Q. Did you tell her what the French itch was? A. Well, I told her it was an itch that was generally brought back to this country by the boys that had been overseas.

Q. And, of course, it is an itch which may very likely be contracted in sexual intercourse? A. Yes; or any other contact; in other ways, too.

Q. Yes. It may be contracted otherwise, but it can be contracted, of course, that way.

The Court: Legitimately or illegitimately.

Mr. Lane: Both ways.

Witness: Yes.

Q. (By the Court.) Contact? A. Yes, sir.

Q. Contact. A. Yes; contact.

Q. (By the Court.) Contact. A. Yes.

Q. (By the Court.) No matter what the moral conditions may be. A. Yes.

Q. And it is very likely in the eyes of a layman or laywoman to be associated with venereal disease, isn't it?

The Court: Well—

A. Oh, that is a possibility. The amount of education they have along those lines makes it difficult.

Mr. Lane: I think that is all.

Recross-examination by Mr. Child:

Q. You told us, doctor, that it might come from raw fur she had around her neck and that was

sent away for analysis, wasn't it? A. I don't know. I told her that that was a possible way of infection, with the fur. It was sent away for analysis and came back. They took it to the Board of Health of Newark, I believe. I am not so sure of that, but it was negative.

Examined by the Court:

Q. Did she have any itch of the parts? A. Why, I can't say that, your Honor.

Q. You say the legs. A. Yes; the lower extremities showed itching.

Q. You don't know? A. I don't recollect that. She may

The Court: That is all.

GRACE McDERMOTT, sworn for the defendant.

Direct-examination by Mr. Lane:

Q. Mrs. McDermott, you are the wife of Thomas McDermott? A. Yes, sir.

Q. Brother of Mrs. Cummings? A. Yes, sir.

Q. And you live with your husband in the same house that Mrs.— A. 10 Washington Place, Belleville.

Q. Now, do you remember—

The Court: What was the number of the other Washington Street or avenue house?

Mr. Lane: I think they are both 10.

Mr. Child: It is 10 Washington Street, and the other is 114 Washington Avenue.

Mr. Lane: I never can keep them straight.

Q. Do you remember a Saturday night in February Mr. Cummings coming to the house? A. Yes, sir; I do.

Q. Tell us where you were and tell us what happened.

Mr. Child: What year?

A. Well, it was around—

Q. What year? A. It was around half past eight Saturday night on February the 4th, 1924, when Mrs. Cummings had come down and asked me if I would watch Olive while she went to the drug store, to the corner, and I says I would, so, in the meantime Mr. Cummings had come to the back door and knocked at the door and I opened the door and he said, "Where is Olive?" I says, "Upstairs sleeping," so he went upstairs and went in every room until he got Olive and he brought her upstairs and sat her on my kitchen—on the chair and he went off for about ten minutes and then he came back, and then in the meantime Mrs. Cummings and her mother had returned, so she says, "What are you going to do?" So he said, "I am going to take Olive with me," so she says, "No; Olive will get cold with no clothes on—"she was just in her night clothes; so I saw him slap Mrs. Cummings right in the face, and he picked up a chair and he fired it at her, which he just missed her, so then he picked up the child and he went out the door with her.

Q. Now, did he use any language to his wife? A. He certainly did; vile language.

Q. What did he say? A. He called her a son-of-a-bitch and he called her a God damned bastard, about three times.

Q. Has he been at your house on three other occasions? A. Yes.

Q. And how often have you seen him at the house? A. Well, he came one afternoon around half past two and he had asked for Olive and I said she wasn't in, that she went downtown with Mrs. Cummings and her mother, and he asked me when would she be back. I said I didn't know, so he pushed through the door and went through every room upstairs and through every room downstairs and even looked behind my parlor chairs, and then went out the back door and said nothing.

Q. Were there any times when he came there when your mother-in-law and Mrs. Cummings were there? A. Yes; he did came there one time in the morning, but I didn't know because I was downstairs.

Q. Well, I only want to know when you were there. Did you ever hear him on any other occasions than the one you have told us in February, 1924? A. I did. Some time in June.

Q. What did you hear then—June of what year? A. 1924.

Q. What did you hear then? A. That was the time when my husband went upstairs and ordered him out of the house.

Q. You were there in the house? A. I was there.

Q. Downstairs? A. When he went upstairs, I went upstairs with him; thought maybe there might be a fight.

Q. What did you hear there? A. Well, because he asked Mr. Cummings what he was doing there Mr. Cummings said "Nothing," but I saw the bureau drawers all opened and I saw where the cot was pulled down and mattress on the floor, so he told me if he couldn't come in a better manner to see his child, not to come at all. So he went

downstairs and he went out. He didn't say nothing.

Q. Did you hear him then at any other time in February, use vile language to his wife or in her presence? A. No; I did not.

Q. Are you generally home at nights? A. I am always home. I have three children of my own.

Q. How old are they? A. Well, one is nine now and the other one is seven and one is five.

Q. Did you ever observe any man calling on— A. No.

Q. Did you ever observe any men calling on Mrs. Cummings at that house? A. No; never.

Q. Did you have any knowledge of it? A. No, never, never. Nobody can come in that house without my knowing it.

Q. Why can't anybody come in the house without your knowing it? A. Because I am always home and if anyone comes in that front door, the minute that front door is open, I open up my kitchen door and I can see who goes in and who goes out.

Examined by the Court:

Q. You watch your own front door? A. I certainly do.

Q. Even though other people live upstairs? A. Even though other people live upstairs I know who goes in and who goes out. Nobody can pass the door without me knowing it.

Q. How about at night? A. Nobody can come in at night because at night when I go to bed I lock the door. Mrs. Cummings is generally in before I go to bed.

Q. What time do you usually go to bed? A. Oh, I don't go to bed before eleven or half past eleven. Then I am up with the children off and on.

Q. Did you hear anybody coming in— A. No, sir.

Q. Could you hear anybody coming in? A. I certainly could.

Q. Never sleep? A. I am a light sleeper. I am nervous and I don't sleep very good.

Examined by Mr. Child:

Q. How close to your apartment would anybody be if they were talking on the front porch of your house? A. My bedroom is right off the front porch.

Examined by the Court:

Q. Right on the front porch, right adjoining the front porch? A. Yes.

Q. The bedroom? A. The front room is my bedroom.

Q. The windows lead from your bedroom to the front porch? A. Yes, sir.

Q. Eh? How many? How many windows are there? A. Well, the front porch is here like, my bedroom is over here (indicating).

The Court: Well, that doesn't explain much. How many windows lead out on the porch?

Witness: One.

Q. From your bedroom? A. The side window.

Q. From your bedroom? A. How many windows my bedroom has? A. Five.

Q. Yes, and how many look out on the front porch? A. How many look out on the front porch? Here is one side window (indicating).

Q. Eh? A. Here is one side window.

Q. Oh. A. So there is a window on the side; there is three on the front and one on the other side.

Q. What? A. There is three windows on the front and one on each side.

Q. Then the porch is the front? A. The porch is on the side.

Q. The porch is on the side. Could you hear people talking on that front porch? A. Certainly I could hear people talking.

Examined by Mr. Lane:

Q. Did you ever hear Mrs. Cummings and a man— A. No.

Q. —talking on that front porch at night? A. No, never.

Q. I show you—it is on its side and its front.

The Court: I know how it is.

Q. I show you Exhibit D-1 of February 25, 1926, and ask you whether the window of your bedroom is this window here (indicating). A. Yes, sir; that is the window of my bedroom right there (indicating).

The Court: There are two windows, aren't there?

Witness: One on the side there.

Q. Better show him here. I show you Exhibit D-2, February 25— A. Right there (indicating).

Q. —1926. That shows it better, Vice Chancellor. A. Yes, sir; right here.

The Court: Yes.

Q. Now, that bay window in the front; is that your bedroom too? A. Yes, because—I—

Q. Do you think anybody could at nine, ten or eleven o'clock at night or twelve o'clock at night, be walking around that yard and into the bushes without your knowing it? A. No; they couldn't, because I generally always keep my windows open a little bit and I can hear.

Q. (By the Court.) In the summer time? A. Yes, in the summer time; yes, sir.

Examined by the Court:

Q. In the warm weather do you keep the windows open? A. Even in the cool weather I keep them open.

Q. How about the summer time? A. Keep them all open.

Q. Did the three babies sleep in that room with you? A. No. At the time I had two and one upstairs with my brother-in-law. You see, this is one big room and I had two beds in it.

Q. Well, in '24 did your two babies sleep with you in that room? A. Yes; two beds in one room because it is a great big room.

Q. Yes. A. And my oldest boy slept upstairs with my brother-in-law.

Examined by Mr. Lane:

Q. When was your practice as to leaving your light on? A. Where, in my bedroom?

Q. Anywhere in the house, until your husband got home. A. There is a light kept in my bedroom every night on account of getting up and seeing to the children.

Q. What kind of a light? A. A little, small lamp I have, oil lamp.

Examined by the Court:

Q. How about out in the hallway; any lights out there? A. Up in the hallway?

Q. No. Out in the hallway, inside this door, in the entrance door; is there a light? A. There is a light upstairs in the hall and there is a light downstairs. The hall is never dark. Of course, outside the house it looks dark.

Q. And you keep a light in your own bedroom? A. Yes; I do.

Q. And during the summer time, the month of August, when you go to bed, do you raise the windows and raise the shades too? A. Yes.

Q. And were the shades and windows pulled up? A. Yes; the shades is always up.

Q. And is the light a light which can be seen from the outside? A. Yes, you can see it; sure.

Cross-examination by Mr. Child:

Q. How long have you lived at number 10 Washington Street, Belleville? A. Four years this month.

Q. And Mrs. Cummings has lived there for how long? A. Well, since she left her husband.

Q. And she was living there in 1924, February? A. She was living there, too, yes, sir.

Q. Well, now, do you remember Mr. Cummings coming there that night that you had testified to in February and getting ice cream for his child? Do you remember that night?

The Court: In February?

Q. Do you remember Mr. Cummings going out that night and getting some ice cream or something for the child? A. No.

Q. He did ask you where the family were, didn't he? A. Certainly did.

Q. And the child was upstairs alone on that floor, wasn't it, and you were downstairs? A. It was not alone upstairs at that time.

Q. Who was with it? A. I had three children of my own sleeping upstairs at that time, but now I have things changed.

Q. I thought you told the Court a minute ago that you had two children sleeping downstairs with you. A. I have now, yes, but at that time I had three upstairs, because I had one room upstairs. The thing has been changed.

Q. And you slept downstairs and had three of your children sleep upstairs? A. I had three upstairs at that time.

Q. (By the Court). And you slept downstairs? A. And I slept downstairs, yes, sir.

Q. How many bedrooms are there upstairs? A. There is two up there now. We had three and then we turned one into a sitting room so there is one large room.

Q. Had three in 1924, two years ago in February? A. 1924 we had three bedrooms upstairs.

Q. And who occupied those rooms? A. Mrs. Cummings and Olive and my mother occupied one and my brother-in-law and my oldest boy slept in the other one and my other two children in the other one.

Q. Why did you have your three children on the second floor and sleep on the first yourself? A. Well, because I wanted two bedrooms and then I changed things around later on.

Q. How old was your youngest child then? A. My youngest child?

Q. At that time, February, 1924? A. Two years old.

Q. Now, what time of the night would Mrs. Cummings come in during February, 1924? A. What time of the night did she come in?

Q. Yes. A. When she went out at night?

Q. Yes.

The Court: Yes.

Witness: Around ten o'clock; no later than ten o'clock.

Q. February, 1924? A. February, 1924.

Q. Yes. And was never out during the year 1924 never later than ten o'clock at night or eleven o'clock? A. Very, very seldom. Maybe eleven, and I would be up when she would get in.

Q. What? A. I would be up when she would get in.

Q. And you would always be up when she came in? A. I generally always was up.

Q. And what was the latest that you ever remember seeing her come in during the year 1924? A. Oh, around half past eleven.

Q. Half past eleven? A. Yes, sir.

Q. Where was Mrs. Cummings working during the year 1924? A. In the A. & P.

Q. (By the Court). What time would she come home from work? A. Well, when she was working she came home two o'clock in the morning, the same time my husband did.

The Court: That is what the lawyer wants to know.

Q. And then you let her in or saw at two o'clock in the morning, did you, every time she came in? A. My husband had a key.

Q. I am not asking you what your husband had. I am asking you whether you saw her whenever she came in at night. A. No; not two o'clock in the morning, because the door was locked and my husband had the key and opened the door and she came in right after him.

Q. Why did you say a moment ago that she never got in that year later than half past eleven? A. Well, I forgot about her working at that time.

Q. Yes. And what number of days did she work during 1924? How many days a week did she work? A. Oh, she worked every day but—every day but Sunday, I think.

Q. Every day but Sunday? A. Uh.

Q. And what time would she get home from her work on Saturday night? A. On Saturdays, why, I think she went out in the mornings, early in the mornings, quite later in the afternoon.

Q. She what? A. I don't remember what time she come home Saturdays.

Q. You didn't see Mrs. Cummings every night she worked until two o'clock in the morning.

The Court: She said she did not.

Q. No? A. No.

Examined by the Court:

Q. Hadn't she a key to get in? A. Yes, sir; there was a key for her.

Q. Hadn't she a key to get in? A. Well, sometimes she did and sometimes she didn't. She generally come home when my husband come home.

Q. She generally came in—she was generally let in by your husband, is that what you mean? A. Yes, he comes home two o'clock in the morning and she comes right after him.

Q. Do you know how that happened? A. Well, she gets through at that time with work.

Q. Well, would your husband wait for her to let her in? A. Well, he would wait a few minutes, certainly, because he knew she came in at that time.

Q. Well, you say "certainly" do you know this? A. I do know it, yes.

Q. Or are you just getting at the amount? A. Because I heard her many times myself, heard her come in when he came in.

Q. You think he would wait to let her in, eh? Is that your idea? A. Yes; because she always came in two o'clock in the morning when he came in.

Q. Well, she carried a key of her own, didn't she? A. No.

Q. Eh? A. No; there was one key.

Q. And who carried that? A. My husband, because he came in a few minutes before her. If she came ahead of him she would knock on the door and I would get up and open the door.

Q. Unlock the door for her? A. Unlock the door because there is another key besides.

Q. Then there are two keys? A. There are two keys, certainly.

Q. I don't know certainly. You said he carried the key, your husband. A. Well, there had to be another key inside.

Q. I don't know. I don't know. One key would be enough. A. (No answer).

Examined by Mr. Child:

Q. And what run did your husband have in 1924 on the cars? A. Paterson.

Q. And where did he get off at the end of his

run? Where did his run stop? A. Where does it stop?

The Court: The car barn.

A. Up at the car barn.

Q. What car barns? A. In Belleville.

Q. And how far are the car barns from your home? A. Oh, about five minutes ride.

Q. What? A. About five minutes ride.

Q. And how far is the bakery from your home? A. Oh, about ten minutes walk.

Q. I don't—

The Court: The same direction, in the same direction?

Witness: Well, no, the bakery is down; the car barn is up on Washington Avenue.

Q. How long does it take to get from the car barns to your home? There is no car directly to your home, is there? A. No. You come up Washington Avenue and have to walk up one block.

Q. And how many blocks away is the bakery, about? A. Well, I don't know just how many blocks; it is about five or ten minutes walk.

The Court: Is that all?

Q. You said you kept a light, I understand, in your room in 1924. Was that for the purpose of tending to the children? A. Yes, sir.

Q. And how could you tend to the children if they were not in your room in 1924 and were upstairs? A. Well, because I can hear when they call.

The Court: Why would you want a light in your room to tend the children, if the

children were upstairs? That is what he wants to know?

Witness: Well, because I am nervous and I don't like to sleep in the dark so when I got up I would just know where I was going —being in a pitch dark room.

Q. Then it was not for the purpose of tending the children; it was on account of your— A. It certainly was.

Q. —nerves. A. Yes.

The Court: That is all.

By Mr. Lane:

Q. In 1925 you were down there—in 1925, August, were your children sleeping on the lower floor with you? A. In 1925?

Q. Yes, that is what I am talking about. They were then— A. In 1924 they were upstairs.

Q. And they were sleeping with you and you had that night lamp? A. Yes. In fact, I always had one.

Q. Have you always, in your life, had one? A. I always had one.

Q. It is an old custom, isn't it, of some people to have a night light? A. Well, I always have one, even now.

HILDA BURLEY, sworn for defendant.

Direct-examination by Mr. Lane:

Q. Mrs. Burley, you are a relation of Mrs. Cummings? A. Yes, sir; I am a first cousin.

Q. And where do you live? A. 52 Oraton Street.

Q. Do you remember June 27th, 1920? A. Yes, I do.

Q. What occurred then? A. My father had died on June 27th Mr. and Mrs. Cummings came to the house and I—and Mrs. Cummings remained in the living room with my mother, relatives and friends —Mr. Cummings sat in the dining room with the men. Later on, things became so crowded that Mr. Cummings and some of the men were forced to go into the kitchen and Mr. Cummings went with them. Around between one and two o'clock in the morning Mrs. Cummings whispered to me and asked me if I would ask Ownie if he was ready to come home. I went into the kitchen and looked around and I didn't see Mr. Cummings. I think went out on the back porch thinking he might be smoking out there, and he wasn't there. I returned to the kitchen. I said to some of the men folks. "Where is Mr. Cummings?" They said, "He is—" he had gone home at ten o'clock. I came in and told my cousin that her husband had gone home. She acted very much surprised, and I said to her—

The Court: No.

Q. Never mind that now. Did you call on Mrs. Cummings while she was living with her husband? A. Very seldom.

Q. Did you call upon them when Olive was born? A. Yes; I did.

Q. How often did you call? A. Well, I called a couple of times, two or three times, but Mr. Cummings was so discourteous—

Mr. Child: I object.

Q. Don't tell us he was discourteous; tell us what he said or did.

The Court: Yes; let her tell.

A. Pardon me. Shall I tell the story?

The Court: Yes.

Witness: Well, I went there at one time, I remember particularly, and it was only once or twice that Mr. Cummings and I engaged in any conversation at all and it was in the living room of their home and we were discussing coats and I suggested to Mr. Cummings with his money he should buy his wife a fur coat. He looked at me—I said, "You ought to get a good one for about five hundred dollars now.

He looked at me in disgust and said the woman or the coat wasn't made that was worth five hundred dollars.

Q. (By the Court). Did you believe him? A. Did I believe him? I was insulted. I was wearing a fur coat at the time.

Q. Was there any—did you ever hear Mr. Cummings address any remarks to his wife? Did you hear any swearing or anything like that? A. No, I was never present when any swearing occurred.

Q. Were you present when he used any other language towards her that was not swearing? A. Well, I was in his presence when I felt embarrassed for Mrs. Cummings when he said that he—if Olive was older he would take her to Ireland and when he came back she would still be waiting for him.

Mr. Lane: That is all.

The Court: That is all.

Witness: Any questions?

Mr. Child: No questions.

Mr. Lane: Mr. Green.

HARRY T. GREENE, sworn for the defendant.

Direct-eamination by Mr. Lane:

Q. Mr. Greene, what is your business? A. Collector of the Public Service Electric & Gas Company.

Q. Were you employed in August of 1920 as a conductor by the Public Service Railway Company? A. I was on the Broad line in 1920.

Q. Do you know Mr. and Mrs. Cummings? A. I do, sir.

Q. How long have you known Mrs. Cummings? A. I have known Mrs. Cummings since childhood.

Q. And how long have you known Mr. Cummings? A. And Mr. Cummings at least ten years.

Q. In the month of August, 1920, did you see Mrs. Cummings late at night? A. I did.

Q. When? A. I had a night run. I used to go down at 3:02 in the morning and Mrs. Cummings boarded my car at Hinsdale Place and Washington Avenue at 1 o'clock in the morning, which to me was a—(interrupted).

Q. Never mind, never mind. You cannot tell what she said.

The Court: He was not going to say what she said.

Witness: No; I was not going to say what she said. It was the hour which struck me.

The Court: Go on.

Witness: To be out alone at that hour in the morning, so I remember the occasion.

Q. All right. Where did she get off the car? A. She left the car at Broad and Market.

Q. And did she tell you at that time where she was going after? A. I asked her, yes.

Q. Do you know where Murray's saloon is, in reference to Broad and Market Street? A. Yes, sir.

Q. How far is Murray's saloon from Broad and Market? A. Well, I would estimate it at 100 yards.

The Court: That is the old Murray's saloon you are talking about?

Witness: Yes.

Mr. Child: East Market.

Mr. Lane: Yes.

Q. To go to Murray's saloon you get off at that point, don't you? A. Broad and Market, yes, sir.

The Court: That is on Market Street, east of Broad.

Mr. Lane: It was on Market Street, east of Broad, yes, towards the Pennsylvania station.

The Court: Is that the one you mean?

Mr. Lane: That is the one I mean.

The Court: I thought that was out of business a long time.

Mr. Lane: It was not out of business in 1920 I don't think.

The Court: Wasn't it?

Mr. Lane: I don't think so.

Mr. Child: I think—

The Court: Everybody knew where Murray's was; it was a respectable, fine place.

Q. Do you know whether or not Mr. Cummings was employed in Murray's saloon at that time? A.

I don't know positively. I heard he was working there.

Mr. Lane: That is all.

Mr. Child: No cross-examination.

Mr. Lane: I want to recall Mrs. Ward for a moment, with the Court's permission.

CATHERINE WARD, recalled.

Examined by Mr. Lane:

Q. Mrs. Ward, the last question you were asked, when you were on the stand before was, whether you were a friend of Mrs. Cummings. Can you tell me about how many times you have seen Mrs. Cummings in the last year or two? A. About four times.

Mr. Lane: That is all.

The Court: That is all.

Mr. Lane: I offer in evidence, if the Court please, the original record of the case of Sadie Cummings against Owen Cummings.

The Court: File?

Mr. Lane: I am trying to find the file number. I have nothing here to show the docket, but I will supply that. Mr. Fleischman has that among his papers.

The Court: Give the title of the case to Mr. Salmon.

Mr. Lane: It is Sadie Cummings against Owen Cummings.

The Court: All right. You offer the file?

Mr. Lane: I offer the file.

Now, I am through, with this exception: There is one of Mrs. McDermott's brothers

who cannot get here until two o'clock. I would like to reserve the right, when he comes, if he comes, to put him on. He will be a very short witness.

The Court: What will he testify to? What do you expect him to testify to?

Mr. Lane: I have a statement here from him.

The Court: Well, the general character of the abuse, something like that?

Mr. Lane: Where is his statement? Yes, he will testify to a conversation which he had with Cummings in—

The Court: Have you got the statement there? Have you got the statement there?

Mr. Lane: Yes, sir.

The Court: Hand it over to Judge Child, and if necessary he may cross-examine on it. You may examine. Go on.

Mr. Lane: I also want to offer a torn bank book of the Howard Savings Institution. The bank has been subpoenaed to produce that book two o'clock this afternoon. All it knows about it it was torn, and the book is, in fact, torn.

The Court: Admitted?

Mr. Child: I don't think there is any testimony in regard to a torn Howard Savings Bank book.

The Court: Oh, yes; there is.

Mr. Child: I remember the building and loan book.

Mr. Lane: The building and loan book was burned.

Mr. Child: I remember that. I don't recall any testimony of a torn bank book.

I do object to the record of the case of Cummings against Cummings going in, because I fail to see that it is in any way material to this issue, a row over property.

The Court: If it is not, I will disregard it. I don't know what Mr. Lane has in mind. We better have it than want it.

Mr. Child: I have no objection to the witness being recalled. Do you rest?

Mr. Lane: Yes.

Mr. Child: Will your Honor pardon me just a moment? Agnes McDermott.

AGNES McDERMOTT, sworn in rebuttal.

Direct-examination by Mr. Child:

Q. Where do you live, Mrs. McDermott? A. 91 North 3rd Street.

Q. Newark? A. Yes.

Q. And you are a sister of Owen Cummings? A. Yes, sir.

Q. Do you recall going to Mr. Cummings house at number 150 Washington Avenue in company with Mr. Cummings on any date? A. Yes; I do.

Q. And when was that about? A. It was about the middle of July, 1923.

Q. And was Mr. Cummings at that time separated from his wife? A. Yes; he was.

Q. How long had he been separated, about? A. Well, I didn't—about—I don't know how long he was separated, but I know he told me about a week before that.

Q. Yes. And while you were there what, if anything, happened? A. Well, I was—Mrs. Cum-

mings come in and she had a child with her, and after she come in she ordered me out and my brother picked up the child and Mrs. Cummings grabbed the child away. She said that she—she called my brother a miser. She said she wanted to have her brother's children come and stay with her for a while and that he was too—so much the miser that he wouldn't allow her. Then Mrs. Cummings she called my brother an Army bum.

Q. (By the Court.) What? A. An Army bum; she said he wasn't able to make a decent living and had to go in the Army; she said to us his father was a bum before him. It happens my father was a Civil War veteran and Mrs. Cummings—oh, I have a very poor memory.

Mr. Lane: What?

The Court: Just a moment.

Witness: I have a very poor memory.

The Court: Have you got it all written down?

Witness: No; but I have the facts about what happened next. Just a moment. I do remember she said when my brother first came over he had to have a—(interrupted).

The Court: What is all this for anyway?

Mr. Child: I am leading up to—trying to get what happened there at the end of this visit.

Witness: Well, Mrs. Cummings, she said to me, when my brother first came over, that they had to throw him to put shoes on him.

The Court: Throw him down to put shoes on him; is that it?

Witness: Yes. And she said, she called

him a bum and said if he is the only man in the world she wouldn't live with him, and she said she would look for a divorce only it would cost three hundred dollars. She said she had friends that would do such and such on him and that if he was the only man in the world that she wouldn't live with him.

Q. Well, then what happened? A. Well, Mrs. Cummings, she threatened to shoot my brother.

The Court: Well, tell us what she did.

Q. What did she say? A. She said it was a good thing she left and went home to her mother or she would have shot him, but she said she intended to shoot him anyhow, and then Mrs. Cummings became very loud and I do remember there was two women on one side of the house and they were listening and my brother closed down the windows in the dining room and Mrs. Cummings opened the windows up again; she said she didn't care anything about the neighbors, and then Mrs. Cummings she went in the dining room and she kicked through the plate glass china closet and she cut her leg on it. She then went to the front and there was a hundred pieces of dishes lying about the floor.

The Court: What?

Witness: She went in the front room, the living room, and there was a set of dishes that lay on the table and she smashed the dishes on the ground—on the floor; she smashed the dishes and broke the—

The Court: Threw them on the floor, you mean?

Witness: Yes; she turned the chair over and broke the whole set of dishes, a hundred piece set. Then she threatened to break the window at the front and my brother stopped her.

Q. What? A. My brother stopped her.

The Court: What did he do?

Witness: She threatened to break the window.

The Court: What did he do?

Witness: Well, he told her that she couldn't do it—he just stopped her, that is all. He told her not to break the windows. So then she left and she returned about—oh, about five or ten minutes later and she had her mother, Mrs. McDermott with her, and Mrs. Cummings she came in and she tore a piece of muslin and bandaged her leg where she was all cut from kicking the china closet.

The Court: What?

Witness: She bandaged her leg where it was cut from previously kicking through the china closet.

The Court: Who bandaged her leg?

Witness: Herself, Mrs. Cummings, herself. And Mrs. McDermott said she—she said, "Sadie," she said, "you shouldn't have done this"; she meant breaking the dishes, she said, "That isn't going to help things any." And then Mrs. McDermott offered to replace the dishes that her daughter had broken.

Q. How many dishes were broken? Was it a

large set or only two or three? A. Well, it was a large set. It is a set that usually goes in a china closet, I should think, about a hundred piece set.

Q. (By the Court.) How many had she broken? A. They were all crashed, every piece in the set. There may have been one or two pieces that were not broken, but to me they seemed all smashed.

Q. After she came back with her mother, later in the day, then what happened? A. Well, she come in and she tore a piece of muslin—

Q. No. You told me that. What else happened, after she bandaged her leg up, if anything? A. Well, I—No, I don't imagine it happened after that. Only what her mother—how her mother offered to replace the dishes. I don't remember Mrs. Cummings, nothing after that.

The Court: Nothing after that?

Witness: No.

Q. Did she go out or you go out or what happened? A. No. I remained there. Mrs. Cummings left with her mother a little while after, but I remained there.

Q. And where did Mr. Cummings go? A. Mr. Cummings remained there.

Q. Did Mr. Cummings use any bad language at that time? A. No, sir, that I—I didn't hear any.

Q. Well, you were there. A. Yes; I was there.

The Court: And you understand bad language.

Witness: Yes, if I hear it I know it.

Q. And what sort of language did Mrs. Cummings use, if any, during the time she was kicking in the china closet and doing these things? A. Well—

Q. Did she use any language, bad language, if you recall? A. (Witness pauses). Well, I can't recall, I know she was using "bum" and such as that.

The Court: She was not saying her prayers.

Witness: No; she was not saying her prayers.

Q. Were you present at any other time on any other occasion when there was any altercation or trouble between these parties? A. No, sir.

Q. Did you used to visit the house at 66 Hinsdale Place? A. Yes; I was there at one time.

Q. Did you—how frequently would you visit these people when they were living together. A. Well, I think that is the only time, once at Hinsdale Place and one time at 114 Washington Avenue, I went there; I went there accidentally and a couple of weeks before I went there, the time I testified about, and at that time I didn't know there was any trouble, and my brother come to my house about a week or ten days later and he was telling me about the condition—

Q. I don't care about that. A. Well, his—(interrupted).

Q. Did you see Mrs. Cummings at the time you went there, two weeks before the— A. No.

Q. —trouble? A. No. I asked my brother, I said, "Where is Sadie—"

Q. Well, never mind about that. A. I didn't see Mrs. Cummings.

Cross-examination by Mr. Lane:

Q. How did you come to be at the house at that

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time? A. Well, I went—about two weeks before that I went to my brother's, I went to see him on business at 114 Washington Avenue; I found the place all upset and I asked my brother, I said, "Where is Sadie?" And he said, "She is home with her mother," and at that time he didn't tell me why, I didn't know, but he told me about a week or ten days later and he told me about speaking about the condition of the house being upset and I told him I would come up and help him place the furniture and do some cleaning, and at the time Mrs. Cummings come in I was helping him clean the windows to the front.

Q. At the time Mrs. Cummings came in—(interrupted). A. Yes. She had herself and her child.

Q. What? A. Herself and her child came in.

Q. Yes. A. I was helping—

Q. At that time you were packing up the china weren't you? A. No, sir.

Q. Cleaning windows? A. Yes, sir; my brother and myself.

Q. How long had you been there? A. Well, I was there about ten minutes before Mrs. Cummings came in.

Q. Only ten minutes? A. About that.

Q. What was Cummings doing? A. Cummings was helping me clean the windows, too.

Q. And that is all you had done is clean the windows? A. At that time. We did later intend to place some furniture.

Q. Intended to pack furniture? A. Positively place the furniture. We couldn't pack the furniture.

Q. Well, pack the dishes. A. But that is not—

Q. Well, what were you going to do? A. I just told you. Just what I told you.

The Court: You intended—you said later you intended to pack them?

Witness: To place the furniture, to do some cleaning, to do some cleaning and placing the furniture. The living room set was in the dining room, I think; we intended placing the furniture.

The Court: You mean setting the house to order?

Witness: Yes, sir; placing it.

Q. And that is all you intended to do then? A. Yes, yes.

Q. Now, you say Mrs. Cummings left with her child and came back in five minutes? A. Well, it might be five or ten minutes; it might be ten for all I know.

Q. Well, did you know where her mother lived? A. No, no, I didn't know anything about where her mother lived, where her mother lived.

Q. But, at any rate, it was a short period of time she was away and she came back with her mother? A. I understand they were going downtown and my brother had went to the front and Mrs. Cummings got off the trolley and when she seen me to the front and I guess that is what attracted her attention, seeing me cleaning the windows she came in, and her mother was up at the corner waiting for her, so she had only to leave—not half a block to go get her mother. Her mother was up at the corner.

Q. Who told you all that? A. Her mother, her mother came in when she came in.

Q. What did her mother tell you? A. Her mother said she was up at the corner and Mrs. Cummings went up and got her.

Q. Was there any smashing of dishes then? A. Well, the smashing was already done.

Q. How did Mrs. Cummings behave when she came back with her mother? A. Mrs. Cummings, when she came in, she tore some muslin and bandaged her leg; her leg was all cut from where she kicked through the china closet.

Q. What did Mr. Cummings say during all of this time? A. What time? You mean afterwards?

Q. When this china closet was being smashed and so forth. A. Why, it happened just like that. We were talking and she went right to the china closet and kicked through it.

Q. What were you talking about? A. Well, I just said it was right after the—Mrs. Cummings closing down the windows in the dining room. She just walked, just as I walk here and kick through something, and then she went from the dining room to the front room and smashed the dishes. It sounded as though an earthquake in the crash of the dishes.

Q. What preceded it? I want to know what you were talking about there. A. I just told you.

Q. You haven't told me anything about what anybody said. A. What anybody said?

Q. Yes. A. Well, I told her—it happened another—(interrupted).

Q. I don't want anything that happened. I want to know what you said, when you were talking there, and then she went and smashed the dishes. What were you talking about? A. I said

there was two ladies on one side of the house listening and the windows were open—

The Court: He wants to know what you were talking about.

Witness: I wasn't talking about anything.

The Court: What were they talking about?

Witness: Well, I know it was about the shooting and about the dishes; it was just that remark that was going on. Mrs. Cummings said it was a good thing she left or she would shoot her husband and she said she intended to shoot him anyhow, and then there was no more conversation; she just went like that and went and kicked through the glass, the china closet.

Q. Did she just walk in your house and say, "I was going to shoot you"? A. No.

Q. What were you talking about when she came in there? A. She ordered me out.

Q. What did she say, when she ordered you out? A. She told me to go out and wanted to know what brought me to her home.

Q. Yes, and what did you say? A. I said I wouldn't.

Q. What, you wouldn't? A. I said, no, it was my brother's home.

Q. It was your brother's home, not her home, no question about that. What else did you say when she ordered you out of the house and you said you wouldn't go? A. Not a thing?

Q. What did she say, when you said you wouldn't go out of her home? A. Well, she—that she—Then it happened about the child, my brother picked up the child, next.

Q. What did your brother say when you said you wouldn't go out of that house? A. My brother didn't say a thing. Mrs. Cummings come in all excited and angry.

Q. Yes. Well, you were in her home, weren't you? A. Yes, sure.

Q. And she wanted you to go away, didn't she? A. Well—

Q. She said so? A. She told me she wanted to know what brought me there.

Q. Yes. And you said you wouldn't go. A. Well, my brother—

Q. You did, didn't you? A. —was coming home later in the day and I was waiting for him, and —(interrupted).

The Court: Answer Mr. Lane's question.

Q. You said you wouldn't go, didn't you? A. Well—

Q. Didn't you? A. I—I don't know exactly what I did say. I think I said, no, that I wouldn't; I was waiting for my brother.

Q. All right. Why didn't you go out of her house? A. Well, because I was waiting for my brother.

Q. Did you tell her that? A. I just can't recall now what—(interrupted).

Q. And your brother stood there all during that time when you were talking there saying nothing? A. No; she just rushed in. There was no talking about it. Just as I explained it, that was all there was to it.

Q. Now, your brother closed down the windows, did he? A. Yes, sir.

Q. What did he say when you closed them down? A. He said that the neighbors were out listening,

and there was two women on the right hand side of the house; there was a—it seemed to be a lot on one side; I think it is the right hand side, and he said the neighbors were out listening and she said she didn't care nothing about the neighbors.

Q. Yes. And she opened the window so the neighbors could hear, didn't she? A. She opened the windows, she opened the windows again.

Q. Did you know who the neighbors were? A. No, sir; I do not.

Q. Now, after she went out and came back with her mother, what occurred then? A. Mrs. Cummings come in and she tore some muslin and bandaged her leg.

Q. What was said when they came in and she brought her mother back? A. Well, there was said—Mrs. McDermott said it; she said, "Sadie," she said, "you shouldn't have done that," she said, "this is not going to help things any." And Mrs. McDermott offered to buy—replace the dishes. She said she would buy the best set of dishes in the house that were broken.

Q. And then what was said? A. Nothing else. My brother had a newspaper or magazine, I don't know which, and he continued reading.

Q. And he was reading a paper? A. He kept on reading, anyway.

Q. He was reading the newspaper? A. I am not positive, but it was a newspaper or magazine; he was reading something.

Q. He was reading something when Mrs. Cummings and Mrs. McDermott came in and he didn't stop his reading, is that right, while they were there? A. Mrs. McDermott kept on talking and I don't know, there was nothing much after that, only he kept on reading.

Q. I want to know what they said. Why did Mrs. McDermott come back? Wasn't there some explanation as to why she should be brought back? A. I don't know why she came back.

Q. Wasn't there something said? A. I told you what happened.

Q. Wasn't there something said? A. Something said? She offered to buy the dishes.

Q. That was all that was said? A. That was all I remember.

Q. Your brother didn't say a word? A. Well, maybe he did, but I can't recall, but I know she offered to pay for the dishes.

Q. You were there, right there. A. I know there was no remark right there; I can't recall anything.

Q. Were you invited again to go? A. Again?

Q. Were you told again to get out? When Mrs. Cummings and Mrs. McDermott came, did they tell you to go? A. Positively no, positively no. Mrs. McDermott acted very nice and was very sociable to me.

Q. Nothing was said? A. No, not that I can recall.

Q. Nothing was said by Mrs. McDermott? A. No.

Q. Or Mrs. Cummings didn't say anything about your going? A. No, sir.

Q. What did she say or do when she came back the second time? A. Well, she said nothing, but bandaged her leg.

Q. Didn't say anything? A. Nothing to me.

Q. That is all? A. She bandaged her leg.

Mr. Child: John Smith.

JOHN F. SMITH, sworn for the complainant.

Direct-examination by Mr. Child:

Q. Mr. Smith, where do you live? A. I live at 235 Washington Avenue.

Q. Belleville? A. Newark.

Q. And what is your business? A. Baker business.

Q. And are you acquainted with Mrs. Cummings? A. I am.

Q. Do you know Mr. Cummings? A. I do.

Q. How long have you known Mr. and Mrs. Cummings? A. Well, I can't recall that, how long I do not know, but Mrs. Cummings—

Q. Did you and Mrs. Cummings work at the A. & P. Bakery in 1924? A. I did.

Q. Are you acquainted with Harold Young? A. I am.

Q. When did you become acquainted with Harold Young? A. Well, when he come to work there in the A. & P.

Q. Eh? A. When he come to work there in the A. & P.

Q. Do you know whether Harold Young—where Harold Young met Mrs. Cummings, first became acquainted with her? A. No; I do not.

Q. Did they become acquainted while they were working at the A. & P. together? A. I don't know.

Q. You don't know? A. No, sir.

Q. You know Harold Young? A. I do.

Q. Did you ever see Mrs. Cummings and Harold Young together? A. Yes; I did.

Q. How many times? A. Twice.

The Court: Are you opening your main case again?

Mr. Child: Sir?

The Court: Are you opening your main case again?

Mr. Child: This is rebuttal.

The Court: Then get to it.

Mr. Child: I am going to, sir.

Q. Where did you see them? A. Why, opposite the Globe Restaurant on Broad Street.

Q. Who was with them? A. Just the two.

Q. When was it? A. Eleven thirty.

Q. But day or night? A. Why—

The Court: How is this rebuttal?

Mr. Child: Mrs. Cummings and Young have denied broadly ever having been together and it is to rebut that testimony. They didn't take the ordinary course of admitting being together sometimes, but they deny ever having been alone together and I think this is proper rebuttal.

Mr. Lane: They don't deny ever being alone together—they say—Mr. Young definitely testified that he accidentally met Mrs. Cummings on trolley cars, but that they never had an appointment to be together and if they were together alone, it was by accident. This does not rebut that.

The Court: I don't understand that to have been the force of the testimony. I understood him to say he had never been out with Mrs. Cummings alone, that is, other than with his mother.

Mr. Lane: Yes. He did on examination he said he might have been on a trolley car with her and she was there alone.

The Court: I will let it in.

Q. Eleven thirty at night? A. Yes, sir.

Q. Do you remember what time of the year it was? A. Well, no. I think it was in the winter time.

Q. And did you observe where they went at that time? A. No, I left—my friend has an office in the Broad Street Theater and I left him—

The Court: No, no.

Q. No. But how long were they there together? A. I passed them right at that church there.

Q. What church? A. The church right on Broad Street here opposite the Globe Restaurant. Well, Hahne & Company is right on the opposite side.

The Court: At the entrance of the park?

Witness: Yes, yes, sir.

The Court: Is that Park Place?

Witness: Well, the church is right in the park.

The Court: Yes.

Q. How long did you observe them—

The Court: Military Park?

Mr. Child: Military Park, yes, sir.

Q. How long did you observe them together that night?

The Court: Just passed them.

A. Just passed them.

Q. I see. Did you see them on any other occasion?

The Court: Which way were they going when you passed them?

Witness: They were going north and I

was going south.

The Court: They were walking?

Witness: Yes, sir.

Q. When did you next see—

The Court: Mr. Lane admitted they were in a trolley car. I was wondering whether this man saw them in a trolley car.

Q. Where did you next see them? A. At Riviera Park on Sunday afternoon.

Q. Can you fix the date? A. I can't recall the date.

Q. Can you recall the approximate time of the year? A. It was in the summer time around five, around five o'clock; they were just raising the balloon—they have a balloon ascension—I was sitting on my friend's—(interrupted).

The Court: Never mind that.

Q. Never mind where you were. Now, who was with them at that time, anyhow? A. Why, the two of them and her little girl.

Q. No others? A. No, sir.

Q. Where were they, inside the park? A. Yes, sir.

Q. How long a time did you observe them inside the park? A. Well, she noticed me and then the both of them went back.

Q. What do you mean she noticed you? A. Well, she noticed me sitting on this here porch and when she noticed me, why, the two of them just—and the child—walked away.

Q. Did you see where they went? A. No, sir.

The Court: Is that all?

Mr. Child: Just one question.

Q. You are related to Mrs. Cummings? A. She is my first cousin.

Cross-examination by Mr. Lane:

Q. What is your business now? A. My business is bakery.

Q. Are you working now? A. Yes, sir.

Q. And how long have you been working? A. I have been working right along.

Q. You were confined to a hospital, weren't you, at one time? A. Eh?

Q. You were confined to a hospital, weren't you? A. Yes, sir.

Q. Newark City Hospital? A. I was.

Q. Do you know for what? A. Yes, sir.

Q. What? A. A nervous breakdown.

Q. Observation as to sanity, wasn't it? A. No.

Q. Sure of that? A. Uh huh.

Q. When was it?

Mr. Child: I object to this unless it is shown that this man was insane.

The Court: The objection is overruled.

Q. When was it you were in the Newark Hospital? A. I can't recall.

Q. You can't recall? A. The date, no, sir.

Q. Can you recall about when it was? A. No; I cannot.

Q. You cannot. Can you give us the year? A. Well, around 1917. I ain't sure.

Q. Sure it was not since then? A. No.

Q. Do you know—have you any recollection as to when it was? A. I just told you.

Q. You think it was 1917? A. Uh huh

Q. Do you know when it was? A. Nine years ago.

Q. When?

The Court: Nine years ago.

Witness: Yes, sir.

Q. Can you tell me what year it was that you saw these people at the two places you say you saw them? A. No; I cannot.

Q. Can't even give us the year? A. Well, it was 1925.

Q. Why do you say that now? A. Because I have been out of the A. & P. now just a year—well, it is over a year—and at that time Mrs. Cummings was working there the same time I was.

Q. At the time you saw them Mrs. Cummings was still working at the A. & P. is that right? A. No; I can't say that if she was working there at the time.

Q. Then I don't know how you fix the date. That is the way by which you fix the date.

The Court: Fix the year.

Witness: Fix the year.

Q. Do you know when Mrs. Cummings left work at the A. & P.? A. No; I can't recall it.

Q. And do you know when Young left work at the A. & P.? A. Yes; I do.

Q. When? A. He left the A. & P. a short while after—well, I can't recall the date he left.

The Court: The year, the year.

Witness: The year. Well, it was 1925, I think.

Q. Do you know the month? A. No, I do not.

Q. Do you know the month you saw these people at, I think you said, somewhere near the Globe Building?

The Court: Near the church.

Witness: Near the church.

Q. Oh, the Globe Restaurant near the church, coming—that you pass if you are going from Park Place station of the Hudson & Manhattan tubes, that church there? A. Yes, sir.

Q. Can you tell me the month that was in? A. I can't recall.

Q. Summer time or winter time? A. I don't just remember.

Q. Day of the week or of the month? A. I didn't specify no time.

The Court: Day or night?

Witness: It was night; it was 11:30 at night.

Q. How have you carried that 11:30 at night around with you without the day of the month or the day of the week. A. Why, I had left my friend's office and he told me the time before I left.

Q. So that— A. I was just going by—going down to Petty's.

Q. Were you—

The Court: Where were you going?

Witness: It was to Petty's Drug store.

The Court: In the Prudential Building?

Witness: No—yes; yes, Petty's was there at the time.

Q. Are you sure Petty's was there at the time? A. I think they were.

Q. And the way you remember the hour is that your friend told you? A. Yes.

Q. Before you went. Anybody with you? A. No, sir.

Q. Which way were they coming, apparently, toward the Tube or away from the Tube? A. They were going north on Broad.

Q. Is that—oh, they were just on Broad Street? A. Going north and I was going south.

Q. And you couldn't tell whether they had come from the Tube or not? A. Well, I wasn't interested.

Q. I say, you couldn't tell? A. No.

Q. And other people on the street? A. No; not at that time.

Q. Street vacant, nobody on the street there except you? A. Oh, sure; there were plenty of people on the street, on Broad Street.

Q. That is what I am trying to get at; there were other people near them, weren't there? A. I suppose so.

Q. Well, don't you know? What I want to get at is, how can you say they were alone? That is what I want to get at. A. I passed them.

Q. Yes, I know you passed them, but there are other people that you passed too, weren't there? A. Certainly.

Q. Well, you say there were a party of four or six? A. Not at this time, no.

Q. What do you mean "not at this time"? A. When I passed them there was just the three of us passing together.

Q. Wasn't there somebody behind them or somebody in front of them whom you did not recognize or did not see, that is, to make any impression on your mind? A. Possibly.

Q. That might be, might it not? A. Yes, sir.

Q. Yes. What were your hours when you were working at that time? A. What do you mean?

Q. What were your hours of work? What hours of the day did you work? A. I worked at night.

Q. From what hour to what hour? A. From half past one to ten o'clock.

Q. (By the Court.) In the bakery? A. Yes, sir; Saturday night I am off.

Q. From half past one in the afternoon until ten o'clock at night, or from half past one in the morning until ten o'clock— A. No.

Q. —the next morning? A. Yes, sir.

Q. When you were at Riviera Park were you alone? A. No, sir.

Q. Who was with you? A. One of my friends; two or three of us.

Q. Was the Park crowded? A. Yes; the Park was.

Q. Will you tell me what month of the year that was? A. That was in the summer time.

Q. Tell me what year it was. A. 1925.

Q. How do you fix that? A. Well, how I recall that, there was no balloon ascension at Riviera Park last year.

The Court: What?

Witness: Or, last season.

The Court: What?

Witness: You see, last year—(interrupted)

Q. Tell me again; I didn't get it. A. I say, there was no balloon ascension at Riviera Park last year.

Q. And that was the year that you saw it? A. Yes, sir.

The Court: You mean in 1926, this year, this summer, there was no balloon ascension?

Witness: Yes. Yes, sir, your Honor.

Q. Well, there was a balloon ascension in 1925 and there was a balloon ascension in 1924, wasn't there, or don't you remember? A. I don't remember.

Q. You don't know what day of the week that was? A. That was on a Sunday.

Q. On a Sunday? A. Yes, sir.

Q. At what hour? A. Well, it must have been about half past four, five o'clock.

Q. And how far away were you from Mrs. Cummings and Harold Young when you saw them? A. Well, about fifteen feet.

Q. And where were they? A. They just walked down, I suppose, to see the balloon go up, to see the balloon ascension.

Q. And there were a lot of other people walking down? A. Yes, sure.

Q. At the same time? A. Sure.

Q. A crowd? A. Certainly.

Redirect-examination by Mr. Child:

Q. You know Mr. and Mrs. Young?

The Court: The parents?

Mr. Child: The parents.

A. No, sir.

Examined by the Court:

Q. Do you think that the night you saw them on

Broad Street Mrs. Cummings was still working at the A. & P? A. Well, I am not sure of that, your Honor, if she was not or she was; I am not sure.

Q. Well, you were working there at the time. A. Yes; I was.

Q. Do you know how long before the time that you saw them on Broad Street she had been working there? A. No, I can't—

Q. Whether it was a year before or the same year? A. Well, the same year—she was working there the same year.

Q. The same year that you saw them on Broad Street, eh? A. That she was working in the A. & P.?

Q. Yes. A. Well, I can't recall that if she was or was not; I can't remember.

Q. Was Young working there at that time? A. What say?

Q. Was Young working there at that time? A. No; he was not.

Q. You can't tell me what time of the year it was that you saw them on Broad Street? A. What time? It was eleven thirty.

Q. Of the year? A. No; I cannot.

Q. Winter or summer. A. No; I cannot; I don't just remember whether it was summer time or in the winter.

Q. You don't know whether you had an overcoat or hadn't any? A. Well, I didn't—

Q. How were they dressed? A. Well, Miss Cummings had her brown coat on.

Q. Winter coat, summer coat? A. Well, I don't know summer or winter; I just passed them by and just recognized Mrs. Cummings.

The Court: All right.

Helen Donohue—Rebuttal—Direct.

Examined by Mr. Child:

Q. Did you recognize Young?

The Court: Oh, yes, he said he did. Go on.

Mr. Child: Mrs. Helen Donohue.

HELEN DONOHUE, sworn for the complainant.

Direct-examination by Mr. Child:

Q. Are you acquainted with Mrs. Cummings, Mrs. Donohue? A. I am.

Q. And with Mr. Cummings? A. I am.

Q. And are you acquainted with Mr. Harold Young? A. No, sir; I don't know the gentleman.

Q. Do you know him by sight? A. No, sir; I don't know the gentleman.

Q. Never have seen him? A. I saw him here yesterday for the first.

Q. Before that you never saw him? A. No, sir.

Mr. Child: All right. That is all.

The Court: That is all.

Mr. Child: Dr. Snively in court?

CHARLES L. SNIVELY, sworn for the complainant.

Direct-examination by Mr. Child:

Q. Dr. Snively, what is your profession? A. Dentist.

Q. And where do you practice your profession? A. 486 Broad Street.

Q. Newark? A. Yes, sir.

Q. And how long have you been in practice? A. Twenty one years.

Q. And in Newark how long? A. Fifteen years.

Q. How long has your office been at 486 Broad Street? A. Eleven years.

Q. Where is 486 Broad Street with reference to the Public Library? A. It is diagonally across the street.

Q. Are you acquainted with Owen Cummings? A. Yes, sir.

Q. Is he a patient of yours? A. Yes, sir.

Q. Do you know his wife? A. No, sir.

Q. Do you know her by sight? A. No, sir.

Q. You don't know her by sight? A. No, sir.

Q. Do you remember seeing a man and woman at the Library in Newark and having Mr. Cummings call your attention to them? A. I saw Mr. Cummings over at the Library; I walked over to the Library and saw Mr. Cummings.

Q. Yes. A. At the Library stooped over talking to a little girl and I saw a lady standing there.

Q. Have you ever seen that lady since? A. Well, not to be positive; I won't be positive I ever saw the lady. That might be the lady there, but I am not positive. I saw a lady standing there and I saw a little girl.

Q. With the little girl? A. With the little girl.

Q. Did you see any man other than Mr. Cummings? A. No man.

Q. Just a moment. Did you see any man other than Mr. Cummings meet that lady? A. Yes, sir.

Q. I ask you to look around the court room and see if you—

The Court: No.

Mr. Child: Mr. Young, stand up.

Witness: I see him.

Q. Is that the man? A. Yes, sir.

Q. What did you see transpire between the woman that you saw with Olive Cummings, or at that point, with Cummings and Olive, with reference to Mr. Young, if anything?

Mr. Lane: I object to this on the ground it is not redirect.

The Court: He—

Mr. Lane: It is not rebuttal.

The Court: —saw them together. That is about as far as you can go.

Mr. Child: Young and both of them deny ever having been together.

The Court: Well, you have proved that they were together.

Mr. Child: I am going to prove further, if your Honor will permit me, to connect up this story of what happened that night.

The Court: What night?

Mr. Child: The night at the Library. I haven't brought them together yet.

The Court: This man said that he saw them together there.

Mr. Child: Not at the Library.

Witness: I didn't see them together at the Library. I didn't say that.

The Court: This is another time you are talking about now. Are you going into another act?

Mr. Child: I am talking about the same time.

The Court: Ask your direct question then.

Q. Did you afterwards see Mr. Young with a woman—

The Court: Assuming this man to be Mr. Young.

Q. (Continuing.) If he is Mr. Young, did you see this man with the woman whom you saw with little Olive Cummings at the Library? A. Yes, sir.

Q. Together? A. Yes.

Q. Where? A. I walked from the Library across by the flag pole and saw the gentleman standing there and walked over to the corner in a confectionery store, purchased a package of cigarettes, come down, walked down about seventy-five feet on Broad Street, stood there waiting for a jitney bus; the man walked across Broad Street and down Broad Street on the left side, shortly afterwards, about five minutes, the lady with the child that I saw at the Library, come across the street and walked down Broad Street and was—just before you get to the part where the Reo Automobile store was, they joined and walked down the street.

Q. Which way? A. South on Broad.

Q. What time of night was this? A. This was about eight o'clock or a few minutes before eight.

Q. And did you see them after that at any other time? A. I didn't see them. I saw the man once after that.

Q. Where? A. Right opposite my office on Broad Street, where the Durant Automobile store was.

Q. Did you see the lady—that is, had you seen her previously? A. No?

Q. That night? A. Did not.

Cross-examination by Mr. Lane:

Q. When was this? A. This was in 1925, this past summer, one year ago.

Q. Yes. About when? A. In June.

Q. That you saw them at the Library? A. That I saw the lady and the child at the Library.

Q. Yes; that is what I am trying to get at. A. Yes.

Q. It was in June, 1925? A. Yes.

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

Q. Had you ever seen Young before? A. No, sir; not till that night.

Q. Have you ever seen him since? A. Yes; I saw him after that, about two weeks after and I remember him being the same man.

Q. Have you ever seen him since then? A. Yes; I saw him yesterday.

Q. Have you ever seen him before—had you seen him before? A. Before.

Q. Were those the three occasions on which you saw him? A. Never saw him until I saw him yesterday.

Q. You saw Mrs. Cummings? A. No; I don't know Mrs. Cummings. I saw the lady, but I don't know it was Mrs. Cummings. I didn't know it was Mrs. Cummings until Mr. Cummings told me it was Mrs. Cummings.

Q. I am not talking about that. Did you recognize the lady you saw now? A. And I saw at the Library, I said no.

Q. I am wondering how you recognized the man

and not the lady. A. I had a better look at the man and not the lady.

Q. That is your explanation? A. Yes, sir.

Q. You didn't recognize— A. I saw the man about, I had about three or four looks at him, good looks.

Q. You didn't recognize—you can't recognize the lady now although you saw Cummings talking to the lady? A. Cummings wasn't talking to the lady; he was talking to the child.

Q. Well, the child. How far away was the lady? A. The lady, about six feet, when I was standing there.

Q. How long did you stand there? A. About five minutes.

Q. And the lady stood within six feet of you? A. Yes, sir.

Q. And Mr. Cummings had to direct your attention to the fact that the lady was his wife? A. No, sir; he did not.

Q. How did he indicate to you it was his wife? A. Afterwards I asked him if that was the child's mother and he said "Yes".

Q. So you observed her closely enough to become curious enough to ask him whether it was the child's mother. A. Certainly I asked him whether it was the child's mother.

Q. And you can't recognize that woman now? A. No. Because women dress different, their clothing is different.

Q. How did you happen to be there at that time on the street? A. At that time Mr. Cummings was in my office and I treated a tooth for him and he told me where he was going and I—he said, "I am going over to take a look at the child," and that is the reason I went over there.

Q. I see. Did the woman speak to Cummings? A. I didn't see her speak to him.

Q. Did she speak to you? A. Why should she?

Q. Did she? A. No; she didn't know me.

Q. How long did you—Did the lady take the child and go away? A. Not while I was standing there, no.

Q. You went away? A. I went away, yes.

Q. Where did you go, where were you heading for? A. I crossed the street right by the flag pole and went over to the confectionery store at the corner.

Q. And how long did you stay in there? A. Stayed long enough to get a pack of cigarettes.

Q. Have you seen the man up to that time? A. Yes; I passed him standing at the flag pole.

Q. How far was that from the point where Cummings was? A. About seventy-five feet.

Q. And what time of the day was this? A. This was just before eight o'clock in the evening.

Q. In the summer time? A. Yes.

Mr. Child: That is eight o'clock daylight saving, isn't it?

Witness: Yes, sir.

Q. You went on past the man into the cigar store? A. Yes, sir.

Q. Or into the confectionery store? A. Passed the man and went over to the confectionery store.

Q. Then what did you do? A. Then I came out of the confectionery store and walked down Broad Street to wait for a jitney bus, and the man came directly across and went down Broad Street.

Q. What do you mean, "went down Broad Street", south on Broad? A. South on Broad.

Q. And where was the lady? A. The lady came across the street just a few seconds, minutes after that and went down Broad Street.

Q. And is that the last you saw of them? A. That is the last I saw of them.

Examined by the Court:

Q. Walked out together? A. Yes, sir.

Q. Why were you interested in seeing the child? A. Just because he had told me about meeting the child there at the Library and I said, "I want to go over and see your child."

Q. Why were you interested in the child? A. Nothing, other than I wanted to see it, that is all.

Q. Well, why? A. Just for curiosity more than anything else.

Q. Why the curiosity? A. I wanted to see the child. I am very much interested in children; I like to see children.

Q. Why were you interested in Cummings' child? A. Because he is a friend of mine.

Q. Not only a patient? A. He has been a friend of mine on—for twelve years, Mr. Cummings.

Q. He is not only a patient? A. No. Personal friend, yes.

Examined by Mr. Lane:

Q. When did you tell Cummings that you had seen them together? A. When did I tell him?

Q. Yes. A. About two or three days afterward I met him and told him.

Q. How long—were there many people on Broad Street? A. Many people on Broad Street?

Q. Yes. A. There is not so many either on Broad Street at night, that time of night, that part of Broad Street, no.

Q. Was it before the theater crowds or after they were in? A. Before the theater—before the theater people got in.

Q. I thought it was about eight o'clock. A. Just about eight o'clock.

Q. Well. A. There is no theater up at that part of Broad Street.

Q. (By the Court.) A good many people out at that hour, though, aren't there? A. Not very, no, sir. I have been there eleven years and there is never any crowd there—unless—never much of a crowd there at night on Broad Street, down on that side of the street especially.

Q. Which side? A. Left side going south.

Q. That is the side of the Washington Restaurant, the side that the Washington Restaurant is on? A. No, sir; the other side.

Q. It is the side the Broad Street theater is on? A. Yes, sir.

Q. Well, there is a theater there then, isn't there? A. Yes, sir; but that is not open in the summer time.

Q. Sure of that? A. Well—

Q. At the time this thing happened in June? A. It wasn't open then. The Broad Theater is not open in the summer.

The Court: That was right near the Tube station?

Witness: No; it is up further, your Honor; it is up towards Bridge Street.

(Discussion.)

Q. And on the left hand side of the street going south there are a great many small stores, aren't there, a great many small stores? A. Yes.

Q. There are a great many small stores on the left hand side, between the Public Library—(interrupted). A. No; there are not.

Q. There are not? A. No, sir; there are not.

Q. Well, what is there? A. What is there? There is a stationery store, Carl Bush; then there is a sewing machine place and then there is two or three automobile store rooms and the Cadillac and there is a radio store.

Q. You are talking about the right hand side. A. I am talking about the left hand side. The right hand side would be the park, on Broad Street going south.

Q. You are right. I was talking about going north. A. Of course, I am.

Q. On the left hand side going south—

The Court: East.

Mr. Lane: No; it is going south.

Witness: It is going south, your Honor.

The Court: That would be east on Broad Street.

Mr. Lane: There are some big automobile places.

The Court: That would be on the east side of Broad Street?

Mr. Lane: That is right, east side of Broad Street.

The Court: If you are going south.

Q. How far was this man, whom you now identify as Young, from you when you saw him on Broad Street? How far away was he from you? A. He come right across Broad Street from where he was standing, right across to Broad Street, only passed and walked on to Broad Street about may-

be five or six feet, come almost face to face, coming across the street, I know.

Q. How far was Mrs. Cummings and Olive when she came across Broad Street? A. They were a little further down than he was—that he was, where he came across Broad Street.

Q. Then you stood there and watched them? A. I stood there and watched for the bus to come.

Q. You watched them? A. Yes; I watched them until the bus came, sure.

Q. How long before Mrs. Cummings was it, that Young came over—how long before Mrs. Cumcings came over was it that Young came over? A. Young came over before Mrs. Cummings—

Q. But— A. The man came over before Mrs. Cummings.

Q. I know, but how long? A. About five minutes.

Q. About five minutes. Are you sure of that? A. I wouldn't say positively.

Q. And he started to walk down Broad Street? A. They did.

Q. And he started to walk down Broad Street? A. No. She came over about the length of time it would take her to walk from the Library to the flag pole. He was just ahead of her about maybe just seventy-five feet when he crossed over, he just got across the street when she would be at about the flag pole.

Q. What happened We have got them on Broad Street, one ahead of the other.

Q. She just come over and met him and they went down Broad Street.

Q. Did he stop and wait for her or did he keep on walking? You have not told us anything about it. A. He walked very slow.

Q. He walked slow and she hurried after him; is that it? A. No; she didn't hurry after him. He walked slow and she walked faster than he did to catch up with him to get up there where he was.

Q. Then I suppose you lost sight of them right away? A. No; I didn't lose sight. The bus came along and I got on the bus. I lost sight of them then, of course.

Q. How long after that was it you saw this same man? A. About two weeks, I should say.

Q. Then where did you see him? A. Right directly across from my office.

Q. How did you happen to notice him then? A. I passed there and I saw him standing there and I recognized him as the same man I had seen.

Q. Do you know what time of the day that was? A. Yes; I do. That was between seven and eight o'clock.

Q. Did you tell Cummings about that? A. I did, about—about three or four days after I told him.

Q. Did you see Cummings that night? A. I did not.

Q. Did Cummings ask you to watch for this—A. He didn't, never.

Q. You did it voluntarily? A. I am not a detective; no, sir, I didn't do it voluntarily. It is a coincidence.

Q. Just a coincidence that you happened to see him at this time? A. At this time, yes.

Redirect-examination by Mr. Child:

Q. Just a moment. While you were looking over towards the Library, did you see any unusual action on the part of the woman who was with the

child? A. While I was standing there, I was looking across the street and I saw the man standing by the flag pole. I see the man kept going this way. It was natural to be curious; I didn't know whether they meant me or who he was motioning to. There weren't many people around there.

Q. What did the woman do? A. I seen the woman do this (indicating); point something.

Q. Did you notice what time it was? A. Yes, sir.

Q. What time was it? A. Ten minutes to eight.

The Court: He has told us that.

Mr. Child: He said it was ten minutes to eight when she raised her hand or whatever she did.

The Court: Are you through?

Mr. Child: Yes.

Recross-examination by Mr. Lane:

Q. This same night? A. This same night I was standing at the Library.

Q. Over Cummings' head, I suppose? A. No.

Q. Cummings saw it? A. He didn't say anything to me about saying it.

Q. I know, but it was right there in public so he could have seen it. A. No.

Q. Why not? A. He was about five or six feet from this lady talking to the child.

Q. So were you. A. That's all right. He was stooped over and I wasn't.

Q. If he hadn't happened to have been stooped over he could have seen this motion there? A. Possibly he could, if he had been looking that way.

Mr. Lane: That is all.

JAMES CERVONE, sworn for the petitioner.

Direct-examination by Mr. Child:

Q. Where do you live, Mr. Cervone? A. 15 Wood Street.

Q. And what is your occupation? A. Special police officer.

Q. What was your occupation in the summer of 1923 and 1924? A. I had charge of police at Dreamland Park.

Q. And how many police did you have down there? A. I had twelve men, steady men.

Q. During the summer of 1924, were you at Dreamland Park? A. Yes, sir.

Q. And do you recall any occasion when a man named Galgano spoke to you down there? A. I do.

Q. After Galgano had spoken to you, what did you do?

Mr. Lane: I object to this, if the Court please, as not rebuttal. This is opening the main case; I assume it is. I cannot assume anything else. It is opening the entire case. Galgano has testified.

The Court: It is rebuttal?

Mr. Lane: It is rebuttal?

Mr. Child: I am leading up to that.

The Court: No; you cannot. Put your direct question.

Mr. Child: All right.

Q. Did you see in the summer—(interrupted).

The Court: "After Galgano spoke to you about it".

Q. After Galgano had spoken to you did you

see a couple in Dreamland Park? A. Galgano came to me—(interrupted).

Q. Never mind. Answer whether you did or not. A. Did I see the couple?

Q. I say, did you see a couple in Dreamland Park after Galgano had spoken to you? A. Yes, sir.

Q. Where was that couple? A. That couple was in the picnic grove of Dreamland Park.

Q. And after your attention had been directed to the couple what did you do?

Mr. Lane: I object.

The Court: Sustained.

Q. Do you recognize as that couple, or either of the two persons that you saw there, any persons now in this room?

Mr. Lane: I object.

Q. (Continuing.) A man and woman?

Mr. Lane: I object to that on the ground it is not rebuttal. They testified to this incident and if this witness was to be called as a corroborating witness, he could have been called on direct. The defendants have gone upon the stand and denied that they were there, he has put witnesses on the stand to prove they were there. And this is nothing but corroboration of their direct case, which should go in in the direct case.

The Court: Read the question.

(Question read as follows: "Do you recognize as that couple or either of the two persons that you saw there, any persons now in this room?")

A. I sure do.

The Court: I don't think it is sufficiently direct in rebuttal.

Mr. Child: Grimm. Stand up.

Q. Is that one of the people you saw? A. Yes, sir.

Mr. Child: Mrs. Cummings.

Q. Do you see this lady here?

Mr. Child: Stand up, please, Mrs. Cummings.

A. Yes; I do.

Q. Is that the other— A. That is the couple.

Q. Where did you see them?

The Court: That is all.

Q. Were they alone? A. Yes, sir.

The Court: Any more? Cross examine.

Cross-examination by Mr. Lane:

Q. Had you ever seen Mrs. Cummings before? A. No, sir.

Q. Have you ever seen her since? A. No, sir.

Q. Did you ever see Mr. Grimm before? A. I believe I have.

Q. Have you ever seen him since? A. Oh, I believe I have seen him the last two years around the streets or somewheres, might find him somewhere.

Q. Did you ever know him as Grimm? A. I did not.

Q. You have seen this woman, Mrs. Cummings on two occasions, once there in the park and once

in the court room today? A. I seen her yesterday and once in the court.

Q. And once in the court, yes. A. My attention was called to her in the park, that is why I remembered so well.

Q. Your attention is called to a great many people in the park, isn't it? A. Not for that particular cause, unless there is some accident.

Q. There are hundreds of people in the park. A. Oh, there is plenty of people in the park.

Q. And yet you recognize this woman now as the woman you saw in the park in 1924, two years ago, is that right? A. Yes, sir.

Q. Is that right? A. I do, yes, sir.

Q. How was she dressed? A. Why, probably—I believe she had a sort of a brown dress.

Q. Yes, what else?

The Court: "Sort of a" is rather indefinite.

Witness: Well, the nearest I stood was ten feet. And a large hat.

Q. She had a large hat? A. Yes.

Q. Do you know how tall she was? A. Oh, I would say about five feet seven, five feet eight.

Q. How long did you look at her? A. Oh, about five minutes; five or six minutes altogether.

Q. Standing there ten foot away from her? A. No, not at that—at two different spots, two different spots in the park.

Q. I see. When did you first tell Mr.—do you know Mr. Cummings? -A. I do not. I know him now, seeing him here in court yesterday.

Q. Has anybody talked to you about this case? A. Only Galgano.

Q. When? A. About a month ago, refreshing my mind on this case; and they gave me a subpoena yesterday to have appeared here yesterday; I wasn't home yesterday morning.

Q. Galgano did that? A. Yes, sir.

Q. Galgano knew what you had seen? A. Yes; because he came to me at the park.

Q. Yes. And Galgano—how long have you known Galgano? A. I have known Galgano since that incident at the park.

Q. Never knew him before? A. No, sir.

Q. And no one spoke to you about this case— A. No, sir.

Q. Wait. —since the time you saw these people, no one spoke to you about this case until about a month ago? A. About a month ago.

Q. Is that right? And nothing brought it to your mind? A. I just simply forgot about it; that was all. It was nothing to me. I didn't make any record of it.

Mr. Lane: I think that is all.

Examined by the Court:

Q. What do you do when you are not Chief of Police? A. Special Officer at Paradise Ball room during the winter season.

Q. What do you do there? A. Keep order and peace in the ballroom.

Q. Bar room? A. Ballroom, dance hall they call it, corner of Hill and Broad Street.

Q. Eh? A. Corner of Hill and Broad Street.

Examined by Mr. Lane:

Q. You know Marinella, I believe his name is, taxi driver? A. No—I know so many Marinellas I don't know unless I see him.

Q. Is he in court? Ralph Marinella. Is he in court?

A Voice: Yes. (Man stands up in court room.)

Q. Do you know that man? A. I have seen him; I have seen him in Newark, but I wouldn't say that I know him personally.

Q. You have seen him around the park? A. No; in Newark; not in the park.

Q. You are not a friend of his? A. No, sir.

The Court: Two o'clock.

Noon Recess.

Afternoon Session.

Mr. Child: Mrs. Brown.

Mr. Lane: The bank man is here. May I call him and let him go, the Howard Savings Bank man?

Mr. Child: Just a minute, Mrs. Brown.

The Court: Put this on record, what you want.

Mr. Lane: I offer in evidence deposit book number 329953 of the Howard Savings Institution in the name of Sadie McDermott, produced from the custody of the bank; the front cover of which appears to be torn in half; the two covers torn apart and the body of the book torn in half, apparently, physical tearing.

Mr. Child: No objection. I may want to examine.

(Book marked Exhibit D-1, 12-16-26.)

Mr. Child: Have you got the current book with you?

(Book produced by bank man.)

Mr. Child: I have no objection.

The Court: Any more, Mr. Lane?

Mr. Lane: I call Mr. William McDermott.

WILLIAM McDERMOTT, sworn for the defendant.

Direct-examination by Mr. Lane:

Q. Where do you live, sir? A. 70 DeWitt Avenue, Belleville.

Q. You are a brother of Mrs. Cummings? A. Yes, sir.

Q. Do you know about the time your sister—

The Court: Can you hear, Mr. Child?

Mr. Child: Yes; I can hear.

Q. (Continuing.) About the time your sister and her husband separated? A. On one evening I was visiting my mother and this—she asked me to go down and see Mr. Cummings and to get her building and loan book and she told me—(interrupted).

Q. Never mind what she told you. Did you go down and see Mr. Cummings? A. I went down and saw Mr. Cummings and I asked at the firehouse of one of the firemen if he would call Mr. Cummings out for me to speak to him. Mr. Cummings came out and he acted very ugly.

Q. What did he say? A. He started to talk about my sister. He says that he was through with the God damn bitch and that he wouldn't live with

her any longer, that she was no God damn good and that he was going to get rid of her. He also said, "The house that we own, she thinks she has got a half interest in and that she is going to get some money out of it. Well, she ain't going to get a God damned cent out of it; she isn't entitled to it." I said to him, "Mr. Cummings, I came down here after a building and loan book, I didn't come here as a dove of peace, and that is up to you." I said, "I don't want to hear no more of that," and I left Mr. Cummings.

Q. Did you get the book? A. I got two books. I think that was when Mr. Cummings told me that the other book was down to the building and loan.

Cross-examination by Mr. Child:

Q. Where did this conversation take place, Mr. McDermott? A. In the firehouse on the opposite, on the Hallock Street side.

Q. 13 Engine? A. Number 13.

Mr. Child: No other questions.
The Court: Call your next. Is that all?
Mr. Lane: That is all.
Mr. Child: Mr. Baum.

FRED H. BAUM, sworn for the petitioner.

Direct-examination by Mr. Child:

Q. What is your business, Mr. Baum? A. In the bakery business.

Q. And are you in business for yourself? A. Yes, sir.

Q. Where is your place of business? A. Springfield Avenue and South 10th Street.

Q. Were you ever in the employ of the A. & P. Bakery, Belleville? A. Yes, sir.

Q. For how many years? A. In Belleville or the A. & P.?

Q. With the A. & P. A. Nine years.

Q. And how long were you in Belleville? A. From the time it opened up until June the 1st, 1925.

Q. When did it open up about? A. I don't recall that. I would say '21, '22.

Q. Yes. Was Mrs. Cummings employed at the Belleville Bakery while you were superintendent? A. Yes, sir.

Q. And was Young employed there while you were superintendent? A. Yes, sir.

Q. Was Mrs. Cummings employed steadily there or not, during the year 1924? A. I would say steady.

Q. Did she terminate her employment at any time during that year? A. Well, she left me once. Just when, whether it was in 1924, I wouldn't say. I don't recollect those dates.

Q. Was it during the time Young was there? A. It was the day after Mr. Young left.

Q. The day after Mr. Young left? A. Yes, sir.

Q. And how long was she out at that time? A. I don't remember.

Q. Well, was it a week or a month or about how long? A. Oh, it was more than a week and I would say more than a month.

Q. And did she afterwards return to the bakery? A. Yes, sir.

Q. Was she out of the bakery after that time by reason of injury to her foot? A. Yes, sir.

Q. For an accident? A. Yes.

Q. For how long a time was she out? A. I don't—

Q. About. A. Well, let's see, more than two weeks, probably three or four. I don't—I wouldn't remember those dates.

Q. Now, upon the occasion of her first leaving the bakery did you discharge her? A. No, sir.

Q. What was the reason for her leaving the bakery at that time? What reason did she give to you? A. She left because I discharged a man by the name of Marshall.

Q. And who else?

Mr. Lane: Well—I—

A. I didn't discharge anybody else.

Q. What did she say to you as the reason for her leaving? A. Because I discharged Marshall.

Q. Did she say to you that—

The Court: Mr. Simpson?

Mr. Child: All right.

Q. Was the name Mr. Young mentioned? A. No, sir.

Q. Did she tell you that Marshall and another man had had a fight the day before? A. I knew they had a fight. That is why I discharged one of them.

(Discussion.)

The Court: Read the question.

(Question read as follows: "Did she tell you that Marshall and another man had had a fight the day before?")

A. No.

Q. Have you told us all the conversation you

had with Mrs. Cummings at the time she quit work? A. No, sir.

Q. What was the rest of the conversation? A. Shall I relate the whole story, your Honor?

(Discussion.)

(Last question and answer read as follows: "What was the rest of the conversation? Answer: Shall I relate the whole story, your Honor?")

The Court: No. Answer the question.

Q. I want the conversation you had with Mrs. Cummings as to her reason for leaving the bakery. A. (Witness pauses.)

Q. Answer the question, please. A. I discharged Mrs.—

The Court: No, no.

Q. The conversation.

The Court: What did she say to you, if you remember?

Witness: She threw down her gloves—

The Court: No. Strike it out. Strike out every thing he said. Strike it from the record. Now ask him the question.

(Question read as follows: "I want the conversation you had with Mrs. Cummings as to her reason for leaving the bakery.")

A. "Why are you leaving, Sadie?" She said, "Because you fired Mr. Marshall." I said, "What have you got to do with this?" She said, "I think they had a fight over me." She walked out. I met her again, probably fifteen or twenty minutes after, on my way home. I offered my car. She came in

and I asked her to go back to work, telling her that it wouldn't change matters. She said, "No." I drove on.

The Court: All right. He has answered the question.

Mr. Lane: No questions.

Mr. Child: Mrs. Wooten.

EMILY WOOTEN, sworn for the petitioner.

Direct-examination by Mr. Child:

Q. Mrs. Wooten, where do you live? A. 567 Summer Avenue.

Q. Newark? A. Right.

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

Q. And how many years have you known them? A. Well, I have known Mrs. Cummings a good many years.

Q. And Mr. Cummings for how long? A. Well, about seven.

Q. Did you at one time live in the house with Mr. and Mrs. Cummings? A. I did.

Q. What house was that? A. 66 Hinsdale Place.

Q. And have you seen Mrs. Cummings since she and her husband separated? A. Yes, occasionally.

Q. On the streets? A. No; I saw Mrs. Cummings on the trolley car and also on the street.

Q. When was this that you saw Mrs. Cummings on the street, about? A. Around the holidays last year.

Q. And who was she with? A. She was with her little girl.

Q. Who else? A. No one at that time.

Q. Did you afterwards see her on the street with anyone, with any man? A. Not on the street.

Q. Did you see her on the trolley car with the man? A. Well, I didn't know that she was with this gentleman.

Q. What led you to think that she was with the gentleman? A. Well—

The Court: She said she didn't think she was with the gentleman.

Mr. Child: She said she didn't know.

Witness: Well, they got out of the car together, that was all.

Q. Where did they get out of the car? A. At New Street.

Q. Which way was the car going? A. Coming down Broad.

Q. South on Broad? A. South Broad.

Q. And do you know the gentleman that she was —(interrupted)? A. I do not.

Q. What sort of a looking man was he? A. I couldn't tell you.

Mr. Child: Mr. Young, will you stand up, please?

Q. Is that the gentleman? A. I couldn't tell you, I don't know.

The Court: That is all.

Mr. Child: Ackerman.

ARTHUR ACKERMAN, sworn for the Petitioner.

Direct-examination by Mr. Child:

Q. Where do you live? A. 335 17th Avenue, Irvington.

Q. And what is your business? A. I am a taxi owner and driver.

Q. How long have you been the owner of a taxi? A. About four years.

Q. Do you recall anything transpiring in the month of August, 1925? A. I do.

Q. In relation to your business? A. Yes, sir.

Q. Where were you in the latter part of August, 1925? A. I was standing in front of Achtel Stetters Restaurant, Broad Street.

Q. What happened? A. Well, I was standing there and three women—(interrupted).

The Court: No, no.

Mr. Lane: I object to that as not rebuttal.

Q. Did you pick up some fares that night? A. Yes, sir.

Mr. Child: I am merely leading up to the identification.

The Court: Don't lead up, but go to it.

Mr. Child: All right. I will go to it.

Q. Did you see the man who has been identified as Harold Young and the woman who has been identified as Mrs. Cummings—

The Court: Oh, oh—

Mr. Child: All right. You were asking me to lead up to it.

The Court: Yes, but you are not leading close enough. "Go to it" I said.

Q. Had you ever seen Young and Mrs. Cummings before? A. Yes.

Q. Where? A. On a jitney and a trolley car.

Q. When? A. The latter part of August, 1925.

Q. And did you have occasion to see them—where did you first see them?

The Court: He hasn't told me that he knew them.

Q. Do you recognize anyone in the court room?

The Court: No, no.

Q. Do you recognize Mrs. Cummings? A. Yes.

Q. And do you recognize Harold Young? A. Yes, sir.

Q. Did you see them on that night? A. Yes, sir.

Q. Where did you see them, first? A. I seen them on the jitney first.

Q. And did you follow the jitney? A. I did.

Q. Where did you follow it to? A. Up to North Newark station.

Q. What did you see at the North Newark station? A. They got off the bus and the fare I had in my car asked me to pull down half a block and go and look at this man and woman so I could identify them.

Q. Where did they get off the jitney, what place? A. North Newark station. That is the end of the line.

Q. And what did they do after they got off the jitney? A. I walked back to look at them so I could identify them again and I—

Q. And where were they standing when you saw them? A. They were standing on the sidewalk.

Q. And then where did they go? A. I went down to my cab and I waited for a trolley car to come along, and they got on the trolley car together.

Q. And where did they go from there? A. They went up Washington Avenue.

Q. And from there where? A. Up as far as William Street.

Q. In what city or town? A. Belleville.

Q. Then what happened? A. Well, I—

The Court: You are going into your main case again.

Mr. Child: No, sir.

The Court: What is the purpose?

Mr. Child: To show that they were together. That they went from Newark to their house together. I had no reason to believe they would deny they had ever been together.

Q. Where did they go in Belleville?

The Court: This is part of your main case.

Mr. Child: With all due deference to your Honor, I do not think we anticipated there would be a sweeping denial of their ever being together alone.

The Court: You must anticipate everything in a law suit.

Mr. Child: I find that.

Q. Where did they go from there? A. Well,

when they got on the trolley car I followed them up and see them sitting on the side of the trolley with his arm around her neck.

Q. I don't care what they were doing. Where did they go? A. Well, I followed them a block—

The Court: Strike it from the record "his arm around the neck". I am letting it in simply to—this testimony is simply to contradict Harold Young.

Mr. Child: Harold Young and Mrs. Cummings.

The Court: On that pretense.

Mr. Child: Sir?

The Court: It is upon that pretense that you are getting it in Judge.

Mr. Child: No, sir.

The Court: All right.

Mr. Child: It does so happen to corroborate other testimony, but that is not the purpose of it.

Q. Where did they go from there?

The Court: The only purpose it will serve at this time is to discredit Harold Young. That is the only purpose that it can be entertained for.

Mr. Child: I think it can be used to discredit Mrs. Cummings too.

The Court: Well, I mean it only goes to the discredit.

Mr. Child: That is all. That is the purpose.

Q. Where did they go after they got to Belleville?

A. They went as far as William Street.

Q. And from there where? A. The people I had in the car got off and they asked me to wait on the corner to see this couple get off the car.

Q. Did you? A. I did.

Q. Then what did you do? A. I walked up William Street and this couple got off the car and when they got past the car tracks he put his arm around her waist.

Q. Never mind that. I don't care anything about that.

The Court: Strike that latter part out. Take it off the record. When I say "Strike it out, "that means scratch it out.

Q. Did you have good opportunity of observing the features of these people? A. Yes, sir.

Q. Where? A. Down at the lunch wagon, and then when I waited on the corner for them to get off.

Q. Where was the lunch wagon? A. Right at the North Newark station.

Q. What time of night was this? A. It was past midnight.

Mr. Child: Cross-examine.

Cross-examination by Mr. Lane:

Q. What day was it? A. It was the latter part of August. I don't remember the date.

Q. Didn't you make a memorandum of it? A. We don't keep our records that long.

Q. (By the Court.) Did you? A. Yes, sir; I did.

Q. Have you got a memorandum of the date? A. No, sir.

Q. (By the Court.) Why should you keep a record of this? It was not part of your business? A. We just put the mark where we go, from Newark to Belleville, that is all.

The Court: Oh.

Q. And that doesn't show the date? A. It does, but I haven't got the cards. I only keep them two months, then we throw them away.

Q. Who were your fares? A. I don't know. There was three women.

Q. Well, did they give you any names? A. No; they didn't give me any names.

Q. Would you recognize them if you saw them? A. Yes; I could recognize the one that paid me.

Q. Would you recognize the other two? A. I don't think I could recognize the other two.

Q. Do you know them as the Kopp sisters? A. No, sir; I never saw them outside of that night.

Q. Did you ever see Mrs. Cummings outside of that night? A. No, sir.

Q. Did you ever see the man whom you have identified as the man who was there with Mrs. Cummings outside of that night? A. Yes, sir.

Q. When? A. Why—

Q. When? When is all I want. A. I don't remember the date I seen them.

Q. How long after that? A. I don't—I think —about eight months.

Q. Never seen them since? A. No, sir; outside of today.

Q. When did you tell what you had seen to Mr. Cummings or anyone for Mr. Cummings? A. Well, he got in touch with—

Q. When? A. When he got in touch with me.

Q. When? A. About three months ago.

Q. Was this the first time that he got in touch with you? A. Yes, sir.

Mr. Lane: That is all.

Examined by the Court:

Q. What kind of cab do you run? A. 20th Century cab.

Q. How many 20th Century cabs are there in Newark at your station? A. About a hundred.

Q. Do you know how the company came to pick on you— A. Why, they send—

Q. —as the driver of this particular cab on this particular night? A. Well, I am the only one—

Q. Do you know how? A. They sent to Trenton for my license plate number.

Q. You mean, that is what he told you? A. Well, he couldn't get in touch with me no other way.

Q. Well, do you know how? A. Well, that is the only way I know how.

Q. You made a statement of a fact that that is the way he did it. A. Yes; he sent to Trenton to get my license.

Q. Do you know how he got it, how he picked on you as being a driver of one of the hundred century cars? A. These women took my license—

Q. Do you know how? A. No, sir; I do not.

Examined by Mr. Lane:

Q. He communicated with you, Cummings or who? A. Mr. Cummings.

Q. Personally? A. No, he called me up on the phone.

Q. That is what I mean, he called you up on the telephone? A. Yes.

Q. Himself? A. Yes, sir.

Q. You have never seen these women, who were your fares that night, since, have you? A. No; I have never seen them since.

Q. Never heard from them since? A. No, sir.

Examined by Mr. Child:

Q. Do you recognize any person in this court room as being the woman that paid you that night? A. Yes, I do.

Q. Kindly point her out, if you can. A. That stout woman there (indicating woman in audience).

Q. The one standing up? A. That is the one.

Q. Who is that? A. Norma.

Mr. Lane: Norma Kopp.

The Court: Any more?

Mr. Child: Yes. I will put Cummings on the stand in rebuttal.

OWEN CUMMINGS, recalled in rebuttal.

The Court: In answer and rebuttal.

Mr. Child: In answer and rebuttal.

Examined by Mr. Child:

Q. Have you at any time, Mr. Cummings, during your married life called your wife vile or indecent names? A. No, sir; I never did.

Q. Have you had—(interrupted).

The Court: His view of what might be vile and indecent might not be mine or be yours.

Mr. Child: All right.

Q. Have you ever called Mrs. Cummings the names which the witnesses here in court testified that you have called her? A. No, sir; I never did.

Q. Have you—when did you first begin to have trouble with Mrs.—(interrupted).

The Court: Did it appear that he heard what I heard?

Mr. Child: All right. If your Honor desires I will repeat it.

The Court: I don't know that; he has been in and out. Ask him if he heard what the witnesses said.

Q. Did you hear the testimony the witnesses have given as to the vile names that you are said to have called your wife? A. Yes, sir; I did.

Q. When did you and your wife first begin to have trouble after you were married? A. Oh, about two months after we was married.

Q. And what was the difficulty? A. Well, my wife had a bad temper and she used to break up dishes and tear her clothes and various other things like that.

Q. You were married in 1916? A. 1917.

Q. 1917. All right. Were you abroad, away from your wife? A. About one year.

Q. And you returned when? A. In 1919.

Q. And where did you get employment? A. In Murray's Saloon on Market Street.

Q. How long did you remain in Murray's Saloon? A. About two months.

Q. And while you were in Murray's Saloon, did you drink to excess? A. No, sir; I never did.

Q. Where did you first live with your wife, after your return from the Army? A. At 19 Washington Avenue, Newark.

Q. Did you own that house? A. I did not, sir.

Q. What difficulty, if any, did you have there? A. About the same thing.

Q. Well, about what? A. Dishes was being broke very frequently and Mrs. Cummings had a bad temper all the way through.

Q. Did you, while you were living on Washington Avenue ever strike your wife? A. No, sir; I never did.

Q. Did you on any occasion ever strike your wife? A. No, sir.

The Court: What is his answer? "No, sir"?

Witness: Yes, sir; I said, "No, sir."

The Court: Eh?

Witness: I said, "No, sir," to Mr. Child.

Q. It has been testified here that while living at 66 Hinsdale Place you took a mattress or a bed and threw it down the back stairs and put it on the back porch later. What explanation, if any, have you to give of the bed incident? A. I took the bed and bedding, when I was putting Mrs. McDermott, my mother-in-law out of the place—she refused to leave—and I took the bed and bedding and laid it on the back stoop.

Q. And when was that, about? A. That was about March, 1922.

Q. Did you have frequent quarrels with your wife at 66 Hinsdale Place? A. Yes.

Q. What were they about generally? A. Oh, I couldn't tell.

Q. Did you ever throw things off the dresser at 66 Hinsdale Place? A. No, sir; I never did.

Q. Do you recall at any time an incident of a

gas plate being thrown downstairs or— A. Yes.

Q. —out of the room? A. I remember very well.

Q. What happened that time? A. Mrs. Cummings heaved it down the back stairs.

Q. And why did she do it? A. There was some argument about supper. She disconnected it and pulled it apart and threw it downstairs.

Q. Do you recall while the house—a house that you had, I think, at 114 Washington Avenue—was being under construction or repair, that Mrs. Cummings came there? A. Yes, sir; I do.

Q. Did you at that time threaten to blow her brains out? A. No, sir; I did not.

Q. What happened, if you can recall, at the occasion Mrs. Cummings came to your house or the house that you were repairing? A. What do you mean? Mrs. McDermott or Mrs. Cummings?

Q. Mrs. McDermott and Mrs. Cummings both came to that house as I understand you. A. No.

Q. Mrs. Cummipngs came first? A. Mrs. McDermott did not.

Q. Well, what happened when Mrs. Cummings came there? A. When we went to live there?

Q. Mrs. McDermott went there. A. Oh, Mrs. McDermott and I were not good friends, not since I put her out of Hinsdale Place.

Q. I am not talking about the time your wife says that you said you had a gun in the closet and you would blow her brains out. A. Well, there is not any such time to my knowledge.

Q. Did your wife come to the house when it was being repaired and have an interview with you? A. We were living there in the house on the first floor the rest of the house was shut off; it was in the winter time and that house was shut off. We were there in the first floor; at that time, that win-

ter you couldn't get any coal, there was a coal shortage and we closed the other floor off and we lived in the three rooms on the first floor and the only room that was heated was the kitchen.

Q. Did you at any time ever threaten to blow your wife's brains out? A. No, sir.

Q. Did you ever tell Mrs. McDermott that you would so do? A. No, sir; I did not.

Q. Do you recall the incident of your visit to the house in Belleville in 1924 in the month of February with reference to what happened at the time you went to see the child? A. Yes; I do. I remember it very well.

Q. State what happened, please? A. About nine thirty I went up to see the child. I went in on the first floor and Mrs. McDermott, Jr. told me there was nobody home; she said that Mrs. McDermott and Mrs. Cummings and the child was to the movies, and I didn't believe her, because the child was too young to take to the movies; so I went upstairs and the child was all alone on the second floor; nobody up there. The place was in darkness. I woke the child up. I heard the child snoring when it was in the dark. I picked the child up; I took the child downstairs.

Q. To whose apartment? A. To Mrs. McDermott, Junior.

The Court: Proceed.

Witness: I went down to the store and I bought some ice cream for the child and I intended to take the child away. Mrs. McDermott in the mean time—It must have been then about ten o'clock—that is Mrs. McDermott and Mrs. Cummings returned from the moving pictures, at least, that is

what Mrs. McDermott, Junior, told me, and I was going to take the child and I got the child down as far as the corner of William and Washington Avenue, Belleville, and that is where the trouble started.

Q. Did you at that time strike your wife? A. No, sir.

Q. Did you at that time use any such language or call anyone in that house a son-of-a-bitch? A. No, sir.

Q. Now, in the year 1920 you were living in 66 Hinsdale Place, and it has been testified to that you, in the month of August, broke in a bathroom door in that house because Mrs. Cummings wouldn't let you in. What happened, if you can recall on that occasion? A. I believe I remember about that, but it is not that way. We had an argument one time where Mrs. Cummings come after me with a knife, and that is the occasion when I took the knife away from Mrs. Cummings, and, in doing so, I had to knock her down; later she came after me and I locked her in the bedroom, not the bath room, and she busted the lock on the door and she come out and after she come out I left that night and I went down to the old Continental Hotel. That finishes that night.

Q. Now, do you recall going to a wake of one of your wife's relations in June, 1920? A. Yes, sir; I went there all alone.

Q. And whose funeral was it?

The Court: Oh.

Q. Mrs. Cummings' uncle? A. No, he was not an uncle of Mrs. Cummings.

The Court: He went home before his wife did; that is all there is to that, isn't it?

Mr. Child: Yes.

The Court: Then why do you want to bother with it?

Q. Do you recall the occasion of the birth of your child? A. Yes, sir; I do.

Q. At the time of the birth of your child, did you employ a nurse? A. Yes; I did.

Q. And for how long did you employ a nurse? A. I think it was a couple of weeks, about two weeks.

Q. And did the nurse get the food for Mrs. Cummings or was she instructed so to do? A. She was instructed so to do. I don't know whether she did or not. I wasn't home in the daytime.

Q. Where were you in the daytime at that time? A. We alternate every three days on the fire department.

Q. And during that time that the nurse was there, who attended to the furnace? A. When I was there I attended to the furnace; when I was not there I don't know who attended to it. I believe the nurse was supposed to.

Q. What was the situation in your house at the time Dr. Kerns called there to visit your child? A. We were living on the first floor. The second and third floors were unoccupied and the paper was torn off the walls because I was going to make an alteration and we were living on the first floor and the rest of the house was shut off.

Q. Were there any windows out on the first floor? A. No, sir.

Q. Where were the windows out if there were any?

The Court: On the second and third floor, making alterations. Come. Go along.

Mr. Child: All right.

Q. What rooms were you living in at that time?

The Court: Downstairs. The only room that had heat in was the kitchen—three rooms downstairs. I know all about it. Don't go over it again.

Q. Were any of the other rooms downstairs heated? A. Yes.

Q. What other rooms? A. The three of them at times with an oil heater in the other rooms.

Q. Did you in the month of February, 1924, call Mrs. Cummings a son-of-a-bitch or a black bastard? A. No, sir.

The Court: He said he never called her any of those names. Why particularize?

Mr. Child: All right.

Q. It has been testified to that you offered a man named Theall the sum of five thousand dollars to take your wife to a hotel or to compromise her. Did you ever make any such offer to Theall? A. No, sir.

Q. Did you ever approach a man named Williams—

The Court: Do you know Theall?

Witness: Yes, sir; I was introduced to him in Belleville.

Q. Did you ever make any offer or suggestion to

a man named Williams? A. No, sir.

Q. To go out and get caught with your wife? A. No, sir; I did not.

Q. Do you know a man named Rothrock? A. Yes, sir; I do.

Q. How did it come about that you met Edson Theall? A. Mr. Rothrock introduced me to Edson Theall.

Q. And what was the occasion of that introduction; why did it take place? A. On June the 2nd, 1925, I was following my wife in Belleville; she was a married man, Joseph Reis, and while I was following this man I didn't know who he was, so I came home about eleven o'clock and I stopped in the restaurant and had something to eat and I told—(interrupted).

Q. Whose restaurant? A. Rothrock's restaurant. I was telling him about it, and he was a very good friend of mine and he says, he would take me up to Belleville and find out who it was, so I told him I thought this man worked where Mrs. Cummings did. We went up to Belleville and we happened to ride on the trolley car which Mrs. Cummings' brother was motorman on the car. It was about one thirty, so we rode as far as Grafton Avenue and I told Rothrock my wife's brother was on that car, so we got off, so we didn't know where we was going, so we got in another trolley and we went to Belleville and we went down to the bakery and Mr. Rothrock went to the watchman and he called out Mr. Theall and he asked him if he knew anything about who Mrs. Cummings was running around with. "Why," he says, "yes; Joe Reis." And he told us various things how he had—(interrupted).

Q. Never mind what he told you, but then what

did you do? A. I heard what I could. That is all. I got all the information I could out of Theall.

Q. Was that the only time you saw Theall? A. That was the first time I knew Theall.

Q. Did you see him after that? A. Yes; I did.

Q. Talk to him? A. Yes, sir.

Q. Try to get information about your wife? A. No; not after that.

Q. Did you ever see a man named Williams? Do you know him? A. Yes; I do.

Q. Did you ever have any conversation with Williams at the A. & P. Bakery or any other place, late at night, with reference to your wife? A. No, sir; I did not.

Q. Was Williams along with you and Rothrock at the time you went over and met Edson Theall? A. No, sir.

Q. Have you made any endeavor to find Rothrock? A. Yes, sir; I have.

Q. When did you last see him here, or when did you last see him? A. Nineteen—last June.

Q. Where? A. In—in the Prudential Building.

Q. Have you endeavored to subpoena him? A. Yes, sir; I have.

Q. And what endeavors have you made? A. Well, I couldn't find him; I was up to the house last night about eleven o'clock. I was there twice last night to try to get him and the boy was—(interrupted).

Q. Never mind what the boy said; did you get him? A. No; I did not.

Q. Were you up there before last night? A. Yes, sir; the night before.

Q. Did you obtain any information as to where

he was? A. They said he was away. They said he was in Trenton. He is a salesman.

Q. Referring to the Howard Bank book. Do you know how that bank book got torn? A. I didn't see my wife tear it, but she tore almost everything else in the house, so undoubtedly she must have torn that.

Q. Did you ever set fire to your house or to a rug in your house, upset an oil stove, to collect the insurance for the fire? A. No, sir. I collected insurance for a fire that was there.

Q. And what happened? A. There was a fire at the house and I—(interrupted).

Q. How did it happen? A. Oh, I believe it was an oil heater.

Q. Eh? A. It was an oil heater tipped over, I believe.

Q. Did you take a building and loan book belonging to your wife and burn it up? A. No, sir; I never—we never had the building—

The Court: Stop!

Q. Did you ever have building and loan books in your house? A. No, sir.

Q. Where were the building and loan books kept? A. They were in the building and loan, the First Ward Building & Loan.

Q. At the time your child was born did your wife have a building and loan book? A. No, sir; she had a building and loan, but not the book.

Q. Well, did she have a building and loan account? A. Yes, sir; she did.

Q. Do you know how much that building and loan account was worth? A. I don't know what it was worth then; but she used to pay ten dollars a month in the building and loan.

Q. She deposited ten dollars a month? A. Yes, sir.

Q. Did she have a bank account? A. Yes, sir.

Q. What bank? A. She had about seven hundred dollars in the Howard Bank and she had another bank account, I don't know whether it is the Fidelity or Merchants & Manufacturers, because I remember she stopped in there one time to make a deposit and I believe she had another account up in the Washington Trust.

Q. What year was this? A. Well, it covered a period of maybe two or three years, while she had an account in there.

Q. And what times did she have those accounts in there— A. In—

Q. —what years? A. She started the account in the Howard Savings Institution about two months before we were married. I gave her one hundred dollars to buy some kitchen utensils but she—

The Court: Oh!

Q. Never mind that. She started that; and how long did she have the account there, if you know? A. She had that account until June, 1918.

Q. And where did she then transfer the account to? A. I purchased a house from—(interrupted).

Q. (By the Court). Where did she transfer it to? A. She didn't transfer it.

Q. (By the Court). Well? A. She give me the money and I put it in a house in both our names.

Q. All right. Did she after that time have a bank account? A. Yes, sir; she did.

Q. Did she at all times have at her disposal during your married life ample funds for the necessaries of life? A. Yes, sir; she did.

Q. How much, if anything, did you allow her or give her for the running evpenses of the home? A. Why, there was no set amount.

Q. Well, what would it average? A. Oh, I should think about thirty or thirty five dollars a week.

Q. When did you and your wife actually separate, what month? A. April, 1923.

Q. Did you see your wife after that time? A. Yes, sir; I did.

Q. Did you at any time after that time make a request for her to return? A. Yes, sir; various times.

Q. And what was her answer? A. She told me she would never live with me.

Q. Did she give you any reason? A. Well, she—Yes, she did.

Q. What was the reason? A. She told me she had friends that would—oh, what she said—wouldn't do such and such on me, that she was going to get a divorce. The only thing, she said, it cost three hundred dollars.

Q. Now, coming down to an occasion when your wife cut her foot or her leg, what happened that time, when you and your sister were in the home? A. My sister and I were cleaning up the house, were cleaning the windows when Mrs. Cummings come in and she brought the child with her and I went to pick the child up and she grabbed the child out of my hands and she got very boisterous and the windows were open; I pulled the windows down; I told her she should be ashamed of herself with all the neighbors out like that, and she called me a lot of names and stuff like that and after she went through a lot of stuff like that, she kicked

through the plate china closet; and she went in with a lot of dishes on the table in the parlor and she picked some of the dishes up and she smashed them on the parquet floor and then she tipped the table over.

Q. And were you and your wife living together at that time? A. No, sir; that was about June—about four months after she left.

Q. And what was the occasion of your being in the house at that time?

The Court: You mean her occasion?
Mr. Child: No. Your occasion.
The Court: Why were you there?

Q. Why were you there? A. Why, I lived there.

Q. Who lived with you? A. I was all alone.

Q. Did she give any reason for her coming there? A. No. She come in and smashed up the dishes and stuff like that. That is all the reason I know.

Q. Did she order your sister out of the house? A. Yes, sir; she ordered my sister out.

Q. And did Mrs. McDermott afterwards come there with your wife that day? A. Mrs.—my sister was there when she come back to bandage her leg.

Q. Were you there? A. Yes, sir; I was.

Q. Mrs. McDermott come with her? A. Mrs. McDermott, yes, came back the second time.

Q. Did Mrs. McDermott say anything about breaking dishes? A. Mrs. McDermott was very nice about it and she told her she shouldn't have broken the dishes. And Mrs. McDermott wanted to buy—replace the dishes; she said she would buy the best set of dishes possible, and I was reading

a magazine, I was sitting there, I didn't pay any attention to it.

The Court: Cross-examine.
Mr. Child: Cross-examine.

Cross-examination by Mr. Lane:

Q. Mr. Cummings, you had advertised your furniture for sale, hadn't you? A. Yes, sir; June, 1920.

Q. You had advertised your furniture again for sale at the time Mrs. Cummings came this last time to the house, hadn't you? A. Yes; I did.

Q. You had advertised—it had been published in the newspaper the day before, hadn't it? A. What day before?

Q. The day before Mrs. Cummings came up to the house and found your sister and you at the house? A. No, sir; that was not the occasion.

Q. Well, two or three days before then? A. No, sir.

Q. Had you advertised it before? A. I believe it was after that.

Q. What? A. It was after that.

Q. Well, now, how long was it after your wife and you separated in April, 1923, that you advertised your furniture for sale? A. Well, I don't know. I am not quite sure. I didn't keep track of it.

Q. Well, now, don't you know that you advertised it for sale? A. Yes; I do.

Q. And don't you know you advertised it for sale almost immediately after she left? A. No, sir; I do not.

Q. And it was after you advertised it for sale

that Mrs. McDermott came to your house and found you and your sister there? A. I don't know whether it was after or not. I think that that occasion was before I advertised the furniture.

Q. Well, what did Mrs. Cummings say when she came into the house? A. What did she say?

Q. Yes. A. She told me—she talked to my sister more than she did to me.

Q. What did she say? A. She told my sister if she didn't—it was a good thing she left, if she didn't leave she would shoot me.

Q. Yes? What else did she say? A. That she intended to shoot me anyhow.

Q. What else did she say? A. And the rest of it she did in breaking the dishes.

Q. What did she say about your sister remaining there? A. She ordered my sister out.

Q. That is what she did when she first came into the house, didn't she? A. Yes, sir. She ordered her out three or four times.

Q. And why did she say she was ordering her out of the house? A. She didn't say why.

Q. Did she just come in and say, "Get out of the house"? A. Yes, sir; yes. She wanted to know what she was doing there.

Q. Yes. And what did your sister say she was doing there? A. My sister said— I said, "That is my sister and she is going to stay there."

Q. You said that? A. Yes; I did.

Q. And it was your wife who was speaking? A. Yes, sir.

Q. And you wanted her back to live with you? A. Yes; positively.

Q. Did you think that was the way to get her back? A. I didn't think she should order my sister out.

Q. You had ordered her mother out, hadn't you? A. Yes, sir; when she—(interrupted).

Q. When her mother was sick? A. Well, she was—yes, I guess she was sick at the time.

Q. And she was sick and serious sick? A. She was sick and seriously sick because she was causing a disturbance around the house.

Q. From February, for several months? A. Yes.

Q. And you knew she was seriously sick? A. Yes, sir.

Q. And she was seriously sick at the time you ordered her out? A. She was making serious trouble, too.

Q. And she was seriously sick? A. Yes.

Q. And notwithstanding the fact that she was seriously sick, you not only ordered her out, but you put out the mattress and springs to enforce your order? A. Yes; I put her bed and bedding on the back stoop.

Q. And you did that quietly, without any words? A. Without any words?

Q. Yes; without saying anything, without using any vigorous language? A. Well, I wouldn't have to use any bad language to put her bed out.

Q. I asked you if you did. A. In putting the bed out?

Q. No; not in putting the bed out; in ordering your mother out. A. In—

Q. Mother-in-law. A. I told Mrs. McDermott I wanted her out by six o'clock. I came home six o'clock and she was still there. I asked her why didn't she leave; she said her daughter had a half interest in that house and she was not going to leave. I said, "Never mind about the half interest. You get out of here." She said she wouldn't leave

and I went in her bedroom and took the bed and bedding and put it on the back stoop and her son came down and got it the morning after, I believe.

Q. Were you present when this bank book which was introduced in evidence here, was torn? A. No, sir.

Q. It was torn during a quarrel with you, was it? A. Almost everything in the house was torn.

The Court: Answer the question.
Witness: The bank book?

Q. Yes. A. I know absolutely nothing about the bank book.

Q. It was not torn during any quarrel with you? A. I don't know anything about the bank book.

The Court: Your answer is "No"?
Witness: "No."

Q. And there was not any talk about it? A. About the bank book?

Q. Yes. A. I don't know anything about it. There was no talk about the bank book, to my knowledge.

Q. So that, if Mrs. Cummings had torn that bank book, it must have been when you were not around, just to vent her spite on her own bank book? A. No; it might have been in my presence.

Q. What I am trying to get at— A. She tore so much, she might have done that possibly. I wouldn't know what she was tearing.

Q. And one of the things she tore was her own bank book? A. I don't know whether it was or not; she tore several things.

Q. You gave your wife, you say, on an average of thirty five dollars a week? A. Yes, sir.

Q. You were earning thirty seven fifty, weren't you? A. My income was about fifty or sixty dollars a week.

Q. How much were you getting from the fire department? A. I think at that time from the fire department I was getting about thirty five or thirty six dollars a week.

Q. And what was the other part of your income? A. The house which we lived in I owned the house and the first floor was rented for fifty dallars and the third floor was rented for thirty five, I think, and the other—the flat which we lived in didn't cost anything. I am figuring the income on the house, which was about one hundred and forty dollars a month.

Q. Yes, and you owned it by yourself? A. Well, it was all my money that was in the house, yes.

Q. And had you acquired that house after you were married? A. I—bought the house after I was married. I didn't acquire the money.

Q. And when did you sell the house? A. I sold the house, I think in April, 1922.

Q. And that is when you bought the other house that you had put in—A. No, sir.

Q. Well? A. I bought the other house, I believe, about three or four months after.

Q. Yes. That is the one you had put in this man's name—what is his name? A. I put that in Mr. Eppinger's name.

Q. Yes. And how much did you accumulate from the time you were married down to the time you bought this second house? A. Oh, I didn't—I don't know what it was, I didn't keep track. I didn't keep no books.

Q. Mrs. Cummings was working, wasn't she? A. When?

Q. When she first married you. A. Before or after?

Q. After. A. No, sir. Not up till the time I went in the Army, which was July, 1920, 1918.

Q. And then she started to work? A. I don't know anything about what she did after she was in the Army.

Q. Didn't you find out? A. Didn't I find out?

Q. Yes. A. What, should I come back from France to find out what she was doing?

Q. I assume there was a way of communicating without coming back. A. I don't know what she did.

Q. You don't know what she did? A. No, sir. I did something what she did, yes.

Q. Well, then, what do you mean? Did you simply go to the Army and forget you had a wife here? A. She wrote me a letter herself and told me her mother had a battle and threw me out. She told me that.

Q. Is that all you know? A. Whether she worked or not I don't know.

Q. Do you know anything about whether she worked or not? A. I am not quite sure, no.

Q. Did you make any—did you wirte her any other letters to find out what she was doing? A. I wrote very regularly.

Q. Very regularly or irregularly? A. Very regularly.

Q. Very regularly? A. Yes, sir.

Q. Didn't you get any reply? A. Sometimes.

Q. Didn't you get any information from her? Didn't you ask information from her as to what she was doing or didn't you? A. Well, I was not interested enough. She had money enough to take care of her if she didn't work.

Q. When you came back from France you never let her know you came back, did you? A. How do you mean? I didn't let her know?

Q. That is what I said. A. I didn't know I was coming myself until I got on the boat.

Q. When you got on the boat and off the boat in Camp Dix you never communicated with her, did you? A. Mrs. Cummings was down to see me.

Q. But not because you told her you were there, but because she found out somewhere else, isn't that so? A. I don't know—how could I let her know?

Q. Can't you write? A. Write from where?

Q. Anywhere. A. Off the boat?

Q. When did you get to Camp Dix? A. When did I get to Camp Dix?

Q. Right. A. I got into Camp Dix about four o'clock. I didn't have time to write.

Q. You didn't have time to write? A. No, sir. She come down before she could get a letter.

Q. And you don't know how she found out you were home? A. Why, it is advertised every organization who comes home in a boat and I come home about one o'clock in the morning and she was down there at eight.

Q. Now, will you tell me how many ton of coal you bought during the winter of 1923? A. I bought all I could buy.

Q. Will you tell me how many ton you bought? A. I don't know. There was about four ton of coal there when I bought the house and I think—I believe I got another ton or two.

Q. You got one ton, didn't you? A. I don't know.

Q. During that entire winter. A. I bought all I could anyhow. That is the winter you couldn't get coal, shortage.

Mr. Lane: I think that is all.
The Court: That is all.
Mr. Child: We are through.
The Court: Complainant rests.
Mr. Lane: I will call Mrs. Cummings.

SADIE CUMMINGS, recalled.

Direct-examination by Mr. Lane:

Q. Mrs. Cummings, do you remember an occasion after you had left the house, I think in the month of April, 1923, going back to the house and finding your brother, or your husband and his sister there? A. I went back lots of times.

Q. Well, that is one occasion that has been testified to. A. Yes, sir; I—

Q. Now, just a moment. Do you remember that? A. Yes, sir.

Q. How long after the separation was it you went there? A. I went about—

Q. On this occasion that you are talking about. A. I—on this occasion when I went in and his sister was there?

Q. Yes. A. It was in June.

Q. And how did you find—how did you come to go there? A. Well, my furniture had been advertised in the paper, it had been advertised for some time, some three or four times a week, and I seen it advertised, so I went down this morning, and when I went down I took—(interrupted).

Q. Who did you have with you? A. Olive and I, and I entered the home and when I entered the home Ownie was standing on a chair and his sister was there and so she spoke to me. She said, he was working in the bakery.

"Hello, Sadie," and I said—spoke to her, and then said, "What are you doing here?" And she said, "Oh, I came down here," she said, "to help Ownie." So I walked in and my china closet—the house was being altered, altered into a two-family house, changed into a two-family house and we had put the furniture all into two rooms, the dining room and living room.

The Court: This is not rebuttal, Mr. Lane.

Mr. Lane: This hasn't been testified about.

The Court: Well, that doesn't justify your going all over it again.

(Discussion.)

Q. Did you at that time break the dishes? A. No, sir.

Q. When you got there what did your sister-in-law say she was doing there? A. I asked her what—she said she came to help Owen.

The Court: Stop.

Q. Was she at that time, or in your presence packing some of the things? A. Yes.

Q. When you told her—did she at that time refuse to leave the house? A. Yes, sir.

Q. Did you cut your leg in breaking a china closet?

The Court: "Kicking".

Q. Kicking a china closet? A. No, sir.

Q. With your foot or anything of that kind? A. No, sir.

Q. Was your leg cut on that occasion in any way? A. No, sir.

Q. Was there any injury done to you? A. No, sir.

Q. At that time in any way? A. Now, Mr. Cummings grabbed hold of me and he ordered his sister to get a policeman.

Q. Well, was there any injury, physical injury, cutting or anything of that kind? A. No, sir; just my wrists where he held me and I pulled away from him.

Q. Did you leave the house—Who was with you —Did you— A. Just left.

Q. Did you leave the house and then come back in a few moments with Mrs. McDermott? A. No.

Q. Was Mrs. McDermott there at any time on that occasion? A. No.

Q. Were you ever on Broad Street, about eleven thirty o'clock in the night, with Harold Young alone? A. No, sir.

Q. Did you tell Mr. Baum at the time, one occasion that you left the A. & P. that you were leaving because you thought that "they had a fight over me" or words to that effect? A. No, sir.

Q. Did you know that there had been a fight? A. Yes, sir.

Q. Did you know how many men were involved in that fight? A. About four.

Q. Did you know what the fight was about? A. Yes.

Q. Over what? A. Over pans.

The Court: Over a pan?
Witness: Over pans. It was—
The Court: All right.

Q. Did you have anything to do with the pans? A. No, sir.

Q. Was anyone discharged except Marshall that you know of? A. No, sir.

Q. Did you upon any occasion say to anyone that you were—say to Mr. Cummings or in Mr. Cummings' presence or to his sister that if you had had a gun you would have blown his brains out or words to that effect? A. No, sir.

The Court: That is on this day that you were down there that has just been referred to.

Witness: Yes, sir.

Q. You did not? A. No, sir; I didn't say that.

Q. Did you tell your husband that somebody would cost—that it would cost you three hundred dollars to get a divorce, that you didn't want to spend the money or anything of that kind? Did any such conversation take place? A. No, sir.

Q. Did you at any time when you were at the Library, at a time of visitation, hold your hand up and signal to Young or any other man? A. No, sir.

Mr. Lane: Cross examine.

Cross-examination by Mr. Child:

Q. You left the A. & P. immediately after this fight, didn't you? A. No, sir.

Q. Didn't you leave the next day? A. No, sir.

Q. Weren't you out of the A. & P. right after that fight or two or three months? A. No, sir; I left. Can I tell you?

Q. I am asking you if you left immediately after the fight. A. No, sir.

Q. And how long after the fight did you leave? A. Well, about seven days.

Q. And why— A. I left because I asked Mr. Baum to give—

The Court: Wait.

A. —me a rest.

Q. Harold Young never came back, did he, after the fight? A. I don't know; not that I know of.

Q. Did you say that Mr. Baum—you never said to Mr. Baum or gave as a reason that you were leaving because of the fight? A. No, sir.

Q. Didn't he pick you up in his car the same day as the— A. No, sir; Mr. Baum didn't pick me up in his car.

Q. Never drove you anywhere? A. No, sir. He stopped his car on the street and asked me if I would like to come back and I wanted him to give me a raise of two dollars.

Q. And when was that? A. That was the same night when I left the bakery. I walked up the street and he came along in his car and stopped. I didn't get into Mr. Baum's car.

Q. Why didn't you tell us about your two employments at the A. & P. on your former cross-examination? A. I was not asked about it.

Q. You were asked when you left the A. & P. A. I told you why I left.

The Court: Is that all?

Mr. Child: That is all.

Mr. Lane: Mrs. McDermott, the mother.

Sarah McDermott—Recalled—Direct.

SARAH McDERMOTT, recalled.

Direct-examination by Mr. Lane:

Q. Mrs. McDermott, after the separation of your daughter and her husband was there any time when you went back or went to the house where they had been living—with Mrs. Cummings and Olive and met Mr. Cummings and his sister at the house? A. No.

Q. Did any such thing as that take place? A. No, sir; at no time did I meet Mr. Cummings and his sister and the child at the house, at no time.

Q. Was there any time when you went back—went to the house and found some dishes broken and said that you were sorry, it wouldn't do any good, and you offered to buy new dishes or anything of that kind? A. No, sir; I never saw any dishes.

Q. (By the Court.) June, 1923, was it? A. No, sir; I never saw any dishes broke in the house.

Q. Or any other time? A. No, sir; at no time.

The Court: No dishes by anybody.

Q. Were you at the house in June, 1923, and Mrs. Cummings had a cut in the leg and she sat down and bound it up or did anything of that kind ever take place? A. No, sir.

The Court: She said she wasn't there.
Cross-examine. Any questions?
Mr. Child: No cross.
Mr. Lane: We rest.

Opinion.

IN CHANCERY OF NEW JERSEY.

Between

OWEN CUMMINGS,
Petitioner,

and

SADIE CUMMINGS,
Defendant.

Opinion.

On petition and counter claim for divorce.

For petitioner, MR. FRANCIS CHILD.

For defendant, MR. MERRITT LANE.

BACKES, Vice Chancellor:

The parties were married in 1917. The defendant left her husband in 1923 because of his alleged cruel conduct. He charges her with adultery with one Grimm, August 7th and 24th, 1924, and by an amended petition charges her with adultery *pendente lite* with one Young, July 26th, August 28th, August 30th, September 19th and 20th, October 26th, November 7th, December 13th, 1925, and January 10th, 1926. The wife counter claims, charging extreme cruelty.

The Grimm charge: Cummings testified he saw his wife on a safety isle on Broad Street below Market Street, Newark, waiting for a trolley, August 6th, in the evening, where she was joined by Grimm. He hired a nearby taxi cab driver, Daly, and they followed them to Dreamland Park. Daly, the driver, testified to seeing the two at the isle, on the trolley and at the Park; that he went into

the Park at Cummings' request and found them at an orangeade stand, where he says he too stood and took a "good luck" at them; that he reported to Cummings and was discharged. Cummings waited. When Mrs. Cummings and Grimm left the Park, towards midnight, Cummings hired another taxi cab in which he followed them. The driver, Marinella, testified, as did Cummings, that the two got off the trolley at Broad and Market and went to the World Restaurant, upstairs. He went up, saw them and waited. Shortly after, they took a trolley at Broad and Market and got off in Belleville near Mrs. Cummings' home. He says they stood at a tree in the dark embracing, and kissing and hugging, or might have been; that they then disappeared into a vacant lot, emerging twelve or fifteen minutes afterwards, adjusting their clothing. This was after two in the morning. The two taxi cab drivers were accidental witnesses of what they testified to and to all appearances are without interest in the affairs of the parties. Counsel's argument to discredit them is that as Marinella saw Mrs. Cummings at night time only, his identification in court after a lapse of two or three years was forced. But what of Daly who saw them in daylight, identifies them, and of Cummings? Is it at all likely that Cummings would have pursued another woman mistakenly or purposefully to make a case?

Cummings then hired the Corbally Detective Agency of Newark. One of the officers and three of the operatives of the agency and Cummings testify to what they saw of the occurrences on the night of August 23rd and the early morning of August 24th. Galgana and Cox, two of the oper-

atives, followed Grimm and Mrs. Cummings from the Newark Post Office, where they met, to Dreamland Park; (Mrs. Cummings from her home to the Post Office). Leaving the park towards midnight the two boarded a bus to Broad and Market Streets and went to the Royal Chinese Restaurant on Market Street. From there they took a taxi cab to Belleville, in the neighborhood of Mrs. Cummings' home. The two walked through several streets until they stopped at a tree in front of a vacant lot where they stood close together for more than a hour until two in the morning and, according to Galgano, mouth to mouth, kissing. Cox, with Galgano, shadowed them to the park, to the restaurant and in the taxi cab to where they got out of the taxi cab in Belleville. He did not follow them nor again see them but appears to have waited at that point for Mr. Cummings whom Corbally had gone to fetch. Stephen Flarity, an officer of the Corbally Agency came upon the scene in Belleville. He saw the two at the tree, but was unable to recognize Mrs. Cummings in the dark. He, however, knew it was Grimm because when the two parted he followed him to a restaurant in Newark and then to Grimm's home. Frank Corbally followed the pair from the restaurant to Belleville, saw them at the tree but was unable to identify them; he brought Cummings there to witness the happenings. Cummings' testimony is that he observed the two under the tree: that is, he was told the two figures were his wife and Grimm.

Galgano and Cox had trailed the two on the Saturday before, August 16th, from Newark to Coney Island. They followed Mrs. Cummings

from her home, accompanied by a girl friend. At the Newark Post Office the two men met Grimm and another man. The four went by trolley to Elizabethport and ferry to Coney Island. On the Island, Galgano stopped to telpehone and lost track of them and Cox. Cox kept them in view and took them back to Elizabethport at 11:45. He was aboard the same trolley as far as Dreamland Park from where he followed the trolley in a taxi cab until they got off in Belleville and walked to Mrs. Cummings' home. Both witnesses describe the displays of affection they witnessed on the boat between the two couples.

On August 29th Galgano and Cox followed Mrs. Cummings from her home to Newark on a trolley. She met Grimm at the Post Office and the two went to Dreamland Park where they left about ten at night. Returning to Belleville in a trolley they sauntered the streets and stopped at a telegraph pole alongside a cemetery where they stood for a spell, kissing Galgano says, talking Corbally says. Flarity and Corbally had been notified and were stationed near where the pair got off the trolley. Flarity and Galgano raced around and through the cemetery to get closer but by the time they reached the point Grimm and Mrs. Cummings had gone. Corbally says Grimm left her at her street. Cummings also testified to seeing the two at the place.

Mrs. Cummings and Grimm flatly deny ever being together in Dreamland Park or Coney Island and of course deny the events that ensued as just related. This denial and the generally unreliability of detective testimony is urged to discredit the evidence that points to guilt. Testimony from

such source is of course always to be carefully scrutinized and cautiously accepted, but subject to that test and guard, it is not to be disregarded and if belief in its truth is induced by the attending circumstances it must be given due weight. The Corbally Agency is regarded in Newark as dependable. Its general reputation for integrity is good and counsel himself vouches for this by his statement that he has "no doubt whatever that Flarity and Corbally followed a man and a woman as Flarity and Corbally describe", in the early morning of August 24th.

And I haven't the slightest doubt that the man was Grimm, for, as Flarity says, he trailed him to a restaurant, where he had opportunity to see him, and then to 401 Warren Street where Grimm entered. That was Grimm's home (he says it was 391 or 397). The trail that let from the tree in Belleville to his home in Warren Street is convincing of his identity. Nor is there any doubt in my mind that the woman with him was Mrs. Cummings. While Flarity and Corbally were not able to recognize Mrs. Cummings and Grimm in the dark, Galgano and Cox knew them well. Their work was to shadow Mrs. Cummings; that was their assignment. They had shadowed her the week before from her home to Coney Island and the week after August 29th to Dreamland Park and back to Belleville. On August 23rd they picked her up at her house and trailed her with Grimm to Dreamland Park and back to the restaurant on Market Street, and thence to Belleville. Locating the two in the restaurant, they got in touch with Corbally and Flarity (as they did again the week after) who saw them later in Belleville. The

calls for their employer to witness, give assurances that they had the woman they were set to watch. If they were falsely pretending that could have been brought about only by Galgano and Cox knowingly following another woman and imposing her on their employer. But where could they so conveniently, upon the two occasions, have picked up Grimm who unquestionably was the man in the case? And if they were imposing why the trailing of Mrs. Cummings on the three occasions directly from her home? Why the efforts? And how did it come about that they were able to deliver their quarry always in Belleville for their employer's observation? I have no question of the good faith and entire accuracy of Cox's testimony. At the time of the hearing he was no longer a detective, having taken up the management of an industry. He testified in a wholly disinterested manner and strictly to the point of his own observations. He is unassailable except by the fact that he was once a detective. As to his truthfulness I have not the least doubt. Galgano is said to have been overzealous in that he says that Grimm and Mrs. Cummings were hugging and kissing under the tree and at the telegraph pole alongside the cemetery, which the others say they could not see for darkness. If the two were not doing worse at two in the morning Galgano's description fits into the situation. The force of his testimony is that the two were there at unconventional hour and it is fair surmise that they were not discussing moral uplift. I have no question as to his truthfulness, nor of Flarity and Corbally. The testimony of the four is persuasive, and while one cannot point to a certain time and place of adul-

tery, the established circumstances are compelling that the relation between the two was unholy.

The testimony is also strongly corroborative of the proof of adultery on August 7th. The denial of guilt by the two is as of little weight as is their denial of being together at Dreamland Park, a fact sworn to by Galgano and Cox, Cummings, Daly and Marinella and by the chief in charge of the special police at the park, Cerone, who identified the two at the hearings as the pair he saw at the park, his attention having been called to their presence by Galgano while working on the case. I am persuaded to believe that the six are not perjurers and that the denials of Mrs. Cummings and Grimm were in self defense. Mrs. Cummings did not hesitate to deny writing a letter to her husband which she apparently feared might hurt her defense. Misspelling of a single word which she again misspelled on the stand—hear for here—satisfied me that her denial was untrue.

Mistaken identity is suggested to perplex. It is said that Grimm had a sweetheart living in Belleville with whom he had been to Dreamland Park. Grimm does not say she was his companion under the tree.

To discredit the four detectives, it is claimed that Mrs. Cummings was at work in the bakery of the A. & P. Co. on Friday night, August 29th, when they say she was with Grimm at a telegraph pole near the cemetery, and the books of the concern would seem to bear out the claim. Mrs. Cummings did not work Saturday nights. August 16th and 23rd were Saturdays. August 29th was Friday. There may be error as to date but not of the occurrence. Cox and Galgano trailed Mrs.

Cummings from her home that day, it may have been Saturday, the 30th, and Flarity and Corbally sustain them, that the trail led to the cemetery.

The Young charge. There is no appeal, as I read the petition, from the decree dismissing the Young charges, and although I am not convinced of the commission of sin with him, the proof relating to that accusation has a strong bearing upon the case made against the defendant of adultery with Grimm; it tends to satisfying one of the truth of the evidence of guilt with Grimm.

The incriminating evidence of adultery with Young was furnished by three women detectives, the Kopp sisters, who worked partly on a contingency basis—no proof, no pay. I have little confidence in them. They impressed me as unrestrained in conscience to accomplish their end and in relating crucial situations I feel that they drew on their fancies rather than the facts to paint the evil picture. That Young paid Mrs. Cummings ardent attention, was unseemly familiar with her, and that the two were not infrequently alone and in places they deny being, I haven't the least question, for it is testified to by witnesses I have no reasons to doubt. The evidence tends to arouse suspicion but I am unwilling to accept as true the testimony of the Kopp sisters and their friend Rothstein of the occurrences on August 30th, 1925, which, if true, would unmistakably point to guilt on that night. They (the Kopp sisters) had trailed the two—Young and Mrs. Cummings—on four or five previous occasions when, as they testify, they saw undue familiarity between the two, on the streets, at her home and Young's home where Mrs. Cummings was a welcome visitor, according

to Young's mother and sister. On the night in question, according to the Kopp sisters, Young and Mrs. Cummings were at a Newark theatre where their lover-like conduct annoyed others. After the show they went to a Chop Suey restaurant and near midnight left and after meandering through the Chinese district of Newark, took a bus and after that a trolley to reach Mrs. Cummings' home, at one in the morning. There, according to the Kopp sisters, they went on the porch and then to bushes alongside the house, from which they emerged fifteen minutes later, Mrs. Cummings adjusting her clothes. Young kissed her goodnight, and on his way down the street adjusted his belt or something on his trousers. Another night later, and late at night, they say, Young took Mrs. Cummings and her child home; that the child was put in the house and they stayed on the porch. The insinuation in that they had illicit relations, because the witnesses say they saw the white of Mrs. Cummings' underskirt. I am not unwilling to accept their testimony as to the meanderings of Young and Mrs. Cummings the first night, their conduct in the theatre, their call at the restaurant and their return home late in the night, for it is supported in a measure by a taxi driver, who to all appearance, is disinterested. Ackerman, the taxi driver, was hired by the Kopp sisters, who picked them up casually on the street, to carry them in their pursuit of the pair who were riding to Belleville, first in a bus then a trolley. He was at pains that night to get a view of them and testified that in the trolley Young had his arm around Mrs. Cummings' neck. The Kopp sisters' testimony of familiarity of the two also finds some sup-

port in the proof of similar occurrences on other occasions testified to by other witnesses who I have no reason to doubt, but I am unwilling to believe as true the alleged porch happenings on either night for it is highly improbable that the two would misconduct themselves in the presence of Mrs. Cummings' sister-in-law who was in her bedroom which faces on the porch. The house is small. The sister-in-law occupied the first floor and Mrs. Cummings the second with her mother. The porch extended across the first story front. The sister-in-law's and the mother's evidence indicates the improbability of the occurrences, that they could not have taken place without their knowledge, and it is not believable that the two, Mrs. Cummings and Young, cast aside all precaution, and, of all places, selected the one that would most likely lead to detection and their undoing. I decline to believe the defendant guilty of adultery with Young on this questionable testimony. I must also withhold credence to the testimony of opportunity to commit adultery in Young's home. It is to the effect that on more than one night the two were in Young's home, in the dark while the rest of the family were out temporarily and that they at times were in each other's embrace, kissing. It is not credited because some of the incidents related would seem to have been impossible of observatoin and Young and his parents' and sister's testimony refute it.

Another episode testified to by the women detectives is that one night while Mrs. Young and her daughter were in a delicatessen store, Mrs. Cummings and Young, who had accompanied them, remained outside where Young embraced and kissed

Mrs. Cummings and when he took her home kissed her goodnight. This is not unlikely because there is evidence from others of like happenings.

Mrs. Cummings makes a sweeping denial of ever being out alone with Young. Its untruth is proved beyond question. Kaiser, a fireman, fellow workman of Cummings, followed the two in his car, at Cummings' solicitation. It was night time. He says he saw them stop in a dark spot in the road, embrace and kiss. Harold Doughty, a fireman, saw Mrs. Cummings with Young, alone, in a booth of a Chinese restaurant on Broad Street and John F. Smith, a cousin of Mrs. Cummings, says he met the two on Broad Street at eleven twenty o'clock at night on two occasions. Other witnesses testified to seeing them together on the street with the Cummings child. Cummings had the right of visit by the child and it appears that Young was frequently her companion when she took the child to meet her father at the Library in Newark in the early evening; waiting for her until the visit was over.

The charge of adultery with Grimm is made. The testimony to establish adultery with Young fails.

The wife charges the husband with extreme cruelty. They were married during the war period. The husband was drafted into the service and went abroad and was released at Wrightstown in 1918 or 1919. They lived together until April, 1923. The testimony discloses that he at no time sensed his duty of a husband; he certainly never discharged it. When he returned from the war the wife had some difficulty in persuading him to return to her. He didn't want to home with her.

His support of her was meagre. His conduct, his vile epithets and actual physical violence from time to time, were past endurance and she left. He struck her, he beat her. He admits one assault. He said he had to knock her down because she came at him with a knife. I am not satisfied with that explanation. That he was always ready with an abusive and vile tongue, that he had nothing but malice and bitterness in his heart toward her, that he wanted to be rid of her and threatened to kill her and that he was ever ready with his fist is proved to a certainty. The testimony, of course, is mainly Mrs. Cummings', but it is amply corroborated. They had an argument over some property the day she left and he struck her two or three times. After she left him she returned to the house several times and on two of the trips he beat her and threatened her with a gun if she did not get out. In the cold mid-winter, February, 1924, while she was living with her mother, he carried away their undressed baby and when his wife resisted, struck her in the face. His conduct shows beyond peradventure that he did not want his wife; that he so abused her verbally and physically that she was compelled to leave. He is guilty of extreme cruelty. That she solicited a reunion does not mitigate against her nor weaken the proof of his cruelty. To again endure his abuse in the hope of an abatement was a lesser hardship than the separation she had involuntarily chosen for herself and baby. He turned down her appeal.

The recrimination results in a dismissal of the petition and counter claim.

Exhibit D-2.





775

Exhibit D-1

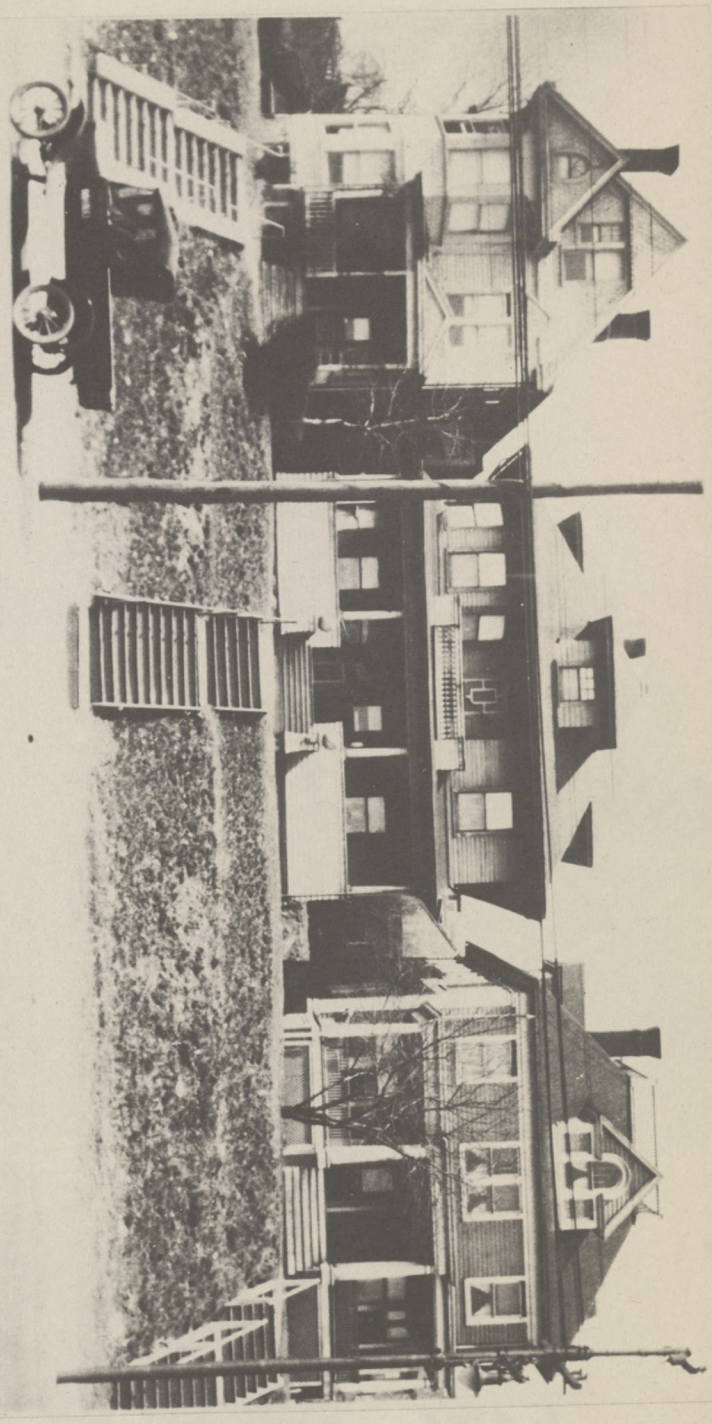




Ex. D-1 of June 23 1926.

176

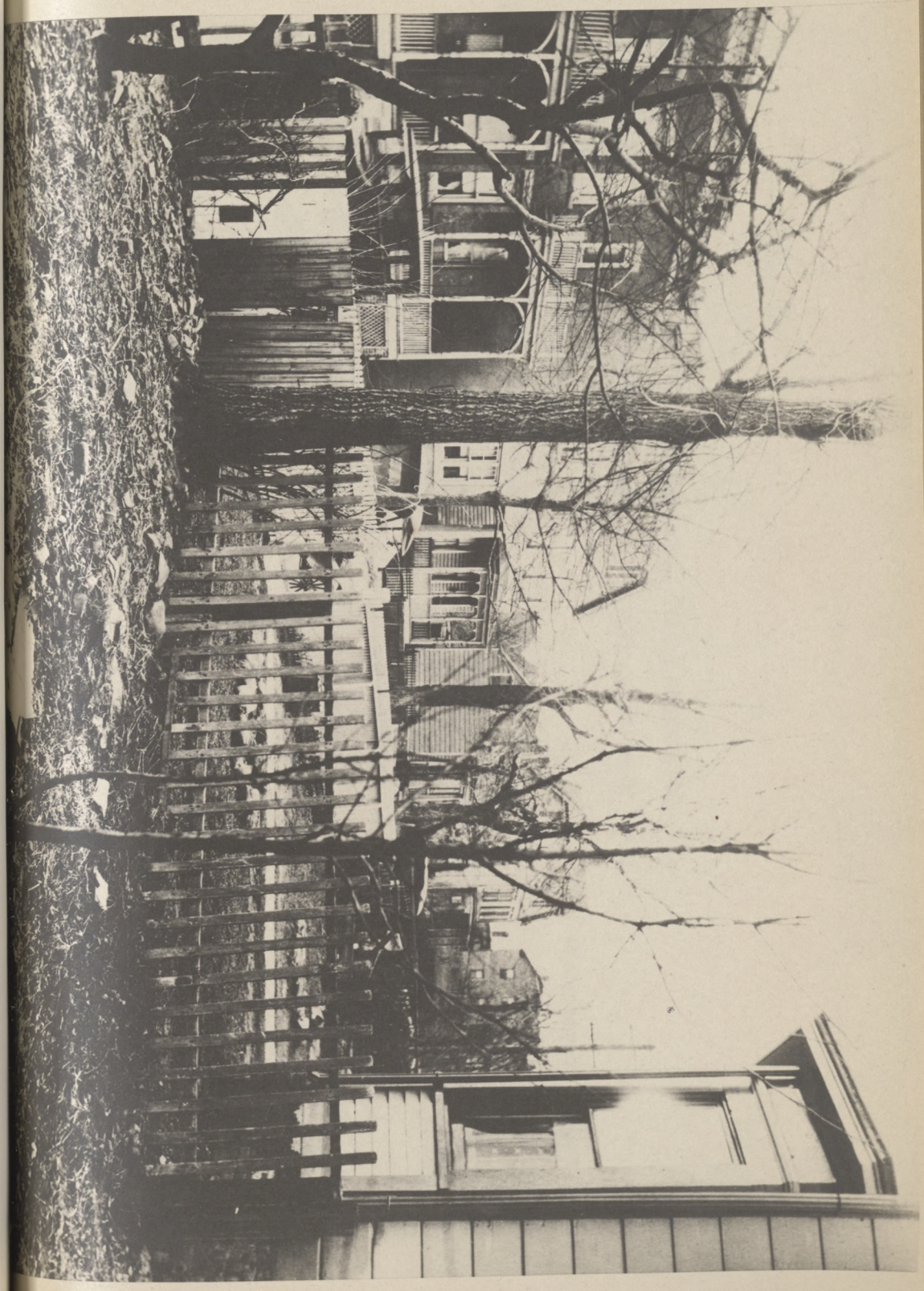
Exhibit D-2 of June 23, 1926.



Ex. D-3 of June 23 1926.

118

Ex. D-4 of June 23, 1926.



Telephone Belleville 2410

Belleville, N. J., Jan. 25 1926

E. C. Jan 23 '26

M ~~[illegible]~~

To **Edward McDermott,** Dr.

GENERAL TRUCKING - CONTRACTING

Ashes, Sand and Gravel

10 Washington Street

Will bring Olive down Tuesday
Afternoon 2 O clock She has
trouble with her teeth and
tonsilites so I was sorry to
dispoint you Sunday night
it was to cold to let her
stand on the street and
pleas tell your sister not to
call up as my brother will
not let me talk to her

S. C.

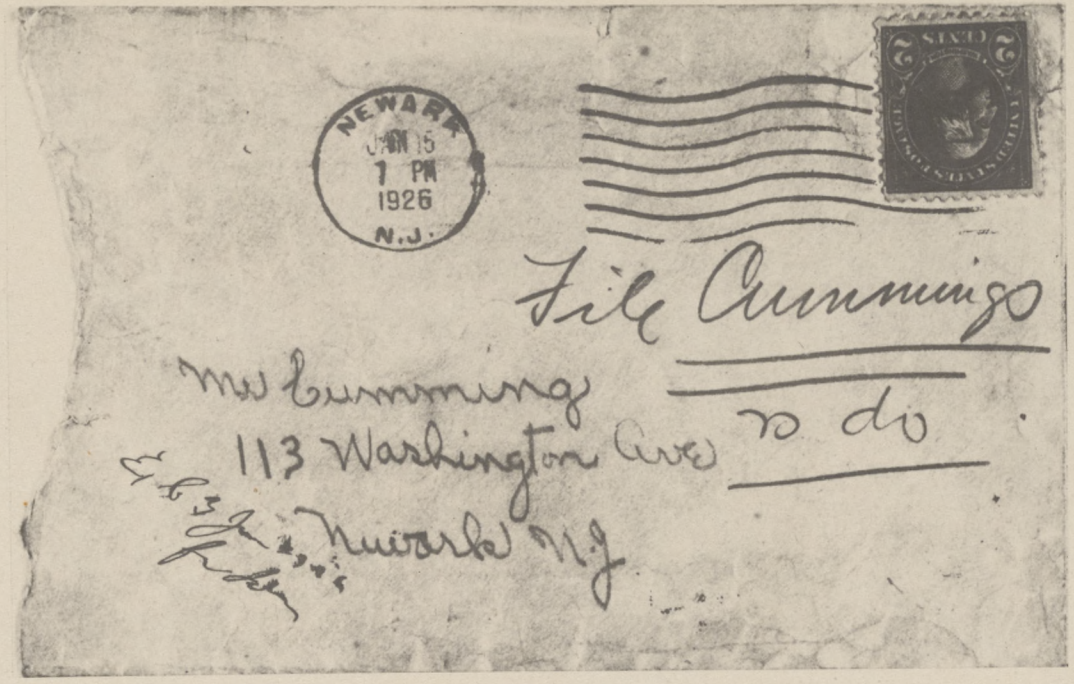
780

781

E 62 Jan 27 26

Cumming:

Hear's a good tip so use your brains I can't give you my name as I don't want to get in to it. but see Frank grims he up against it and a little money will make him see your way and she played him rottenings you can see him where he works or call him up No 0503 Mulberry he also knows some one that will help you get more goods. If you see him take him slow but he'll work if you take him right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113 Washington Ave
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98 MAY.T.1931

New Jersey Court of Errors and Appeals

Between

OWEN CUMMINGS,
Petitioner-Appellant Respondent,

and

SADIE CUMMINGS,
Defendant-Respondent Appellant.

Petition on Appeal from Court of Chancery.

SUPPLEMENT TO PETITIONER APPELLANT'S BRIEF.

Mr. Lane did not serve me with three copies of his brief until June 5th, six days after time specified by the rules, and therefore submit that the defendant has abandoned the right to this appeal. (Rule 35)

However, on page No. 148 of Mr. Lane's brief he attempts to have the Court believe it proper, for a husband to stand by while the wife commits an assault upon her husband. It is true I testified that I took the knife away from her, and in doing so I had to knock her down.

The defendant would have the Court believe that Cummings squared off as to deliver a knock-out blow in order to take the knife away from the aggresor.

I respectfully request the Court to read carefully the testimony of the knife episode.

The extraordinary thing about Mrs. Cummings story is, why did she continue to live with her

husband if he was cruel? She charged cruelty in 1919, 1920 and 1921—before extreme cruelty was grounds for a divorce in this State.

The Court below says on Page No. 773 of the opinion " * * * * that he was always ready with an abusive and vile tongue, that he had nothing but malice and bitterness in his heart towards her, and threatened to kill her, and that he was ever ready with his fist, is proven to a certainty. The testimony is mainly Mrs. Cummings' but it is amply corroborated."

I defer from the learned Vice Chancellor's opinion, for the reason that the testimony of curelty is not corroborated by even one independent witness, and the lower court does not make any attempt to point out any testimony of an independent witness to that charge.

On page No. 100 of Mr. Lane's brief he cites a case from the Court of Appeals of New York, this is entirely contrary to the rules of this Court, Rule No. 20 prohibits such practices.

Respectfully submitted,

OWEN CUMMINGS,

For Himself.

New Jersey Court of Errors and Appeals

Between: OWEN CUMMINGS, Petitioner-Appellant-Respondent, *and* SADIE CUMMINGS, Defendant-Respondent-Appellant.	On Petition and Cross-Petition for Divorce. Sat Below Backes, V. C. On Appeals of Both Parties.

(Italics, etc., mine, except where otherwise noted.)

BRIEF FOR APPELLANT SADIE CUMMINGS.

On September 17, 1924, Owen Cummings filed his petition for divorce against Sadie Cummings, his wife, alleging the marriage of the parties on November 15, 1917, and that his wife on August 7, 1924, and August 24, 1924, committed adultery with one Frank Grimm "at or in a lot on Hornblower Avenue, opposite Academy Street in the Town of Belleville, New Jersey, and on Washington Street, about one hundred feet south of John Street, Belleville, N. J., respectively" (p. 1). On October 23, 1924, the wife filed an answer denying the adultery and a cross petition setting up cruelty and praying for divorce upon that ground (p. 3). On November 1st, 1924, the husband filed an answer to the counterclaim denying its allegations (p. 10). On April 3, 1925, the wife filed an amended answer and cross petition, in which amended answer she set up as a separate defense to the petition for adultery the cruelty of the husband (p. 11). On April 19, 1925, the husband filed a reply to the amended answer and an answer to the counterclaim, in which he denied the allegations therein set forth (p. 27). On February 2nd,

1926, the husband filed an amended petition alleging that the petitioner had committed adultery at various times and places with one Harold Young (p. 30). To this amended petition the wife filed an answer on February 10, 1926, denying its allegations and setting up the same defenses in the matter of cruelty as before (p. 33). On February 19, 1926, the husband filed a reply to the amended answer and an answer to the amended counterclaim denying the allegations.

On February 10, 1928, an order was made admitting Harold Young as party respondent (p. 43). He filed an answer denying the adultery (p. 44).

There was one child the issue of the marriage, a daughter Olive Marie Cummings, aged three at the time of the filing of the original petition on September 17, 1924, in the custody of the wife. The case was heard by Vice Chancellor Backes and he filed his opinion (p. 762) in which he found: 1, the wife was guilty of adultery with Grimm, as alleged in the original petition; 2, the wife was not guilty of adultery with Young; 3, the husband was guilty of extreme cruelty (p. 762). This resulted in the decree, entered July 12, 1927 (p. 45), which dismissed all petitions. From that decree the wife appealed (notice of appeal, pp. 47, 48), her allegation being that the Court below erred in holding her guilty of adultery with Grimm (petition of appeal, p. 48).

The husband also appealed (p. 51). His petition of appeal (p. 52) does not allege that the Court erred in finding the wife not guilty of adultery with Young, and the Vice Chancellor who decided the case below and who filed his opinion after the appeals had been taken, said (p. 769):

> "There is no appeal, as I read the petition, from the decree dismissing the Young

> charges, and although I am not convinced of the commission of sin with him, the proof relating to that accusation has a strong bearing upon the case made against the defendant of adultery with Grimm; it tends to satisfying one of the truth of the evidence of guilt with Grimm."

The husband, notwithstanding that in his petition of appeal he does not question the decision of the court below on the Young charge, has in his brief considered that charge (p. 25), and it is necessary therefore for me to consider it, and it would be in any event because of the remark of the Vice Chancellor in his opinion (p. 769) that, while the proof as to the Young charge was not sufficient to convince him that the wife was guilty, it "tends to satisfying one of the truth of the evidence of guilt with Grimm". I cannot follow the Vice Chancellor. It would seem to me that, if the proof as to the Young charge was not sufficient to satisfy him of the guilt of the wife, and if the husband was obliged, in the attempt to prove his wife guilty of adultery with Young, to resort to the employment of the three women detectives, the "Kopp sisters", of whom the Vice Chancellor said (p. 769):

> "who worked partly on a contingency basis —no proof, no pay. I have little confidence in them. They impressed me as unrestrained in conscience to accomplish their end and in relating crucial situations I feel that they drew on their fancies rather than the facts to paint the evil picture",

there would be doubt cast upon the charge of the husband against his wife as to Grimm, and doubt would also be cast upon the prior charge, because, if the husband were satisfied of the guilt of his wife on the prior charge, why did he spend the time and money necessary to get the perjured

testimony on the Young or second charge? And the husband must have known that this testimony was perjured because he participated in the watching and he also testified. The court below in effect convicted the husband of a "frame up" on the wife as to the second charge, yet gave credence to the testimony coming also from detectives as to the first charge.

The innocence of the wife on the Young charge, far from having a tendency to satisfy one of her guilt with Grimm, would, I submit, have exactly the opposite result.

I will therefore deal in this brief, first with the Young charge, then with the Grimm charge, and last with the charge of cruelty, and will urge that there are matters which go to the weight to be given to the husband's whole case.

I.

The Young charge and matters generally affecting the weight to be given to the husband's whole case.

The testimony from the husband on the issue of adultery comes from detectives, taxi drivers and close personal friends of the husband in the fire department of Newark. Two sets of detectives were employed. The Corbally Detective Agency was employed during the year 1924, and, *apparently not satisfied with what that agency had done,* the husband employed the Kopp sisters, who worked under an agreement with the husband, the nature of which throws suspicion *not only upon their testimony but upon the husband's whole case.* The husband testified (p. 386) that he paid the Corbally Detective Agency about $400.00 and that he had paid the Kopp sisters

$550.00. He paid them in four installments, $150.00 as a retainer, and (p. 386):

"Q. Well, did you make the fee of five hundred and fifty dollars in the beginning? A. Yes, sir.

Q. For what? A. For getting evidence.

The Court: Whether they got it or not?

Witness: No, sir.

The Court: Only if they got it?

Witness: Yes, sir, if—— (interrupted).

The Court: What? Whether they got it or not?

Witness: No, sir; for working.

Q. A certain amount was to be paid in the beginning and a certain other amount to be paid when they got the evidence, is that right? A. If they got the evidence.

Q. If they got it? A. Yes, sir."

He did not make the final payment *until his counsel advised him that they had obtained sufficient evidence.* And (p. 388):

"Q. I understood you to say that your agreement with the Kopp sisters was that if they didn't get the evidence they wouldn't get any money and I am asking you now if that was the agreement? A. Well, my understanding—you advised me that I had enough evidence, and I took it for granted, and I paid them—I paid out the money."

Then, in response to his own counsel's question he said that they were to be paid whether they got the evidence or not but under examination by the Court (p. 389) he said:

"Q. How long was she to work? A. Until she would get enough evidence to secure what *I was looking for, a divorce.*

Q. She was to work until that time for five hundred and fifty dollars? A. That was the understanding.

Q. Was that your agreement? A. Yes, sir.
Q. Whether it took one year or ten years she was to work? A. No, half the amount.
Q. Half the amount what? A. Half the amount of five hundred and fifty dollars.
Q. For what? A. If she didn't get the evidence."

And (p. 390):

"Q. Why did you pay her any more than half of the five hundred and fifty—why did you pay her more than two hundred and fifty dollars when you say your bargain with her was that unless she produced testimony she was only to get two hundred and fifty? A. Because I was satisfied she had enough testimony.
Q. Eh? A. Because I was satisfied *she had enough.*"

How does this compare with the husband's statement that he had been advised by his counsel that he had enough in what had been obtained by Corbally and that he retained the Kopp sisters to get evidence to show that the wife was not fit to retain custody of the child?

The testimony from the Kopp sisters and those associated with them not only comes from a private detective source but was obtained under agreement that, if evidence was not obtained *sufficient for a divorce,* there would be a pecuniary disadvantage to the detectives.

And who are the witnesses produced to substantiate the charge of adultery with Young in the summer of 1924? Norma Kopp (p. 183), a private investigator of Paterson; Constance Kopp (p. 291), her sister, also a private investigator; Fleurette Kopp (p. 328), another sister, who is not "necessarily" an investigator, but "occasionally" so, the three constituting the Kopp sisters; Abram Vandersluys (p. 154), who met the husband at the home of Miss Kopp in Hawthorne

(p. 154), who is a salesman for the Kardex Company, Newark, who had known the Misses Kopp for about one and one-half years (p. 163), who had gotten acquainted with them through an attorney in Paterson, N. J., having been sent by the attorney to them so that he might engage their services in his own divorce suit, upon which the Kopp sisters worked for approximately a year (p. 164), up until September, 1925, at which time they ceased and after which time he had no business relations with the Kopp sisters, being only a casual caller at their home in Hawthorne (p. 165).

He said that the occasion of his going around with the Kopp sisters in this Cummings case was that they desired to talk with him about his own case (p. 165) and:

> "Q. Each one of these times that you were in their presence—or in the company of the Kopp sisters, it was with respect to conferences as to your own case, is that right? A. It wasn't the direct purpose of it, but it invarably came up.
>
> Q. So that they conferred with you at the house and they conferred with you while they were using your automobile to take them to Belleville. A. Sometimes such a conversation came up, yes, sir.
>
> Q. Have you told us all that you saw on each one of these occasions? A. Yes, sir; I believe I have."

This man had brought suit for divorce on the ground of adultery against his wife, based upon the testimony of the Kopp sisters, and that suit was pending at the time of the trial (p. 164).

Emma Rosenstein (p. 309), for whom the Kopp sisters were working (p. 318) and who said, when asked why she went around with them on this Cummings case:

> "Why, I was ill at the time and the doctor advised me getting the fresh air. Miss Kopp

offered to take me around for fresh air in her car. That is why I was with her or in the country."

She said that she did not know that they were going to follow Mrs. Cummings (p. 318):

"Q. It just happened that you were there? A. Yes, sir.

And then it transpired that she had been a witness in the Vandersluys case (apparently the Vandersluys case had been tried between the time Vandersluys testified in February, 1926, and the time that Mrs. Rosenstein testified in June, 1926), and:

"Q. You have been a witness, or, you were a witness in the Vandersluys case, weren't you? A. Yes, sir.

Q. When was that? A. When that case came up?

Q. Yes. A. Some time in February, I don't know exactly.

Q. This year? A. Yes, sir.

Q. And you testified to about the same events as you now testify to about Mrs. Cummings, you testified to about Mrs. Vandersluys, didn't you? A. Just what do you mean?

Q. Following her and finding her? A. Yes.

Q. Yes. And you were also a witness in your own case, weren't you? A. Yes, sir.

Q. And the Kopp sisters were? A. No, sir.

Q. Well, they at least were prepared to be? A. Yes, sir."

Ada Small, who first said that she had been acquainted with the Kopp sisters for five years (p. 323), having met them socially but who turned out to be a niece of Troast, their chauffeur.

Cornelius Troast, who was employed by the Kopp sisters as a chauffeur (p. 324), and from whose testimony it developed that the previous witness, Mrs. Small, is his niece, and that he lived

in the same house with her. He had a divorce suit with his wife (p. 328) in which the Kopp sisters figured only to the extent that they testified as to his residence.

From such courses came the testimony against the wife with respect to Young.

The only other testimony was that of Harry Doughty (p. 149), a friend of the husband, a fellow fireman, who testified that in June, 1925, for the first time, he saw Mrs. Cummings with her little girl and another girl and the husband in front of the library (p. 150). He said that he saw Mrs. Cummings once after that in a Chinese restaurant on Broad Street in company with Young. He said that, when the meeting broke up at the library Mrs. Cummings met Young and that they went across the street to a candy store at the corner of Bridge and Broad Street. Each time he told Cummings of what had occurred, although he did not know of any difficulty between Cummings and his wife (p. 153). Each time he just "accidently" saw Mrs. Cummings and Young. His story as to how he happened to be at the library is ridiculous (p. 151):

> "Q. How did you come to see them at the Library? A. Through a friend of mine that was in the car and pointed Mrs. Cummings and Mr. Cummings and the little girl and the other girl out to me, and this gentleman was standing near the park across the street." ("This gentleman" referring to Young.)

Arthur Ackerman, a taxi driver, who said that he drove the Kopp sisters in the month of August, 1925, and also saw Mrs. Cummings and Young on that occasion. He had never seen the Kopp sisters or Mrs. Cummings since that time. Yet he recognized them (p. 733). He said that Cummings communicated with him and that they got his name from the number of the license plate

on the car (p. 733). Cummings got in touch with him about three months before the date of the hearing in December, 1926. This taxi driver remembered these details for over a year and could pick out the persons involved from among the hundreds of people whom he must have driven during that time.

Charles L. Snively, a dentist on Broad Street (p. 702), said that he saw Young and Mrs. Cummings and the little girl at the library in 1925 (p. 706). He had never seen Young before and had not seen him again until the day he testified, yet he remembered him. He did not know Mrs. Cummings. He said that the reason why he could identify Young better than Mrs. Cummings was because "I had a better look at the man and not the lady" (p. 707), although he was within six feet of them, and (p. 707):

> "Q. How did you happen to be there at that time on the street? A. At that time Mr. Cummings was in my office and I treated a tooth for him and he told me where he was going and I—he said, 'I am going over to take a look at the child,' and that is the reason I went over there."

He said that Young stood within 75 feet of Cummings (p. 708). It was eight o'clock daylight saving time (p. 708). And (p. 709):

> "Q. Why were you interested in seeing the child? A. Just because he had told me about meeting the child there at the Library and I said 'I want to go over and see your child.'
>
> Q. Why were you interested in the child? A. Nothing, other than I wanted to see it, that is all.
>
> Q. Why the curiosity? A. I wanted to see child. I am very much interested in children; I like to see children.
>
> Q. Why were you interested in Cummings' child? A. Because he is a friend of mine.

Q. Not only a patient? A. He has been a friend of mine on—for twelve years, Mr. Cummings.

Q. He is not only a patient? A. No. Personal friend, yes."

And (p. 713):

"Q. Did Cummings ask you to watch for this— A. He didn't, never.

Q. You did it voluntarily? A. I am not a detective; no, sir, I didn't do it voluntarily. It is a coincidence.

Q. Just a coincidence that you happened to see him at this time? A. At this time, yes."

This friend of Cummings told a story of Mrs. Cummings, *while her husband was present,* making a motion with her hand to Young about 75 feet away. His explanation as to why he saw it and Cummings did not, was (p. 714):

"Q. Over Cummings' head (the motion) I suppose? A. No.

Q. Cummings saw it? A. He didn't say anything to me about seeing it.

Q. I know, but it was right there in public so he could have seen it? A. No.

Q. Why not? A. He was about five or six feet from this lady talking to the child.

Q. So were you. A. That's all right. He was stooped over and I wasn't.

Q. If he hadn't happened to have stooped over he could have seen this motion there? A. Possibly he could, if he had been looking that way."

James J. Wood (p. 133), another fireman companion of Cummings, said that some time in the early part of June, 1925, Cummings came to his house looking for him and asked him to go down to the Regent Theatre with him; and said that he, Cummings, knew that his wife was in the theatre with a fellow from Belleville. He told the story of having followed Mrs. Cummings and Young and

another lady and that the other lady went into a store and, while waiting for her to come out, "Young just put his hand on Mrs. Cummings' shoulder, or probably might have been her neck and pulled her toward him" (p. 135). The other lady was an elderly or middle-aged lady. He could not swear that Young kissed Mrs. Cummings. The store was lit up, business was going on and people were going in and out. It was not exactly dark where Mrs. Cummings and Young were standing (it could not have been or this witness could not have seen what he said he saw. And if the witness saw what he said he saw, everybody else saw it too). The elderly woman was Young's mother (pp. 138, 139).

Harry Kaiser (p. 119) a fellow fireman of Cummings, said that he first saw Young on June 10th, 1925, in front of the library on Broad Street, Newark. He followed Mrs. Cummings and Young at the request of Cummings (p. 119). He then told a story which it is impossible to believe and which is of such a nature as that it casts discredit upon the husband's whole case. He said that: after they came out of the library, they got on a Broad Street car; he, Kaiser, got on the same car and sat two seats ahead of Mrs. Cummings; she was on the right side of the car with the child and Young was sitting opposite her with another gentleman; the other gentleman got off the car and Young called Mrs. Cummings over to his seat; she went over to his seat with the child, and then (p. 121):

> "Mrs. Cummings told him to take off his hat, which he did. The child was standing partly in the aisle and partly squeezed into the back—into the seat. Young started to play with the child with his hand chucking it under the chin and caressing it; apparently the child resented it. He continued

> playing—with the left hand—making motions to the child, withdrawing his hand to Mrs. Cummings' breast where he was apparently rubbing her breast. They rode to Bloomfield Avenue and Belleville, got off the car and went into the Regent Theater."

This witness accompanied Cummings on various occasions when he went down to the library to visit the child. He had never spoken to Mrs. Cummings (p. 124). On cross-examination (p. 124) he repeated what he had said on direct and it is so nearly in *hac verba* (the infallible test of perjury) as that I repeat it here:

> "I sat two seats from Mrs. Cummings and the child. Mr. Young sat opposite Mrs. Cummings with some other man; the other man got up and got out at the D. L. & W.; Mr. Young called Mrs. Cummings over; she went over. She said, 'Take off your hat'. He had a straw hat on; he then started playing with the child. The child apparently resented it; he withdrew his hand and apparently he was rubbing Mrs. Cummings' breast."

He went into details and said that: Young had been teasing the child with his left hand; he was rubbing Mrs. Cummings' breast with his left hand; the car was quite full; it was an open car with an aisle in the middle, seats on each side of the aisle holding two people each; he was alone in the seat; Young was sitting at the seat next the window and Mrs. Cummings on the aisle seat; the child was in the aisle "partly, skinned in between her knee and the back of the seat in front of them"; Mrs. Cummings was not leaning toward the child; the car was light; it was daylight (p. 133); Young had his right hand back of Mrs. Cummings on the seat (p. 132) and:

> "Q. Now how could he with his left hand apparently be fooling with the child and ap-

parently rubbing her breast? A. She was sitting on his right and the child was standing there. He was, with his left hand—his right hand was up that way back of her and with his left hand he started chucking the child under the chin and gradually pulled his hand back until he was rubbing Mrs. Cummings' breast.

Q. Rubbing it or brush by it? A. I say was rubbing it; it was going up and down probably a dozen times."

All of this performance took place in broad daylight, in an open car, well filled with people, observable not only to the people in the car but to the people in the public street and this witness, sitting two seats ahead of where Mrs. Cummings had been sitting, or two seats ahead of where Mrs. Cummings and Young and the child were, but on the opposite side of the car, saw what occurred with such clearness as that he was able to swear that Young's arm did not just brush by Mrs. Cummings as he was fondling with the child but that he was in fact rubbing her breast, his arm going up and down at least a dozen times. To see this he had to turn and look around and his gaze could not be interfered with either by the back of the seat in front of Young and Mrs. Cummings, which must have intervened in a direct line from the witness to Mrs. Cummings. Explaining how he saw, he said (p. 130):

"Q. You had to turn around to look? A. I was sitting over probably where you are maybe—two seats.

Q. You had to turn around. A. Looked that way (indicating).

Q. Looked right at them. Did they know you were looking at them? A. I don't know whether she saw me or not.

Q. She could have seen you if you saw her? A. Yes, sir.

Q. And so could Young? A. If he had looked."

Can a court believe that there was any such public performance as this in that open trolley car in broad daylight? If the witness had said that Young had his right arm around Mrs. Cummings' neck and that he had his right arm resting upon her breast, we might possibly believe it. Such things may be done and not arouse particular attention but that he deliberately took his left hand and raised it and "rubbed this woman's breast", apparently over the dress, is ridiculous. It would have drawn the attention of everyone in the car.

This witness saw Mrs. Cummings and Young upon several other occasions and apparently acted quite as a detective but always "accidently" (p. 125) and he always "accidently", after he had performed the shadowing, met Cummings to report to him. The witness ended up by saying (p. 133):

> "Q. How long have you known Cummings? A. About fifteen years.
>
> Q. You are very friendly with his brother who is in the same engine house A. Yes, sir; I have been very friendly with his brother.
>
> Q. Fire department employee? A. Yes, sir."

I now come to the testimony of Fred Cook and consider it here because, in connection with it, there are matters that discredit the husband's whole case. Cook said that he was a carpenter acquainted with the husband and knew him, from going into a restaurant, for seven or eight months (p. 139). Cummings requested him to follow his wife as he was coming from his house, Cummings telling him that his wife and a man by the name of Young were on a North Newark jitney. The witness said that he followed the jitney to Clay and Broad Streets, Newark, at which point Young

and Mrs. Cummings alighted, waited seven or eight minutes and then got a Kearny and Arlington car, which they took to Midland Avenue and Kearny Avenue. They there got off the car. The witness parked his car, left Cummings in the car and followed Young and Mrs. Cummings. He described the shadowing and finally put them in Young's house in Belleville. The witness said that, before they crossed the bridge in Belleville, they stopped and put their arms around each other and kissed and went about 150 feet and stopped again and kissed. This was on Rutgers Street. This witness admitted that he had told Joseph Reilly (p. 143), that he had followed Mrs. Cummings but that he had seen nothing wrong. His testimony was illuminating (p. 143):

> "Q. Did you speak about what you had done to Joseph Reilly? A. No.
>
> Q. Didn't you tell Joseph Reilly that you followed Mrs. Cummings but you never saw anything wrong? A. Oh, yes; I told him that.
>
> Q. When did you tell him that? A. I don't know.
>
> Q. How did you come to tell him that? A. Well, he was—I suppose he might have asked me questions which I didn't answer him; that is all.
>
> Q. You what? A. He might ask me some questions. I don't remember telling him anything like that." (There are three contradictions in the space of about ten lines. First, the witness did not speak at all to Joseph Reilly about it, second, he told Joseph Reilly that he followed Mrs. Cummings but he had seen nothing wrong and third, Joseph Reilly may have asked him questions but he did not answer him.)

And then:

> "Q. You just said a moment ago you did remember telling him, did you or didn't you? A. I might have told him something like that." (Another contradiction for a moment

before he said he had told Joseph Reilly nothing like that.)

"Q. It isn't a question of might have. A moment ago I asked you didn't you tell Joseph Reilly you had followed Mrs. Cummings and you never saw anything wrong and you said yes; is that the fact? A. I said I never saw anything *real* wrong." (Fifth contradiction.)

"Q. Now you say you never saw anything real wrong, but—(interrupted). A. Nothing *real* wrong.

Q. Are you sure now it was anything 'real wrong'? A. No, sir."

He had also told Mrs. Cummings, when she saw him just before the trial, as he said, that he had not seen anything "*real* wrong" and he said that Mrs. Cummings did not ask him what he meant by "real wrong." It is absurd to say that, if a woman had asked this witness what he had seen and he had said that he had seen nothing "real wrong", she would not have asked him what he meant by the "real" and would not have asked him what he had, in fact, seen. The witness conceded that it is not right for a married woman to be kissing a man other than her husband (p. 144):

"Q. On the bridge or off the bridge, that isn't anything real wrong, is that right? A. No; it isn't right to be kissing a man."

This took place on a public street, county road, main thoroughfare, electrically lighted (p. 146). The witness was on the opposite side of the street and could see all of this kissing. In the middle of the sidewalk of this electrically lighted street, with cars going back and forth continuously, these people stopped, kissed, went on about 150 feet, stopped and again kissed and could be seen by this man on the other side of the street at least forty or fifty feet away (p. 146). There were no trees or

brush to hide their conduct (p. 147). The witness is 20 years old, (p. 143). He did all this work out of pure friendship and was not offered or paid a cent (p. 143). Cummings paid for nothing except the gasoline he put in the car (p. 143). His only friendship with Cummings was as a result of meeting him in a restaurant. He knew the proprietor of the restaurant, Rothrock, and a man named Joseph Williams and another man named Joseph Reilly, who frequented the restaurant (p. 142), also a man named Thiel and another named Lucas. The difficulties between Cummings and his wife were never discussed in the restaurant so far as he knew (p. 142). In view of the testimony now to be averted to, it is significant that this witness, Cook, *came from the restaurant.*

Edwin Theall, sworn for Mrs. Cummings, testified (p. 353) that: he is employed in the A. & P. Bakery in Belleville; he knew Cummings and Rothrock, the proprietor of the restaurant; about a week before Decoration Day, 1925, Rothrock came to him at his place of employment at the A. & P. Bakery, called him out of work at three o'clock in the morning and took him across the street to Cummings; and (p. 354):

> "Why, Mr. Cummings wanted to know if I wanted to make some money, and I said, 'in what way?' And he claimed that I was to take his wife to a hotel and be raided.
>
> Q. And was the amount of money which he was to pay you for doing that mentioned? A. Yes, sir.
>
> Q. How much? A. Five thousand dollars.
>
> Q. Did he say anything to you with respect to what he had already done? A. Well, he claimed he spent around six— * * * He claimed he had spent around six thousand trying to obtain evidence for a divorce so far.
>
> Q. Did he say with what result? A. No; he didn't say.

Q. Now did you agree to do that or not? A. No, sir.

Q. Did you decline to do it? A. Yes, sir.

Q. After you had declined to do it, did you hear any conversation between Mr. Rothrock and Mr. Cummings? A. Why, yes, Mr. Rothrock claimed that he could get a man to do that work Mr. Cummings and that he would bring that man to me and have me introduce him to Mrs. Cummings and that man would do it for much less money than five thousand dollars."

He said that he saw Cummings about a week after and that Cummings asked him if his wife was still working at the A. & P. Bakery. He knew Williams. He went into details on cross-examination (p. 355) as to his conversation with Rothrock. The husband sought to impeach this witness by showing that he had been convicted of a crime but it appeared that all that that amounted to was that he was in Rahway for nine days for carrying a gun.

It is true that, from the question of the Court, (p. 356) it would appear that the Court may have been impressed with the view that it was impossible that Cummings, who was a fireman, should have offered Theall $5,000, and that Theall should have refused it (p. 356).

The husband refers to this testimony on page 55 of his brief, and, in effect, says that the production of the testimony of this witness and also that of the witness Williams, was a deliberate attempt to put Cummings in the position of having paid money for the getting of testimony. The difficulty with any such theory is that, if anyone had deliberately arranged to have this testimony fabricated he would have recognized the fact that Cummings was a fireman and that $500 would, on the face of things, appear more appropriate for a fireman to offer than $5,000 and he would

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likewise have recognized that $5,000 was quite a sum for the young man Theall to refuse to take, and it would not require much acumen upon the part of the witness Theall to recognize these facts in view of the questioning of the Court. If the story had been prepared the amount would have been $500 and not $5,000. But the witness testified that the sum was $5,000 and he stuck to that amount and it is easy to conceive that Cummings would offer $5,000. While only a fireman *he has had sufficient moneys to retain distinguished counsel and to pay two sets of detectives.* He had property and, as will be hereafter adverted to, *this litigation is the outgrowth of property disputes between his wife and himself.* He may be an ordinary fireman but he had sufficient property to produce $5,000, which it was said he had offered, several times over.

Joseph Williams testified (p. 357) that: in May and July of 1926 he was employed by the Sinclair Oil Company; on or about May 25th, 1925, Cummings came to him and asked him if he would like to make some money and, upon being asked in what manner, Cummings said that he would like to have someone go and take his wife to a hotel and that Cummings would come with a detective and see them there; the witness had gone to school with Mrs. Cummings and declined the offer; Cummings asked the witness if he would accompany another man and point Mrs. Cummings out to him and trail her and he refused to do that; Cummings gave, as a reason why he wanted the witness to point out his wife to another man, that he was trying to divorce his wife.

It is true that the witness had been out of employment, but I do not know as that particularly affects the credit to be given his testimony. The witness was young and had a home and was supported by his people (p. 360). The witness knew

Andrew Rothrock, the proprietor of the restaurant, Theall, the preceding witness, and Joseph Riley, to whom the witness Cook, produced by petitioner(p. 361), had said that when he, Cook, had trailed Mrs. Cummings he had seen nothing wrong, and the witness Williams knew Cook (p. 362). They all frequented the restaurant.

I submit that it is not quite fair for the husband to call the witness Theall a "jail bird" (p. 55 of his brief) however fair it may be for him to style the witness Williams "a self confessed loafer". A youth who has been in Rahway Reformatory for nine days for carrying a gun cannot properly be called a "jail bird".

The difficulty with the criticisms of the husband of Theall and Williams is that *they were his associates,* not those of Mrs. Cummings. Cummings was an habitual frequenter of the restaurant kept by Rothrock. It was from that restaurant that Cummings got his witness Cook. It was in that restaurant that Williams, Theall, Cook and Riley congregated, and it was *with them that Cummings associated.* Cummings admitted his knowledge of these men and the manner in which it was necessary to force the admission from him showed a fear on his part to have his relations with these men gone into.

Cummings said (p. 274):

> "Q. Where did you meet this Fred Cook? A. On the corner of Chester Avenue and Washington Avenue, Newark.
>
> Q. Where did you meet him first? A. In the vicinity where I lived.
>
> Q. Where? A. I don't know.
>
> Q. Didn't you meet him in a restaurant? A. He was in the restaurant various times when I was in there, yes, sir.
>
> Q. Didn't you meet this man in that restaurant? A. Not exactly. I know he was in the restaurant with me, yes, sir.

Q. Didn't you first become acquainted with him from going to this restaurant? A. Yes, sir."

Six questions and answers to get out what the witness knew examining counsel was after and which could well have been disclosed by him in the beginning.

"Q. What is the name of the restaurant? A. What restaurant do you mean?"

(Clear equivocation.)

"Q. The restaurant at which you met the man and became acquainted with him. A. There are two restaurants there.

Q. The one you met the man in and became acquainted with him. A. I believe he and I have been in both of them. I don't know which one you mean.

Q. Which one was it that you became acquainted with him in the first time? A. I don't know which one of them."

(All equivocation.)

"Q. What was the name of the two restaurants you have in mind? A. One is the Blue Moon. I don't know what the name of the other one is.

Q. Do you know a man by the name of Theal? A. Yes, sir.

Q. Meet him there? A. I have seen him there; yes, sir.

Q. Talk to him? A. Yes, sir.

Q. Do you know a man named Reilly, Joe Reilly? A. Yes, sir.

Q. Meet him there? Or John Reilly, meet him there and talk to him too? A. I don't remember seeing Joe Reilly there.

Q. Do you remember a man by the name of Williams? A. Yes; I do.

Q. Is he one of those that you met there in that restaurant? A. No, sir.

Q. Where did you meet him? A. Williams, I have seen him for a number of years in that vicinity and he usually sat in the bread box

from 9:00 o'clock in the morning until 11:00 o'clock at night on the corner of Chester and Washington Avenue."

Remember that Williams had not been called when this testimony was given and it had not appeared that he had been unemployed from May of 1925. Why did Cummings testify with respect to *him* in this manner unless he was afraid that Williams was going to say something and why should he be afraid, if he did not know that Williams *could* say something, if he wanted to?

Cummings said that he had never made an offer to Theall as Theall said he had, but that he knew Theall and had been introduced to him by *Rothrock* (p. 743) (which agrees with Theall's testimony). Cummings story is as follows (p. 743):

"Q. How did it come about that you met Edson Theall? A. Mr. Rothrock introduced me to Edson Theall.

Q. And what was the occasion of that introduction, why did it take place? A. On June the 2nd, 1925, I was following my wife in Belleville, he was a married man, Joseph Reis, and while I was following this man I didn't know who he was, so I came home about eleven o'clock and I stepped in the restaurant and had something to eat and I told—(interrupted)

Q. Whose restaurant? A. Rothrock's restaurant." (He had no difficulty then in identifying the restaurant.) "I was telling him about it, and he was a very good friend of mine and he says, he would take me up to Belleville and find out who it was, so I told him I thought this man worked where Mrs. Cummings did. We went up to Belleville and we happened to ride on the trolley car which Mrs. Cummings' brother was motorman on the car. It was about one thirty, so we rode as far as Grafton Avenue and I told Rothrock my wife's brother was on that car, so we got off, so we didn't know where we was

going, so we got in another trolley and we went to Belleville and we went down to the bakery and Mr. Rothrock went to the watchman and he called out Mr. Theall and he asked him if he knew anything about who Mrs. Cummings was running around with. 'Why', he says, 'Yes; Joe Reis'. And he told us various thing how he had—(interrupted).

Q. Never mind what he told you, but then what did you do? A. I heard what I could. That is all. I got all the information I could out of Theall.

Q. Was that the only time you saw Theall? A. That was the first time I knew Theall.

Q. Did you see him after that? A. Yes; I did.

Q. Talk to him? A. Yes, sir.

Q. Try to get information about your wife? A. No; not after that."

Cummings admitted again that he knew Williams (p. 744). He denied that he had had any conversation with him with respect to his wife.

The husband on page 55 of his brief says:

> "The witnesses, Theall and Williams, state that Cummings offered to pay them money to go out with his wife was held in the presence of one Andrew Rothrock and a man named Reilly. Neither of these witnesses were called by the defendant, although the witness Rothrock was in Court up to the last two days of the trial, and the testimony of the petitioner is that when he attempted to find Rothrock to serve him with process, he was unable to do so."

The wife can hardly be criticised for not calling Rothrock or Reilly either (in view of the admission of Cook), but particularly Rothrock. Rothrock was the friend of Cummings, and the man who performed the introduction to Theall, and the man to whom Cummings confided his troubles

(p. 743), and who accompanied Cummings to get information about his wife, and one Joe Reiss, the very good friend of Cumming, according to his own testimony. *Why should the wife call him? It is true that Cummings testified* (p. 744) that he had endeavored to subpoena Rothrock. It would appear that the only effort he made was the night before the hearing and he said (p. 744):

> "Well, I couldn't find him; I was up to the house last night about eleven o'clock. I was there twice last night to try to get him and the boy was—(interrupted).
>
> Q. Never mind what the boy said; did you get him? A. No; I did not.
>
> Q. Were you up there before last night? A. Yes, sir; the night before.
>
> Q. Did you obtain any information as to where he was? A. They said he was away. They said he was in *Trenton.* He is a salesman." (In the State of New Jersey within reach of subpoena.)

Not a very violent effort to secure the attendance of a very good friend and confidant, whose testimony was vitally necessary to refute the testimony of Theall and Williams! The husband says (p. 55 of his brief) that Rothrock was in Court up to the last two days of the trial. If that is so he was within the control of the husband, and the excuse given for his non-production (without a request for a postponement in order to get his testimony) is, I submit, without substance.

The reason why Rothrock was not called by petitioner is to be gleaned from the equivocation of Cummings in the beginning as to how and where he had met Cook (p. 274).

Joe Reilly was a frequent visitor of this restaurant and was (p. 275) one of the crowd from which Cummings got his witness Cook. The wife went into the husband's camp and produced The-

all and Williams. Theall and Williams testified to a story damaging to Cummings and put two of Cummings' acquaintances in the position of knowing about the matter, to wit, Rothrock and Reilly. Rather than put Rothrock and Reilly on the stand to contradict the stories told by Theall and Williams, Cummings preferred to rest upon his plain denial. If Rothrock and Reilly (the latter of whom was not shown to be not available) could deny the story told by Theall and Williams why were they not put upon the stand?

We have Cummings, with his friends from the restaurant, and with his detectives, the Kopp sisters, with their friends, then present and past clients, riding around with them and getting evidence for another client, to be paid a certain amount if they succeeded and a certain lesser amount if they did not. When a man, in order to get evidence against his wife for divorce, is willing to pay detectives, who will accept such a proposition, a contingent fee for getting evidence, he is not incapable of doing that which Theall and Williams allege he did.

Petitioner produced two young men, Mr. Horace Wey (p. 109) and Paul Palmer (p. 115). Wey was twenty-one years old. He had just quit college (p. 113). He had never met Mrs. Cummings, never saw Cummings, except once, and had never seen Young. He recognized Young but not Mrs. Cummings (p. 114).

Palmer was twenty years old. He was a clerk.

Wey testified that: one night, in the summer of 1925, Cummings came up to him and his friends, who had stopped at a drug store, about nine o'clock at night, to get a package of cigarettes, and asked them "if we had seen this young lady and man" and he (p. 110) "asked us information about road houses and so forth, around town there"; he asked them to locate "this young

lady and man", whom they had not yet seen or had described to them; they went out alone looking for the young lady and man (whom they had not seen and had not had described to them, so far as the record shows), and after going around for about ten minutes they went back to the drug store and saw Cummings again and "at that time he had given us no information about what it was all about and we were kind of bewildered—" (I should say that two young men, trying to locate a young lady and a man in some portion of town, never having seen the young lady and the man before and not having the young lady and man described to them, *would* be somewhat bewildered); Cummings asked them to wait; he said that he had a gentleman following the couple; they did wait and then they trailed behind Cummings "and this other gentleman in the flivver coupe"; they went to Belleville and Cummings pointed out a place "where the young lady was supposed to be and the young lady and the man and an elderly lady and a young baby came out to go to this fire"; they followed; when Young and Mrs. Cummings and the baby and this elderly woman were coming back (p. 111)—

> "and Mr. Young and Mrs. Cummings were walking together, Mr. Cummings (Interrupted).
>
> Q. Mr. who? A. I mean Mr. Young. He had—I *think* he had his arm around her waist; *I wouldn't say for sure.*
>
> The Court: What? He had his arm in her arm or around her?
>
> Witness: They were walking up the street.
>
> The Court: You say he had his arm around her arm or around her waist, which?
>
> Witness: I don't know which. I know they were walking together anyhow. Then we went over to this house again on the main street there and shortly afterwards.

The Court: Is that the Cummings house as you understood it?

Witness: No. That is this gentleman, Mr. Young—Mr. Young's house. They went in there, up on the porch—they didn't go in, and very shortly afterwards they came downstairs again from off the porch——

The Court: Who—they?

Witness: Why, Mrs. Cummings, Mr. Young, the baby and this elderly woman, and Mr. Cummings suggested that we follow them. It seemed as if they were going to take them home. So we walked down the avenue and went up a street to the right and followed them over to Mrs. Cummings' street and we walked—it was a very dark street—and we got behind a tree and watched them stop at a house there, and then we walked by the house—they were all standing there, and we went down to the corner and stood behind a telegraph pole, and we couldn't see very well there; we stood off about fifteen doors; and we came back on the side of the street where the house was *and Mrs. Cummings and Mr. Young—there was a little gate there—they were sitting there by the gate and the elderly lady and baby were standing there talking to some other person. They were out in front with everybody.* We went by the house and went back to the avenue to Mr. Cummings, and we were going to come back again, but just then Mr. Young and his mother, as I understand it, came back, so we came home.

The Court: The elderly woman, you understood, was Mr. Young's mother?

Witness: That is what I understood."

The witness's companion, Palmer, says:

"We followed them down and waited until they started home and came up back of them, and the gentleman friend of Mrs. Cummings picked up the child and carried it across the street once or twice and coming up Rutgers

Street *I believe he had his arm around her waist.*

The Court: Are you sure about that, the arm around her waist, or her arm?
Witness: Her waist, I think."

They first went to the fire about 9:30 P. M. (p. 118). The Court examined this witness:

By the Court:

"Q. Why were you so busy about this thing? It was none of your affair. It wasn't a very nice thing to be bothering with. Why were you interested? A. He asked us to go.
Q. He was an absolute stranger to you. Why should you bother with another man's business, and one of spying on a woman? Why were you interested? A. He claimed his wife went out with another man. *We didn't know if that was exactly right on her part.*
Q. Why were you interested in it? It wasn't your wife. Why were you interested I say—why were you two interested? A. I guess we didn't have much time to think it over before we went. We did it right on the spur of the moment."

While these two young men (so far as we knew) were not members of the crowd congregated in Rothrock's restaurant they are more or less of the same type, out with nothing to do, one a clerk, and one who had just "quit college", apparently not graduated, and perfect strangers to Cummings.

Cummings' story of the incident of the fire is found on page 256:

"A. A fire alarm sounded at that time (about 10 P. M.) and Mrs. Cummings, and Harold Young, Mrs. Young, Mildred Young and Olive Cummings walked down to see this fire. It happened to be a false alarm, and they came back together. Harold Young was walking up in back of the rest of the party

with his arm around Mrs. Cummings. They went up to 175 Washington Avenue and all of them walked up the avenue. I didn't see them any more.

Q. Who was with you that night? A. Fred Cook and Mr. Way and another man; I don't remember his name. He has already testified."

Fred Cook in his testimony (p. 139) said nothing about this. The witnesses Wey and Palmer (pp. 109, 115) *thought* that Young had his arm in her arm or around her, they did not know which (p. 111). According to Wey, Young at some time or another, was with the child (p. 113). Wey and Palmer both have Young and Mrs. Cummings and Mrs. Young and the child coming out of the Young house and all proceeding to Mrs. Cummings' house, and they also have Cummings with them when they saw this. Yet Cummings said that he did not see Young and Mrs. Cummings after they walked up to 175 Washington Avenue.

The testimony of the witnesses for petitioner upon the issue of adultery with Young went too far. It was met by explicit corroborated denials. It was mostly all as improbable as the story of the witness Kaiser who told of Young rubbing Mrs. Cummings' breasts on an open trolley car well filled with people in the day time. Coming from the source it did, it was unbelievable. The dates relied upon in petitioner's brief as the dates upon which the adultery was committed with the co-respondent Young are July 26th (p. 24), August 28th (p. 25), August 30th (p. 26), September 19th, 20th (p. 32), October 26th (p. 34), November 7th, 1925 (p. 34), December 13 (p. 36), January 10th, 1926 (p. 37). Upon the whole case there are other dates, however, of equal importance.

July 4th, 1925.

Norma Kopp testified that: she followed Mrs. Cummings to her home at 10 Washington Street; she saw Young at his home, 175 Washington Avenue, Belleville, at eight o'clock; and (p. 184):

> "Mrs. Cummings was going up the stairs with her little daughter, and Mr. Young met her at the head of the stairs. He put his arm around her and kissed her."

She said that: Mrs. Smalley, Mrs. Rosenstein, Cornelius Troast and the sister, Florette Kopp, were with her at the time; she remained at 175 Washington Avenue until about 9:30; she did not see Mrs. Cummings again.

Florette Kopp testified (p. 329):

> "A. I believe it was visitation night for Mr. Cummings' child and we followed them back from the Library to 175 Washington Avenue and he—Mr. Cummings—Mr. Young greeted Mrs. Cummings at the head of the stairway. It was a deep stairs or high terrace and the child was a few feet ahead of the mother and he greeted the child with a kiss and embrace and also Mrs. Cummings, and they went up onto the porch and they were going to have a celebration of some kind there that—fireworks, they were making preparations for a little celebration with some fireworks, and we remained around there for, oh, I should say, pretty nearly an hour.
>
> Q. What were they doing during that time? A. In and out of the house and sitting on the porch together side by side. The child was down on the terrace.
>
> Q. What time did you leave? A. Oh, I guess it was a little after nine."

On cross-examination she said (p. 348) that on July 4th Mrs. Young, Young, Mrs. Cummings,

Young's sister Mildred and the little girl were at Mrs. Young's house, and

"Q. The little boy was there, too, wasn't he? A. No, I didn't see—I didn't notice any little boy.

Q. And are you sure there was not any little boy around there? A. I didn't notice any there, no.

Q. But you saw everybody there? A. No, not at that time, when I first saw them.

Q. Well, at any time during the time you saw them on July 4th on that porch did you see a little boy? A. No.

Q. Did you see them playing with fireworks? A. Oh, I saw Harold Young set off some red lights.

Q. At any time did you see Mrs. Cummings leave the party and take Olive home? A. No.

Q. What time was it when Mrs. Cummings finally left? A. She was still there when I went.

Q. And that was what time? A. I went—I left there about nine thirty, I guess, near to ten, maybe.

Q. And Olive was still there? A. Yes, sir.

Q. There cannot be any doubt about that? A. No, sir, Mrs. Cummings did not leave and she did not take the little girl home.

Q. Mildred was there all the time, wasn't she? A. Mildred?

Q. Yes. A. In and out of the house on several occasions. I didn't pay any attention to what Mildred's movements were.

Q. Well, were they present when the kissing was going on? A. Yes, they were on the porch when he came out to meet her.

Q. Well, if the kissing had gone on, they saw the kissing, didn't they, or must have seen it? They were closer than you were? A. Maybe they were not looking just where I was looking.

Q. That was not any answer. There was not any concealment about it, was there? A. No; it was very open.

> Q. Very open, so it would be nothing for them to see it. A. Yes. It was way off; it was not on the porch it was done. It was done on the stairs, on the terrace.''

In other words, on July 4th, in the presence of his sister and of his mother Young deliberately kissed this married woman, Mrs. Cummings, publicly and openly, in broad day light.

I submit that the testimony of Mildred Young can be implicitly relied upon. She is not impeached; she is a young girl who would not be likely to testify falsely; she supported her testimony by diary entries, and, notwithstanding the suggestion of the husband (p. 56 of his brief) that these diary entries may have been put in for the occasion, the books themselves bore intrinsic evidence that this was not so.

Mildred Young said that: she was present on Saturday, July 4th, 1925; the whole family was on the porch and her uncle and aunt were upstairs; Mrs. Cummings and her daughter Olive came to the house; the fireworks were started and Olive was afraid so they took her in the house thinking, perhaps, that it would pass over; Olive seemed to be afraid of a cannon that was making a loud noise and was carrying on and Mrs. Cummings left to take her away and ''Mrs. Cummings was forced to take her to her mother's, who, I believe, was at her brother's home—I don't know just what it was, but I believe it was her brother's home, and then I guess they went on home''; Olive and Mrs. Cummings came to the house about seven thirty P. M. and left a little after nine o'clock.

All of this is (in condensed form) in the diary (p. 484). Mildred was present during all of the time that Mrs. Cummings was present and saw no kissing or embracing, and, upon questioning by the Court (p. 484), she testified that she had never

seen any affection displayed between Young and Mrs. Cummings.

Gustave Young, the father of Harold Young, was present when Mrs. Cummings came to the house that night; he saw her come, and he denied that there was any kissing (p. 515).

Mrs. Charlotte Young, the mother of Harold Young, told the same story (p. 561). She also saw Mrs. Cummings come to the house and (p. 561):

> "Q. Did your son kiss her or greet her at the top of the steps or terrace with a kiss and so forth? A. No, he did not.
>
> The Court: How do you know that?
>
> Witness: Because I was there and we had a lot of company. I know my son wouldn't do such a thing.
>
> The Court: Wouldn't do such a thing as what?
>
> Witness: As kiss Mrs. Cummings or any married woman or anyone out on the street that way."

These witnesses corroborate the denial of Harold Young and Mrs. Cummings.

September 12th, 1925.

Florette Kopp (p. 340) said that she and her sister followed Young and Mrs. Cummings on a trip to Coney Island and that the mother was along. She described the different trains taken and:

> "I sat—Mrs. Rosenstein was on my right and I was here (indicating) and they were on the first seat that faces the long one alongside of the train, and Mrs. Cummings was along—Mrs. Young was alongside of Mrs. Rosenstein. We were like three in a row and they were two on the first seat facing, and little bits of conversation you could get at

the time when the train was not the most noisy would be, she seemed to be rather—Mrs. Cummings seemed to be rather perturbed about something, something about she had a little difficulty at her home and she said to Mrs. Young, 'You will put up with me, won't you? You would let me have your old attic room, wouldn't you?' And she said, 'We could fix that up nice.' And Mrs. Young answered, 'Well, Harold wouldn't stand for that. He wouldn't have you in the attic.' He said, 'What is the matter? We have plenty of bedrooms.' He said, 'Don't you worry'—he was patting her hand—he said, 'Everything will come out all right, you don't want to be worrying.' "

* * * * * *

"A. And he had his arm around the back of the seat by her and he would put her hand up to his mouth, like to kiss it; he didn't smack it, but he pressed it up to, like, his hand. I took notice at that time that she had no wedding ring on. She had a single stone ring on one hand and a little cluster, I believe, on the other, and Mr. Young had on either a black stone or sardonyx ring. He has a sardonyx ring."

She did not think that she saw them in Coney Island.

Norma Kopp said (p. 192), that:

"Mr. Young remained in back with Mrs. Cummings and kissed her two or three times, with his arms around her waist. In the train all the way over he held her hand. His mother was sitting there."

Mrs. Rosenstein said (p. 314):

"A. I was sitting alongside of Mrs. Young. Mrs. Young was touching me and I sat the way I am now. I don't know what all their conversation was, but they were talking about the little girl going to school, and Mrs. Cummings asked Mrs. Young if she would fix a

room up in the attic for her and she told her no, that Harold would not be satisfied to go up in the attic.

Q. Well, what did you observe about their conduct, if anything? A. Why, they were petting one another's hands and Mr. Young told her not to worry, that everything would come out all right.

Q. Did you notice anything in regard to their conduct on the way down in the train to Coney Island? A. Only that they seemed very affectionate, that is all, patting one another."

Fleurette Kopp testified, on cross-examination (p. 350):

"Q. And so this love making at Coney Island was in the presence of the mother, wasn't it? A. Yes.

Q. And if you could hear she could hear. A. Uh, huh."

Mrs. Charlotte Young was not the kind of a mother who would tolerate her son carrying on with a married woman in her presence as described by these detectives. Mrs. Young had a young daughter, Mildred, only sixteen years old at the time of the trial. Is it possible that Mrs. Young would permit this to go on not only in her presence but also in the presence of Mildred? Mrs. Charlotte Young described the trip to Coney Island (pp. 552, 553, 554). She described the sitting arrangements, Mrs. Cummings and Mrs. Young sat together, and Harold Young had a seat across from them. It was on Saturday and the car was crowded and (p. 554):

"Q. Was there any exhibition of affection between your son and Mrs. Cummings on the way down? A. No; never.

Q. Was there any exhibition of affection in Coney Island at any place when you were at Coney Island or coming back? A. No, never.

That was the last of their thoughts. They never thought of such a thing. We were out for pleasure and sightseeing."

Not only did the witnesses put Young and Mrs. Cummings in the position of talking in a way these detectives say they did in the presence of Mrs. Young but also in the immediate presence of the detectives.

July 26th, 1925 (p. 24 of the Husband's Brief).

The first day, upon which it is stated by the husband (p. 24 of his brief), that adultery was committed with Young was July 26th, 1925. The witness, Norma Kopp (p. 187) testified that: she saw Mrs. Cummings on Sunday at half past five in the afternoon when she left Riviera Park with Young, Mrs. Young, Mildred Young, and Olive Cummings and went to 175 Washington Avenue, the home of Young; Young took Mrs. Cummings to her home at 10 Washington Street, and then returned to his own home; about eight o'clock Mrs. Cummings went to Young's home; about quarter after nine, Mrs. Young, Mildred Young and Olive Cummings left the home and remained away probably a half hour, and then returned; Mildred Young rang the door bell and Young opened the door and let his mother and sister and Olive Cummings in (Apparently the mother and Mildred left for the particular purpose of giving Young and Mrs. Cummings a half hour in which to commit adultery, even taking the child with them. It was most opportune that they should have happened to leave in this way to supply the "opportunity" for the detectives to testify to—*But even so, where was the father?*); they all left about half past ten that same evening and went to a delicatessen store at 272 Washington

Avenue, Belleville; Mrs. Young and Mildred and Olive Cummings went into the delicatessen store; next to the delicatessen store is a fish store, on towards Newark; "Harold Young and Mrs. Cummings remained outside, Harold Young drew Mrs. Cummings in the doorway of this store and put his arm around her and kissed her, not once but numerous times"; when Mrs. Young and her daughter Mildred came out of the delicatessen store, they all went to Carrigan's and had a soda, and then "Mr. Young took Mrs. Cummings and her child home to 10 Washington Street where he kissed her good night at the gate of her home at 10 Washington Street"; the witness then followed Young to his own home at 175 Washington Avenue.

The husband's story of this episode is found at page 254, and that of Fleurette Kopp at pages 332, 333. Fleurette Kopp enlarged upon the story for she said that before Mildred and Mrs. Young left they had all been sitting on the porch and then the two of them, referring to Harold Young and Mrs. Cummings, went in and (p. 333)—

> "and in the meantime the folks returned and Mildred rapped on the door and Mr. Cummings—or Mr. Harold Young, opened the door. They went in. Immediately after that they had come out again and then remained on the porch and then they all came out. In the meantime, while they had been in there, when the folks were away, *the lights were not lit in the house.* When Mildred tapped on the door they lit the hall light and then the light stayed on all the rest of the evening that we were there."

(*Where was the father?*)

The familiar story of the familiar detective. At Riviera Park Mildred Young was present (p. 350). Mildred had a reference in her diary to

July 26th (p. 487). Mrs. Young, Mrs. Cummings and Olive, the child, were at Riveria Park. Mildred was at Riveria Park but not with them. Her diary showed that she did leave the Park with her family. It also showed that Mrs. Cummings and Olive came down to their house at 175 Washington Avenue in the evening. The diary also showed that Mildred was having fun with Olive. She testified that at no time during that evening did Young and Mrs. Cummings retire to any part of the house away from the others and that there never was an occasion when that was done.

While it is impossible for Mrs. Young, the mother, to remember the details of the particular occasions upon which she and her son were out with Mrs. Cummings she said (pp. 559, 560) that never, on *any* occasion, did her son go home with Mrs. Cummings although they have, together, taken Mrs. Cummings to within a block of her house. She said that, on no occasion, did her son leave her and take Mrs. Cummings home and yet, if the testimony of the detectives is to be believed, this is what must have happened on the night of July 26th.

So with Young. He cannot remember specific occasions. He knew that he went to Riveria Park with Mrs. Cummings, his mother and Mildred several times (p. 569). He denied that he, on any one of these occasions, kissed Mrs. Cummings or put his arm around her.

August 28th (p. 25 of the Husband's Brief).

Norma Kopp testified (p. 188):

> "A. On August 28th, 1925, I was at 175 Washington Street sitting in my car when, about half past 5 Mrs. Young left her home and went away in a sedan car which was standing in front of their home. At about—

shortly before 6:00 Harold Young came home. At about ten minutes after 6:00 Mrs. Cummings came to 175 Washington Avenue. Harold Young met her on the porch, put his arm around her and kissed her. Twenty minutes after 6:00 Mildred Young left 175 Washington Avenue. We remained there until about—must have been 9:30 very nearly, when Mrs. Young came home. About 10:00 o'clock Harold Young took Mrs. Cummings home to her home at 10 Washington Street, Belleville. That was August 28th. During the time while we were outside of 175 Washington Avenue the lights in the house were never lit until the return of Mrs. Young at 9:30."

Constance Kopp told the same story (p. 293) in a poll parrot fashion.

Fleurette Kopp referred to the occasion at page 334.

The diary of Mildred Young (p. 488) showed that on the night of August 28th Mrs. Cummings and Olive Cummings came to the house. The diary showed nothing more and the witness had no independent recollection of the particular occasion. It would be impossible for either Mildred, Mrs. Cummings, Young or the mother to remember all of the occasions. They might remember some particular ones, but not all. They all denied that, ever, upon any occasion, was Mrs. Cummings and Young alone in the house at 175 Washington Avenue.

August 30th (p. 26 of the Husband's Brief).

Norma Kopp's story of this episode is found at page 188 of the record. She said that: Mrs. Cummings and Young met at the Newark Theatre on Market Street some time after six o'clock and went into the Theatre and remained until the show

was over; "during their time in the theatre Harold Young had his arm on and off around Mrs. Cummings; he held her hand. He kissed her hand, not once, but many times. So much so that the people sitting next to me remonstrated about the actions of this couple"; in the theatre and in close proximity to Mrs. Cummings and Young were Mrs. Rosenstein, the sister of Norma Kopp, and Cummings himself; after the theatre Mrs. Cummings and Young went to the Eagle Chop Suey on Market Street, leaving about midnight and (p. 189):

> "It took them very nearly fifteen or twenty minutes to reach Mulberry Street, because during their walk they went in, not one vestibule of the stores, but went in numerous stores. Harold Young kissed Mrs. Cummings, not once but at least ten or fifteen times in his walk from Broad to Mulberry Streets, on Market."

She then told a story of a man coming out of the Mulberry Arcade and handing something to Young and Mrs. Cummings (p. 190). They walked to the City Hall in Newark waiting for a bus and the Kopps took a taxi and followed Mrs. Cummings and Young to 10 Washington Street, the home of Mrs. Cummings, and (p. 191):

> "They went on the porch and then they went to two bushes, which are on the right hand side of the house, at Mrs. Cummings home. There was a lot on William Street—there is only one house between her home and William Street. Mrs. Cummings had her hat on when she went in these bushes with Mr. Young. They were in there probably fifteen minutes. I could hear the moving of the bushes. She came out with him and had her hat in her hand. She was arranging her dress —the coat she wore that evening, a blue coat, with a sort of fur on the bottom. Mr. Young

came with her to the gate. He kissed her good night and walked up under the electric light at William Street. I followed him with Mrs. Rosenstein and my sister, Miss Florette. He was fixing a belt or something on his trousers when he got by the electric light and lit a cigarette. I took him to his home at 175 Washington Avenue. It must have been a quarter to 2:00 or ten minutes to 2:00 because I had to go in a restaurant to call up for my car and I asked for the time."

Mrs. Rosenstein's story was the same, almost in *hac verba,* as was also that of Norma Kopp (pp. 313, 314) and Fleurette Kopp (p. 336, at 337), except that, with respect to the theatre, the latter said:

"After a while, being in the show, we had placed ourselves just alongside of Mrs. Cummings and Mr. Young, they were about the fourth row of seats from the front and about the fifth or sixth seat in; we sat in the same row, directly alongside of Mr. Young. In the meantime, I noticed that my sister had taken a closer seat alongside of—in back of them and Mr. Cummings was place by her. During this time I took particular notice to see just what they would do in the show. It was a movie house; it was very dark. There was an elderly couple sitting just behind me who passed a remark——

Q. Never mind about the remark. A. I am not going to say it.

Q. All right. A. I glanced around and looked at Mr. Young and I just saw him as he kissed Mrs. Cummings on the neck. He was then unwrapping a roll of Lifesaver candy, doing it with one hand, his other hand was around her back. They were very much endeared to one another."

She also told the story (p. 338):

"And I saw that this man walked up exceptionally close to Mrs. Young. They were right

> off the corner, I believe it was Green Street, and there is a little stationery store somewhere in that vicinity and this man stood in the doorway, crossed in front of them and they hesitated and they were very close to one another, apparently talking a few words, and Mr. Young put his hand in his right pocket. From where I was I couldn't see what they did, or whether they passed money or something, but anyhow it was very short and quick."

I am unable to imagine the meaning of this episode of the man stopping Young and money being passed unless it was to imply that Young was purchasing drugs or lottery tickets.

On cross-examination Norma Kopp said that: there were present at 10 Washington Street, in the early morning her sister, Fleurette, and May Rosenstein; they first were on the other side of the street and they then crossed over immediately after Mrs. Cummings and Young went on the porch; Norma Kopp went behind a tree, which was about thirty feet away from the bushes; all three were there (pp. 207-208); she was twenty-five feet away from the bushes (p. 209); when they were in the bushes, she was about twenty feet away; when Mrs. Cummings came out of the bushes carrying her hat, the witness was not more than twenty feet from the bushes; she was about fifteen or twenty feet more or less from the house; there were two bushes, about four or five feet high in foliage; they were not clumps, just two bushes three or four feet apart (p. 211); before going into the bushes Young had his arm around Mrs. Cummings on the porch and they stayed about five minutes on the porch (p. 211); the witness was so close that she could *hear the kissing on the front porch;* she could not hear any conversation when they were behind the bushes but she heard muffled sounds; although she could hear

no conversation yet she "could hear very plainly," but yet she could not tell "whether they were on the ground. They could have been on the ground half a dozen times without my knowledge"; she could hear the kissing on the porch but no conversation; the kissing "was very loud"; she was close enough to hear what they said unless they talked in whispers. On cross-examination by the Court she said (p. 214):

> "Q. You are a pretty good sized woman and could see from the sidewalk. Will you explain how it was that these people couldn't see you? A. There was a large tree.
>
> Q. From these places where they were? A. I don't know, your Honor.
>
> Q. How they couldn't see you from this where they were on the porch. You said you were within twenty feet of them. A. Yes, sir.
>
> Q. Can you explain to me how it was they didn't see you? A. Right behind—(interrupted).
>
> Q. The reason I ask you is because evidently you saw them go behind the bushes. A. Yes, sir. I will try to explain it to you. Where these two bushes are—(interrupted).
>
> Q. The explanation I want is, that these people, as you say, tried to do something in secret, still could not see you twenty feet away or twenty-five feet away when you were on the sidewalk. A. Because I was very careful that they wouldn't see me.
>
> Q. You were not concealed? A. No.
>
> Q. A woman that weighs—how much do you weigh? A. About a hundred and sixty pounds.
>
> Q. How tall? A. I am five feet seven in my stocking feet.
>
> Q. Good big—good sized woman. A. Yes, sir. Right behind these bushes there is a yard.
>
> Q. I don't care about the bushes. I just wanted to know whether you could explain to me why these people who were bent upon

each other, as you would indicate, could not see you and still they were careful to go behind the bushes.''

She said that she was not standing in one position two minutes, although always standing on her feet. A photograph was shown to the witness (pp. 215, 216), and it appeared that the darkest place in the immediate vicinity was on the porch (p. 217):

''The Court: It is darker at that door than at the bushes—darker at the door than in the bushes?

Witness: Yes.

The Court: So you don't know why they went into the bushes, do you?

Witness: I couldn't tell you.''

She said that there were no lights in the house. This was the night of August 29th and the morning of August 30th.

Photographs were offered showing the locality of 10 Washington Street. Exhibit D-1 of June 23, 1926 (p. 776) shows the garage across the street from 10 Washington Street referred to by the witnesses. The Court will observe the size of the yard and the width of the street. Exhibit D-4 of the same date (p. 779) is a photograph of one side of the yard and the Court will observe how close the house is to the public street. Exhibit D-3 of the same date (p. 778) shows the other side of the fence and the bushes right at the fence.

In this limited space and with these bushes in the position in which they are, toward the front of the yard and against the fence, it is manifestly physically impossible that any such occurrences should have happened as described by the witness. And to contemplate these three women detectives flitting about in this circumscribed space without Young and Mrs. Cummings seeing or hearing them, is perfectly ridiculous.

That Young and Mrs. Cummings should have gone from the porch, the darkest place in the neighborhood, to the bushes against the fence, and nearer the street, is likewise ridiculous. The story of the noises behind the bushes, the witnesses hearing nothing else, is ridiculous. The story of Mrs. Cummings coming out without her hat and Young taking the opportunity of fixing his clothing right under an electric light is absurd. It is the ordinary manufactured detective tale.

It is equally ridiculous to consider that these people conducted themselves as it is said they did in the theatre, a public place, with the husband in the theatre. Notwithstanding, the proximity of these witnesses to Young and Mrs. Cummings they never were observed.

October 26, 1925 (p. 34 of the Husband's Brief).
December 13, 1925 (p. 36 of the Husband's Brief).
January 10th, 1926 (p. 36 of the Husband's Brief).

Constance Kopp testified as to January 10th that: she, with Vandersluys and Cummings, watched 175 Washington Avenue, the home of Young; Mrs. Cummings entered the house about quarter of or ten minutes of seven; the witness saw Mrs. Cummings kiss and embrace Young a number of times and (p. 294):

> "I saw them both sit down onto the floor and play a sort of game and while they were playing the game they would love and embrace each other. I also saw them kiss on the settee facing the left hand wall, which to me seemed to be the settee of the piano, and while sitting on the settee I saw Mr. Young put his arms around Mrs. Cummings. I also saw Mr. Young in the standing embrace with Mrs. Cummings for a period of five minutes. I saw this from the car in which I sat, and I

saw it from the stoop of the house which was next door to the house in which Mr. Young lived; and I also went on the stoop on the two occasions and looked into the window and saw Mrs. Young, Mrs. Cummings and Mr. Young and the little kiddie at times alone. They came out of the house then at about 11:30 that night and he took her to her home in Washington Street."

She said (p. 307) that, during all of the time Young and Olive and Mrs. Cummings were in the front room and:

"Q. Did you see anyone else in the house that night? A. I did not. I saw no one."

She admitted that she saw a Christmas tree, and:

"Well, I saw them take the decorations off the Christmas tree.

Q. Oh, who took the decorations off the Christmas tree? A. Mrs. Cummings and Mr. Young was packing it away in a box, sitting on a small chair or stool.

Q. Did you see Mildred there at that time? A. No, sir."

She denied that the Christmas tree fell, and:

"Q. Nothing like that occurred? A. No, sir; absolutely not.

Q. And you cannot be mistaken with respect to that at all? A. The Christmas tree did not fall over at all, no, sir, and I did not see Mildred Young."

Cummings said (p. 251):

"A. Harold Young met her and kissed her at the door.

Q. Yes; what did you see then? A. They took the fixtures off the Christmas tree, and they were dancing part of the time, and the two of them were in a sitting position, I believe—it looked like a piano, where I was—

where they were sitting. I later went up on the stoop and found it was a piano. The two of them were sitting on the piano stool playing the piano. Later they played some kind of a game on the floor. They removed the table from the center of the floor and Mrs. Cummings and Harold Young were playing checks on the center of the floor. * * *

Q. Did you notice anything about the house that time? A. The lights were off and on about ten or twelve times.

Q. How long would they remain on and how long would they remain off, approximately? A. Well, five or ten minutes.

Q. Did you see anyone leave the house while your wife and Young was there? A. No, sir."

Vandersluys said that he did not see anyone else in the room (p. 160). He left about nine o'clock (p. 161). I ask the Court to read the cross-examination of this witness (p. 163 *et seq.*). It is filled with contradictions.

On page 157 the witness gave the impression that he saw Young and Mrs. Cummings in the front room of the house in October, 1925, seated at the piano together, after the lights were extinguished. When the matter was put to him (p. 166), he evidently realized that he could not well say that the lights were out, and:

"Q. And you could see into the room? A. Yes, sir.

Q. See the people in it? A. Yes, sir.

Q. After the light was extinguished? A. No, not after the light was extinguished.

Q. I thought you said you did. A. I did not, sir.

The Court: Yes, you did. You said you saw them in there after the light was out.

Witness: I do not recall it: I didn't mention the light.

The Court: I won't say that you did. My recollection is that you did.

Mr. Child: My recollection is that he saw on one occasion. I don't know whether it was this occasion or not.

Witness: I didn't mention the light, I don't think, at the time."

And, page 170:

"Q. You could see the side face, at any rate? A. Yes, sir.

Q. Could you see the keyboard of the piano? A. Yes, sir.

Q. You can't tell me whether they were playing or not, or anybody was playing? A. No, sir; I do not recall.

The Court: You say this house was on an elevation of fifteen feet above the street?

Witness: That is what I would approximate it.

The Court: And you could see the piano keys from where you were?

Witness: No, sir; I don't remember seeing the piano keys.

The Court: I understood you to say that.

Witness: I didn't mention the keys, your Honor."

And, page 171:

"Q. Could you see the keyboard of the piano or couldn't you? A. No, sir. I didn't see the keyboard of the piano.

Q. Why did you say a few moments ago that you did? Not a few moments ago, within less than a minute ago. A. I didn't say that I saw the keyboard of the piano. It wasn't asked of me.

Q. Your recollection now is that you haven't within the last few moments said you saw the keyboard of the piano? A. That is it exactly, yes, sir.

The Court: Read the testimony.

(Testimony read.)

Q. Now, is there any explanation as to why you answered that question 'Yes'? You

heard the reporter read you the question and answer, namely, 'Did you see the keyboard of the piano? A. Yes'. Now, is there any explanation as to why you made that answer? A. No, sir; there is none.

Q. No explanation? A. No, sir. My answer was yes on that.

Q. No explanation? A. I can't explain it; no, sir."

And (p. 172):

"Q. And you didn't see what they were doing, whether they were playing or whether they were just sitting there, or whether they were talking or what they were doing? A. No; I don't remember seeing their hands.

The Court: Are you sure it was an upright piano?

Witness: No, sir; I am not positive of that your Honor.

Q. Then you are not positive you could see the upper part of the piano? A. They were sitting at the piano and naturally, I assumed that the rest of the piano was there.

The Court: Do not assume.

Q. Can you tell me—put your mind back to that occasion. Will you tell me what you did see? A. I saw Mr. Young and Mrs. Cummings seated out in front of a piano, and his arm at one time, was around her shoulder.

The Court: What? Her shoulder? Around her shoulder?

Witness: Around her body in the rear.

The Court: Which was it, shoulder or waist?

Witness: Well, I don't remember what distinctly, whether it was shoulder or waist, but it was around her; I could see that.

The Court: And for how long?

Witness: Well, I would say not more than five minutes.

Q. And that is all you did see? A. Yes, sir.

Q. You can't tell me whether they were talking there or whether they were playing at any time, or any other move that they made, except that this man had his arm, on one occasion around this woman's waist or body, or some part of her, for five minutes? A. I will not say for five minutes continually.

Q. Five minutes then, intermittently? A. Intermittently would be correct; yes, sir.

Q. The arm around the shoulder was the only thing that you saw? A. Yes, sir.

Q. And when they were not at the piano, where were they? A. They were in the room standing; sometimes either one would walk to another part of the room, disappear from view sometimes."

He said that he could not see the room as there was an obstruction, and:

"Q. Was there anything to prevent you from looking through the other window this distance? A. Yes, sir.

Q. What? A. There was some obstruction in the way of that window which I don't know what it was.

Q. You don't know what the obstruction was or where it was? A. No, sir.

Q. You have a definite recollection of an obstruction? A. Yes, sir; and *I think it was a Christmas tree.*

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

Q. Anyone else come into the room that you saw? A. No, sir; not that I saw."

The witness then said that this occasion he was talking about was not January 10th but rather in October and when the Court drew his attention to the fact that the obstruction could not well have been a Christmas tree on that date, he said that he must have been confused, and (p. 115):

"The Court: Did you see anybody around the house other than the two?

Witness: Someone came in the house; Mrs. Cummings, and Miss Young returned to the house later in the evening.

The Court: Did you see her go out that evening?

Witness: As near as I can remember I did not, your Honor.

The Court: Don't you recall saying in the very early part of your examination that on that night Miss Young went out of the house, and then you saw all these things that you are now telling us? You gave me that impression that you were trying to tell me there was nobody in the house, that Miss Young had gone out. Don't you recall saying that?

Witness: There were several evenings—— (interrupted).

The Court: You do not recall saying that on the night that you saw this arm incident, earlier in the evening Miss Young left?

Witness: Yes, sir; I recall that.

The Court: Now is it a fact?

Witness: Yes, sir. I distinctly remember seeing Miss Young leave.

The Court: On that night?

Witness: On one evening.

The Court: You do not say it was on this night?

Witness: I am trying to connect that now, your Honor.

The Court: But you did definitely connect that night in my mind with the night of the arm incident. You say it did not occur that night or did occur? I am not so much interested in what you said before as of the fact.

Witness: The first evening where the arm incident came in was October 26th, I believe, or October 25th.

The Court: I don't care anything about the date.

Witness: Somewhere there.

The Court: I am asking you whether on the night of the arm incident you saw Miss Young leave the house before that occurred.

Witness: Yes, sir; that is right."

After saying practically that this couple sat at the piano with their arms around each other, etc.,

the witness said (p. 181), with respect to another occasion, December 13th, that he had seen them both in the house that night, and:

> "Q. You didn't see anyone in the room? A. No, sir.
>
> Q. What did they do that night? A. Well, practically the same as on the other night, except—(interrupted).
>
> Q. Then I suppose he sat with his arm around her at the piano? A. No, sir.
>
> Q. What then? A. He didn't sit with his arm around her at the piano the second time.
>
> Q. Then it wasn't the same. A. It wasn't exactly the same, no, sir.
>
> Q. What did they do? A. They didn't sit at the piano with his arm around her. I saw only on one slight occasion that he put his arm around her when they were standing.
>
> Q. On what? On one slight occasion? A. Yes, sir.
>
> Q. What do you mean by that? A. It was slight duration, the time that his arm was around her.
>
> Q. And how long were they there that you saw that time? A. Oh, I will say about an hour.
>
> The Court: Shoulder or waist?
>
> Witness: Well, I would say midway between.
>
> The Court: Don't say what you would say. You ought to have a definite knowledge. You speak definitely enough of the occurrence.
>
> Witness: Midway between her shoulder and her waist."

To digress for a moment and turn to the testimony of Norma Kopp as to what she said occurred on December 13th we find that this was the occasion when she said that: she saw Mrs. Cummings meet Mr. Cummings at the library; she heard her tell Mr. Cummings that the child was sick and that she would have to leave; she

went upon a car to the Regent Theatre where she met Mrs. Young, Mildred Young and Young; she made a remark loud enough for the witness to hear (p. 195), "I got rid of him and told him I had to take the child home"; they went to the Regent Theatre together; Mrs. Cummings sat with Young and:

> "They came out of the theater after 11:00 o'clock, went to a store and had a hot chocolate. They then went towards Belleville. Harold Young took Mrs. Cummings to her home with the child. It must have been near midnight. He let the little one in the door and he remained outside on the front porch of 10 Washington Street where Mrs. Cummings lived. Mrs. Cummings wore a dark dress that evening and when they were standing on the stoop I could see a lighter undergarment.
>
> Q. How long did they remain there? A. About—(interrupted).
>
> The Court: What do you mean by that?
>
> Witness: It looked to me like an underskirt. I know she had a dark dress on. It might have been gray or light blue. He remained with her. I saw him with his arms around her. I stood opposite a garage directly in line with the entrance of their home and then I walked over in the road. Mr. Gardner and my sister, Miss Florette, were with me at the time. Harold Young came out of the house and walked to 175 Washington Avenue, arriving there —(interrupted).
>
> The Court: Came out of the house? I thought he was on the front porch.
>
> Witness: He was.
>
> The Court: She put the child in.
>
> Witness: Put the child in. And walked away from the house, off of the porch. This was on December 13th.
>
> The Court: You said he came out of the house.

Witness: I didn't mean that; I meant he left the porch."

I ask the Court to read the cross-examination of Norma Kopp (pp. 231, 232 and 233). Although on direct examination the witness had said nothing about loving and kissing in the theatre, on cross-examination she said that there was such loving and kissing. It must have been in the presence of Mildred and the mother, for they were present. Vandersluys was with the witness but not in the theatre. She told about the putting of the little three year old child in the house and the returning to the porch, where they were kissing and embracing. She saw much more, apparently, than did Vandersluys. She could not see the kisses but she did see the white underskirt (pp. 232, 233, 234). And particularly (p. 234):

"Q. And how far could you see this light underskirt? A. As I passed.

Q. Up to her waist or how far? A. No, probably up to just beneath her knees.

The Court: Just what?

Witness: Just below her knees.

The Court: Below her knees?

Witness: It looked as though her dark dress was raised.

The Court: Was her dress below her knees?

Witness: Yes, sir.

The Court: Was her dress longer than to her knees?

Witness: Yes, sir.

Q. So that what you saw was the white petticoat below the knees. A. No, sir.

Q. Well, then, what? A. I didn't say it was a petticoat. I didn't know it was a petticoat. It wasn't white. I said it might have been blue, it might have been another color.

Q. It was still some color. A. I know her dark dress was raised.

Q. It was a skirt of some kind, nature or description, is that right? A. Could be like a skirt. I don't know it was a skirt. It was something lighter.

Q. It was a fabric of some kind and not her skin. Q. It was not her skin. It was lighter than her dress and the dress was about the knee.

Q. The dress was above her knee, but the white was below the knee. A. Yes, sir."

A few moments before the witness had said that the dress was below the knee, being seen by the witnesses from across the street in the night with the parties standing on a dark porch.

To return to January 10th, at which time it was said that Young and Mrs. Cummings were in the house alone and were playing checkers on the floor, which could be seen from the street, the house standing on a terrace about 15 or 20 feet high as shown on photograph, Ex. D-2 of June 23, 1926 (p. 777).

Mildred Young had an entry in her diary for January 10th (p. 477). It was a Sunday night. The witness said:

"A. Well, Mrs. Cummings came to our house that night and we were having coffee in the dining room.

The Court: Having what?

Witness: Coffee in the dining room and we heard a very soft sound and we didn't pay any attention to it and we just commenced to talk and then we heard a very loud crash and we looked in the other room and the tree had fallen; so we all started picking up the pieces and we put them in the boxes and shortly after that Mrs. Cummings left.

Q. Who were at your house at that time—who all were in the party? A. Well, my whole family was there, my father, my mother and my brother, Mrs. Cummings and Olive and myself.

Q. And do you remember what time Mrs. Cummings and Olive left that night? A. Yes, sir; they left about ten thirty, later than usual because they had helped us pick up the pieces.

Q. Were you present during all the time that Mrs. Cummings and Olive were at the house that night? A. Yes, sir; I was.

Q. Did Mrs. Cummings and Harold Young at any time play any game on the floor of the front room in that house? A. No.

Q. That night? A. No, sir.

Q. Could they have played any game on the floor of that front room without you knowing it? A. No, sir; I was present all the time.

Q. Were you on the floor of that room that night picking up these things from the Christmas tree? A. Yes, sir; we were, we were stooping over, of course, and we had to kneel on the floor, the boxes were low, to put the things away.

Q. Did you see any evidences of affection between Harold Young and Mrs. Cummings that night in that house? A. No, sir.''

There was a reference to all of this in her diary (p. 478) and, because of the fall of the Christmas tree, the witness has a distinct recollection of the occasion.

The father of Harold Young (p. 515) had a recollection of the fall of this Christmas tree. He did not, of course, remember the date. He said that it was about a week after New Years. He remembered that Olive and Mrs. Cummings were at the house. They were having coffee, when they heard a noise; and

''All hands went in and we stripped the tree and got it out, cleaned up the floor, and Mrs. Cummings and all hands helped to pick up the ornaments and take those that were not smashed off the tree.

Q. Now on that night were Mrs. Cummings and Harold on the floor playing some game

of checkers or something on the floor? A. No. I will tell you what did happen. Olive and Harry was sitting on the floor and he was running the little train that runs around the tree for the amusement of the child."

Mrs. Young remembered the fall of this Christmas tree (p. 555) and:

"Q. Now was Mrs. Cummings and your son in your presence all that evening? A. Yes, sir; Mr. Young too and Mildred.

Q. Was there any time they were on the floor together, exhibiting affection one to the other or anything like that? A. No."

Young and Mrs. Cummings also remembered the incident.

Other Incidents.

There are other specific incidences mentioned in the testimony with respect to Young, all the testimony coming from the same source, which I will not specifically refer to for, after all, the question is as to which set of witnesses is to be believed? Either the detectives are falsifying with respect to the incident of January 10th or the entire Young family is falsifying and Mildred Young has also falsified in her diary. There is no opportunity so far as *this* occasion is concerned, for a mistake. The detectives and those associated with them, definitely fix the date as January 10th and they say that there *was* a Christmas tree and that Young and Mrs. Cummings did something with respect to taking ornaments off the tree and they say that Young and Mrs. Cummings sat on the floor and played a game. These detectives all testify that there was no one in and around that house except Mrs. Cummings and Young. They had to say this in order to create an opportunity for adultery.

The court below did not believe that the Young girl, Mildred, falsified her diary. It is significant that her entries with respect to Mrs. Cummings are not at places where they could easily be inserted. Some of the entries are sandwiched in between matters having nothing to do with Mrs. Cummings. Others are at the end when the appropriate place for them is at the end. The diary of Mildred Young for January 10th shows exactly what happened and it shows that *every member of the family was home.* The fall of the Christmas tree was an occurrence which would permit the other members of the family to identify the occasion.

The result is that either the old lady, Mrs. Young, the mother of Harold Young, the father of Harold Young and the Young girl, Mildred, besides Mrs. Cummings, and the co-respondent, Harold Young, are deliberately committing perjury, or the detectives are. Besides finding that the others are all committing perjury, if the Court believes that the detectives are telling the truth, Mildred Young must be convicted of deliberately falsifying her diary.

To find that the tale as a whole, told by these detectives, is true, the Court will be obliged to find that Mrs. Cummings and Harold Young were absolutely without shame and that the mother of Harold Young was also without shame, for according to the testimony of the detectives, Mrs. Cummings and Harold Young carried on in an unseemly manner not only in public but in the immediate presence of the mother and the daughter. The mother must be convicted of not only permitting this conduct in her own presence but in the presence of her daughter.

The fact is that Mrs. Cummings became the friend of the Young family. She was the friend of the mother and father, as both testified, and

of the daughter and of Harold Young. She *did* go out with them all and she visited at their home. All of the members of the Young family testified that they never observed any undue intimacy between Mrs. Cummings and Harold Young. A sister of the mother of Harold Young was produced (p. 527). She also knew Mrs. Cummings. She visited the house when Mrs. Cummings was present. She had spent the evening there when Mrs. Cummings was present, and (p. 528):

> "The Court: Did he pay any undue attention to Mrs. Cummings?
> Witness: Harry?
> The Court: Yes, to you.
> Witness: To me?
> The Court: More to you than to Mrs. Cummings?
> Witness: Not more.
> The Court: Treat you all alike?
> Witness: Yes, sir.
> The Court: Mrs. Cummings always behaved herself—conducted herself properly?
> Witness: We all did; everybody behaved themselves.
> The Court: She conducted herself the same as you did and Mrs. Young?
> Witness: Yes, sir."

This witness had also gone to the movies with Mrs. Young and Harold Young and Mrs. Cummings.

One more matter and I will leave the Young part of the case. I desire to mention it, however, because it bears upon Cummings' entire case. Constance Kopp swore that on July 10th she followed Mrs. Cummings from the library and "saw her meet Mr. Young in front of number 10 Washington Street, Belleville." And (p. 291):

> "Q. What time of night was that? A. That was about 8:20.

Q. Well, what did you observe that night? A. They both went into the house and went into the rear entrance and to the second floor, into the apartment, where they remained for about an hour and three-quarters. She then came out alone and went home to number 10 Washington Street.

Q. Where did you say they were? A. Number 10 Washington Avenue.

Q. And they remained there about an hour and three-quarters and then went to 10 Washington Street. A. No; she came out alone and went home to her own home at number 10 Washington Street.

Q. Where did you first see Young that night? A. Standing on the sidewalk or in the curb between two cars."

This occasion was not made the basis of a charge of adultery. The reason why it was not so made is that it appeared that the apartment at No. 11 (Constance Kopp said 10, it should be 11) was occupied by a woman named Emily Beer (p. 523). She had three children, two living in the apartment with her, the other married and living upstairs. She had known Mrs. Cummings from childhood. The witness had a daughter who was a very close friend of Mrs. Cummings. Mrs. Cummings visited her during the fall of 1925. She came frequently. Cummings knew that Mrs. Cummings knew Mrs. Beer. He had visited her home, always with Mrs. Cummings (p. 524). The witness said (p. 524):

"Q. Now, do you know Mr. Young? (Mr. Young, stand up.) Harold Young? A. Well, I never knew—saw him until I saw him here in the court room—not here, but in the Prudential Building.

Q. Was that man ever at your house with Mrs. Cummings? A. Never."

And (p. 526):

> "Q. Are you home all the time? A. I am always home; I very seldom go out.
>
> Q. Did Mrs. Cummings ever come up there with a man other than her husband? A. Never; never any man but her husband. He came before he was married, when she introduced me, and he came afterwards; he came until this trouble, but not since. He has been once since. He called for my son-in-law once."

She took care of her four grandchildren, aged from two years upwards. And:

> "The Court: You are tied down to the house?
>
> Witness: Yes, sir; I am.
>
> The Court: And you were then?
>
> Witness: Yes, sir; I have been for four years now, since my daughter left a little boy and then my son's wife died and she left three babies, so I take care of them all."

It is quite apparent that it was not intended to use the testimony of Constance Kopp that she saw Harold Young go with Mrs. Cummings into this house on July 10th. Does the Court believe that Emily Beer also deliberately perjured herself? Either she or Constance Kopp did. That counsel for petitioner did not use the occasion of July 10th as a basis for a charge of adultery is a clear indication that Cummings himself knew that Constance Kopp was at least mistaken. I think it is a fair inference that Constance Kopp *did* see Mrs. Cummings go into this place at 11 Washington Avenue and *deliberately invented the presence of Young.* Assuming for the moment that Young went in with Mrs. Cummings, what possible reason was there for Young remaining? The tale would be more probable if Mrs. Cummings had remained after Young.

It is respectfully submitted that the adultery with Young was not proven and that the court below was right on this branch of the case.

The Adultery Alleged to Have Been Committed by Mrs. Cummings with the Co-respondent, Grimm (p. 3 *et seq.* of the Husband's Brief).

The testimony with respect to this came from Marinella, a chauffeur, Stephen P. Flarity, an officer of the Corbally Detective Agency, Frank Galgano, a detective connected with the same agency, Raymond Cox, a detective connected with the same agency, Harry Daily, a bartender at the time of the trial but a taxi driver at the time of the happenings of the events, James Cervone, who, during the summer of 1923 and 1924 had charge of the police at Dreamland Park, and the petitioner, Cummings.

Before considering this testimony in detail, I desire to refer particularly to that of Frank Corbally, employed by the detective agency. He testified (p. 106), that he watched Mrs. Cummings, who was pointed out by Galgano, another representative of the agency, on August 23rd and August 29th, 1924, and:

> "Q. Is Mrs. Cummings in the court room? Can you identify her? A. *No, I could not.*
> Q. Where did you start in watching her?
>
> The Court: The lady sitting back of Mr. Lane is said to be her.
>
> Witness: *I wouldn't know her the way she is dressed now, your Honor, no, sir.*"

This witness said that he was called at about quarter of twelve on the evening of August 23rd and was told that Mrs. Cummings and a gentleman were in the Royal Restaurant on Market

Street, Newark, and that he went down and met Galgano and that Mrs. Cummings came out about 12:10, and:

> "Q. Who was with Mrs. Cummings? A. Another gentleman.
> Q. A gentleman, you mean? A. Yes, sir; a gentleman.
> Q. Do you see him here in court? A. No, sir; *I would not recognize him.*"

He said that the two whom they followed walked a block up Washington Street and stood behind a tree for about twenty minutes. He left off watching and went after Cummings at the fire house and brought him up and "showed the two of them standing behind the tree from the corner".

Apparently he left the two standing behind the tree, went down to the fire house and got Cummings and:

> "Q. While they were standing there by the tree could you see what they were doing at all from where you stood? A. No, sir; could not; *it was too dark.*"

With respect to the night of August 29th he said that he was getting off a trolley car in Belleville at John Street, and

> "They walked up John Street, up to the top of the hill to another street, I think it was Liberty Street; stood on the corner near the electric pole about twenty minutes talking; they went down that street—I forget the name of it—to Mrs. Cummings' street and he left here there and walked down to Washington Avenue and went to the lunch room, came out of the lunch room and boarded a trolley car to Newark."

On August 23rd Galgano, Flarity, a friend of Corbally's named Mooney, and Cox were with

him. On the night of August 29th Cox, Flarity and Galgano were with him. It is significant that this witness, although he is said to have followed Grimm and Mrs. Cummings on two occasions, August 23rd and August 29th, *could not identify either. This is of particular importance because both Mrs. Cummings and Grimm say that they were never together.* Grimm and Mrs. Cummings had a mutual friend, a Miss Keating (p. 531). Grimm was introduced to Mrs. Cummings in July, 1925, by Miss Keating. Miss Keating worked in the A. & P. with Mrs. Cummings and Grimm used to go to the bakery *to see Miss Keating.* Grimm saw Mrs. Cummings only at the bakery. He never saw her except when Miss Keating was present. Miss Keating lived at Little Street in Belleville (p. 541). It was impossible for Grimm to remember where he had been on the different dates mentioned. He had been to Dreamland Park with Miss Keating (p. 541). He did not know the dates. He did not know during the summer of 1925 where Mrs. Cummings' home was (p. 542), and he never was at her home.

Mrs. Cummings (p. 424) said that she met Grimm in the manner Grimm stated and she denied that she was ever out with Grimm at any place. She denied everything that is said by the detectives (p. 425, etc.). She knew that she was not at Coney Island during the summer of 1924. The first time that she went there was in 1925 with Mrs. Young and Harold Young (p. 429). She had known Mrs. Young since 1923 (p. 430).

Miss Keating testified (p. 383) that: she was not related to Mrs. Cummings; she worked with Mrs. Cummings in the A. & P. Bakery during the years 1923, 1924; she was a friend of Mrs. Cummings through working with her (p. 384); Grimm was a friend of the witness.

When we turn to the testimony of Stephen P. Flarity (p. 75) we find that he was only present on the morning of August 24, 1924, and August 29th, the same times that Frank Corbally was present. He told a story of going up to John Street and Washington with Frank Corbally and:

> "He took me up John Street to Washington Street and pointed out a man and woman standing alongside of a large tree, about fifty feet in from John Street as Mrs. Cummings and that man in the rear there, whose name is Frank Grimm."

But Frank Corbally said that he could not identify *either* Grimm or Mrs. Cummings and that he could not then identify them. Flarity then proceeded;

> "They remained there until about 2:00 o'clock and when they parted I followed Grimm with Frank Galgano in an automobile to Broad and Market Street where he got off the trolley car that he had been riding on; he went in Thompson's Restaurant, came out and board an Orange car and rode to about 401 Warren Street and went in a house there."

He then said (p. 76):

> "Q. Did you have an opportunity of seeing Mrs. Cummings' features that night? A. *No, I did not.*
>
> Q. Galgano was with you? A. He was with me after Grimm had left the woman at the tree.

He also said (p. 76):

> "Q. Did you have an opportunity of seeing his features that night? A. I did.
>
> Q. Is it the same man that has been identified as Frank Grimm? A. It is the same man."

He had never seen Grimm before. He had only seen him once on August 29th. Frank Corbally, the man who pointed out the couple, *neither knew nor could identify Grimm or Mrs. Cummings* and yet Flarity said that the man who was there was the same man who was identified in Court as Frank Grimm.

With the most honest intentions it is quite possible that the witness may be mistaken. It is significant *that this witness cannot identify Mrs. Cummings as the person who was at the point in question and this, notwithstanding the fact that, prior to this trial, he had seen Mrs. Cummings because she subsequently came into his office and saw him* (p. 79). He said (p. 76):

> "Q. Did you have an opportunity of seeing Mrs. Cummings' features that night? A. *No, I did not.*"

So that neither Frank Corbally nor Flarity, who were two of the detectives present, could identify Mrs. Cummings as the one who was present and one of the detectives, Frank Corbally, cannot identify Grimm as the man who was present, although he had the same opportunity of seeing him as had Flarity.

On the night of August 29th Flarity said that Frank Corbally again picked him up at his house, and:

> "We drove to Washington Avenue and John Street and we saw Grimm and Mrs. Cummings get off a car and they walked up John Street to Bridge Street and over Bridge Street to some other street and down to a street called Liberty Street alongside of the cemetery there, and they stood alongside of a telegraph pole across the street from the cemetery for about fifteen minutes. We circled around, went in the cemetery to try to see what they were doing, but when we got

in the cemetery to opposite where they were, they had left."

Again he was with Frank Corbally, who again cannot identify either Mrs. Cummings or Grimm. He could not identify her in Court as any person he had ever seen before, although she was pointed out to him (p. 106), Flarity had the two standing near the second tree in from the corner of the street from 1:15 to two o'clock in the morning and then parting.

It is significant how different the testimony of the ordinary operatives is with respect to these occurrences from the testimony of those who are more responsible in the detective concern.

Galgano (p. 82) testifying to what occurred after trailing Grimm and Mrs. Cummings to Dreamland Park and to a Chinese restaurant and then to Washington Avenue and Rutgers Street alongside of a tree, said (p. 83):

> "Q. Could you see how close they were standing together when they were in the street, or what they were doing there? A. Well, yes, sir, you could, from where we were standing—in fact, we were sitting on a porch right opposite Washington Street on John Street and they were standing very close together, just about make their mouths—kissing each other there."

He said that, before they arrived at the lot, there was no indication of affection between them. He testified (p. 84) that they were together and that he could see the two distinctly, and:

> "Q. They could see you too, couldn't they? A. Well, they could have if they looked that way. If they came out to John Street they would have saw us."

Galgano the *operative,* could see them so distinctly as to recognize them but Corbally could

recognize neither and Flarity could recognize only one. Testifying as to August 29th, Galgano said that, after again trailing them to Dreamland Park and again calling Frank Corbally and Flarity:

> "That evening they walked up John Street, walked west on John Street to Bridge Street, Bridge Street to Liberty Street and alongside of a cemetery, they stopped in front of a telegraph pole for a short time and Mr. Flarity and I chased through the cemetery as fast as we could go and by the time we got there, why, they had left—they had started to leave from that spot where they were standing at the telegraph pole. * * *
>
> Q. And did you on that day see any indications of affection between them? A. Well, there at the pole, yes, sir.
>
> Q. What did you see at the pole? A. Why, they were kissing each other there at the pole."

Mrs. Cummings was not pointed out to Galgano until August 11th (p. 87). He had done no work on the case until the 11th. She was pointed out by Cummings. *Any identication therefore by Galgano depends upon the word of Cummings.* Testifying with respect to the kissing, Galgano said (p. 93):

> "Q. Now, on the occasion that you saw them in front of this tree, or by this tree, do I understand that they stood at that tree for over an hour kissing each other? A. Not a steady kiss, no. Off and on.
>
> Q. Well, but at any rate, this kissing—they didn't move from that tree. A. Didn't move from that tree.
>
> Q. They stood at that one point? A. Absolutely.
>
> Q. And were engaged in a continuous, or, rather, an interrupted performance of kissing? A. Yes, sir.

Q. From time to time, is that right? A. Yes, sir.

Q. And you didn't see anything else? A. No, only thing was that they were hugging each other there at the same time.

Q. They were hugging and kissing each other? A. Yes, sir.

Q. Standing up on the street? A. Yes, sir.

Q. So all that you could see from a point how far off? A. About fifty feet.

Q. And you were within fifty feet of them? A. Yes. sir.

Q. And you didn't see them do anything else there at that time except kissing? A. No, sir; I did not.

Referring to the August 29th with respect to the kissing, the witness said (p. 94):

"Q. Now, when they were at this telephone pole out in front—or telegraph pole out in front of the cemetery, what day was that on? A. That was on the 29th of August, 1924.

Q. That was on Friday, wasn't it? A. I think that was on Friday, I do not remember just what day it was on, but I knew there was one Friday.

Q. Was there a lot on that street? A. There were some lots on that street, yes, sir.

Q. And they were standing there, and you were how far away when you were looking at them. A. Why, they were standing directly under a telegraph pole that had the electric light on.

Q. Yes, but how far away were you? A. We were standing up about a hundred to a hundred and twenty-five feet north of them."

Turning to the testimony of Raymond Cox, another operative, with respect to August 23rd, we find that he said that he followed them to Dreamland Park (p. 100), and then to Washington Avenue and John Street but that, after they reached the D., L. & W. station, Broad Street, he did not see them any more that night (p. 101). As to Au-

gust 29th he said that they again went to Dreamland Park and he saw them start home and that after that he did not see them, and (p. 101):

> "Q. During this trip of the 29th, did you see any evidence of affection between the two? A. Going down in the trolley car.
>
> Q. What did you see? A. They sat with their arms around one another.
>
> Q. How about coming back? A. The same way."

But Galgano had testified that on August 23rd, at the time of the episode of the tree, Cox was present. There were four in the party (p. 84), and Corbally said that Galgano, Flarity and Cox were present, as well as on August 29th.

How does the testimony of these witnesses, who could see so distinctly this kissing at these trees, compare with the testimony of Corbally (p. 107) when referring to the episode of the tree on the night of August 23rd, he said:

> "Q. While they were standing there by the tree could you see what they were doing at all from where you stood? A. *No, sir; could not; it was too dark.*"

Some one is improvising. Instead of corroborating the testimony of the operatives, Flarity and Corbally contradict it both as to identification and events. There is nothing in the testimony of Flarity and Corbally with respect to incriminating events. They were in a position where they certainly could see as much as Galgano and they put Cox in a position where he could certainly see as much as they. Yet Galgano saw everything distinctly in a clear light and it was too dark for Corbally to see. And Cox, according to *his* testimony, was not where he could see.

When we turn to the testimony of petitioner (p. 251), we find him testifying also to the kissing

which Flarity and Corbally could not see and which Cox did not see for he was not there. And Cummings saw the kissing 250 feet away (p. 283), almost an entire city block.

The Alleged Adultery of August 6-7 (The Husband's Brief, p. 3).

The testimony with respect to this date came from a taxi driver, Marinella, another "accidental" witness. Cummings "happened" to hire his car (p 55). He had never seen either Grimm or Mrs. Cummings prior to August 6th (pp. 59, 60). He never saw Mrs. Cummings from August 6th, 1924, to the date of the hearing, February 18th, 1927, a period of almost three years. He said that he saw Grimm about four days later driving a coal truck. Mrs. Cummings was pointed out by petitioner. He had never met Cummings before (p. 59). He told a story of Cummings hiring his taxi at Dreamland Park and following Grimm and Mrs. Cummings, who boarded a Roseville car and rode to Broad and Market Streets and then got off and walked west on Market Street to Halsey Street. He parked his car; they went into the World Resaurant; it was about 12:20 A. M. when they went in and about 12:50 when they came out. He continued to follow them to Belleville, and:

> "They walked up Academy Street west one block to Hornblower Avenue and I followed, passed them on Academy Street and parked on Hornblower Avenue about one hundred and fifty feet. They walked up Hornblower Avenue and stood at a building—a tree opposite a building still under construction that is about two hundred feet from John Street."

They stood at this tree for about thirty minutes, and (p. 58):

"Q. How close were they? A. They were right up to one another with arms around each other, hugging and kissing, *or might have been that.*"

He drove away and parked his car, and:

"Mr. Cummings and I walked through the vacant lot opposite to where they were standing. That was about forty feet, I think, from where they were standing at the tree. They stood at that tree for about thirty minutes in that manner and then he walked into the lot and she followed him.

Q. Who? A. Mr. Grimm, and Mrs. Cummings followed him, and they walked in about fifty feet, I think, and disappeared. Then I didn't see them, *it was so dark there,* big tree, no light on the corner or nothing. It was pretty well dark. We walked and waited about twelve or fifteen minutes, and then I saw both of them coming out, fixing —dressing themselves, in that manner. It was about 2:50 or 3:00, something around that, when I left Mr. Cummings. Well, that is all."

On cross-examination, he said that, when Mrs. Cummings was pointed out to him she was waiting for a trolley with about 15 or 20 people (p. 61). He followed the trolley until it got to Broad and Market Streets, when four or five people got off. He said that he made a right turn at Market Street and then turned again, they having gone toward Halsey Street in the other direction. If the court will read the testimony as to how he followed these people (pp. 62 and 63), the court will, I submit, find it is almost impossible to believe. Certainly he could not have followed as he said he did without the two people being followed knowing it. See also his cross-examination (pp. 64 and 65). He kept them in view in the car, notwithstanding the fact that it was filled to seating capacity (p. 65). He told how, when they got to

the corner of Broad and Market Streets, he stuck his head out of his car in order to see where they were going (p. 65). He also told how he followed them to Hornblower Avenue and John Street. He could not have followed them in the manner he related without their knowing it. With respect to the lot he said that they came out together and (p. 69):

> "Q. And as I understand it, as they came out in your view they were fixing their dress? A. *They were fixing their clothes, yes, sir.*
> Q. *Both of them? A. Both.*
> Q. And that fixing wasn't accomplished until they came out on the sidewalk, is that right? A. Well, coming through the lot, see, and when they came to the sidewalk they walked south, I think, to John Street. That is the direction they were going.
> Q. Still fixing their clothes? A. No, sir. When they got to the sidewalk they were all fixed already, I think."

As to how he came to see, he testified (p. 71):

> "Q. Any lights in the neighborhood of this lot? A. No, sir.
> Q. You were sixty feet away? A. It was moonlight—quite a moonlight night.
> Q. I thought you said it was dark (he had said it). A. The trees made it dark around the neighborhood, a big tree there on the street."

He had been shown a photograph and asked whether he could identify the place and he said:

> "Well, I will tell you, it was pretty dark in the street."

He could not identify it. The court asked him (p. 71):

> "Q. If it was so dark you can't identify the location by the photograph, how were you

able to see these people coming out of the lot fixing their clothes? A. *Well, I saw them.*

Q. Well what? A. I saw them.

Q. Notwithstanding the fact that it was dark? A. *Well, it wasn't so dark that you couldn't see.*

Q. Then why is it so dark you can't identify the lot from the photograph? A. *I don't remember the place. That is over a year.*"

Yet he remembered the faces, although that was the first time he had seen the faces. He had never seen either of the parties by daylight. He never saw either of the parties afterwards by daylight until they were in court, except, perhaps, Grimm, whom he said he saw four days after on a truck. It was so dark that he could not recognize the place. Yet it was light enough for him to see the people and he was able subsequently to identify them. And light enough for him to see both of them coming out of the lot fixing their clothing.

It may be that, at the time, this witness was not employed by the Corbally Detective Agency. However, immediately after the episode he went to Corbally's Detective Agency and made a statement (p. 71).

And he told the stock detective tale.

It is remarkable that, in every one of these cases where detectives are employed and testify, the man and woman who have sense enough to retire to a lot or behind bushes for the purpose of committing sexual intercourse, never have sense enough to refrain from coming out in the open, where everyone can see them, before fixing their clothing. This story has been told so often that it can almost be said that any story which includes it, except there be extraordinary circumstances, is false. As was said by Vice Chancellor Van Fleet in *Daggers* v. *Van Dyck*, 37 N. J. Eq. 130:

"The Court may very properly, in a case of this kind, where the evidence, on the main

point in dispute stands in such decided conflict, resort to the circumstances which are inherent in the transaction brought in judgment, as well as to those which are collateral to it, in order to see whose evidence they corroborate and whose they impugn.

They may so far strengthen one and impugn the force of the other as to leave no doubt which story is true. The Court is not bound to accept everything as true a witness may say.

Evidence, to be believed, must not only proceed from the mouth of a credible witness, but it must be credible in itself—such as the common experience and observation of mankind can approve as probable under the circumstances. We have no test of the truth of human testimony, except its conformity to our knowledge, observation and experience. Whatever is repugnant to these belongs to the miraculous, and is outside of judicial cognizance. Evidence is generally considered improbable when it imputes to the parties to a transaction, occurring in the ordinary course of business, conduct inconsistent with the principles by which men, similarly situated, are usually governed.''

The location at Hornblower and Academy Street is shown by the photograph D-2 (p. 774) and the location at John and Washington Street is shown by the photograph D-1 (p. 775).

The witness Marinella made it moonlight when it is necessary to have light to see and darkness when it is necessary that he should not see, and as to whether it was moonlight or not see the changes in the witness's testimony (p. 71).

The night of August 6th and the morning of August 7th and the night of August 23rd and the morning of the 24th are the only two occasions upon which it is alleged adultery was committed by Mrs. Cummings with the co-respondent Grimm. Other occasions are relied upon to contradict the testimony of Grimm and Mrs. Cummings that she was never out with Grimm.

OTHER OCCASIONS.

The occasion of the night of August 29th and the morning of August 30th I have already mentioned (p. 63).

AUGUST 16TH.

The two witnesses with respect to this occasion are detective Galgano (p. 79) and the ex-Detective Cox (p. 96). The story was that Galgano saw Mrs. Cummings come out of her home at four o'clock in the afternoon of August 16th, and followed her to the Post Office in Newark "and met two men there"; (who the other men are was not disclosed) (p. 80).

> "They met together and walked back to the safety isle, boarded an Elizabethport trolley car and rode down to Elizabethport. On the way down Mrs. Cummings was sitting alongside of Frank Grimm and he had his arms thrown around her; they got off at Elizabethport and bought four tickets for the S. S. Express Ferry for Coney Island, which they boarded."

Mrs. Cummings had with her a girl friend from the time that she left her home (p. 80):

> "The boat left the dock about 6:20 P. M. On their way up they each had a seat alongside of the rail on the right-hand side of the boat; about three-quarters of the way up to Coney Island—three-quarters of the way to Coney Island they were hugging and kissing each other, the four-two couples.
>
> When they got to Coney Island they walked out to the boardwalk and to the Gold Mill—what they call the Gold Mine,"

It is one of those places—

> "where you pay ten cents and you go through and it takes you through a very dark, like a caterpillar—very dark tunnel-like."

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Galgano let Cox stand guard while he went to make a telephone call to the office and when he got back both Cox and the couples had disappeared (p. 81).

At her home before she left there was her mother and the little girl (p. 92).

Cox (p. 96) told the same story. He followed them back from Coney Island. On the way to the Island they were on the upper deck, and on the way back they sat on the lower deck in the back of the boat and at this time, during all of this time, "why, Grimm had his arm around the lady and they seemed quite affectionate." He put them in a Roseville car at 11:45 P. M., upon which they rode to Dreamland Park (p. 99)—

> "and at that time I got off the car and they continued to ride on the car and all the while, of course, they had their arms around one another.
>
> Q. On the trolley car? A. On the trolley car. Going down in the afternoon they had their arms around each other in the trolley car also.
>
> Q. You did not continue on with them to see where they went. A. No. I followed in a taxi from then on, because the car got too crowded to keep track of them."

He then told how they got off the car and how he followed in a taxi to John Street and Washington Street and to 10 Washington Street, and (p. 99)—

> "Q. And did you see anything while they were walking down from the trolley car to Mrs. Cummings' home, any demonstration of affection or anything of that sort? A. No, sir, I did not, except they had their arms around one another *as people do walking on a dark street.*"

Grimm left her at her home (p. 100).

See the story of Cox as to how he followed (p. 104).

These are the two operators who could identify Grimm and Mrs. Cummings when Corbally and Flaherty could not and who could see the kissing and hugging when Flaherty and Corbally could not.

Galgano had not seen Mrs. Cummings until that day p. 79). Cox said that she had been pointed out to him a couple of days before.

THE DESTRUCTION OF THE NOTES OF THE DETECTIVES.

These are also the detectives whose original notes of what occurred were destroyed. (p. 90). Galgano testified (p. 90):

> "Q. Those original notes, the first things you put on paper, are the things I would like to have if you have got them. Where are they? A. I haven't got those.
>
> Q. You haven't any of those? A. No.
>
> Q. Those are the things that are destroyed? A. What I did use, yes, sir—what I did put down."

And Cox (p. 102):

> "Q. Have you your original notes that you made at the time? A. No, sir; I have not.
>
> Q. Did you make any original notes? A. I did at the time it was going on; yes, sir; while we were following them.
>
> Q. When did you destroy your notes? A. As soon as I left the employment of the Corballys."

Every detective who indulges in shadowing in a case of this kind knows that he may be called upon to testify and he also knows that he is often called upon to produce his *original* notes and it is the *original* notes which are important.

Galgano said (p. 88):

> "Q. Don't you know you have been examined in court a great many times and you have

been asked to produce your original notes as distinguished from your report to your office and you produced them? A. On certain occasions I did have them, yes, sir.

Q. And there have been occasions then when you have not destroyed your original notes and you have produced those original notes in court on call, haven't you? A. I have; yes, sir.

Q. And there have been occasions then when you have not destroyed your original notes and you have produced those original notes in court on call, haven't you? A. I have; yes, sir.

Q. Now when was it that you adopted the practice, if you ever did, of destroying your original notes, as you made them, after you made your formal report? A. That I cannot recall. Sometimes I did and other times I didn't.

Q. You have some original notes in cases at the present time, haven't you, that you have worked on? A. Yes, sir.

The Court: Why did you destroy these notes?

Witness: I don't know. I just simply—when I was making up my report in the morning or after I got through with the case I throwed them away in the waste-basket.

Q. Why didn't you destroy the notes in all cases where you made the report—you always make a report, don't you? A. Yes, sir; I always do.

Q. Yes, and why didn't you then destroy your notes in all cases—your original notes—in all cases where you made your report? A. That I don't know; I can't say."

The witness then (p. 89) produced what he first said were original notes for the 11th, 12th, 16th (Ex. D-3) for identification). It appeared, upon subsequent examination, that they were *not* the original notes and (p. 90):

"Q. Those original notes, the first things you put on paper, are the things I would like

to have if you got them. Where are they? A. I haven't got those."

The court is fully familiar with the fact that detectives have very often come to grief upon the witness stand because they produced their original notes, made at the time, which did not at all correspond with the testimony they gave upon the stand.

Galgano and Cox adopted a method by which they were relieved of this danger. They destroyed their original notes. They made reports to the agency after they had had time to sit down and consider *what was needed.* It is not *these* reports which *are made up* for the consumption of the client, in the first instance, with which we are concerned. It is the *original memorandum* made at the time before the detective had time to think. In the ordinary case, the destruction of these *original* memoranda would be highly significant. In this case, it is more highly significant than it would be in the ordinary case because of the inability of both Flaherty and Corbally to recognize Mrs. Cummings; the inability of Corbally to recnize Grimm; the inability of Flaherty to recognize Mrs. Cummings particularly in view of the fact that almost immediately after he had followed her she called at his office; the ability of the two operators, Galgano and Cox to recognize both Grimm and Mrs. Cummings; the ability of Galgano and Cox to see hugging and kissing at the same time that it was too dark for Flaherty and Corbally to see hugging and kissing.

It may be that Flaherty and Corbally followed a man and a woman as they describe. They protect themselves when they say that they *did not recognize Mrs. Cummings and that it was too dark for them to see any hugging and kissing.* Flaherty went one step further than Corbally and

said that he *did* recognize Grimm upon one occasion. It may be that the man was Grimm. In view of the denial of both Mrs. Cummings and Grimm that *they* were ever out together and in view of the fact that the only acquaintance that Mrs. Cummings had with Grimm was through Miss Keating, who was a friend of Grimm's, the refusal of both Flaherty and Corbally to recognize Mrs. Cummings is of high significance.

The truth was not so well observed by the operators Galgano and Cox. When we add to their observance of things which Flaherty and Corbally could not see because it was too dark, such as hugging and kissing, and their identification of Grimm and Mrs. Cummings with no more opportunity to identify them than had Corbally and Flaherty, the *destruction of their original notes,* I submit that the testimony becomes so dubious as that it cannot be accepted in the face of the positive denials of Grimm and Mrs. Cummings.

There is also to be considered, in determining the truth of the testimony of Galgano and Cox, the fact that they, like the detectives in the Young matter, have Mrs. Cummings and Grimm hugging and kissing each other in public places.

The Testimony of the Defense.

The husband is mistaken when he says (p. 23 of his brief) that the *only* answer to the testimony with reference to Grimm is the flat denial of Grimm and defendant *that they were ever together.*

During the month of August, 1924, Mrs. Cummings was employed at the A. & P. Her hours were from 5:30 in the afternoon until 2 o'clock in the morning (Eaton, p. 368; Mrs. Cummings, p. 423). Friday she worked two hours overtime, that is from 5 o'clock in the afternoon until 4

o'clock the following morning. Saturday afternoon she did not work (p. 423). She commenced work at 5 o'clock Sunday afternoon. Those were her hours during the month of August and September, 1924. August 23rd was on a Saturday, but August 29th was on a *Friday* and August 6th was on a *Wednesday.* The paymaster of the A. & P. was produced (p. 363) and his records show that Mrs. Cummings, during the week ending August 30th, was paid for a full week's work, *and was paid for work performed on August 29th* (p. 370). She also was paid for a full week's work for the week ending August 16th. An attempt was made (pp. 375, 376) to indicate that this is not so with respect to the week of the 16th, but the paymaster explained fully (pp. 376, 377) and it is clear that, for the weeks of August 16th, August 23rd and August 30, Mrs. Cummings was paid for working every day. An attempt was made to confuse because there were allowances for overtime but, on the payroll sheets, the distinction is made between overtime and regular work (p. 378). The integrity of these records is beyond dispute (p. 369, p. 378). There could not be any changes in hours except that they might be lengthened by overtime. They could not be shortened (p. 372).

As corroborative of the payroll sheets Miss Keating testified (p. 383) that she worked with Mrs. Cummings in the A. & P. during the month of August, 1924; she did not work the first week in August because of a death in her family; after she returned she worked every day; Mrs. Cummings also worked every day. She remembered the names of others who worked every day (p. 384).

The husband claimed below that this testimony was contradictory of the testimony of Mrs. Cummings, who admitted that she did not work on Saturday nights. When Miss Keating said "ev-

ery day'' she meant every day that the bakery was open. It was not open Saturday night. Business was entirely suspended, so far as baking was concerned, from Friday morning at 2 o'clock until Sunday afternoon at 5 o'clock, and when the witness, Miss Keating, said ''every day'' she meant every working day.

The husband also said that Miss Keating was contradicted by the testimony of Mrs. Cummings and of Blum, the superintendent of the bakery, because they said that there was one time in 1924 that Mrs. Cummings was out but that time, which was caused by the injury to her foot, was prior to August 7th, and Miss Keating's testimony was confined to the month of August, 1924 (p. 383). She said:

> ''Q. When did you go back to work there, in August, 1924? A. I think I went back the 7th of August.
>
> Q. From that time on did you work during the month of August? A. Yes, sir.
>
> Q. Did you see Mrs. Cummings there? A. Yes, sir.
>
> Q. And how do you remember whether or not there was—did you work every day or not? A. Yes, sir.
>
> Q. Do you remember whether or not there were any days that Mrs. Cummings did not work? A. No.
>
> Q. Were there any days that she did not work during that month except the first week? A. No.''

Grimm and Mrs. Cummings were supposed to have been together on the night of August 29th, a Friday night, at eleven o'clock. (Corbally, p. 108; Flaherty, p. 76; Galgano, p. 84; Cox, p. 101; Cummings, p. 251.)

Either the books of the Atlantic and Pacific were incorrectly kept and Miss Keating perjured herself or it is impossible that Mrs. Cummings and Grimm should have been seen by these detectives

on the evening of August 29th and the morning of August 30th for, according to the books and the testimony of Miss Keating, she was in the bakery and was paid for services rendered that day.

And it must always be kept in mind that, with respect to the nights of August 29th and of August 23rd, both Flaherty and Corbally did not identify Mrs. Cummings and did not see the kissing and hugging which the other detectives saw.

GENERALLY UPON THE ISSUE OF ADULTERY.

Mrs. Cummings lived at No. 10 Washington Street, Belleville (p. 391) with her mother. The mother testified to the hours that her daughter worked (p. 601). She said (p. 602) that Mrs. Cummings never brought any men to the house and—

> "Q. Could she have brought a man there without your knowing it? A. No, sir, she could not without my knowing it.
>
> Q. Why not? A. Because I was most of the time there; very seldom do I go out, very seldom, because, as I said before, my health isn't so good. I didn't go out at night but very, very seldom."

She remembered no occasion when the child was put into a dark hall or a dark place on the porch. They live upstairs and Mrs. Cummings' brother lives downstairs with his wife and three children, all babies. There was no occasion when the child Olive came into the house without her mother (p. 604)—

> "A. No, sir; because there was hardly a night that Mrs. Cummings would be out or the child in, that I would go to bed until she came home, and there is always a light burning on the top of the stairs, the light is always kept burning until the last one is in—light in the hall.
>
> Q. Did you ever know of the child coming in and going to bed alone? A. No, sir, I did not.

The Court: Was the child able to undress itself?

The Witness: No; the child was never able to undress itself.

The Court: How old is the child now?

Witness: It is over five.

Q. In 1925 it was about four years old—three and a half to four years old. Does the child dress and undress itself now? A. No, sir, it does not, has to be undressed and dressed.

Q. Did the child know enough a year ago to go to bed alone? A. No, sir, did not. It even has to be put to bed now, the child.

Q. What is your practice as to when you go to bed with respect to the time your daughter comes in?

The Court: What is your habit?

Witness: Sometimes maybe I would lie down in the same room with the child—maybe I would lie there for half an hour until the child was asleep and then I would get up again and take the paper and read it until my daughter came in."

Mrs. Cummings slept in the same room with her mother and the child (p. 605). The mother slept on the couch, and (p. 606)—

"Q. If she put the baby in the door downstairs, where could the baby go? A. Stay in the hall, that is all.

Q. Couldn't go in any of the rooms downstairs? A. No, sir; she could not.

Q. Why? A. She would have to come upstairs.

Q. Why? A. Because the child doesn't go in the room.

And yet these detectives had Mrs. Cummings putting this child into this dark house, alone, and staying outside with the co-respondent Young. The story is preposterous.

Grace McDermott, the sister-in-law, testified (p. 658, at p. 661) that she was generally home at night; she had three children; she had not observed any men calling on Mrs. Cummings at the house:

> "Q. Did you have any knowledge of it? A. No, never, never. Nobody can come in that house without my knowing it.
>
> Q. Why can't anybody come in the house without your knowing it? A. Because I am always home and if anyone comes in that front door, the minutes that front door is open, I open up my kitchen door and I can see who goes in and who goes out."

On cross-examination she was asked a significant question (p. 662):

> "Q. How close to your apartment would anybody be if they were talking on the front porch of your house? A. My bedroom is right off the front porch.
>
> Examined by the Court:
>
> Q. Right on the front porch, right adjoining the front porch? A. Yes.
>
> Q. The bedroom? A. The front room is my bedroom.
>
> Q. The windows lead from your bedroom to the front porch? A. Yes, sir."

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> "Q. The porch is on the side. Could you hear people talking on that front porch? A. Certainly I could hear people talking."

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> "Q. Do you think anybody could at nine, ten or eleven o'clock at night or twelve o'clock at night be walking around that yard and into bushes without your knowing it? A. No; they couldn't, because I generally always keep my windows open a little bit and I can hear.
>
> Q. In the summer time? A. Yes, in the summer time; yes, sir."

The two youngest children slept in the same room off this porch (p. 664).

The witness also testified that: she always had a night light, with the shades up so that the light could be seen (pp. 664, 665); the youngest child of the witness was two years old; if Mrs. Cummings went out at night she came home not later than ten; when she came home from work she usually came in after the husband of Mrs. McDermott; Mrs. McDermott's husband got home at two o'clock in the morning; he left the door open and Mrs. Cummings followed him in (p. 669); Mrs. McDermott's husband had the key (p. 669); he was employed by the Public Service Railway Company on the trolley cars (p. 669); the bakery, where Mrs. Cummings worked, was about ten minutes walk from her home, and the car barns, where Mr. McDermott worked, were about five minutes walk from her home (p. 670).

The brother, Thomas McDermott, testified that: (p. 640) it would be impossible for anyone to come in the house without their knowing it (p. 640); he had been for nineteen years a motorman on the trolley cars; in August, 1924 (p. 642), there were no open trolley cars on the Roseville Avenue line, and he repeated this on cross-examination (p. 643).

There is no proof to the contrary and yet the detectives, Galgano and Cox, place Mrs. Cummings and Grimm in *August, 1924,* hugging and kissing each other on an *open car on this line* so that they could be seen from the public streets.

With the idea of the size of the yard of the home of Mrs. Cummings at 10 Washington Street, Belleville, indicated by the photographs, can the court believe that Young and Mrs. Cummings stood on the front porch, right off the bed room of Mrs. McDermott, her sister-in-law, in the summer time, with the windows open, and a night light

in the room, hugging and kissing so loudly that the detectives could hear it, and that this small yard should have been cluttered up with Young and Mrs. Cummings in the bushes and with detectives flittering around, never two minutes in one place, without the sister-in-law hearing it?

Can the court believe that Mrs. Cummings took her paramour into the house at the hours at which the detectives say she did? None of these things could have been done without the mother, brother and sister-in-law of Mrs. Cummings knowing about it, and they say they never heard of it. Can the court believe that Mrs. Cummons put this young child three and a half years old child into a dark hall? To do what? Does the court not believe that the child would forthwith have raised a rumpus? Does the court believe that, not only was Mrs. Cummings committing adultery with, but exhibiting affection for, Young in the presence of Young's mother, sister Mildred and father and also bringing her paramour into the house into the presence of her mother and her own brother and sister-in-law?

The Youngs had a dog (p. 486), a good watch dog, who usually barked and (p. 486)—

> "Q. Why do you consider him a good watch dog? A. Well, anybody comes in the alley we know it.
>
> Q. How? A. He rushes through the house, if he is at the other end, and he barks whenever anybody goes to visit the people upstairs.
>
> The Court: The dog would hear them long before you would know they are there?
>
> Witness: Yes, sir."

And yet these detectives congregated around the house and not only did the dog not notice that they were present but they testified that they

never saw a dog. Young's father and mother also testified to the presence of the dog.

There are several other matters which go to Cummings entire case of adultery. On these various occasion why was not some attempt made to catch the parties in *flagrante delicto?* Assuming the story told by the detectives to be true, if adultery was being committed, there was abundant opportunity to so do. The only explanation of Norma Kopp as to why she did not catch them in *flagrante delicto* was "because Mr. Cummings was not there with me, near enough." But he was available. It would have been very easy to have caught these people committing adultery if, in fact, they committed it, in such a manner as to have something substantial before the court and not merely testimony of paid or biased witnesses as to inclination and opportunity.

Owen Cummings seemed to believe that his wife was not the kind of a woman who would run around with another man. He testified that he heard that she was running around, and (p. 277):

> "Q. Did you say anything to her when you heard she was running around? A. No, sir.
> Q. Why not? A. *Didn't believe it.*
> Q. Didn't believe she was running around. A. No, sir.
> Q. So that when you saw her kissing, it was a shock to you? A. I believed what I had been told previous to that when I seen her.
> Q. I say, when you were told, before, you believed it—you said nothing to her about it? A. No, sir."

He had testified to seeing his wife kissing Grimm on August 6th, 1924, and (p. 276):

> "Q. First time you had seen your wife kissing another man, wasn't it? A. First time, yes, sir.

Q. And you just stood there and watched them? A. Yes, sir.

Q. Why? A. Because I heard she was running around previous to that."

Does the court believe the testimony of Cummings (p. 263) that Mrs. Cummings asked him whether he wanted to be introduced to the child's new papa, or words to that effect? Cummings testified (p. 263):

"Q. What did you say to her when she asked whether you didn't want to be introduced to the child's new papa, or words to that effect? A. *I didn't say anything to her at all.*

Q. Well, didn't you think that was rather peculiar? A. I thought it was very peculiar.

Q. Well, didn't you say—why didn't you say something about it? A. I had absolutely no control over this woman. I didn't say anything.

Q. How did it come about that she said that? Tell me the details of it? A. No details to it at all. Young was waiting across the street. She simply asked me if I wanted to get introduced to the child's new papa.

Q. Did you say 'yes'? A. Didn't answer.

Q. Say 'no'? A. No, nothing.

Q. Had you been talking to her before? A. No, sir, I never talked to Mrs. Cummings at visitations of the child.

Q. So that when you went to visit the child —where did you get the child? A. She brings the child to see me.

Q. And you would meet her there? A. Yes, sir.

Q. And you talked to the child? A. No, sir; she stayed there with the child; the child doesn't talk to me (interrupted).

Q. You never speak to her? A. No, sir.

Q. And you haven't spoken to her when she was there with the child on one occasion, have you? A. I have not; no, sir.

Q. When was the first time that you went there to see the child? A. It is about a year ago.

* * * * * *

Q. Well, it was at the time you—in your first beginning to see your child, wasn't it? A. I first started to see the child at the Public Service.

Q. When was it when you first started to see the child at the Public Service? A. About June 15, 1924.

Q. And at the time you saw the child at the Public Service you never spoke to your wife? A. No, sir.

Q. Not a word passed between you? A. No, sir."

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"Q. And when she made this statement of whether you didn't want to be introduced to the child's—what was the language she used?

The Court: New papa.

Witness: She asked me if I didn't want to get introduced to the child's new papa.

Q. That just came out of a clear sky. Nothing was said to lead—(interrupted). A. It came out of her mouth, I would say.

Q. Nothing else was said to lead up to it? You know what I mean? A. No, sir."

He first retained the Corbally Detective Agency about August 10th, 1924.

The Husband's Suit Was a Defense Measure.

The husband in his brief (p. 57) speaks of the suit of the wife being a defensive measure. The fact is that the suit by the husband was a defensive measure. There had been a property suit brought by Mrs. Cummings against the husband, the record of which was in evidence (Book 5, p. 676). It was commenced in January, 1924, and the wife alleged that she and her husband were jointly the owners of property on Hinsdale Place,

in Newark, the cost of which had been contributed in part by herself and in part by her husband. The property was sold and upon the closing of title the husband took possession of the entire proceeds. With the proceeds he had purchased other lands and premises on Washington Avenue, Newark, and had the title to those lands put in the name of William J. Efinger. This was all done without the knowledge and consent of the wife, although the understanding had been that the proceeds of the property were to be used for their joint benefit. In October, 1923, Cummings had desired to see the child (p. 413) and an arrangement had been made before Judge Brennan. He was to pay a certain amount per week. He had suspended payment for the support of the child and Mrs. Cummings was contemplating going into the Court of Chancery to bring suit for support (p. 461). The property suit was pending and the husband also was attempting to settle it (p. 461).

With this litigation pending and threatened against the husband, the husband, in August, 1926, started the Corbally Detective Agency following his wife, and filed this suit in September, 1924. Cummings testified (p. 267):

> "Q. You didn't start your divorce suit in September, 1924, until you knew that Mrs. Cummings was going to sue you for the property, isn't that right? A. No; her suit was started about a year previous to that for the property.
>
> Q. About a year after the suit was started by her for the property you started this suit for divorce; is that right? A. Yes, sir."

In the meantime, Mrs. Cummings was going down to the fire house insisting that Cummings contribute towards her support (p. 268).

The suit for adultery was, therefore, purely a defensive measure, as will be more fully indicated

when I consider the testimony as to cruelty and the relations existing between these parties.

Notwithstanding the fact that Flarity and Corbally, two of the detectives, could not identify Mrs. Cummings, and notwithstanding the fact that the story of Corbally and Flarity differ from those of Galgano and Cox, and notwithstanding the fact that there was no independent evidence of any intimate relations whatever between Grimm and Mrs. Cummings, *to anticipate action by the wife against the husband,* suit was brought by the husband against the wife in September, 1924, on the ground of adultery.

It is true that Cummings testified that counsel had advised him that the evidence supplied by the Corbally Detective Agency was sufficient. But, if that were so, why did Cummings employ the Kopp sisters upon an agreement that if the Kopp sisters got evidence of adultery they were to be paid a certain price, and if they did not get such evidence they were not to be paid that amount. The testimony of Cummings that the reason why he employed the Kopp sisters was to prove to the Court that Mrs. Cummings was entirely unfit to have the custody of their child is, I submit, not substantial.

If she were convicted of adultery with Grimm it would be just as bad for her as if she were convicted of adultery with Young, and Cummings testified (p. 267):

> "Q. So it had nothing to do with your divorce case, but merely with respect to the custody of the child (the retaining of the Kopp sisters)? A. It had both, custody of the child and the divorce."

And he finally (pp. 388 to 390) testified flatly that his retention of the Kopp sisters *was to get evidence to secure a divorce.*

The reason given by Cummings for retaining the Kopp sisters was that Mrs. Cummings knew that she was being followed by the Corballys. The difference between the nature of the testimony of Flarity and Corbally and the nature of the testimony of the Kopp sisters and their associates is sufficient to indicate the real reason for getting the Kopp sisters and the real reason for agreeing to pay the Kopp sisters a certain amount if they "got the goods", and a certain other amount if they did not.

No reliance whatever can be placed upon the testimony of the Kopp sisters and their associates. *The very fact that it was deemed necessary to retain them throws a doubt upon the whole case.*

Other Evidence.

The Vice-Chancellor (p. 768) relied upon the testimony of Cervone, who is a special police officer and had charge of the police in Dreamland Park in the summer of 1924-1925 (p. 715), as rebutting the testimony of Grimm and Mrs. Cummings that they were never together. This man said that *Galgano* told him something, and that after he "told him something he went in and looked at a couple in the Park", and he identified Grimm and Mrs. Cummings as the persons whom he saw. The way the identification was made deprives it of all significance (p. 716):

> "Q. Do you recognize as *that couple,* or either of the two persons that you saw there, any persons now in this room? A man and woman? A. I sure do.
>
> Mr. Child: *Grimm, stand up.*
>
> Q. Is *that* one of the people you saw? A. Yes, sir.
>
> Mr. Child: *Mrs. Cummings.*
>
> Q. Do you see *this* lady here?

Mr. Child: *Stand up, please, Mrs. Cummings.*

A. *Yes; I do.*

Q. Is that the other— A. That is the couple."

This witness had never seen Mrs. Cummings before or since. He believed that he had seen Grimm before "around the streets or somewhere—

"Q. Did you ever know him as Grimm? A. I did not."

The reason why he recognized him (p. 718):

"A. My attention was called to her in the park, that is why I remembered so well.

Q. Your attention is called to a great many people in the park, isn't it? A. Not for that particular cause, unless there is some accident."

It is clear from his examination (pp. 718, 719) that this witness is improvising and the identification made by him, in the way in which he made it, is ridiculous. It is also significant that, although he denied being a *friend* of Marinella, he had seen him.

One other witness was relied on below by the husband as to the Young charge—one John F. Smith. He is a first cousin of Mrs. Cummings (p. 695). He testified (p. 691) that: he knew Mrs. Cummings and Harold Young; he saw Mrs. Cummings and Young together twice, once opposite the Globe Restaurant on Broad Street, Newark, at eleven thirty at night; he thought in the wintertime; he passed them by the church on Broad Street opposite the Globe restaurant. On the other occasion, he saw them at Riviera Park on Sunday afternoon; could not recall the date but it was in the summer time, around five. The attitude of this witness on the stand clearly indicated that he was mentally affected. On cross-examination he said (p. 695)—

"Q. You were confined to a hospital, weren't you, at one time? A. Eh?

Q. You were confined to a hospital, weren't you? A. Yes, sir.

Q. Newark City Hospital? A. I was.

Q. Do you know for what? A. Yes, sir.

Q. What? A. A nervous breakdown.

Q. Observation was to sanity, wasn't it? A. No.

Q. Sure of that? A. Uh, huh.

Q. When was it you were in the Newark Hospital? A. I can't recall."

He thought it was around 1917.

Page 696:

"Q. Can you tell me what year it was that you saw these people at the two places you say you saw them? A. No; I cannot.

Q. Can't you give us the year? A. Well, it was 1925."

With respect to the time that she saw them at the Globe Restaurant he testified (p. 698):

"Q. Yes, I know you passed them, but there are other people that you passed, too, weren't there? A. Certainly.

Q. Well, you say there were a party of four or six? A. Not at this time, no.

Q. What do you mean 'not at this time'? A. When I passed them there was just the three of us passing together.

Q. Wasn't there somebody behind them or somebody in front of them whom you did not recognize or did not see, that is, to make any impression on your mind? A. Possibly.

Q. That might be, might it not? A. Yes, sir."

So with respect to Riviera Park, there were a great many people in the park; it was about four or five o'clock. The witnesses could not say that there were no other people with Young and Mrs. Cummings. He did not know the mother and father (p. 700).

Assuming this witness to be telling the absolute truth his testimony did not prove that Young and Mrs. Cummings were alone, together, at any time. It is conceded by the wife that they went out with the mother and Mildred and with others and there is nothing in the witness's testimony, with respect to either of the occasions which indicates that there might not have been others with Mrs. Cummings and Young whom the witness did not recognize.

The Vice-Chancellor says (p. 772) that the testimony of Mrs. Cummings and Young that they were never out *alone* together is false. I submit that there is no testimony to support that finding.

Several attempts were made to rebut the testimony of Mrs. Cummings and Young that they were not out *alone,* together (and there is nothing in their testimony which indicates that they may not have been on the public street or a trolley car together; they lived in the neighborhood; they naturally would meet; no one says that they may not have been on the street or on a trolley car at one time or another, together, having met accidentally; what they *did* say was that they never went out *alone* together). One such attempt was made by the calling of Helen Donohue (p. 702), and another by the calling of Emily Wooten (p. 726), both of which failed.

When Cummings sought the testimony of others than detectives, taxi drivers, special police officers, young men whom he did not know, but picked up, who were loafing around the street in a car, persons whom he met in the restaurant of Rothrock, a dentist, who is a friend of many years standing, and his fellow firemen, he always failed.

In this case we have at least two occasions, one involving the Young charged adultery and the other involving the Grimm charged adultery, where the stories told by the witnesses for the

husband, coming from the classes indicated, *cannot be true,* or else there has been perjury by others than Mrs. Cummings and the co-respondents.

With respect to the charge of adultery with Grimm, if Mrs. Cummings and Grimm were in the positions which Cummings' witnesses put them, the records of the A. & P. bakery must be all wrong, and Miss Keating must be committing perjury, for Mrs. Cummings could not, at one and the same time, be working at the A. & P. bakery and at an entirely different place.

With respect to the charge of adultery with Young, if Cummings' witnesses are correct with respect to the episode which is alleged to have taken place on January 10th at the Young house, at 175 Washington Street, the playing of checkers, etc., then the diary of Mildred Young must have been falsified, and Mildred Young and the mother and father of Young must have been perjurers.

In a case of this kind, where the testimony comes from the class of people that it does, *if it be shown that in one instance they are falsifying, the whole case falls.* It is easy enough to make a case, through the use of private detectives, against two people which it is almost impossible to meet. Such a case can only be met by the denial of the parties and an alibi. It is impossible, months after the event, to look back and establish an alibi for *every* occasion on which private detectives can say the parties have been together, alone. Such alibis can only be built up if something happened to fix the occasions in the minds of the parties.

Fortunately, with respect to the charge of adultery with Grimm, we have the records of the A. & P. bakery. Fortunately, with respect to the charge of adultery involving Young, we have the episode of the Christmas tree on January 10th, 1926, and,

with respect to what occurred on July 4th, the fact that it *was* July 4th fixes it in the minds of the parties, and we also have the diary of Mildred Young.

Argument, Law and the Opinion Below.

In dealing with the Grimm charge, the Vice Chancellor recognized that testimony proceeding from detectives "is of course always to be carefully scrutinized and cautiously accepted" (p. 766).

Among other things which have been said upon this subject is what is contained in the memorandum of the Chancellor of October 8, 1896, published in 19 N. J. Law Journal, page 342 as follows:

> "The Court of Appeals of New York, in Moller *v.* Moller, 115 N. Y. 466, said of spy or detective witnesses, hired to obtain evidences in divorce proceedings: 'We agree with the learned judges of the general term in their low estimate of the value, in divorce cases, of the evidence of prostitutes and private detectives. The courts have come to regard the uncorroborated evidence of such witnesses as insufficient to break the bond of matrimony.' This is not to be regarded as holding that such witnesses will never be believed. It is, of course, possible for them to tell the truth, and, perhaps, *by the inherent probability of the truth of their statements,* to satisfy the court; but practical experience demonstrates that satisfaction from them alone is of rare occurrence. Heimann *v.* Heimann, memorandum by Chancellor, October 8, 1896."

The Vice Chancellor below said (p. 766):

> "The Corbally Agency is regarded in Newark as dependable. Its general reputation for integrity is good and counsel himself vouches for this by his statement that he has

> 'no doubt whatever that Flarity and Corbally followed a man and a woman as Flarity and Corbally describe', in the early morning of August 24th."

There is no evidence that the "Corbally Agency is regarded in Newark as dependable." The only evidence is that it is a detective agency, and testimony coming from its operatives is subject to the criticism generally made of "detective testimony." The Vice Chancellor ignores, I submit, the discrepancy between the testimony of Galgano and Cox, who were mere operatives, and that of Corbally and Flarity, who were responsible heads of the concern. As I have pointed out (p. 68 of this brief), the testimony of Corbally and Flarity is valueless, for neither Corbally nor Flarity would state that they recognized Mrs. Cummings, and only one of them would state that he recognized Grimm.

But the Vice Chancellor says, "While Flarity and Corbally were not able to recognize Mrs. Cummings and Grimm in the dark, Galgano and Cox *knew them well.*" I submit that there is no testimony that "Galgano and Cox *knew them well.*" I have already indicated in this brief (p. 69) as to how "well" Galgano and Cox knew Grimm and Mrs. Cummings, and I do not intend to repeat. The Vice Chancellor said (p. 767):

> "I have no question of the good faith and entire accuracy of Cox' testimony."

I have considered this testimony (p. 70 of this brief), and I submit that, if the testimony of Cox is correct, then that of Galgano, Flarity and Corbally is incorrect. Even Galgano and Cox differ.

The Vice Chancellor says (p. 768): "Mistaken identity is suggested to perplex." The answer is that, unless there be assumed the inaccuracy of the payroll books of the A. & P. and the inaccuracy

and falseness of the testimony of Miss Keating, there *was mistaken identity or worse.* The Vice Chancellor (p. 768) concedes that August 29th, one of the dates upon which the detectives were said to have followed Grimm and Mrs. Cummings, was a Friday, and that the payroll books of the A. & P. and the testimony of Miss Keating indicated that Mrs. Cummings could not have been out on Friday night for she was working, but as to this he says, "there may be error as to date, but not of the occurrence." Detectives do not err as to dates. Every detective makes a memorandum, and it is inconceivable that all four of these detectives and Cummings should have erred as to the date. The Vice Chancellor overlooks, I submit, the doubt cast upon the testimony of these detectives by the fact that, fortuitously or otherwise, they have destroyed their original memoranda, which destruction I have adverted to on page 79 of this brief.

The Vice Chancellor has also overlooked, I submit, the doubt cast upon the testimony as to this first adultery by the fact that the husband was not satisfied with the testimony which he had as to that alleged adultery, but proceeded and retained the "Kopp Sisters" to get further evidence as to the alleged adultery of the wife with Young, and he retained them upon an agreement that, if they got the evidence they should get so much, and if they did not, they should get less, and by the fact that the husband attempted to use testimony which he must have known to be perjured, if the Vice Chancellor's conclusion on the Young charge is correct, to convict his wife of the alleged adultery with Young.

I submit that there is nothing in the case which warranted the Vice Chancellor in disregarding the testimony of the detectives employed with respect to the Young episode and accepting at face value

the testimony of the detective with respect to the Grimm episode, notwithstanding the differences between the various detectives upon matters upon which there should be no difference, and notwithstanding the inability of the responsible heads of the detective agency, Corbally and Flarity, to identify Mrs. Cummings.

The law as laid down by this Court in *Marchese* v. *Marchese,* 98 N. J. E. 379 is—

> "In the case of Berckmans *v.* Berckmans, 17 N. J. E. 453, Mr. Justice Van Dyke, delivering the opinion of this court in a divorce case charging adultery against his wife, after pointing out that the charge constituted a crime, and that, consequently, the suit was strongly of the nature of a criminal proceeding, declared that, by reason of this fact, *the burden was placed upon the petitioner of supporting his charge, not only by a decided preponderance of the testimony, but by such evidence as would satisfy the human mind and leave the careful and guarded judgment of the court free from any conscientious and perplexing doubts as to whether the charge was proven or not,* and that, if such doubts remain after a careful consideration of the testimony, it is the duty of the court to give the defendant the benefit thereof and to refuse the prayer of the petitioner. In the case of Culver *v.* Culver, 38 N. J. E. 163, Vice Chancellor Van Fleet, in following this pronouncement, declared that the proven facts, which would constitute sufficient evidence to support a finding of adultery, must be such as would lead the guarded discretion of a reasonable and just mind to the conviction that the crime had been committed. This rule of evidence has been accepted and followed in repeated decisions of our court. See Luderitz *v.* Luderitz, 88 N. J. E. 103, 105."

The language of Vice Chancellor Fielder in *Sargent* v. *Sargent,* 114 Atl. 428 (not officially reported)—

> "To accept such a story would be to say that every woman in her home is at the mercy of servants who, for pay or to satisfy a grudge, might relate a tale which only their mistress and the alleged co-respondent could deny."

is as applicable to the class of witnesses who have been produced in this case as it was to the servants who were produced in that case.

Vice Chancellor Fielder also said:

> "I know it has been said that the denial of the defendant is entitled to but little weight, but I understand by that, that when the guilt is indubitably established, the defendant's denial is of little value. It would be an unfair rule that, with relation to testimony such as I have quoted, her denial under oath should be cast aside merely because she is the defendant. *I think the rule is that, where there is an endeavor to establish circumstances from which it is sought to draw an inference of her guilt and her veracity is unimpeached, her testimony should be given the same weight as any other witness, except only as affected by her interest*" (p. 432).

The Vice Chancellor was affirmed in 92 N. J. E., page 703.

In *Carton* v. *Carton,* 93 N. J. E. 175, this Court, at page 179:

> "To justify a decree for divorce on the ground of adultery, the evidence of the defendant's guilt must be clear and satisfactory. A full and explicit denial of the charge by the defendant and her alleged *particeps criminis* should be regarded as decisive in a case of doubt."

And see

> *Brown* v. *Brown,* 63 N. J. E., at page 348, in this Court;

Reid v. *Reid,* 17 N. J. E. 101;
Osborn v. *Osborn,* 44 N. J. E. 257.

Farrow v. *Farrow,* 70 N. J. E. 777, in this Court, in which latter case there was direct evidence that the defendant had been seen in *flagrante delicto* and abundant opportunities were proven. The Court said:

> "None of them, even if true, present incidents *which show the existence of an adulterous disposition or purpose.* None go to prove that an act of adultery was committed" (p. 787).

In *Slattery* v. *Slattery,* 87 N. J. E. 673, adopting the language of the Advisory Master, this Court said:

> ". . . *His (co-respondent's) attentions to her have been marked and their conduct is open to severe criticism.* They have, in the presence of the petitioner or his friends and without any apparent concealment, *kissed each other;* in the hospital where he went as a visitor, *he sat and held her hand;* in many ways *they gave evidence of a deep interest in each other.* Although requested by petitioner to keep away from his wife, Hobcroft refused to do so, and has continued to live near her and for a long time in the same apartment occupied by her, her mother and other relatives."
>
> * * * * * *
>
> "While her conduct in this and other respects is reprehensible, *there is no evidence of lewdness on her part or of any indecent language or action, and she is not shown to be depraved.* As a witness she was unusually frank and admitted without hesitation, substantially all the acts charged against her, claimed to indicate affection for, or interest in Hobcroft."

The divorce was denied.

In *Cooper* v. *Cooper,* 82 N. J. E. 581, affirmed 82 N. J. E. 660, Vice Chancellor Backes said:

> "Her conduct with the corespondent, as she admits, *was highly indiscreet and venturesome, if not reckless.* * * *
>
> The defendant admits the circumstances from which it is claimed guilt should be inferred * * * she told and confessed all that could be used to build a story around her, from which guilt might be deduced, even relating to matters which had not been brought out on the petitioner's case * * * While the appearances are against her, *and the fact that she entertained him at her home, went out with him at public places, visited him at his office, and that he, upon two occasions, kissed her, may arouse suspicion that all was not right between the two,* I am not convinced that she took the fatal step, that she broke her marriage vow, that she committed adultery. In fact, I believe she did not * * * She was a flirt and a fool, but not a criminal."

And see

Frost v. *Frost,* 85 N. J. E. 571, in this Court reversing the Court of Chancery;

Grundy v. *Grundy,* 92 N. J. E. 687, in this Court reversing the Court of Chancery.

And also see

Rector v. *Rector,* 78 N. J. E. 386.

In *Berckmans* v. *Berckmans,* 16 N. J. E. 122, at p. 141, the Chancellor said:

> "At the very threshold of the inquiry we meet the significant fact, that the bill filed by the complainant in this cause is virtually a defensive measure."

Carton v. *Carton,* 93 N. J. E. 175;
Derby v. *Derby,* 21 N. J. E. 39, 40;
Brown v. *Brown,* 63 N. J. E. 348.

And so it is in this case, and that finally brings me to the discussion of

Charges of Cruelty.

The husband deals with the issue of cruelty on page 58 of his brief. He apparently thinks (p. 59) that it should not be considered because "Nearly all of this testimony was given by witnesses who were either friends or relatives of the defendant, or who had some grudge against the petitioner."

If this were true, which, I submit, it is not, how can the husband ask this Court to find Mrs. Cummings guilty of adultery where all of the important testimony comes from paid agents of the husband?

The fact is that substantial corroboration of the charges made by Mrs. Cummings comes from the testimony of Cummings himself on cross-examination.

Mrs. Cummings told the story of her life commencing at page 391. She was twenty-eight years old at the time of the trial; her husband was about six years older; they were married November 15, 1917; after the marriage they went to live at 66 Hinsdale Place, Newark; within a month after they were married, he commenced to call her vile names (p. 392); when the draft came he did not want to go because he was drawing good money; about May, 1918, he called her vile names and she got up from the table and ran to the bathroom and closed the door, refusing to come out upon his command; he threw a dish through the window of the bathroom and cut his own wrist; he was

drafted and went to France for a year; when he returned to Cap Dix he did not let her know and it was not until she was told by a friend that the regiment was there that she knew he had returned; she went down to see him and ask him why he did not let her know and all he said was, "What is the use?"; he did not think that he would take up housekeeping; she stayed a day and coaxed him to come back to Newark and she rented rooms at 19 Washington Avenue; he then took a position in 1919 as bartender in Murray's saloon; he then commenced to drink and stayed away from home and came home any time he felt like it, "and I would go down and stand outside, one o'clock in the morning, when he'd come out of Murray's, and wait for him. Sometimes he'd come up to me and when he'd see me he'd go across the street; then I would go down the next morning and he would come up to me and say, 'What the hell do you want?' I said, 'I want you to come home.' Then I would have to follow him around, and even followed right into the restaurant and sat down at the same table with him"; he wrote some letters to her while he was in France in which he accused her of sending him to France, "being the cause of sending him to France"; these letters he destroyed after he had returned from France; in April or May, 1920, they moved to 66 Hinsdale Place, which they had bought; there was a quarrel over the paying of a deposit for gas (he had then joined the Fire Department), and he asked her whether she had paid the deposit and she told him yes; he said she was a liar and grabbed hold of her arm, and (p. 395),

> "and he says, 'What do you mean by lying to me?' I said, 'I did pay the gas,' and so he, when he left—I had his lunch and a bottle of tea fixed up for him to take and he dashed the tea at me and threw the sandwiches in my face."

The next day he came home and told her that she would have to get out; she told him she would not and he said that he would see that she got out, "and he took the mattress off the bed and threw it down the back stairs and it landed at the back door of the first floor, and after he had gone I went down and brought the mattress up again and when he came back home he took it off the bed again and threw it back down. I then took some quilts and put them on the spring and that is the way I lived for about three days, that way"; that was in June, 1920.

On June 30th, 1920, Cummings published in the Newark Evening News an advertisement reading "Household goods and furniture for sale, dining room suite, mahogany, cost $1,300, sell for half; also mahogany cane back velour living room suite; cost $1,100, sell for $750 and other things, afternoon until 5:00 p. m., 66 Hinsdale Place, second floor" (p. 397). She knew nothing of this advertisement until she came home from work about quarter after five and when she came home she found three women on the street, and (p. 396):

> "They said, 'Mrs. Cummings, did you know your furniture is advertised?' I said, 'No'. So the one on the first floor showed me the advertisement in the paper and she said how many couples had been there and that Mr. Cummings had seen them and had been talking to them."

He told her that he wanted to sell out the furniture, that he wanted to break up and he said to her, as he had said many times, "If you don't like what I do, get out. I am not satisfied with the rooms. I have always been used to furnished rooms. If you don't like what I do, get out."

She worked after the marriage and made $24.00 a week and used it for the running of the house;

he kept all his money; she worked up until a few months before the baby was born; he gave her just enough to buy food (p. 396); they attended a wake for the uncle on the 27th of June, 1920; originally he did not want to go; he finally went; without saying a word to her he went home about half past ten, and (p. 398):

> "When I got home Mr. Cummings was up sitting in the living room reading the paper. I then asked him—I said, 'Why did you do that? Why did you make a fool out of me in front of my people?' And he said—he started an argument and started to call me vile names and he told me he was going to smash up everything in the house, and he went over to the lamp shade that I was making—it wasn't quite finished—and he tore it up. We had draperies between the door and he tore them down and cleared the side board of everything that was on it and then went in the bathroom and locked himself in there for a couple of hours."

There was a quarrel in August of 1920; he got mad "and he just went over and took the gas plate and threw it down the back stairs"; in October, 1920, she was pregnant and Cummings left and went away for about a week; upon another occasion he struck her and blackened her leg and arm and she called him a coward; he said that if she did it again he would hit her; she did it again and he did hit her; the child was born in June, 1921; he did not give her money enough for the child.

He decided to sell the house. There was a misunderstanding as to her carrying out some of his instructions. And (p. 401):

> "He stepped in and he took down the bed and he took it and he left it on the back porch and he left the mattress on the floor and he made such a noise I told him, 'I am going to call up Mrs. Ward after you are gone and

> I am going to tell her what all this racket is about'. He says, 'You don't have to'. He opened the door and called up the tenant on the first floor, Mrs. Ward. Mrs. Ward came in; he started telling her that I was going to call her up, so he decided to tell himself what it was about. He then told Mrs. Ward, and I listened, that—he says, 'Long before we ever had the child', he says, 'I didn't want to live with her', and he says, 'Any time she doesn't feel satisfied, why, let her see her lawyer', and then when he went out to work I put the bed back up again and Mrs. Ward stood there and watched me put it back up."

The next morning he came home and took it down again and put it on the back porch and he slept for three weeks on top of the mattress in the bed room; this was in May, 1922; he had previously left her in March of 1922, and had remained away from March, 1922, until May 2nd or 3rd; after he left in March, 1922, she received a letter from Judge Quigley, and (p. 402):

> "It asked me if I would kindly call and see him about a matter which my husband had spoken to him about, so I went down to see Mr. Quigley and he told me—he told me that my husband was there and he said that we didn't get along and he wanted to separate, and he asked me how much a week did I want. I said, 'Well, I didn't know what I wanted a week and that I wouldn't take it because', I said, 'I didn't know anything about the case'. So I started to explain to him and he said he didn't want to hear it. He says, 'Of course', he said, 'I am a friend of Cummings and I don't want the other Cummings brother to know anything about this."

Cummings told her, before he left, that he was going to get out—that his lawyer told him to get out. During the time that he was away he used to come in every once in a while and call her vile

names. Upon one occasion he came in, and (p. 403):

> "I had a building and loan of my own; the book was laying on the table, and, of course, he didn't leave any money and I didn't have any money to pay it, and it was then two months in arrears—and it was laying on the table when he came in, so he picked it up and went over and he said—put it on the gas stove in a bent shape and he lit the gas underneath it and it burned—the cover didn't burn —then he took a kettle with hot water which was prepared for a baby's bath and he poured it on top of the book; then went over and took a little mahogany clock on the mantle piece and threw it on top of the kitchen range, and broke that, and went into the bed room—and cleaned everything off the dresser and pulled everything around in the bedroom and walked out."

He came back in May, 1922, and said to her:

> " 'I have sold the house,' and he said, 'I have taken a deposit on it of three hundred dollars;' and then maybe a couple of days later he came back with his things into the house."

During the time that he was away he had been giving her $15 every two weeks.

They sold the house and moved to 114 Washington Avenue in September, 1922, and then to 96 Washington Avenue and then he bought 114 Washington Avenue. He struck her in November, 1922 (p. 405):

> "Well, one day he went in, the baby was sleeping in the room and I had the shade down—it was dark in the bed room, and he went in and laid down and I went in afterwards and I said, 'Owen, why did you lay on the white spread?' He says, 'You son of a bitch, can't you see I am not laying on the spread?' So that raised an argument and he

struck me. I said to him—I told him he was getting away with murder on the stuff he was —when I told him I was going to tell about his setting fire to our carpet—rug—he said if I ever told it he would kill me.''

At that time she had been sick for six months and was under the care of Dr. Kearn and the child Olive also was sick. Cummings had started to change the house into a two family house. He had a disagreement with the man who built it and the work stopped, and (p. 406):

''He went out and nailed some boxes up at the window and the back of the house was cut through to make an addition to the cellar, and they had taken the cellar door and part of the cellar away, and that was in cold weather, and it remained that way until after I left Mr. Cummings, and when I moved there, there was two ton of coal in the cellar which he bought off from the woman, and that was all the coal that came into the house, and the doctor told him when he visited me, he said it was not fit place to keep me and the baby.''

The doctor told this to Cummings in the presence of Mrs. Cummings. The house at Hinsdale Place was owned by both. It was understood that the new house, 114 Washington Avenue, would be bought in both names, and (p. 407):

''A. Mr. Cummings—we had bought the place, see, and the place was to be put in my name and his, because we both owned the other house; so one day I got a letter that came and it was from Mr. Quigley, and I opened it and I found out that Owen had changed the house into another man's name, a Mr. Ettinger, so when he came home I asked him why he had done that, I thought the property was being put into my name and his, and he then told me that he had me just where he wanted me and that I could go to hell now

and go home and see how long my people would keep me."

He then asked her to go down to Mr. Quigley's office to sign some paper to get a loan on the house; she told him that she would not go and that he had $1,200 in the bank that belonged to her and to use that and, when he had used that for fixing the house, she would sign for a loan on it; she told him that he had treated her badly by putting the house in another man's name and he struck her; Olive was sitting in her lap at the time; the next morning she had his breakfast ready for him; he came in the back door and went into the closet, changed his shirt and collar and went out the front way without stopping to eat; she sat down and ate and was sitting at the table when he came back with a paper under his arm and he said:

"What do you mean by putting this over on me?"

He then took a plate and threw it down on the table and it broke; he then grabbed hold of the table cloth and everything went up in the corner of the kitchen (p. 408); he then struck her on the head (p. 409); she then left and went to her mother's, where she has been ever since.

He struck her two or three times before her leaving. After she left she went back to the house in a couple of days. He was at the place with a lot of men working around and she asked him what he was going to do, and (p. 410):

"He said for me to get out and stay out, and I tried to talk to him and talked to him about the child and everything and tried to show him where he is wrong and he told me he wouldn't admit to any woman he was wrong and no woman would ever walk out of his home and come back again and when I went I could stay out."

She went back on another occasion and found him on the ladder taking paper off the dining room; she did not have five cents when she left him; she asked him for money and told him that the baby needed shoes and he said, "Get the hell out of here", and threw the brush at her, but it did not hit her, and he came down off the ladder and came over to her, he said, "What are you coming in here for?"; he struck her and she fell into the closet; he knocked her unconscious (p. 411); she went back upon another occasion and said that she was going to stay; she had swept the whole first floor and wiped up the hall and stairs; the next morning she went down, and (p. 41):

> "Mr. Cummings came in, and he took the child's crib and brought it down in the cellar, then came up and took the chairs—and one chair I was cleaning, he snatched it out of my hand and raised it and said, 'If you don't get out of here I'll let you have it,' and then he disconnected the gas range. I said I was going to stay—he then went over and pulled the gas range from the wall, and went downstairs—whatever he done—and came up and uncoupled it and pulled the gas range right from where it was connected."

On another occasion when she went on a Sunday with Olive and tried to talk with him, he kept ordering her out and told her if she did not stay out he would see that she was put out; he finally backed her up into the kitchen with his fist; there was a gun in the place and he told her upon one occasion that, if she did not get out, he would use it on her, "and he did run up the front stairs, and when he run up the front stairs I left"; within *three days* after she left he sold her dresser and bed room chairs that had been given to her as a wedding gift and also an ice box; during no part of this period of time did he support her; she went down to see him at the fire house and he

would always say, "Take it into court, the best man wins"; finally, through counsel, he offered to pay her $15.00 a week; this was the first time that she got any money from him and he continued it from June, 1923, until February, 1924.

During all this period of time he made no efforts to see the child until October 23rd, 1923; an arrangement was then made by which he would see the child; upon one occasion, in February, 1924, he came to the mother's house to see the child (p. 414):

> "A. Well, he didn't come in the morning then; he came in the evening, and he took the child from bed and she was asleep and he woke her up and he took her out in just her night gown and down to Belleville there he was stopped by the police and I was on the way down—I went after him to take the child back off him and when I wanted to take the child off him he kicked me and struck me in the face and before he left the home he picked up the chair and fired it at me."

The child was brought back by the police (p. 414); until February, 1924, he never asked her to return to him; he was then taken to the police court in Belleville; she was asked whether she would press the charge of assault against him and she said "no"; two days after that she received a typewritten letter from him reading as follows:

> "Dear Madam: You say I never asked you back. I am asking you now back provided you do what is right."

That is the first and only letter he ever wrote her in which anything was said about coming back. It is the letter of October 25th, 1923 (Ex. D-9, p. 416). She received a note from her husband about October, 1923, reading:

> "Inform me how many suits you are going to start, also what you are going to do in the

future in regard to your domestic troubles'' (p. 417).

In September, 1923, she received the following from her husband:

> ''Any belongings of yours take them out of here before the first of September.''

At Christmas of 1925 she received a note (p. 417) pinned to a doll which he sent Olive:

> ''Next Christmas I expect to have you out of the *house of degenerates.*''

The note in which he spoke about her coming back is in evidence (p. 418). In February he stopped the allowance for about 11 weeks. She went to the fire house to see about it, and (p. 419):

> ''He was kind of half way decent to me and he said—he talked like this—he said, 'Now Sadie, wait a minute.' He then went in the fire house and came back, and when he came back he says, 'Now, listen,' he says, 'the best thing you can do is to take it into Court,' he said, with another man standing there; he says, 'Say, Jim, come over here,' he says, 'I am asking my wife to come back and live with me,' and he had never even asked me, but that was the answer I got when I was down to him.''

This was after he had been warned by the Court and was palpably for the purpose of defeating any action for divorce which might be brought by her on the ground of constructive desertion. She then took the matter into Court and an allowance was made for the child. She started a suit to get back the property. For doing this, he called her vile names, and (p. 420):

> ''He said he was going to surprise me in a few days—I would get something. That was the first time I had been informed about the

> divorce and he used to call me all kind of names—the names I have mentioned, and he was going to prove it. I told him he couldn't prove it. He said he was going to prove it and was going to spend the rest of the money, the other half, to prove that I was a common, ordinary prostitute."

The property suit was settled in November or December, 1924. This was after the divorce suit was brought. It was settled upon a fifty-fifty basis (p. 421):

The story told by Mrs. Cummings is amply corroborated.

Sarah McDermott, her mother testified (p. 588) that: Mrs. Cummings continued to work after the marriage; they came to live with the mother after they married; in about four months she saw that they were not getting along well together and she left; while she visited her daughter upon some occasions after she left it was "not so often, because Mr. Cummings was very disagreeable when I would be there and I thought it was on account of me being there that he acted that way"; there was trouble because Mr. Cummings would not go to mass with Mrs. Cummings; the mother has heard the husband call the wife "old son-of-a-bitch" and has heard him say that she did not know how to cook for a dog, let alone a man; she had heard him say "that is how the Irish cook"; in 1921 the mother was very sick with blood poisoning; she first went to St. Barnabas Hospital (p. 591); she then went to her daughter's home, where she was confined for 7 or 8 weeks in one room and her daughter attended her; she heard the arguing; she was too sick to pay any attention to it; she paid board; after six or seven weeks she left. Testifying as to the way the husband treated the wife she said:

> "In the first place she didn't have no clothes and in the next place she was pretty

> near half naked, no shoes on her feet and she was an awful sight for the way he was treating her."

She heard him call her a "black rat" and other names, and:

> "When he was mad he used to call her names I wouldn't mention here, I couldn't mention or any woman; I don't think it is fit to mention."

In April, 1923, the wife left the husband and went back to the mother. The mother went to Mr. Cummings to see what could be done about it, and:

> "I couldn't speak to Mr. Cummings, he used such terrible language; told me what his wife was; she was an old rat; she was like a mill stone tied around his neck and that he didn't intend to ever live with her when he come home from France; he never expected to live with her again. I said, 'Why did you?' I said, 'You got a child now', I said, 'I think you both ought to be happy with the little girl, and ought not to use such terrible names to your wife', and I thought to bring back my daughter the next day; he says, 'No, don't take her back; if you do, I will beat her brains out, and I want you to get it right'; so I said, 'All right'. And as I went in Mr. Cummings stood up, got up and went to the closet and threw out some clothes belonging to Mrs. Cummings and he says, 'Take these clothes with you'. I said, 'No.' * * * A. Then Mr. Cumming threw the clothes on a table in the dining room and asked me to take the clothes with me. I said, 'No', I wouldn't take the clothes with me. I didn't feel like carrying clothes. So I walked down to the front where Mr. Cummings argued with me and we stood on the porch. Mr. Cummings said, 'Do you know', he says, 'that your daughter was nothing but an old whore when I maried her?' I

said, 'Can you prove that?' He says, 'It is none of your damned business whether I can or not. Get down the porch. Get down the stoop', and I got down the stoop and come on home."

He said that the day his wife left he had a gun and if he had brought that down when he went upstairs he would have blown her brains out. In the early part of the year 1924 Cummings came to the mother's house, and (p. 596):

"I (the mother) was putting the child to bed; after leaving the child down to sleep in the bedroom Mr. Cummings came upstairs and came into the bed—into the bedroom and Olive was asleep. I said, 'Owen,' I said, 'Don't wake her, she is just after lying down to have a sleep, maybe she will only be an hour to sleep and then she will be up again.' With that he went in and run his finger up and down the child's leg and woke her up. Then he started to speak to the child. He says, 'Olive,' he says, 'where do you sleep? Don't you sleep on that couch there?' he says, and the child said, 'Yes.' I said, 'No, she doesn't sleep on that couch; she sleeps on the bed where you just picked her up from.' He says, 'Never mind; let the child tell; she knows what she is speaking about,' he said, 'Olive,' again, 'where do you sleep?' The child pointed again to the couch, and I said, 'No,' and Mr. Cummings spoke up. 'You are a God damned liar,' he says, 'the child knows what she is speaking about; she does sleep on that couch. I am paying enough money,' he says, 'to have the child in a comfortable position, not to sleep on that souch.' "

The fact is that the child *did* sleep on the bed and was too much asleep to understand his questions, and:

"He pulled the whole covering of the couch on the floor, and then my son downstairs

heard the racket and he came upstairs; he wanted to know what the trouble was about and Mr. Cummings said, 'Nothing.' So he says, 'What is the matter? Every time you come here in the place looking for your child,' he says, 'you are looking for trouble.' So he says, 'If you don't want to call here in a decent kind of way and not running through the rooms and making trouble and scrapping with my mother,' he says, 'I don't want you to come here at all,' so Mr. Cummings said, 'All right,' and turned and went downstairs and went and I have not seen Mr. Cummings in my home since.''

She testified to the incident when Cummings took the child out of the house. She had left the house and gone to the movies. She had come out of the movies, and:

''As I crossed Washington Street to go up William my daughter called to me and I turned around and she was coming behind, so I said, 'Where were you?' She says, 'I was to the drug store;' and then we walked down William Street, the two together, and as we turned Washington a man walked on awful fast, so my daughter said, 'That is Owen', and went on quick ahead of me, because I couldn't walk so very fast—so she went on ahead. The minute I went to the front I heard an awful noise inside in the kitchen. * * * So I went to the door and there Mr. Cummings was with the child; no clothes on it, trying to take it out, as I thought, and I said, 'What is the trouble about, Mr. Cummings?' I said, 'What is the matter?' He says, 'Oh, you,' he says, 'you old son-of-a-bitch.' I said, 'I ain't no son-of-a-bitch,' I said. I went right over to him. He says, 'Yes, you are; you are nothing but an old son-of-a-bitch, that is all you are,' then he went to take the child and my daughter pushed him back and put her back against the door that he wouldn't take Olive, and Owen

Cummings raised his fist and struck her and knocked her hat off.

The Court: Whose hat?

Witness: Mr. Cummings, that is her husband.

The Court: Knocked whose hat off?

Witness: My daughter's hat; trying to prevent her from taking the child. Then I ran out and seen Mr. Cummings striking his wife. I ran out and—(interrupted).

The Court: What did you see him do?

The Witness: He struck his wife and knocked her hat off. Then I ran out and down to the corner and got a policeman and told him there was trouble up in the house, Mr. Cummings was there, and—just told him the truth, and if he could come up. He said, no, he couldn't go up, but he would get a man. As I turned I seen Mr. Cummings coming down with the child in his arms without any clothes on, and Mrs. Cummings, both coming down William Street; so then the policeman met them and I went on up to the house."

The child was taken back to the house; the mother saw the black and blue marks on the daughter's side and the marks were black for two weeks (p. 600); the mother said that when he came to see the child he called his wife all kinds of names; told her that she was going out with men, etc.

The wife is corroborated by Catherine Ward, who moved into 66 Hinsdale Place in October, 1920, and lived there about a year. The Cummings moved away before she did. She heard the quarreling (p. 611). She heard Cummings call his wife vile names—son-of-bitch, whore, bastard "and all that kind of stuff". The witness said that: she did not mean swear words but dirty words; also words worse than these (p. 613); upon one occasion she heard a loud noise and

"Mr. Cummings came and opened the back door and called me up to witness the scrap"; this was the occasion referred to by the wife when she said she was going to call and Cummings himself called; there was some trouble about some building and loan man coming and (p. 614):

> "He went in the room and took the bed, brought it out and threw it down the front stairs and after that he went out. When he threw the bed out he went out, and I helped Mrs. Cummings up with the bed and put it back up again, and in about an hour after he came back again and took the bed and put it out on the back porch."

The next morning he threw the bedding down the front stairs again; two days after Cummings came to her and told her about some letter that Mrs. Cummings had received from a lawyer and speaking of Mrs. Cummings, he said:

> "Well, I wanted to get rid of her before we ever had a child."

That was in March, 1921. The witness remembered Easter Sunday of 1921. She had fixed a tray with Mrs. Cummings' dinner on it and she went up and stood in the back hall and she heard them quarreling and (pp. 615, 616):

> "He took the building and loan book and he burned the inside of it and then took the kettle of boiling water off the stove and put the fire out with the boiling water and then threw the water all over the floor and there was a little clock on the mantel and he took that and smashed it on the stove. * * * he took the cover of the dresser and pulled everything off all over the floor. Mrs. Cummings was standing at the sink; he came out and grabbed her wrist; he says, 'I will kill you yet'. I stood in the back hall. I was so excited I didn't know whether to go down-

> stairs or to stay upstairs. Then Mr. Cummings went out the front way and I went in the room and her hands—her wrists were bruised and bleeding."

He continued to call her the same names that the witness had already mentioned. The witness testified that: Cummings went away about March 15th and stayed about a month and one-half; she heard conversations between Mr. and Mrs. Cummings in which she said "Aren't you going to leave me any money, Owen?" And he said, "Go to hell and try to get it"; he has told the witness that he has never wanted to live with his wife; because of Mrs. Cummings' lack of clothing, the witness had given her underwear, stockings, etc.; Mrs. Cummings objected to the language that was used toward her by her husband; Mrs. Cummings had said to Cummings that he should be ashamed (p. 620); at the time of the quarreling over the bill Mrs. Cummings told him "he ought to be ashamed of himself, that the little girl would soon understand what he was talking about".

The argument of counsel for the husband below was that Mrs. Cummings stood all of this treatment without resentment and that therefore it is not cruelty. His argument is exploded by the testimony of Mrs. Ward brought out on his cross-examination (pp. 619, 620). The witness, Mrs. Ward, was not impeached.

Mrs. Ward was neither a relative of the wife nor did she have a grudge against the husband to use the language of the husband (p. 59 of his brief). It is true she testified (p. 620) that she was a friend of Mrs. Cummings. It appeared, however (p. 676), that in the last year or two before the trial she had only seen Mrs. Cummings about four times.

Mrs. Von Bucknow, living, at the time of the trial, in Berkeley Heights, New Providence, in

1920 lived in the house 56 Hinsdale Place, Newark, about ten months. She had the first floor, first flat. About two months after she moved in the Cummings came into the floor above her. During the time she lived there she heard Cummings call his wife a bastard (p. 622). She knew about the quarrel between Mr. and Mrs. Cummings with reference to a deposit of the Public Service. Describing Cummings' general conduct she said (p. 622):

> "Well, he rushed up the stairs—he came in the front door, as a usual thing, and rushed through, and if she was home then they quarrelled; but if she wasn't home he would rush down the back and that would be the last of him for a while, but this time he came home and the next thing I heard was loud voices and things flying around up there and glass breaking, and he called her a liar, and I never could hear what she said. She always spoke in a quiet voice."

She described another episode:

> "She was putting up his lunch that day and he took the bottle and threw it at her, that is the glass I heard. And when she came downstairs I said, 'My goodness, what happened now?' She says, 'Oh, nothing; he just threw a bottle of tea at me'."

She corroborated Mrs. Cummings with respect to the bath room door episode; she was not present but she heard Cummings shout—"Let me in; let me in; come out of there; let me in"; she heard Mrs. Cummings reply that she would not and Cummings' reply, "If you don't let me in, I will break down the door", and she heard the smashing of the door, and heard Mrs. Cummings run out and into her bed room and, after Mrs. Cummings got into her bed room, she heard something fall heavily; she remembered the advertise-

ment in the newspaper, put in by Cummings, of the sale of the personal property; she had to open the door to the people who came to look at the property; she was the one to show the advertisement to Mrs. Cummings; when she showed the advertisement to Mrs. Cummings, Mrs. Cummings knew nothing about it; she thought it was in August, 1920, that the gas plate was thrown down the stairs, landing at her back door; she gave Mrs. McDermott, the mother of Mrs. Cummings, certain information; she helped the mother of Mrs. Cummings to see Cummings with respect to which the mother testified describing the incident of the mattress she said (p. 625):

> "Why, only that it was in the early morning hours and I heard a frightful noise, such a funny noise that it frightened me to death; it sounded as if a dead body was being dragged across the floor and being thrown downstairs. I was frightened to death. I was going to wake up the family and then I changed my mind. I stood at the back door a long time before I could open it. I opened it and it was nothing but a mattress. I expected to see a body."

She corroborated Mrs. Cummings to the effect that, during the married life, Mrs. Cummings worked. Mrs. Von Bucknow for her own safety always shut and locked her doors.

This witness is neither a relative of the defendant nor has she a grudge against petitioner.

The husband deals with the testimony of Mrs. Von Bucknow on page 59 of his brief and seems to think that her testimony that she only heard, upon one occasion Mrs. Cummings called a bastard is evidence that Cummings had never called his wife anything else during that period of time. This is absurd. It is not to be expected that every witness heard the same thing.

Frank Christiano, a traffic officer of Belleville (p. 627) corroborated the testimony of Mrs. Cummings and her mother with respect to the conduct of Cummings in February, 1924, in coming to the house and taking the baby out without its being dressed and, as he said "I told Mr. Cummings, 'You will kill that child by taking her out dressed in the way she is now.'" It was a cold night (p. 628).

This officer is neither a friend nor relative of the wife, nor has he a grudge against the husband.

Frank J. Carragher (p. 629) a Commissioner of the Town of Belleville, went to the Cummings house in January, 1923, for purposes of appraisal. On page 629 he described the condition of the rooms occupied by Mr. and Mrs. Cummings, and corroborated Mrs. Cummings to the effect that they were unfit to live in. He said that: it was in January, 1923, in the middle of winter; there was no heat in the house, except in the kitchen; it was about fourteen above zero, a pretty cold morning (p. 631). An attempt was made to show that the lack of coal was because of a coal shortage (p. 631). There is no proof that there was any coal shortage which prevented Cummings from getting coal if he wanted to.

The testimony of this witness fully corroborated Mrs. Cummings as to the condition of the property.

Jennie Handley (p. 632) testified that: she lived at the Hinsdale Place house in 1920 from June until November; she heard Cummings call his wife a son of a bitch and a bastard, and another worse term which appears in the record (p. 632); she remembered the incident of the gas plate, testified to by Mrs. Cummings (p. 632), she heard the noise; she did not see the advertisement of the personal property for sale but she remem-

bered the people who came to the house in response to the advertisement; she took precautions to protect herself (p. 634); she heard the noise of the gas plate being thrown downstairs (p. 633).

The testimony of this witness is overlooked by the husband when he says at page 59 of his brief in commenting upon the testimony of Mrs. Von Bucknow "It therefore appears that for a period of eighteen months from 1920 to 1921, the only evidence of persons living in the house was to the effect that one of these persons had heard Cummings call his wife a bastard."

There is no evidence that *this* witness was either a friend or relative of the wife or had a grudge against the husband.

On cross-examination it was sought to show that there had been difficulty between Cummings and Mrs. Handley (p. 635). But the attempt, so far as the cross-examination went, failed.

Florence Walker (p. 635) lived at the Hindsdale Avenue place in the Cummings property from December, 1920, until October, 1921. She testified that: she gave Mrs. Cummings shoes, underwear, stockings, and a waist and also clothes, etc., for the baby because "she didn't have the necessary articles" (p. 636); furnished Mrs. Cummings with the larger part of her meals during her confinement. "Q. Why did you do that? A. Well, I don't think she had the necessary food; she depended entirely on what Mr. Cummings brought in at lunch when there was no time to prepare proper food for her. I went up there one day when all she had to eat was mashed potatoes, and another day she had a small piece of Taylor ham and fried cake; I couldn't see that that was the proper food for a sick woman."; she also took care of the furnace when Mrs. Cummings was pregnant because there was no one else to take care of it; the furnace was out many

times. On cross-examination she testified that the services which she rendered to Mrs. Cummings were necessary (p. 637).

Thomas McDermott, a brother of Mrs. Cummings, and a motorman (p. 638), corroborated his mother as to what occurred in June, 1924, when Cummings came to the mother's house, after the separation, and he said (p. 639):

> "A. Why, I was sitting at the stove; I heard the front door open; heard somebody running upstairs; so the first thing you know I heard something crash; so I heard the voice call my mother 'You old son-of-a-bitch', so with that I got out of the chair and went upstairs. So I found Mr. Cummings with the cot threw over, and I asked him what the trouble was; so I don't know what he said, so I told him if he couldn't come to see his child in a decenter manner than that why he better not come at all, so at that he said—didn't say nothing—'All right, Tom', so he walked downstairs and went out and from that day to this he never came."

He also said that Cummings had told him that he could not live with his wife, using vile language (p. 639):

> "A. Yes, sir; I told him—he said that, now, that he was paying enough, or something, for his child. I told him if he didn't like it the way the child was kept he better provide better quarters for him and his wife. He said, 'I wouldn't live with the son-of-a-so-and-so no more—son-of-a-bitch any more,' and with that he run down the stairs and run out."

It is true that the brother is a relative of Mrs. Cummings but he is not wholly to be discredited on that account. If his testimony be true, and it corroborated that of the mother, it indicates that Cummings is the type of man who is quite likely

to have performed the acts and called the names, during the married life, that the witnesses say he did.

Doctor Francis Kerns was called (p. 646). He had known Mrs. Cummings and Mrs. McDermott, her mother, for nineteen or twenty years; he attended Mrs. McDermott, the mother, at the time she had the infection in her hand in 1921, testified to by her, after she had been in the hospital; she was running a fever of from 102 to 104 "in a very serious condition"; she had to go to her daughter's home to be attended to and was there confined.

Cummings said that, during this period of time, there had been a quarrel in which he had been attacked by the wife and the mother of the wife. This was denied by both. Dr. Kerns testified:

> "Q. Was she in any condition to engage in an assault upon anybody during that period of time? A. Not while she was confined to her house.
>
> Q. That is what I mean. A. Why until March 28th—or, February 28th—pardon me."

Dr. Kerns also testified to the condition of the home corroborating Carragher, the Commissioner.

He also testified to the condition of health of Mrs. Cummings. She was suffering from hemorrhoids, and, about two months before the trial, she was operated on. She was suffering from hemorrhoids when the husband and wife were living together in Washington Street to such an extent as that Dr. Kerns advised an operation. She was suffering from bleeding and protruding hemorrhoids, and, of course, that kept her condition run down (p. 648). She was suffering all the time (p. 648) and her husband knew it.

If Mrs. Cummings was in this condition, to the knowledged of her husband, a greater duty was cast upon him with respect to his treatment of her.

Grace McDermott, the wife of Thomas McDermott, a sister-in-law of Mrs. Cummings, related the incident of February 4th, 1924, when Cummings came to the house to see Olive, and when Mrs. Cummings and her mother returned and Cummings assaulted Mrs. Cummings. This incident is related by Mrs. Cummings, the mother and by Grace McDermott. Grace McDermott said (p. 659):

> "Q. What year? A. It was around half past eight Saturday night on February the 4th, 1924, when Mrs. Cummings had come down and asked me if I would watch Olive while she went to the drug store, to the corner, and I says I would, so, in the meantime Mr. Cummings had come to the door and knocked at the door and I opened the door and he said, 'where is Olive?' I says, 'Upstairs sleeping', so he went upstairs and went in every room until he got Olive and he brought her upstairs and sat her on my kitchen—on the chair and he went off for about ten minutes and then he came back, and then in the meantime Mrs. Cummings and her mother had returned, so she says, 'What are you going to do?' So he said, 'I am going to take Olive with me', so she says, 'No; Olive will get cold with no clothes on—', she was just in her night clothes; so I saw him slap Mrs. Cummings right in the face, and he picked up a chair and he fired it at her, which he just missed her, so then he picked up the child and he went out the door with her.
>
> Q. Now, did he use any language to his wife? A. He certainly did, vile language.
>
> Q. What did he say? A. He called her a son-of-a-bitch and he called her a God damned bastard, about three times."

She also described the conduct of Cummings on other occasions when he came to the house. She corroborated her husband as to the incident which took place in June, 1924, when Cummings came to the house. Mrs. McDermott has three children of her own, one 9, one 7 and one 5.

The husband calls testimony of this character contradictory (p. 61 of his brief).

I have already considered the testimony of this witness with respect to the issue of adultery, and, I submit, that it is not contradictory. Certainly, her testimony upon the issue of cruelty, is not contradictory and it is corroboration of the testimony of her husband, of her mother and of Mrs. Cummings, and the testimony of these witnesses was also corroborated, in certain details, by the traffic officer of Belleville.

Against all of this is the word of Cummings, which will be hereafter considered.

Hilda Burley (p. 671) corroborated Mrs. Cummings with respect to what took place at the Wake on June 27th, 1920, and how Cummings treated her upon that occasion.

Harry T. Greene is a collector for the Public Service Electric and Gas Company. In August, 1920, he was employed as a conductor for the Public Service Railway Company (p. 674). He had known Mr. and Mrs. Cummings for at least ten years; he saw Mrs. Cummings late at night, and in the morning, during the month of August, 1920; she took his car at Hinsdale Place and Washington Avenue, and left the car at Broad and Market Street; Murray's saloon was about one hundred yards from where Mrs. Cummings left the car, and Broad and Market Street is the point at which one got off to go to Murray's saloon.

This testimony corroborated the testimony of Mrs. Cummings that, during the month of Au-

gust, 1920, when Cummings was employed at Murray's saloon, night after night she went down to Murray's saloon for him.

What is the answer of Cummings to this history of cruelty:

On his direct examination (p. 244) he tried to lay the blame for all their quarreling on his wife. And he told a story (p. 244) of his wife starting to use vile language to him four months after their marriage and of her breaking the wedding presents and he said that, in April, 1918, about three months before he went in the army:

> "Mrs. Cummings acted so rough that I had to get out of the house one night about twelve o'clock and go down to the Continental Hotel; before I left she come after me with a knife, and in order to take the knife away from Mrs. Cummings *I had to knock her down.* After she got up she come after me and I locked her up in a room and she broke the lock on the door and come out and come after me again, and I left and come down to the hotel in Newark."

Cummings is a fireman. Even to take a knife away from Mrs. Cummings, assuming his story to be true, there was no necessity for him, with brute force to "*knock her down.*" He seemed to take *some pride* in knocking her down and telling about it. He claimed that in the latter part of 1921 and the early part of 1922, when Mrs. McDermott came to live with them, she was very agreeable while she was sick, and (p. 245):

> "after she got well she started to make a disturbance and it got so that my wife and her mother were all the time arguing. I'd come home from work at six o'clock, there would be no supper ready; so I told my wife that I would have to separate them if they couldn't agree; so I requested my mother-in-law to

> leave. She told me she wouldn't leave as her daughter had a half interest in the house and that she wouldn't leave. *However, I took her bed and bedding and I laid it out on the stoop and her son came down after her bed and bedding and took it away.*''

He claimed (p. 246) that the mother came back a week later and ''she started a disturbance again and I put her out.''

I have already mentioned the testimony of Dr. Kern, which indicated that the mother-in-law, when she was at the Hinsdale Place house, was in such a condition as that she could not have indulged in any arguments, if she had wanted to. I submit there is no difficulty in determining whether this old lady is to be believed or the man, Cummings, who did not hesitate to knock his wife down, *according to his own story,* and who did not hesitate to put his mother-in-law out and put her bed and bedding on the stoop, *according to his own story.*

Cummings in his direct examination, in response to questions of his counsel (p. 245) said:

> ''Q. What was the basis for those quarrels—reasons for them? A. *I don't know, I never had her examined.*''

And again, on page 247:

> ''My wife came after me with the knife and believing she is crazy I would leave.''

He charged that there was no difficulty which resulted in the wife leaving on April 5th, 1923. On the contrary he said that: he came home; she was gone and had taken $390.00, which was in his clothes and had stripped everything that she could remove (p. 247). It is impossible that the separation should have been *for no reason whatever.*

Something *must* have occurred. Mrs. Cummings told what *did* occur. Cummings said that *nothing* occurred. Asked to explain on cross-examination (p. 263) what he had meant at the onset of his testimony when he had said that he never had her examined, he replied "she acted so queer and started throwing dishes." After the separation, when he went to visit the child, he admitted (p. 264) that he never spoke to his wife, *although she spoke to him.* Notwithstanding the fact that he would never speak to his wife when he visited the child, he would have the Court believe that, almost every time he saw her he asked her to come back, even at the fire house, and that she said that she would never live with him.

It is quite apparent from the testimony of Mrs. Cummings (p. 419) how this came about. He attempted to make evidence in favor of himself and, upon one occasion, when she was at the fire house, he called one of the firemen over and said to him:

> " 'Say, Jim, come over here,' he says, 'I am asking my wife to come back and live with me'."

This was to prevent his wife going to the Domestic Relations Court as she had threatened. His alleged desire that his wife should live with him does not accord with the formal letter which he wrote his wife (p. 415) as follows:

> "*Dear Madam:* You say I never asked you back. I am asking you now back provided you do what is right."

Nor does it accord with his advertising the personal property for sale in June, 1920. Nor does it accord with the note he wrote her in October, 1923:

> "Inform me how many suits you are going to start, also what you are going to do in the future in regard to your domestic troubles."

Nor does it accord with the note he wrote her:

> "Any belongings of yours take them out of here before the first of September."

And he sent a Christmas greeting to the child, either at Christmas, 1925 or 1926, which was pinned to a doll that Cummings sent the child, which read:

> "Next Christmas I expect to have you out of the *house of degenerates.*"

Language of this kind indulged in by Cummings in a note written in this way pinned to a doll sent to his child indicates that he is exactly the type of man who would use the language towards his wife, which it is claimed he had used. For the note, see the testimony of Mrs. Cummings (p. 417) and the testimony of Cummings (p. 277).

After the separation in April, 1923, before the suit was started Mrs. Cummings went down to the fire house to see Cummings. Cummings insisted that she had never asked him to come back but on the contrary told him that she never wanted him to come back. If that is so, why did she go to the fire house (p. 268)?

Cummings equivocates (p. 280). He would have the Court believe on page 281 that he *voluntarily* paid $15.00 a week after the separation and he said (p. 280):

> "A. No, sir; that was the agreement when she left. (Her bringing the child down to see him.) I *willingly* gave her fifteen dollars a week for nine months.
>
> Q. You were willing to give her? A. I gave her fifteen dollars a week until she told me that Mr. Fleischman told her she should get twenty-five—she wouldn't take the fifteen."

It then appeared (p. 281) that he did not make these payments immediately after she left and that he did not commence them until June and then because:

> "Q. And that agreement came about by demand upon her part, didn't it, for you to support her? A. Yes, sir.
>
> Q. And an agreement was reached under which you did support her and paid her fifteen dollars a week? A. Yes, sir.
>
> Q. And you kept that up until a demand was made for increased amount? A. No. That wasn't the reason why—yes; that was one reason, yes, sir.
>
> Q. And when the demand came for an increased amount, you wouldn't pay it? A. No, sir.
>
> Q. And then this trouble started? A. Yes, sir."

This is a clear admission upon his part that *the charges made by him against his wife are defensive* and were not made against her until she made a demand for support which he would not meet.

He was shown an advertisement which he had caused to be inserted in the Newark Evening News on June 30th, 1920, advertising the furniture for sale; and (p. 281):

> "That is your furniture, isn't it? A. Yes, sir.
>
> Q. You put that ad in? A. Yes, sir; I thought if she had any intention of coming back she'd come back when she seen the furniture advertised for sale."

Cummings, at the time he made this answer, did not realize that the advertisement was in 1920 and that *she had not left him in 1920.* The Court directed his attention to this by injecting (p. 282):

> "The Court: 1920?"

Whereupon the witness said:

"That is wrong, no. I'll tell you what happened to this. In 1920 my wife—(interrupted)."

And he then went on to say that: she was working (p. 282); he did not want her to work; in order to convince her that she should not work, he advertised the property for sale. This story is preposterous.

Recalled in rebuttal (p. 735) Cummings denied generally that he had ever called his wife vile and indecent names but he had to admit that he had referred to his wife and her mother and all others in her home, when he pinned the note to the doll which he sent the child at Christmas:

"By next Christmas I expect to have you out of the house of *degenerates.*"

He repeated (p. 736) that his wife had a bad temper and that she broke dishes. And he then said:

"Q. Did you on any occasion ever strike your wife? A. No, sir.

The Court: What is his answer? 'No, sir?'

Witness: Yes, sir; I said, 'No, sir'.

The Court: Eh?

Witness: I said, 'No, sir', to Mr. Child."

Compare this with his testimony at the first hearing, some months before when he apparently thought it was quite alright to strike his wife upon proper provocation (p. 245), "and in order to take the knife away from Mrs. Cummings *I had to knock her down*". He again stated that he had taken the bedding of Mrs. McDermott, his mother-in-law, out of the place and laid it on the back stoop. He denied throwing things off the dresser at 66 Hinsdale Place. He recalled the incident of the gas plate but said that it was Mrs.

Cummings who had heaved it down the back stairs because of some argument about supper and "she disconnected it and pulled it apart and threw it downstairs". Imagine this woman disconnecting a gas plate, etc. Mrs. Cummings told a circumstantial story as to how Cummings had disconnected it. It is a man's job and not a woman's job and it is something that a woman would never do. When a woman becomes so excited as that she begins to smash things she does not wait to disconnect things. A man will. At least a man who will do the things that unprejudiced witnesses have testified Cummings did, will.

His explanation of his visit in February, 1924, testified to by the mother, Mrs. Cummings and Mrs. Cummings' sister (p. 739) is:

> "About nine-thirty I went up to see the child. I went in on the first floor and Mrs. McDermott, Jr., told me there was nobody home; she said that Mrs. McDermott and Mrs. Cummings and the child was to the movies, and I didn't believe her, because the child was too young to take to the movies; so I went upstairs and the child was all alone on the second floor; nobody up there. The place was in darkness. I woke the child up. I heard the child snoring when it was in the dark. I picked the child up; I took the child downstairs. * * * I went down to the store and I bought some ice cream for the child and I intended to take the child away."

He then said that he got as far as Washington Avenue and William Street, Belleville, and that is where the trouble started. His testimony is in direct conflict with that of three witnesses and the policeman, who had no interest in the matter, who testified that the condition of the child was such as that Cummings had no right to take her out on that cold night dressed as she was. On page 740, notwithstanding his absolute denial that

he had ever struck his wife, he remembered that there *was* an occasion when he had to take a knife away from her and knocked her down and locked her in the bedroom.

A Howard Savings bank book which appears to have been torn in several places (p. 677) and which Mrs. Cummings says was torn during one of the quarrels by him was put in evidence and he said (p. 745):

> "Q. Referring to the Howard Bank book: Do you know how that bank book got torn? A. I didn't see my wife tear it, but she tore almost everything else in the house, so undoubtedly she must have torn that."

Just why would the wife tear her own bank book?

He said (p. 747) that he had never given his wife a set amount for household purposes. He told a story (p. 747) of an occasion when the wife was at the home after a separation:

> "My sister and I were cleaning up the house, were cleaning the windows when Mrs. Cummings come in and she brought the child with her and I went to pick the child up and she grabbed the child out of my hands and she got very boisterous and the windows were open; I pulled the windows down; I told her she should be ashamed of herself with all the neighbors out like that, and she called me a lots of names and stuff like that and after she went through a lot of stuff like that, she kicked through the plate china closet; and she went in with a lot of dishes on the table in the parlor and she picked some some of the dishes up and she smashed them on the parquet floor and then she tipped the table over."

He said that this was in June after the separation. He said that he was living there at the time, and:

"Q. Did she give any reason for her coming there? A. No. She come in and smashed up the dishes and stuff like that. That is all the reason I know.

Q. Did she order your sister out of the house? A. Yes, sir; she ordered my sister out.

Q. And did Mrs. McDermott afterwards come there with your wife that day? A. Mrs. —my sister was there when she come back to bandage her leg.

Q. Were you there? A. Yes, sir; I was.

Q. Mrs. McDermott come with her? A. Mrs. McDermott, yes, came back the second time.

Q. Did Mrs. McDermott say anything about breaking dishes? A. Mrs. McDermott was very nice about it and she told her she shouldn't have broken the dishes. And Mrs. McDermott wanted to buy—replace the dishes; she said she would buy the best set of dishes possible, and I was reading a magazine, I was sitting there, I didn't pay any attention to it."

Imagine this man sitting there saying that his mother-in-law, about whom he had never said anything good, was very nice about it and willing to buy a new set of dishes?

Although he admitted (p. 749) that, after she left in April, 1923, he had advertised the personal property for sale, he would not say that it was *immediately* after. He did not remember (p. 750) that it was after the advertisement for sale that Mrs. Cummings came to the house and found him and his sister. He said that Mrs. Cummings ordered his sister out of the house (p. 750) several times. He said that Mrs. Cummings did not say why she ordered her out. And then (p. 750):

"Q. Yes. And what did your sister say she was doing there? A. My sister said—I said, 'That is my sister and she is going to stay there.'

Q. You said that? A. Yes; I did.

Q. And it was your wife who was speaking? A. Yes, sir.

Q. And you wanted her back to live with you? A. Yes; positively.

Q. Did you think that was the way to get her back? A. I didn't think she should order my sister out.

Q. You had ordered her mother out, hadn't you? A. Yes, sir; when she—(interrupted).

Q. When her mother was sick? A. Well, she was—yes—*I guess she was sick at the time.*

Q. And she was sick and seriously sick? A. She was sick and seriously sick because she was causing a disturbance around the house.

Q. From February, for several months? A. Yes.

Q. And you knew she was seriously sick? A. Yes, sir.

Q. And she was seriously sick at the time you ordered her out? A. She was making serious trouble, too.

Q. And she was seriously sick? A. Yes.

Q. And notwithstanding the fact that she was seriously sick, you not only ordered her out, but you put out the mattress and springs to enforce your order? A. Yes; I put her bed and bedding on the back stoop."

This was after the testimony of Dr. Kerns and was an admission by Cummings that at the time he ordered the mother out and, to enforce his order, put the bed and bedding out on the back stoop, *the mother was seriously ill.* And yet, he said that this same woman, when she went to the house in June, after the separation, acted very decently about it and offered to buy an entirely new set of dishes. And Dr. Kern had testified that when this mother was ill, she was so seriously sick as that it was impossible for her to engage in any arguments.

And see Cummings' testimony (p. 751), in which he calmly told how he ordered this sick woman out

by six o'clock and said, "Never mind about the half interest. You get out of here", and how he put her bed and bedding out. The manner in which he told the story stamps him as a man who would do the things his wife said he did to her.

On page 752 he said that he did not know how the bank book came to be torn.

He calmly admitted (p. 754) that, while he was in the army, he did not know what his wife was doing, and:

> "A. I don't know anything about what she did after I was in the army.
>
> Q. Didn't you find out? A. Didn't I find out?
>
> 'Q. Yes. A. What, should I come back from France to find out what she was doing?
>
> Q. I assume there was a way of communicating without coming back. A. I don't know what she did.
>
> Q. You don't know what she did? A. No, sir. I did something what she did, yes.
>
> Q. Well, then, what do you mean? Did you simply go to the Army and forget you had a wife here? A. She wrote me a letter herself and told me her mother had a battle and threw me out. She told me that.
>
> Q. Is that all you know? A. Whether she worked or not I don't know.
>
> Q. Do you know anything about whether she worked or not? A. I am not quite sure, no.
>
> * * * * * *
>
> Q. Didn't you get any information from her? Didn't you ask information from her as to what she was doing or didn't you? A. *Well, I was not interested enough.* She had money enongh to take care of her if she didn't work."

He conceded that he did not let her know when he was coming back nor did he let her know when he had arrived and his excuse was "I don't know—how could I let her know?"

Mrs. Cummings admitted (p. 756) that she went back to the house in June, 1923, after she had left for good. She went back because her furniture had been advertised in the paper. She had seen it advertised. She and Olive went down and:

> "I entered the home and when I entered the home Ownie was standing on a chair and his sister was there and so she spoke to me. She said, 'Hello, Sadie,' and I said—spoke to her, and then said, 'What are you doing here?' And she said, 'Oh, I came down here,' she said, 'to help Ownie.' So I walked in and my china closet—the house was being altered, altered into a two-family house, changed into a two-family house and we had put the furniture all into two rooms, the dining room and living room."

She denied that she broke any dishes. She said that the sister of Cummings was packing the things. She denied that her leg was cut on that occasion or that there was any injury done to her leg or that she kicked the china closet. She said that her husband grabbed hold of her and ordered the sister to get a policeman. She denied that the mother, Mrs. McDermott, was present on this occasion and she denied that she came back with her mother. She denied that she had threatened to blow Cummings' brains out at any time (p. 759).

The mother denied (p. 761) going back to the house in June, 1923, with Mrs. Cummings as testified to by Cummings.

Where is the corroboration for the story of Cummings with respect to Mrs. Cummings breaking the dishes, etc.? There is none except that of his sister (p. 678). And that corroboration has reference only to the occasion when Cummings said she came back in June of 1923. The sister put the occasion in the middle of July, 1923 (p. 678). She said that Mrs. Cummings came in with

the child and ordered her, the sister, out and that Cummings picked up the child and Mrs. Cummings grabbed the child away. She said that Mrs. Cummings called her brother a miser and also an army bum (all this is denied by Mrs. Cummings). Apparently (p. 679) the witness forgot her story, and:

> "Oh, I have a very poor memory.
> Mr. Lane: What?
> The Court: Just a moment.
> Witness: I have a very poor memory.
> The Court: Have you got it all written down?
> Witness: No; but I have the facts about what happened next. Just a moment. I do remember she said when my brother first came over he had to have a—(interrupted)."

She then got back on the thread of her story (p. 680) and told practically the same story that Cummings did. She then said that Mrs. Cummings threatened to break the window and "he just stopped her, that is all". She then told about the return of Mrs. Cummings with the mother and the bandaging of the hurt leg (p. 681). Notwithstanding the manner in which Cummings said his wife treated her, this witness said *she never knew anything about the trouble* (p. 683).

She told an impossible story of how she came to be at the house on this occasion. The fact is that she was at the house because Cummings had advertised the furniture for sale and she was helping him pack it up. She said that when Mrs. Cummings came in they were cleaning windows, both of them.

After long equivocation, over two or three pages of the record, the witness finally said (p. 687) that Mrs. Cummings ordered the sister out; and:

> "Q. What were you talking about when she came in there? A. She ordered me out.

Q. What did she say, when she ordered you out? A. She told me to go out and *wanted to know what brought me to her home.*

Q. Yes, and what did you say? A. I said I would't.

Q. What, you wouldn't? A. I said, no, it was my brother's home.

Q. It was your brother's home, not her home, no question about that. What else did you say when she ordered you out of the house and you said you wouldn't go? A. Not a thing.

Q. What did she say, when you said you wouldn't go out of her home? A. Well, she —that she—then it happened about the child, my brother picked up the child next.

Q. What did your brother say when you said you wouldn't go out of that house? A. My brother didn't say a thing. Mrs. Cummings came in all excited and angry.

Q. Yes. Well, you were in her home, weren't you? A. Yes, sure.

Q. And she wanted you to go away, didn't she? A. Well——

Q. She said so? A. She told me she wanted to know what brought me there.

Q. Yes. And you said you wouldn't go. A. Well, my brother——

Q. You did, didn't you? A. —was coming home later in the day and I was waiting for him, and—(interrupted).

The Court: Answer Mr. Lane's question.

Q. You said you wouldn't go, didn't you? A. Well——

Q. Didn't you? A. I—I don't know exactly what I did say. I think I said, no, that I wouldn't; I was waiting for my brother.

Q. All right. Why didn't you go out of her house? A. Well, because I was waiting for my brother.

Q. Did you tell her that? A. I just can't recall now what—(interrupted).

Q. And your brother stood there all during that time when you were talking there saying nothing? A. No; she just rushed in. There was no talking about it."

She then told an impossible story (p. 689) as to the mother and Mrs. Cummings coming back and the mother having offered to buy a new set of dishes and Mr. Cummings sitting reading a magazine and saying nothing.

With respect to what happened when Mrs. Cummings went back to the home in June or July, 1923, it is not difficult to determine which story is to be believed. Cummings had advertised the personal property for sale, as he had advertised it before in 1920 when they were living together. Mrs. Cummings went to find out what it was all about. She got to the house and found Cummings and his sister packing things up. She undoubtedly told the sister "to get out"; "and that it was her home". The sister refused to get out. Cummings refused to permit her to go. Undoubtedly Mrs. Cummings attempted to raise the windows and, undoubtedly, Mr. Cummings prevented her from doing it. Mrs. Cummings was naturally indignant when she came to her home and found the sister packing the furniture and when the sister would not desist. If she had hurt her leg at that time, is there any doubt but that she would have told about it? If she were not telling the truth and were trying to falsify and it was a fact that her leg had been hurt, she would have said that her husband was responsible for the hurt leg. Her leg was *not* hurt and she did not attempt to invent a hurt leg.

As against the story told by Cummings and his sister is the story of Mrs. Cummings and the absolute denial of the mother, the old lady, who is said to have behaved so decently and to have offered to buy a new set of dishes, quite the contrary of what is to be expected, if Cummings' story as to the relations between himself and his mother-in-law is true. If the conduct of Mrs. Cummings had been such as Cummings said it was

he could have gotten corroboration other than from his own sister with respect to one particular event. If her conduct had been such as Cummings said it was, his sister would have known of the trouble.

Mrs. Cummings' story as to how Cummings treated her is corroborated by several independent witnesses. It is corroborated by: the manner in which Cummings testified; his demeanor upon the stand; his calm admission that he knocked his wife down; his statements with respect to her being crazy; the communications which he wrote her; his advertisement of the furniture for sale in 1920 when they were living together and in 1923 after she had left; his admitted lack of interest when he was in the army as to what she was doing or how she was getting along; his sending the communication pinned to the doll sent to the child at Christmas, 1925, "By next Christmas I expect to have you out of the house of *degenerates*"; his conduct in taking the child after the separation out of the house unclothed in such weather as that the policeman told him that he had no business to take the child out under such circumstances.

It is clear that, when Cummings returned to his wife in May, 1922, after having left in March of 1922 (p. 404), it was only for the purpose of getting her to sign the papers transferring the property which they owned in their joint names, which she did in September, 1922. And he promptly took the money and bought other property and had that other property put in the name of a third party (p. 407). And it is clear, I submit, that:

> "He then told me that he had me just where he wanted me and that I could go to hell now and go home and see how long my people would keep me."

He deliberately set out after that to force his wife to leave. He had counsel communicate with her in an attempt to get her to agree to a separation (p. 402). She refused. He continued his ill treatment and finally forced her to leave in April, 1923, and, within three days, he had sold her dresser and her bedroom chairs which had been given to her as a wedding gift (p. 412) and also an ice box. He made no attempt to see his daughter until October, 1923 (p. 413) when Mrs. Cummings received the formal letter. He made no attempt to induce her to return or even to suggest her returning until he had abused her in such a way as that she had him before the police court on the occasion of February 4, 1924 (p. 415) and then he wrote her the following:

> "*Dear Madam:* You say I never asked you back. I am asking you now back *provided you do what is right.*"

In the meantime he had advised her by note to get her things out of the house by September 1st (p. 417) and also he had written her:

> "Inform me how many suits you are going to start, also what you are going to do in the future in regard to your domestic troubles."

Cummings himself told about the sale of the house (p. 753) and this led to Mrs. Cummings being obliged to bring the suit against her husband to obtain her rights in this property, the record of which was offered in evidence and, which suit was brought January 29th, 1924, and was finally settled by Cummings giving his wife her one-half of the proceeds of the property.

In conclusion let me direct the Court's attention to the fact that the charges made against the wife, are charges of a defensive nature and repeat his testimony (p. 281) as follows:

"Q. And an agreement was reached under which you did support her and paid her fifteen dollars a week? A. Yes, sir.

Q. And you kept that up until a demand was made for an increased amount? A. No. That wasn't the reason why—yes; that was one reason, yes, sir.

Q. And when the demand came for an increased amount, you wouldn't pay it? A. No, sir.

Q. *And then this trouble started?* A. *Yes, sir.*"

Cummings cannot excuse his conduct by saying that he had any suspicion of his wife's conduct with men. He precluded himself from making any such charge in the beginning of the case (p. 277) when, referring to the time that he was advised in the summer of 1924 that she was running around:

"Q. Did you say anything to her when you heard she was running around? A. No, sir.

Q. *Why not?* A. *Didn't believe it.*

Q. *Didn't believe she was running around?* A. *No, sir.*"

It is respectfully submitted that unless this Court is prepared to ignore the testimony of the independent witnesses, Catherine Ward, Lucy Von Buckow, Frank Christians, Frank J. Carragher, Jennie Handley, Florence Walker, Dr. Francis Kearn, and the testimony of Sarah McDermott, the elderly mother, Thomas McDermott, the brother, William McDermott (p. 721) testimony which I have not yet referred to, the witness testifying that on an occasion when he saw Cummings after Cummings and his sister were separated, Cummings said he was through "with the God damn bitch and that he wouldn't live with her any longer", Grace McDermott, the wife of Mrs. Cummings' brother, upon the testimony

only of Cummings and his sister, the charge of cruelty is clearly made out, and the Court below was right upon that issue.

That this conduct amounted to cruelty cannot be questioned.

> *Doty* v. *Doty,* 92 N. J. Eq. 660 in this Court.

If that charge is made out, it is immaterial whether Cummings ever offered to take her back or not. *Coe* vs. *Coe,* 97 N. J. Eq. 57, affirmed 99 N. J. Eq. 422, but it is clear from the evidence that he never offered, in good faith, to take her back.

The fantastic charges made against Mrs. Cummings by Cummings on the cruelty issue also affects the credit to be given to the defensive case of adultery which he attempted to make out.

It is respectfully submitted that the decree below should be affirmed as to finding that Mrs. Cummings was not guilty of adultery with Young and that Cummings was guilty of cruelty and reversed as to the finding that Mrs. Cummings was guilty of adultery with Grimm and that the record be remitted to the Court of Chancery with instructions to enter a decree granting a divorce to Mrs. Cummings.

Respectfully submitted,

MERRITT LANE,
Of counsel with Sadie Cummings.

98 MAY.T.1931

New Jersey Court of Errors and Appeals.

Between OWEN CUMMINGS, *Petitioner Appellant,* *and* SADIE CUMMINGS, *Defendant Respondent.*	On Petition Of Appeal.

PETITIONER'S BRIEF OF FACTS.

Owen Cummings was married to the defendant on the 15th day of November, 1917, at Newark. The residence of both parties since their marriage has always been in the City of Newark, or in Belleville, New Jersey, with the exception of the time when the petitioner was abroad in the service of the United States during the World War. The parties lived together until the month of April, 1923, when the defendant left the petitioner, alleging that he was cruel to her. One child was born of the marriage, namely, Olive Marie Cummings, who is now 10 years of age and is in the custody of the defendant.

Matrimonial relations between the parties ceased in the month of April, 1923.

In the month of September, 1924, the petitioner filed his petition against the defendant, alleging therein that the said defendant had committeed adultery on the 7th day of August, 1924, and on the 24th day of August, 1924, with one Frank Grimm, at or in a lot on Hornblower Avenue opposite to Academy Street, in the Town of Belleville, and on Washington Street about 100 feet south of John Street in Belleville; to this petition the defendant filed an answer denying the acts of adultery alleged and also filed a cross-petition

charging that the petitioner had been guilty of extreme cruelty consisting of actual acts of physical violence and verbal abuse accompanied by the use of vile and indecent language and stated in said cross-petition that the petitioner was *under the influence of liquor in the use of which he frequently indulged.* The answer also charged, although not naming the disease beyond specifying that it was a venerial disease, that her husband was suffering from syphilis and that she had contracted that disease from him. An answer to the counter-claim of the defendant was duly filed by the petitioner in which he denied all acts of cruelty, denying that he was suffering, or had been suffering, from a venerial disease. That later an amended answer and counter-claim were filed by the said defendant in which she reiterates all the charges of physical and verbal abuse leaving out, however, the charge that she was suffering from a venerial disease indicated to her by the petitioner and praying that a divorce might be granted to her on the grounds of extreme cruelty; to this, the petitioner filed a reply and an answer to the counter-claim in which he denies all allegations of cruelty.

On the 2nd day of February, 1926, the petitioner filed an amended petition for divorce in which he charged the defendant with having committed adultery with Frank Grimm on the 7th day of August, 1924, and on the 24th day of August, 1924, and also charged that the defendant had also committeed adultery with one Harold Young on the following dates, July 26, 1925, August 28, 1925, August 30, 1925, September 19th and 20th, 1925, October 26, 1925, November 7th, 1925, December 13th, 1925, and January 10th, 1926, to which amended petition the defendant answered, denying the acts of adultery charged and setting up addition to said denial as a separate defense acts of extreme cruelty, physical and verbal, and

also a counter-claim for a divorce from the petitioner on the ground of extreme cruelty; to this answer and counter-claim the petitioner filed a reply and answer to the counter-claim.

In this brief it is proposed to review the evidence upon which the petitioner relies, under the heading of each date.

AUGUST 6th — 7th, 1924.

Ralph Marinella, a chauffeur who was engaged by Owen Cummings at Dreamland Park, Frelinghuysen Avenue, Newark, New Jersey, testifies as follows:

Q. Are you acquainted with Owen Cummings, the petitioner in this case? A. Why I am acquainted with him only the night I met him at Dreamland Park.

Q. What night was it that you met him, if you can recall? A. August 6th.

Q. What year? A. 1924.

Q. And where did you meet him? A. In the front part of Dreamland Park entrance.

Q. Where is Dreamland Park? A. On Frelinghuysen Avenue.

Q. What did you do after you met Mr. Cummings? A. Well, Mr. Cummings asked me if I was hired. I told him "no". He said he wanted to hire my taxi to follw his wife across the street. So I said "alright" to him, so I hired to him. Mr. Cummings sat in my taxi cab and I turned around and I went on the left side of Frelinghuysen Avenue. Waited. There was a gentleman with her— interrupted.

THE COURT: What?

WITNESS: There was a gentleman with Mrs. Cummings, (Vol. 1, P. p. 56) at the time, see, and they boarded a Roseville trolley car and rode to Broad and Market Streets. There they got off and walked one block west of Broad Street, Halsey. I turned my cab down Market Street 150 feet and

came in the direction they were walking and I parked my car on Market Street about 150 feet from Halsey Street and waited. They entered the World Restaurant 140 Market Street. I waited five minutes, then I went upstairs to see if the same couple was there, which I was following. When I entered the Restaurant, the waiter asked me what I wanted and I told him "did any one call for a taxi?" He says "no". At the same time I seen the same couple sitting in the front part of the restaurant facing Market Street.

Q. Which couple? A. Mrs. Cummings and the party that was with her. I think his name was Frank Grimm.

Q. Do you see either of the parties that you followed that night in court? A. Yes, sir.

Q. Will you kindly indicate the woman you followed, if you can? A. The woman is sitting on the left hand side the second seat. The seat next to her is vacant.

Q. Inside of the rail? A. Right here behind these men (Vol. 1, P. p. 57) right here in front.

THE COURT: The woman in black?

WITNESS: With the black hat on and fur coat.

Q. Do you see the man in court that was with her that night?

THE COUURT: Is Grimm in the Court room?

MR. LANE: Yes.

THE COURT: Stand up.

WITNESS: That is the fellow.

THE COURT: Is that Grimm?

WITNESS: Yes.

Q. And from the restaurant—did they go out of the restaurant? A. We waited about 35 minutes. It was then about 12:20 when they entered the restaurant and they came out 12:50 and walked to the safety aisle on Broad Street—Broad and Market. I turned my cab around again and I

followed again and they boarded a Broad car and rode to Washington Avenue and Academy Street, Belleville. They walked up Academy Street west one block to Hornblower Avenue and I followed, passed them on Academy Street and parked on Hornblower Avenue about 150 feet. They walked up Hornblower Avenue and stood at a building—a tree opposite a building still under construction. That is about 200 feet from John Street. I turned down John Street about (V. 1, p.p. 58) 300 feet and turned around and waited five minutes more there. Then we proceeded on down Hornblower Avenue again and they was standing at a tree opposite a vacant lot. They stood at this tree for about thirty minutes I think.

Q. And then what happened? A. They were standing pretty well together.

Q. How close were they? A. They were right up to one another with arms around each other, hugging and kissing or might have been that. I drove two blocks down to — I think it is Lloyd Place, but I am not sure—Lloyd Place, we drove down one block, we came back in the direction of John Street again and came down Hornblower Avenue one block—I think that is Rutgers Street —on the right hand side turned in there and parked the cab. Mr. Cummings and I walked through the vacant lot opposite to where they were standing that was about 40 feet I think, from where they were standing at the three. They stood at that tree for about thirty minutes in that manner and then he walked into the lot and she followed him.

Q. Who? A. Mr. Grimm and Mrs. Cummings followed him and they walked in about 50 feet, I think, and disappeared. Then I did not see them it was so dark and big tree, no light on the corner or nothing it was pretty well dark (V. 1, p. p. 58) we waited and waited about 12 or 15 minutes

and then I saw both of them coming out, fixing—dressing themselves, in that manner. It was about 2:50 or 3, something around that when I left Mr. Cummings. Well that is all.

Q. What time did they get there?

THE COURT: They were in the lot at 2:50 in the morning.

Do you want any more detail about it? They were not saying their prayers if they were there (V. 1, P. p. 59).

This witness was subjected to a very searching and vigorous cross-examination and his testimony was absolutely unshaken. He is not and was not a detective and was not in the employ of the petitioner, except to drive a taxi.

Q. (By Mr. Lane). The date was August 7th? A. August 6th, 11:50 P. M. (Vol. 1, P. p. 72).

Q. And the moon was up? A. Well I didn't look up in the sky to see if the moon was up there.

Q. You said a few minutes ago it was moon-light. Was it moon-light or wasn't it? A. It was moon-light alright.

Q. The moon was up, wasn't it? A. It must have been.

Q. It was moon-light there is no doubt about that is that right? A. Yes, sir, about that.

THE COURT: He wants to know whether you are sure it was moon-light.

WITNESS: Like any other night if you can see walking through a dark street and you can see there must be a moon out to see to make the street light. There was no lights in the neighborhood may be a block down there was a light.

THE COURT: You don't know what made it light whether the stars made it light or the moon made it light.

WITNESS: I don't know.

In connection with the question as to whether it was moon-light at that particular time on the morning of August 7th, 1924, an examination of the almanac shows that there was at that time what is known as an astromical quarter moon which is the same moon generally referred to by the public as a half moon and at the time in question this moon had reached the position in the horizon of an angle of about 45 degrees.

HARRY DALY, who was in the year of 1924 a taxi cab driver, testifies with reference to the occurrences of the early evening of August 6th, 1924, although he does not attempt to fix the exact date.

Q. During the summer of 1924 did you ever see Mr. Cummings who is here in Court- A. Yes, sir.

Q. Where did you see him? A. Why he hailed me at the Central Railroad and asked me if I was vacant. I told him I was—told me—he pointed his wife out to me who was standing in front of "Truly Warner's" and told me that he expected she was going to meet someone and if she did he wanted me to follow them.

THE COURT: "Truly Warner's" is where?

WITNESS: Branford Place and Broad Street.

Q. What time was that? A. Between 7 and 8. I don't remember just what time.

Q. Do you remember the date? A. It was sometime in August I can't say the date.

Q. Did you subsequently follow Mrs. Cummings or the woman that he pointed out to you? A. Why we waited for about 5 or 10 minutes and she met the same gentleman (V. 1, P. p. 74).

THE COURT: What?

WITNESS: She met this man down on the end—I don't know what his name is.

THE COURT: Where is he in the room?

WITNESS: The same Grimm I suppose his

name is now,—first I heard his name. They walked to the Central Railroad safety aisle going south on Broad and boarded an Elizabeth car and we followed them to Dreamland Park and they got out there and went in the park. Mr. Cummings asked me to take a look in the park and follow them and see if—take a good look at them in case he may need me to identify them sometime and I followed them in the park. I took off my taxi cap and put on another cap I always used to carry in the car and walked inside of Dreamland Park and they got an orangeade and I stood across the counter and had one, too. I took a good look at them and came out and Mr. Cummings told me to drive back to the Central Railroad. I drove back and he paid me off and discharged me.

Q. Do you see the woman that you followed that night in the court — is she in court? A. Yes, sir, Mrs. Cummings here.

THE COURT: The lady sitting back of Mr. Lane?

WITNESS: Yes, sir (V. 1, P. p. 74).

Owen Cummings testified on June 23rd, 1926, Book 3, with reference to the adultery charged on the 7th day of August, as follows:

Q. When was the first date that you saw her with a man? (Vol. 1, P. p. 248) A. August 6th, 1924.

Q. What time of day was it? A. About 7:30 P. M.

Q. And where was she standing? A. She was standing in front of 825 Broad Street.

Q. How long did she stand there? A. She stood there for about 10 minutes that I seen.

He then testifies as to the engaging of a taxi cab driver and as to Mrs. Cummings meeting a man with whom Cummings was not acquainted. That she walked with this man to the safety aisle in front of the Central Railroad station where they boarded a trolley car and went to Dream-

land Park and that he, Cummings, sent the taxi driver into the park to look at the man and Mrs. Cummings (V. 1, P. p. 249). This taxi cab driver referred to by Cummings is undoubtely the witness Daly, although he does not give the name of the witness.

With reference to what transpired in the park after 11:30 P. M. on August 6th, Cummings testified as follows: They visited the various amusements, they sat on a bench in front of the swimming pool and this man had his arm around Mrs. Cummings and kissing frequently. They left that pool and I waited until they came out of the park. When they came out of the park I got another taxi driver and they were standing across in front of the park and they got in a trolley car; we followed, then to Newark; they got off at the safety aisle—interrupted.

Q. Where? A. Broad and Market Street, Newark, they walked up to a Chinese restaurant and we followed them. We parked our taxi in front of this restaurant. We waited until they came out. They came out about 12:20 I think—12:50 I believe. They walked over to the safety aisle at Broad and Market Street. They got the 1:05 car north bound—Broad car going to Belleville. They rode to Washington Avenue and Academy Street, Belleville, and got off. We followed them up Academy Street. We passed them. We parked our taxi in front of a vacant lot on Hornblower Avenue opposite Academy Street. They passed us again; they walked up and stood in front of a tree and a house in the course of construction. We passed them again. We drove our car up to John Street and turned down about 300 feet. V. 1, P. p. 250). They walked back again to where we originally parked our taxi. We come back and we passed them again and we went pass them about two blocks to Lloyd

Place; we turned left into DeWitt Avenue and we detoured back to John Street. We come back again and parked our car on Rutgers Street; went through the vacant lot until we got opposite Mrs. Cummings and the man whom she was with. Mrs. Cummings and this man stood against this tree for about half an hour in a loving embrace. They went in the lot and they stayed in the lot about 15 or 20 minutes. They came out of the lot and the man was adjusting his clothing and Mrs. Cummings was adjusting her's. They walked up towards John Street and I discharged the taxi driver and I left.

Q. What was the taxi driver's name? A. Ralph Marinello.

ADULTERY CHARGED AS OF AUGUST 24th, 1924.

Stephen P. Flarity, an officer of the Corbally Detective Agency, who is well and favorably known to this Court, testified as follows:

Q. Did you at any time follow Mrs. Cummings? A. Yes, sir, I did.

Q. What days did you follow her? A. August 24th, 1924 (V. 1, p. p. 75) at 1:15 in the morning I went to John Street and Washington Avenue, Belleville, in answer to a telephone call and I met Frank Corbally and he took me up John Street to Washington Street and pointed out a man and woman standing alongside of a large tree about 50 feet in from John Street as Mrs. Cummings and that man in the rear end whose name is Frank Grimm, they stayed there—that was about 1:15—they remained there until about two o'clock and when they parted I followed Grimm with Frank Galgano in an automobile to Broad and Market Street where he got off the trolley car that he had been riding on; he went in Thompson's restau-

rant came out and boarded an Orange car and rode to about 401 Warren Street and went in a house there.

Q. Did you have an opportunity of seeing his features that night? A. I did.

Q. Is it the same man that has been identified as Frank Grimm? A. It is the same man.

Q. Did you have an opportunity of seeing Mrs. Cummings' features that night? A. I did not.

Q. Galgano was with you? A. He was with me after Grimm had left the woman at the tree.

Q. And when you arrived there who was there from your agency? A. Mr. Corbally, Frank Corbally and Mr. Galgano and Mr. Cox—Raymond Cox, (V. 1, p. p. 76).

Frank Galgano.

Q. When did you next see these people together if you did? A. On the 23rd—the night of the 23rd and morning of the 24th of August, 1924.

Q. Where did you first see them that day, or first see Mrs. Cummings that day? A. Saw Mrs. Cummings at her home (V. 1, p. p. 81) that day.

Q. And where is her home? A. At 10 Washington Street, Belleville.

Q. What did you see while you were watching her home that day? A. She came out of the home sometime that afternoon about 5 o'clock and she walked down—walked south on Washington Street to William Street, east on William to Washington Avenue. She boarded a trolley car and got off the trolley in front of the Post-Office.

Q. In Newark? A. In Newark. She met the same man, Frank Grimm. They first walked to the Palisade bus—they had the intention of going to the Palisade Park and then turned around and walked back to the trolley car safety aisle and boarded an Elizabeth trolley car. They rode on down in the trolley car to Dreamland Park. They got off at Dreamland Park and entered it. They

walked around for a short time. Matter of about 20 minutes or so and then entered the arena. At that time they were having bull fights down there at Dreamland Park. They were in there until the fights were over (V. 1, p. p. 82) came on out walked over and boarded a West Orange bus, they got off the West Orange bus at Market and Broad Street and walked west on Market street to a Chinese Restaurant just above Proctor's Theatre opposite Washington Street—opposite Bamberger's. They entered in there about—it was going on to 12 o'clock. I called — informed Frank Corbally of it—called him on the telephone and about 15 minutes later he was down there. Came on down in his car and met up with me. I met him at Proctor's — in front of Proctor's Theatre about 12:15—about 12:35 rather, Mrs. Cummings and Frank Grimm came out of the restaurant, they hired a taxi that was standing in front of Proctor's Theatre and drove—the taxi driver drove them on up to Belleville. They got off the taxi at Washington Avenue and Rutgers Street—that is about one block north of John Street. They walked up—walked west on Rutgers Street to Hornblower Street or Hornblower Avenue while they were walking around — they walked through several streets and back walked back on Hornblower Avenue to John Street, East on John Street to Washington Street and stood alongside of a large tree in front of a vacant lot on Washington Street, about 50 feet in front of John Street. They were there from about a quarter to one until two o'clock A. M. morning of the 24th.

Q. Could you see how close they were standing together? A. When (V. 1, p.p. 83).

Q. They were in the street or what they were doing there? A. Well, yes, sir, we could from where we were standing—in fact we were sitting on a porch right opposite Washington Street on

John Street and they were standing very close together just about make their mouth, kissing each other there.

Q. What time did they separate? A. About two A. M.

THE COURT: Where did they go after that?

WITNESS: Why about 2 A. M. they separated and—right there at the tree. Frank Grimm walked down—walked east on John Street to Washington Avenue and got a trolley car there and Mrs. Cummings walked over to her home.

Q. Just go back to the 23rd and 24th of August, who was with you that night? A. Raymond Cox was with me that night.

Q. Anybody else? A. Mr. Flarity, well he wasn't with me just then, he joined us about one A. M.

Q. And how many were there in your party? A. In our party there was four.

Q. How far was your party from where the two were under the tree? A. About fifty feet.

Q. Could you see them distinctly? A. Yes, sir.

Q. They could see you too, couldn't they? A. Well they could if they had looked that way, if they came out to John Street they would have seen us.

Q. You weren't hiding, were you? A. We were hiding, yes, sir.

Q. Hiding behind what? A. Porch, it was a stucco porch there. It wasn't like a porch it was more of a stoop, stairway and then it had sort of a rail—stucco rail in front of it (V. 1, p.p. 84).

Raymond Cox, who was employed by the Corbally Detective Agency from May 1924 until November, 1924, but who, at the time of the trial, was the manager of a plant that manufactured automobile lights, (V. 1, p. p. 97).

Q. During the course of your employment did you have occasion to follow the lady that has been identified as Mrs. Cummings and a man named Frank Frimm? A. Yes, sir.

Q. On how many occasions did you follow Mrs. Cummings if you can recall? A. Mrs. Cummings?

Q. Yes. A. I believe it was 6 or 7 times (V. 1, p. p. 97).

After testifying as to having followed the defendant and Frank Grimm on the 16th of August, the occurrences of that date will be discussed hereafter, the witness testified:

Q. When next did you see them together ,if at all? A. I think it was the next week. I think it was on the 23rd.

Q. And where did you see them? A. Why, Mrs. Cummings—we had been — Galgano and I were up at the house shadowing the house and Mrs. Cummings came out and went to the same place — to the Post-Office and met Mr. Grimm there; they went from there down to Dreamland Park, they walked around the park and finally went in the bull fights that were going on in the arena at that time. Before that they had played games of chances and had drinks.

Q. And when did they come out from the bull fights? A. As soon as it was over. I don't know how long that was (V. 1, p.p. 100).

Q. Where did they go? A. They went from there, I believe—I can't recall. I believe they went right home. They went right out of the park and boarded a Roseville car and rode to Broad and Market Street. They got off and went down to the Royal Chinese Restaurant. Named the Royal. It is on Market Street opposite Washington Street.

Q. And how long did they remain there, about? A. They remained in there for about half an hour I think.

Q. Then where did they go? A. They then boarded a taxi and the taxi took them up to Washington Avenue and John Street but after the D. L. & W. W. Station on Broad Street I didn't see them because I got down in the bottom of the car and the next time I saw them was to get out of the taxi and after that I didn't see them at all that night.

Q. Saw them get out of the taxi? A. Saw them get out of the taxi, but I didn't see them after that.

Q. Why didn't you see them after that? A. Because I was down on Washington Avenue waiting for Mr. Corbally (V. 1, p. p. 101).

Frank Corbally employed by the Corbally Detective Agency, while he cannot identify and does not attempt to identify either Mrs. Cummings or Grimm, absolutely corroborates the witness Flarity and Galgano as to the occurrences of August 23rd.

Q. When did you start operations of watching her? A. Why about quarter to twelve Mr. Galgano called me up on the evening of August 23rd at my home and told me that Mrs. Cummings and a gentleman were in the Royal Restaurant on Market Street. I went down and met Mr. Galgano and they came out about 12:10.

Q. Who was with Mrs. Cummings? A. Another gentleman.

Q. A gentleman you mean? A. Yes, sir, a gentleman.

Q. Where did they go from there? A. Why they boarded the car and rode to Belleville. They got off at John Street and walked one block up to Washington Street and walked over Washington Street — south about 50 feet. They stood behind the tree for about 20 or 25 minutes. I left watching them and went down after Mr. Cummings, down to the fire house (V. 1, p. p. 107) and brought him up, brought him up and showed

the two of them standing behind the tree from the corner.

Q. How long did they stand there? A. Well it must have been 25 minutes.

Q. And from there where did they go? A. Why he walked over to Mrs. Cummings' house and then walked down — I forget what street it is.

Q. Who walked down? A. Mrs. Cummings and the man that was with her walked to Mrs. Cummings' home.

Q. Where was her home, do you know? A. No. 10 Washington Street.

Q. What time did they get to the house, if you recall? A. Must be around one o'clock.

Q. While they were standing there by the tree could you see what they were doing at all from where you stood? A. No, sir, could not, it was too dark.

Q. What date was this? A. August 23rd, 1924.

Owen Cummings:

Q. When did you really follow them? A. On August 24th, I was working in the Firehouse and Frank Corbally told me that — interrupted.

Q. Never mind what he told you, he came and got you. A. Came and got me and told me that they were at a tree about 100 feet — Mrs. Cummings and a man was at a tree about 100 feet from John Street on Washington Street. I went up to Belleville and I walked up to John Street and I could see two figures — or one was up against the tree and later this man came out and he walked down John Street to Washington Street (V. 1, p. p. 250) and boarded the trolley car and that is the last I seen of him that day.

Q. What time of day was that? A. That was about two A. M. August, 1925.

In addition to the evidence as to the acts of adultery alleged to have been committed by the

defendant with Frank Grimm on August 24, 1924, there is evidence that on various other dates Mrs. Cummings and Frank Grimm met. This evidence is important, in view of the fact that both Mrs. Cummings and Frank Grimm denied that they ever met alone or ever were alone.

Stephen P. Flarity testifies as follows:

Q. Did you follow Mrs. Cummings and Grimm at any other time? A. Yes, sir, on the 29th of August, same year. Frank Corbally picked me up at my house that night, around—on eleven o'clock. We drove to Washington Avenue and John Street and we saw Grimm and Mrs. Cumming get off a car and they walked up John Street to Bridge Street and over Bridge Street to some other street and down to a street called Liberty Street alongside of the cemetery there and they stood along side of a telegraph pole across the street from the cemetery for about fifteen minutes. We circled around, went in the cemetery to try and see what they were doing, but when we got in the cemetery to opposite where they were, they had left.

Q. What time of day or night was this? A. That was after eleven o'clock, between eleven and twelve. Then, the following week Mrs. Cummings came into the office and Mr. Corbally, Sr. and I were there and she wanted to know whether we were watching her and we told her we were not and asked her why she came in and she said she had been told that we had been watching her and she came down to find out what it was about (V. 1, p. p. 77).

Frank Galgano, employed by the Corbally Detective Agency, testifies as follows:

Q. Are you acquainted with the lady that has been identified here as Mrs. Cummings? A. I am, yes, sir.

Q. When did you first see her, that you recall? A. August 16th.

Q. And where did you see her? A. I saw her come out of her home. I saw her before that, she was pointed out to me by Mr. Cummings about two days previous to that.

Q. You say you saw her come out of her home, where is her home? A. Number 10 Washington Avenue, Belleville.

Q. What time did you see her come out of her home? A. About four P. M.

Q. And did you follow her? A. I did, yes, sir.

Q. State what you did and what you saw. A. Mrs. Cummings and girl friend of her's came out of (V. 1, p. p. 80) the home at No. 10 Washington Street, walked down William Street to Washington Street, boarded a trolley car going south on Washington Avenue. They got off the trolley car at — in front of the Post Office in Newark. They walked from the safety aisle across to the Post Office, across Broad Street to the Post Office and met two men there. One man that I know is back there, by the name of Frank Grimm. They met together and walked back to the safety aisle; board an Elizabethport trolley car and rode down to Elizabethport. On the way down, Mrs. Cummings was sitting alongside of Frank Grimm and he had his arms thrown around her. They got off at Elizabethport and bought four tickets for the S. S. Express Ferry for Coney Island, which they boarded. The boat left the dock about 7:20 P. M. On the way up they each had a seat alongside of the rail on the right hand side of the boat about three quarters of the way up to Coney Island— three quarters of the way to Coney Island they were hugging and kissing each other — the four— two couples.

THE COURT: You mean each man kissing his own girl?

WITNESS: Yes, sir. They were two couples.

Q. What time did they get to Coney Island about, if you know? A. About 9:15.

Q. When they got to Coney Island, what did they do? A. When they got to Coney Island, they walked out to the boardwalk and to the "Goldmine"—what they call the Gold Mine. It is a sort of thing you pay ten cents and it takes you through a very dark—like a caterpiller—very dark tunnel like. When they had gone into this Gold Mine, I left Mr. Cox out there in front of the Gold Mine, to watch them until I came back from making a telephone call. * * * When I returned from the telephone booth to the Gold Mine, they had disappeared and I—

Q. Had Cox disappeared too? A. He had gone. I tried to locate them until about quarter to eleven — half past ten or so, but I didn't find them any more and I discontinued for that evening.

Q. Who is Mr. Cox? A. He is a Corbally operator (V. 1, p. p. 96).

The same witness, Galgano, testified that he followed Grimm and the defendant on the 29th of August, 1924.

Q. Now, then next time you followed them, was when? A. On the 29th.

Q. Where did you see Mrs. Cummings that day, what place, where did you pick them up? A. From her home, Washington Street, Belleville.

Q. And where did she go? A. She came out with the little girl, as Mr. Cummings told me it was her daughter and (V. 1, p. p. 84) this girl friend of her's and they walked on down William Street to the cut rate fruit store on Washington Avenue. They entered the store and came out a few minutes later and walked back to William Street, up William Street to Washington Street and entered their home. They were in the home about five minutes and came out again, the three,

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and walked east on William Street to Washington Avenue, where Mrs. Cummings boarded a trolley car going south on Washington Avenue and this girl friend took the child with her. That is where they parted. Mrs. Cummings rode down in the trolley car to in front of the Post Office again and met Frank Grimm there.

Q. What time did she meet him? A. That was about 6:30 P. M. They walked back to the safety aisle together and boarded an Elizabeth trolley. We followed the trolley car down to as far as the Durant plant at Frelinghuysen Avenue, there in Elizabeth. They got out of the trolley car there at the Durant plant and walked back to Dreamland Park. They entered the park and walked around, going on different things and played a few games of chance and left there about ten o'clock—left the park and they boarded a trolley car on Frelinghuysen Avenue opposite dreamland Park. They rode on the car to John Street to Bridge Street, to Liberty Street and alongside of a cemetery they stopped in front of a telegraph pole for a short time and Mr. Flarity and I chased through the cemetery as fast as we could go and by the time we got there, while we had left they had started to leave from the spot where they were standing at the telegraph pole.

Q. Now what time did they separate? A. They separated about eleven—about ten-thirty that evening, I think it was on about eleven o'clock. * *

Q. What did you see at the pole? A. Why they were kissing each other there at the pole (V. 1, p. p. 86)

The witness, Raymond Cox, who was then, but is not now a detective, fully corroborates the testimony of Frank Galgano with reference to the defendant meeting Frank Grimm on the 16th of August (the date of the Coney Island trip); as

to the occurrence on the trip down to Coney Island, p. p. 98-101, V. 1. While at Coney Island, the witness became separated from Galgano. Cox, however, followed the defendant and Grimm from Coney Island home.

Q. What did you see that day, that first day? A. At that time Galgano was with me and at that time Galgano left me, called up the office in Newark while I stayed outside and watched the ride. Well, when they came out of the ride, Galgano hadn't yet returned, so I followed them back to the boat and on the way back they stopped at a restaurant, a sort of chop house I guess, and got something to eat—came out and re-boarded the boat. On the way up they were on the upper deck —on the way to the Island they were on the upper deck, and on the way back they sat on the lower deck. (V. 1, p. p. 98) the back of the boat and at different times—during all of this time why Grimm had his arm around the lady and they seemed quite affectionate.

Q. When you say the "lady" who do you mean? A. Mrs. Cummings.

Q. That was on the return trip? A. On the return trip.

Q. What time did they get back to Elizabethport? A. I believe it was 11:45. I am not sure.

Q. And from there where did they go, do you know? A. They boarded a Roseville trolley car, which I boarded and we rode up to Dreamland Park and at that time all got off the car and they continued to ride on the car and all the while, of course, they had their arms around one another.

Q. On the trolley car? A. On the trolley car. Going down in the afternoon they had their arms around each other in the trolley car.

Q. You did not continue on with them to see where they went A. No, I followed in a taxi from then on, because the car got too crowded to keep track of them.

Q. You followed in a taxi? A. I followed to John Street and Washington Avenue — John and Washington Avenue.

Q. What did you see there? A. They got off the car and walked up John Street to Washington Street and directly home.

Q. To whose home? A. To No. 10 Washington Street, where (V. 1, p. p. 99) Mrs. Cummings lived. * * *

Q. And what time was that? A. I couldn't tell the time, it was after twelve o'clock. I don't know what time (V. 1, p. p. 100).

Q. When did you next see them together? A. It was on the 29th (of August).

Q. And where did you see them that day? A. They met at the same place and went down to Dreamland Park again, but they didn't stay in the park, only until (V. 1, p. p. 101) about 10:15, I believe. They left and started back for home.

Q. During this trip of the 29th, did you see any evidence of affection between the two? A. Going down in the trolley car.

Q. What did you see? A. They sat with their arms around one another.

Q. How about coming back? A. The same way.

Frank Corbally testified as to watching the defendant and Grimm on the 29th of August.

Q. Where did you see them that night? A. I saw them as they were getting off the trolley car at John Street in Belleville. They walked up John Street, up to the Washington hill, to another street, I think it was Liberty Street, stood on the corner near the electric pole about twenty minutes talking. They went down that street— I forget the name of it, to Mrs. Cummings' street and he (Vol. 1, p. p. 64) left her there (V. 1, p. p. 109).

Cervone, who was in charge of the Special

Police at Dreamland Park, in the Summer of 1924, testified that he saw a couple in Dreamland Park sometime during the Summer of 1924; his attention having been called to the couple by Galgano, (V. 2, p. p. 717), testifies as follows:

MR. CHILD: Grimm, stand up.

Q. Is that one of the party you saw? A. Yes, sir.

MR. CHILD: Mrs. Cummings.

Q. Do you see this lady here?

MR. CHILD: Stand up please, Mrs. Cummings.

A. Yes, I do.

Q. Is that the other? A. That is the couple.

Q. Where did you see them?

THE COURT: That is all.

Q. Were they alone? A. Yes, sir.

The petitioner, Owen Cummings, also testified that on August 30th, 1924, he saw the defendant and Frank Grimm together.

Q. What was the next date? A. August 20th—

Q. Where did you see them that night or day? A. I seen this man and Mrs. Cummings walk down Liberty Street down around the cemetery in Belleville. They come back and stood against the telegraph pole, I believe, or tree. I don't know which, and he had his arm around her and kissed her. They walked up toward William Street. Mrs. Cummings went home and this man walked back and boarded a trolley car and went some where—I don't know.

Q. The same man? A. The same man.

Q. What time was it? A. The same man.

Q. What time was it? A. It was about eleven P. M. (Vol. 1, p. p. 257).

It is respectfully insisted that the testimony as about set out, conclusively shows that the defendant did meet Grimm and was alone with him. The only answer to this testimony is the flat denial of

Grimm and the defendant that they were ever together.

While it is true that the testimony of detectives is to be taken with caution, nevertheless it is beyond believing that men of the standing of Flarity and of the other witnesses, would be guilty of deliberate perjury.

ADULTERY ALLEGED TO HAVE BEEN COMMITTED JULY 26, 1925, WITH THE CORRESPONDENT HAROLD YOUNG.

The witness, Norma Kopp, after stating that she had watched the defendant on July 4th, July 16th, July 22nd and that she had seen the correspondent Young in the company of the defendant on said dates and that on the evening of July 4th, she had seen the correspondent, Young, with the defendant (Pp. 186-189, V. 1, hearing of February 25, 1926, (Book 2), testifies as follows:

Q. When did you next see Mrs. Cummings? A. On July 26th, 1925, on Sunday, at half past five, she left—interrupted.

Q. In the afternoon, half past 5 P. M. A. Yes, sir, she left Riveria Park with Mr. Young, Mrs. Young; a young lady who I was told was Miss Mildred Young and Olive Cummings. They left the Park and went to 175 Washington Avenue. Harold Young took Mrs. Cummings to her home at 10 Washington Street he then returned to his home. About eight o'clock that same evening, Mrs. Cummings came to 175 Washington Avenue, Belleville. About quarter after nine, probably a little sooner, Mrs. Young and her daughter, Miss Mildred Young and Olive Cummings left their home. They remained away probably half an hour or more and then they returned. Miss Mildred Young rang the door bell at 175 Washington Avenue and Mr. Harold Young opened the door and

left his mother and Olive Cummings in. They all left about half past ten, that same evening, and went to a delicatessen store, I think it is 272 Washington Avenue, Belleville. Mrs. Young and Miss Young and Olive Cummings went in the delicatessen store. Right next to the delicatessen store is a fish store on towards Newark. Harold Young and Mrs. Cummings remained outside. Harold Young drew Mrs. Cummings in the doorway of this store and put his arm around her and kissed her; not once but numerous times. When Mrs. Young and her daughter, Miss Young, came out of the delicatessen store they all went to Carrigan's and had soda. Mr. Young took Mrs. Cummings and her child home to 10 Washington Street where he kissed her good-night at the gate of her home. I then followed Mr. Young to his home, 175 Washington Avenue. That was on July 26th.

Owen Cummings, the petitioner, corroborated Norma Kopp as to the occurrence of July 26th, 1925, pages 254 and 255, Vol. 1, testimony of June 23rd, 1926.

The witness, Flurette Kopp, corroborates this witness, (Vol. 1, p. p. 332-333).

ADULTERY OF AUGUST 28th, 1925, ALLEGED TO HAVE BEEN COMMITTEED WITH HAROLD YOUNG.

Norma Kopp testifies as follows:

Q. When did you next follow her? A. On August 28, 1925. I was at 175 Washington Street (Vol. 1, p. p. 188), testimony of February 25th, 1926, waiting in my car when about half past five Mrs. Young left her home and went away in a sedan car which was standing in front of their home. About—shortly before six, Harold Young came home. About ten minutes after six, Mrs. Cummings came to 175 Washington Avenue.

Harold Young met her on the porch, put his arm around her and kissed her. Twenty minutes after six, Mildred Young left 175 Washington Avenue. She remained there until about — must have been 9:30. Very shortly when Mrs. Young came home. About 10:30 o'clock Harold Young took Mrs. Cummings home to her home at 10 Washington Street, Belleville. That was August 28th. During the time they were inside of 175 Washington Avenue, the lights in the house were never lit until the return of Mrs. Young at 9:30.

THE COURT: What date was that?
WITNESS: August 28th.
THE COURT: Day-light Savings?
WITNESS: Yes, sir.
THE COURT: Then it was daylight when Mrs. Young returned, I suppose.
WITNESS: No. 9:30.

Constance Kopp corroborates the testimony of Norma Kopp, Vol. 3 hearing of June 23rd, 1926, V. 1, p. p. 293-294.

Flurette Kopp corroborates the witness as to the defendant being at 175 Washington Avenue on August 28th, V. 1, p. p. 334-340.

ADULTERY ALLEGED TO HAVE BEEN COMMITTEED AUGUST 30, 1925 WITH HAROLD YOUNG.

Norma Kopp, witness,

A. No, 9:30 on August 29th, Harold Young went into the barber on Washington Avenue. I don't know the name—remained there about two hours.

Q. What time did he go? A. Two o'clock. Came back to his (V. 1, p. p. 188-189, hearing of February 25, 1926) home at four o'clock. At ten minutes after six he left his home and went to Broad and Market Street. He went to Kresge's

store and bought a pair of arm garters. He then went to the Newark Theatre on Market Street, where he waited probably 15 or 20 minutes, when Mrs. Cummings met him. They both together went into the drug store on the corner of Market and Broad, then went back to the theatre. He bought two tickets; I immediately bought one right after him. They both went into the theatre. Mrs. Cummings went to the ladies' room. Mr. Young waited for her. They both went down to the fourth aisle—fourth seat in. Mrs. Cummings taking the fourth or fifth seat and Harold Young taking the seat right next to her. I sat down in back of Harold Young. My sister and Mrs. Rosenstein came in after. They remained in the theatre until the show was over. During their time in the theatre Harold Young had his arm on and off around Mrs. Cummings; he held her hand. He kissed her hand, not once but many times. So much so that the people sitting next to me remonstrated about the actions of this couple. Mr. Cummings came into the theatre and sat down behind us.

Q. Mr. Cummings? A. Yes, sir. Shortly before the show ended I left the theatre—Mr. Cummings left ahead of me. They came out together and went to the Eagle Chop Suey on Market Street. Atfer — it must have been about 10 P. M. minutes to twelve when they came out of the Chop Suey place, walked up Broad Street—down one block on Broad, looked at some men's suits in the window, returned to Market and Broad; at Market they walked down Market Street towards Mulberry. It took them very nearly 15 or 20 minutes to reach Mulberry Street, because during their walk they not only went in one of the vestibules of the stores, but went into numerous stores. Harold Young kissed Mrs. Cummings, not

once but at least 10 or 15 times in his walk from Broad to Mulberry Street on Market Street.

Q. Where were you all this time? A. I was following them.

Q. Which side of Market Street were you on? A. I was on the other side at times and on the same side they were. In fact, I stood right in front of the window, the same window they were in the vestibule of the store. They turned up Mulberry Street. It must have been after midnight. I crossed the other side of Mulberry. He had his arm around her waist on the way down under the tressel and until you come to the Mulberry Arcade. Shortly—right on front of me a man came out of the Mulberry Arcade and stopped and spoke to Harold Young and Mrs. Cummings. He handed him something and Mr. Cummings—I mean Mr. Young (V. 1, p. p. 190) put his hand in his pocket. When this man crossed over from the Chinese district at the Arcade—the Mulberry Arcade and handed Mr. Young something, Mr. Young went in his pocket—I couldn't see whether it was paper money or other money he handed him back. At that time my sister, Miss Florette and Mrs. Rosenstein came up to me. They walked up Green Street as far as—interrupted.

Q. Who do you mean by "they", please? A. Mrs. Cummings and Mr. Harold Young. The same man went back into the Mulberry Arcade who came over to him. They walked up Green Street to Broad Street to the City Hall of Newark, where they waited for a bus. A bus came along and they got on the bus. We ran all the way to Market and Broad Street where I got in a taxi and followed the bus to the end of the City Line, where Mrs. Cummings and Mr. Young got out and got on a trolley. They got off at William Street and Washington Avenue. Then walked with

her to No. 10 Washington Street. It was very nearly one o'clock in the morning when they arrived (V. 1, p. p. 191) there. They went on the porch and then they went to some bushes which are on the right hand side of the house at Mrs. Cummings' home. There was a lot on William Street—there is only one house between her home and William Street. Mrs. Cummings had her hat on when she went in these bushes with Mr. Young. They were in their probably 15 minutes. I could hear the moving of the bushes. She came out with him and had her hat in her hand and she was arranging her dress—the coat she wore that evening, a blue coat with a sort of fur on the bottom. Mr. Young came out with her to the gate. He kissed her good-night and walked up under the electric light at William Street. I followed him with Mrs. Rosenstein and my sister, Miss Florette. He was fixing a belt or something on his trousers when he got by the electric light and lit a cigarette. I took him to his home at 175 Washington Avenue. It must have been about quarter to two or ten minutes to two (V. 1, p. p. 192).

The testimony of Norma Kopp with reference to what transpired on the night, or the early morning of August 29th is corroborated by the testimony of Emma Rosenstein, Vol. 1, p. p. 309-313, and by the testimony of Florette Kopp, P.p. 335-339, V. 1.

The evidence of The Misses Kopp and Mrs. Emma Rosenstein is corroborated by Arthur Ackerman, who is taxi cab driver and owner. This witness was called by the petitioner primarily to rebut the testimony of the defendant that she had been never alone with Harold Young, the co-respondent. Incidentally, his testimony corroborates in part that of other witnesses who testify as to the occurrences on the early morning of August 30th, 1925.

Q. Have you ever seen Young and Mrs. Cummings before? A. Yes.

Q. Where? A. On a jitney and a trolley car.

Q. When? A. The latter part of August, 1925.

Q. Do you recognize Mrs. Cummings? A. Yes.

Q. Do you recognize Harold Young? A. Yes, sir, (V. 2, p. p. 729).

Q. Did you see them on that night? A. Yes, sir.

Q. Where did you see them first? A. I seen them on the jitney first.

Q. Did you follow the jitney? A. I did.

Q. Where did you follow it to? A. Up to North Newark Station.

Q. What did you see at the North Newark Station? A. They got off the buss and the fare I had in my car asked me to walk down half a block and go and look at this man and woman so that I could identify them.

Q. Where did they get off the jitney, what place? A. North Newark Station. That is the end of the line.

Q. And what did they do after they got off the jitney? A. I walked back to look at them so I could identify them again and I—

Q. And where were you standing when you saw them? A. They were standing on the sidewalk.

Q. And where did they go? A. I went down to my cab and I waited for a trolley car to come along and they got on the trolley car together.

Q. And where did they go from there? A. They went up Washington Avenue.

Q. And from there, where? A. Up as far as William Street.

Q. In what city or town? A. Belleville.

Q. Then what happened? A. Well I (V. 2, p. p. 730).

Q. Where did they go from there? A. Well then they got on the trolley car I followed them up and saw them sitting on the side of the trolley car with his arm around her neck (V. 2, p. p. 731).

After argument in which the Court limited the use of the testimony at this time to discredit Harold Young.

Q. Where did they go after they got to Belleville? A. They went as far as William Street.

Q. And from there, where? A. The people I had in the car got off and they asked me to wait on the corner to see this couple get off the car.

Q. Did you? A. I did.

Q. Then what did you do? A. I walked up William Street and this couple got off the car (the remainder of the answer stricken out by order of the court).

Q. Did you have a good opportunity of observing the features of these people? A. Yes, sir.

Q. Where? A. Down at the lunch wagon and then when I waited on the corner for them to get off.

Q. Where was the lunch wagon? A. Right at the North Newark Station.

Q. What time of night was this? A. It was past midnight (V. 2, p. p. 732).

Under cross examination, this witness testified as follows:

Q. Who were your fares? A. I don't know, there was three women.

Q. Well, did they give you any names? A. No, they didn't give me any names.

Q. Would you recognize them if you saw them? A. Yes, I could recognize the one they paid me.

Q. Would you recognize the other one? A. I don't think I could recognize the other two.

Re-direct.

Q. Do you recognize any person in this room as being the woman who paid you that night? A. Yes, I do.

Q. Kindly point her out if you can? A. That stout woman there (indicating woman in audience).

Q. The one standing up? A. That is the one.

Q. Who is that? A. Norma.

The evidence of the Misses Kopp is further corroborated by the testimony of Cornelius Troast, who at the time in question, was a chauffeur employed by the Misses Kopp.

Q. Have you any independent recollection of what happened on any of those dates—I mean can you fix the date in your mind? A. Yes, Saturday, August 29th, I followed Mr. Young from his home to Market and Broad Street on a North Newark bus, and he went to—he met Mrs. Cummings at the drug store on the corner of Market and Broad Street and from there they went to the Newark Theatre on Market Street, and from there I—after they had gone into the theatre, I drove over to the Fire Engine House where Mr. Cummings works. * * * I brought Mr. Cummings down to the Newark Theatre, and Misses Norma Kopp and Florette Kopp and Emma Rosenstein were in the theatre at that time. Mr. Cummings went in later on. They remained in there until a late hour. I think it was about eleven o'clock, and from there they went to the Eagle Restaurant on Market Street, and they remained up in there about half an hour, I think about half an hour or so and they came out of there and then I lost them, and the Kopp sisters followed them and I later picked them up in Belleville. (P. p. 325 V. 1) Owen Cummings also corroborates the witnesses as to Young and the defendants being in the Newark Theatre and going to Eagle Restaurat (V. 1, p. p. 257-258).

ADULTERY ALLEGED TO HAVE BEEN COMMITTED ON SEPTEMBER 19th and 20th, 1925, WITH HAROLD YOUNG.

Norma Kopp:

Q. Well, did you follow them after that? A. On September 19, 1925, Harry Young was waiting for Mrs. Cummings on the corner by the Catholic Church on William Street. He waited there quite a little while when finally, about quarter to eight, Mrs. Cummings came out with her child. They walked down Bridge Street. They let the little one run ahead and during their walk down the street he continually had his arm around her waist. They walked up—I believe it is Mt. Prospect Avenue—or the street until they reached the Mt. Prospect Theatre where he entered the candy store and bought a box of candy. They entered the theatre. I followed them into the theatre. He sat down next to Mrs. Cummings. He held her hand. I came out of the theatre, sent my car for Mr. Cummings. I returned—the entire time at the theatre—and about eleven fifteen he came out with Mrs. Cummings and the little one. He walked all the way down to Washington to Cateract—(Carteret)—or—I don't know all the names of the streets; they went in and out of streets—where they got on a trolley car. This is September 19, and went to William and Washington Avenue, Belleville. They walked up to 10 Washington Street where Harry Young opened the door with a key and put the little one in the house. It was about quarter to twelve when they arrived there. Mrs. Cummings went to the side of the house and remained with Harry Young for half an hour when Harry Young left and went to his home. He kissed Mrs. Cummings at the gate goodnight. It was about one o'clock—not quite, when he got to his home (V. 1, p. p. 194).

The testimony of this witness is corroborated by the testimony of Emma Rosenstein (V. 1, p. p. 315-316).

It is also corroborated by the testimony of the petitioner, Owen Cummings (V. 1, p. p. 258-260).

ADULTERY OF OCTOBER 26th, 1925, WITH HAROLD YOUNG.

Book 2, hearing of February 25, 1926, p. p. 169.

Q. When did you next follow them? A. On October 26th, at about quarter to seven, I was passing (Bk. 2, p. p. 169) the home of Harold Young when I saw him in the window. We parked our car on the opposite side of the street. About half past seven, Mildred Young left her home, about eight o'clock or a little after, Mrs. Cummings came to the Washington Avenue home of the Young's shortly after she got there the lights went out. My sister, Miss Florette, left my car and while she was gone the light went on in the house for a few minutes and then went out again. At about 10:15 Mrs. Young, the mother of Harold Young, returned. She got into the house, the lights went on at about 10:30. Mrs. Cummings came out with Harold Young and went to 10 Washington Street, Belleville. He left Mrs. Cummings and kissed her good-night. I followed Harold Young back to his home. This was October 26th (V. 1, p. p. 194-195).

The testimony of this witness is corroborated by the testimony of Emma Rosenstein, (V. 1, p. p. 317-318).

ADULTERY OF NOVEMBER 7th, 1925.

Norma Kopp testifies as follows:

Q. When did you next follow them? A. November 7th.

Q. Where did you see them that night? A. I saw Harold Young down in the park at the Library. Mrs. Cummings boarded a car and I returned to 175 Washington Avenue. Mrs. Cummings left her husband, Mr. Cummings. I re-

turned to 175 Washington Avenue where about 8:20 Harold Young let Mrs. Cummings in and about—a little after ten o'clock in the evening Harold Young and Mrs. Cummings came out and went to No. 10 Washington Street, to the home of Mrs. Cummings. That was on November 7th, (V. 1, p. p. 195-196)?

Florette Kopp, (V. 1, p. p. 346-347-348):

A. * * * I think I have here November 7th—I think I have here—library night. I saw him in the park, Mr. Young. He was in the Park, Mrs. Cummings—interrupted.

Q. Where, what park? A. This I don't know what they call it. It is on Broad Street right by the Washington Restaurant big triangular park. I don't know the name.

Q. Alright, what time? A. That was around between 7:30 and 8 o'clock at night, I guess.

Q. Did Mrs. Cummings join him? A. Mrs. Cummings left Mr. Cummings with the child and we went back to 175 Washington Avenue. When she got back, Mr. Young was at the door. He opened the door. He had come on home. He was watching her that night through the bushes.

Q. Watching who? A. Mrs. Cummings who was in the park early in the evening. I remained to watch there.—I stayed in the car—we all did—watching Mrs. Cummings, but he had gone home.

THE COURT: Where were the bushes?

WITNESS: In this big park right up the pathway right at the corner. The park comes to a sharp point directly in front of the Library.

Q. Who was in the bushes? A. Mr. Young, he stopped in a pathway just in back of it by a bench. He was watching Mrs. Cummings and they were in the home that night together and she went in, but he opened the door for her, but we didn't know whether or not they were there alone.

This testimony with reference to adultery alleged on November 7th standing alone would be insufficient to more than call upon the defendant to show that she and the correspondent were not alone in the house that night, but in view of the broad and sweeping denial of both the defendant and the correspondent that the correspondent ever went to the park in front of the library on nights when Mrs. Cummings was there, this testimony does, if believed, establish the guilt of the defendant and the correspondent, because it discredits the testimony that the correspondent was ever at the library with Mrs. Cummings or on the nights when Mrs. Cummings was there.

Fleurette Kopp corroborates the testimony of Norma Kopp as to the defendant meeting Young on November 7, 1925 at the Library in Newark and going to Young's home at 175 Washington Avenue (V. 1, p. p. 346-348).

ADULTERY ALLEGED TO HAVE BEEN COMMITTED ON DECEMBER 13, 1925.

Norma Kopp testifies as follows:

On December 13, I saw Mrs. Cummings meet Mr. Cummings at the Library with her child about twenty minutes to eight. I was right near by. I heard her say to Mr. Cummings that the child was very sick, had a sore throat and she would have to leave immediately. She immediately left and went up on a car towards the Regent Theatre.

Q. Where was that? A. Bloomfield Avenue. She got out—I think it is Clark Street—she walked back to a store where they had some dolls. I think it is 50 the number, where she met Mrs. Young, Harold Young and Miss Mildred Young—she made this remark to Mrs. Young, "I got rid of him and told him I had to take the child home." They went to the Regent Theatre. Mrs. Young sat with Harold Young—Mrs. Cummings

I mean sat with Harold Young. Mrs. Young and her daughter and child sat together. They came out of the Theatre after eleven o'clock and went to a store and had a hot chocolate. They then went towards Belleville. Harold Young took Mrs. Cummings to her home with the child. It must have been near midnight. He let the little one in the door and he remained outside on the front porch of 10 Washington Street where Mrs. Cummings lived. Mrs. Cummings wore a dark dress that evening and then when they were standing on the stoop I could see a lighter under garment (V. 1, p. p. 195-196).

Q. How long did they remain there? A. About (interrupted)

THE COURT: What do you mean by that?

WITNESS: It looked to me like an undergarment. I know she had a dark dress on. It might have been gray or dark blue. He remained with her. I saw him with his arms around her. I stood opposite a garage directly in line with the entrance of their home and then I walked over in the road. Mr. Gardner and my sister, Miss Fleurette were with me at that time. * * *

Q. What time did he arrive home or leave the house? A. It was after midnight. I looked at the clock in my car at the time.

The testimony of Norma Kopp is corroborated by that of her sister, Fleurette Kopp (V. 1, p. p. 346-348).

And by the testimony of the petitioner (V. 1, p. p. 260-262).

ADULTERY OF JANUARY 10, 1926.

Constance Kopp testifies as follows:

Q. When did you next follow them? A. January 10th I went down to Washington Avenue to the residence of Mr. Young with Mr. Abraham Vandersluys, Mr. Cummings and—those were the

three. I went alone with the first. And Mrs. Cummings entered the house about quarter or ten minutes of six—I mean ten minutes of seven. We were outside of the house until about nine o'clock when Mr. Deisen came. Before Mr. Deisen came I saw Mrs. Cummings kiss and embrace Mr. Young a number of times. I saw then both sit onto the floor and play a sort of game and while they were playing the game they would love and embrace one another. I also saw them kiss on the setee facing the left end wall which to me seemed to be the settee of the piano and while sitting on the settee I saw Mr. Young put his arms around Mrs. Cummings. I also saw Mr. Young in a standing embrace with Mrs. Cummings for a period of five minutes. I saw this from the car in which I sat and I also saw it from the stoop of the house which was next door to the house in which Mr. Young lived. I also went onto the stoop on two occasions and saw Mrs. Young, Mrs. Cummings and Mr. Young and the little kiddie at times alone. They came out of the house then about eleven thirty that night and he took her to her home in Washington Street (V. 1, p. p. 294).

This testimony is corroborated by the testimony of Owen Cummings (V. 1, p. p. 261-262).

THE FOLLOWING WITNESSES TESTIFY AS TO SEEING HAROLD YOUNG AND THE DEFENDANT TOGETHER:

The witness Harry Kaiser, a fireman in the Newark Fire Department, testified as follows:

Q. When did you first see Young to your knowledge? A. On June 4, 1925.

Q. And where did you see him? A. Front of the Library on Broad Street. (V. 1, p. p. 119).

Q. What time was it you saw them in front of the Library? A. About eight o'clock; Mrs.

Cummings came out with the child and met Mr. Young.

Q. Out of where? A. Out of the Library, walked across the street in the ice cream store, stayed probably five or ten minutes, came out. Mr. Young saw Mrs. Cummings on the car, Mt. Prospect Avenue car, with the child. Young walked down to Orange Street and got on a Broad Street. Later, probably half an hour—three-quarters—I met Mr. Cummings and told him what I had saw. He suggested we take a ride on a trolley car. He says we will locate them later. Took a Broad Street, rode to Riviera Park in Belleville, went into the Park, looked through the Park, couldn't locate anybody. Came out * * * We walked back. We—Mr. Cummings met some friend and he talked ten or fifteen minutes, left them, walked down another block and there we met Mr. Young and Mrs. Cummings walking west on William Street about fifteen feet from us.

Q. Were they alone? A. Yes, sir.

Q. Did you see them together again at any other time? A. On June 10.

THE COURT: On that day, you mean?

WITNESS: June 10. Mrs. Cummings left Mr. Cummings came out with the child, met Mr. Young and they went in the ice cream store corner of Bridge and Broad . * * *

Q. Before they went into the ice cream store? A. Came out of the Library. * * *

WITNESS: Waited on the safety aisle, got a Broad car at Bridge and Broad. I got on at (V. 1, p. p. 120-123) Orange Street, sat two seats ahead of Mrs. Cummings. She was sitting on the right with the child. Young was sitting opposite her with another gentleman. At the D. L. & W., the other gentleman got off the car, Young called Mrs. Cummings over to his seat. She went over

with the child. Mrs. Cummings told him to take off his hat, which he did. The child was standing partly in the aisle and partly squeezed into the back—into the seat. Young started to play with the child with his hand, chucking it under the chin and caressing it; apparently the child resented it. He continued playing—with the left hand—making motions to the child withdrawing his hand to Mrs. Cummings' breast where he was apparently rubbing her breast. They rode to Bloomfield Avenue and Belleville. Got off the car and went into the Regent Theatre. I saw Mr. Cummings later on and told him what had happened.

Q. Did you follow them at any other time? A. On June 16th.

Q. Where did you meet them that day? A. At the Library. She met—Mrs. Cummings met Mr. Young with the child and another young girl who Cummings said was Young's sister. They got onto the car, rode to the City Line, got off the car, walked east side of Washington Avenue up to John Street, crossed over and went into a house which Mr. Cummings said was Mr. Young's home, 175 Washington Avenue, Belleville. I met Mr. Cummings after and told him.

Q. What? A. Mr. Cummings. We went back up—waited there. They were—apparently somebody was sitting on the stoop—who it was I don't know—once in a while I would see a cigarette being smoked. Later on about—it was about ten-forty-five, I believe when they left. Mr. Young, Mrs. Cummings and the child came down out of Young's home, walked down Washington Avenue and up John Street to Mr. Cummings, and I drew back a little ways, twenty or thirty feet, and Mr. Cummings suggested to take a walk up and see where they went and as I got near the next corner, Mr. Young was returning alone.

JAMES J. WOOD, a fireman in the Newark Fire Department, testifies as to having seen Young and Mrs. Cummings together. * * *. They went down Belleville Avenue on the west side of the street to Clark Street, crossed over to the east side of Bloomfield Avenue—there was another lady with them, and this lady went in a store to purchase something and Mrs. Cummings and Mr. Young stood in the hallway of a store—in the entrace—not in the hallway— in the entrance of a store. While they were standing there waiting for this woman to come out, why, Mr. (Bk. 1, p. p. 97) Young put his hand on Mrs. Cummings' shoulder, or probably might have been her neck and pulled her toward him. I was standing opposite them and the woman came out and they all got on a Broad car. (V. 1, p. p. 134-136).

FRED COOK, a carpenter, testifies as follows:

Q. And did you at his request ever follow his wife? A. Yes, sir. I was coming from the house—(interrupted).

Q. What house? A. 123 Chester Avenue, my house, in my car, and he approached me and asked me to follow a North Newark jitney, which I did, and told me there was a man by the name of Young and his wife in this jitney. I followed this jitney to Clay and Broad and they got off. They waited there for about seven or eight minutes and got the Kearny-Arlington bus. They took that to Arlington, to Midland Avenue and Kearny Avenue. They got off there and I parked my car there and left Mr. Cummings in the car and I followed them up to 176, I think it was, Kearny Avenue, on the right hand side going up. So Mr. Young left her there and he went across the street into a house, 176 Kearny Avenue for five minutes—no, Mrs. Cummings went in the house. Mr. Young waited there on the opposite side. Mr.

Young crosses over and meets another man; he talked with this man for about—until she came out, and when she came out—when she came towards Mr. Young this other man left. They walked down to Laurel Avenue drug store, went in there and had a soda. While they were in there I ran back to my car, Midland Avenue and Kearny Avenue and told Mr. Cummings what I saw, and started my car up and ran to Laurel Avenue and Kearny Avenue to the drug store. I took my coat and hat off and walked in there and got a package of cigarettes and looked them both over carefully. I went back to the car and put my coat and hat on and they walked all the way to Rutgers Street, Arlington, over to Mr. Young's house; walked over—right over Rutgers Street to Belleville to Mr. Young's house. There they went up on the porch and I didn't see much anymore.

Q. Did you see them crossing the bridge at Belleville? A. Before they crossed the bridge there they stopped up on the dark spot of the road there and put their arms around one another and kissed; they went about a hundred and fifty feet and stopped again and kissed.

Q. Where was that? A. That was on Rutgers Street before the bridge—why before the bridge.

Q. Did you see any kissing on the bridge? A. No, sir.

Q. And that was in Belleville or Arlington you saw them kiss? A. That was in Rutgers Street, Arlington, going down that hill there.

Q. Now, when they came across the bridge, where did they go? A. Went up to Mr. Young's house. (V. 1, p. p. 141).

Q. It isn't a question of might have. A moment ago I asked you didn't you tell Joseph Reilly you had followed Mrs. Cummings and you never saw anything wrong and you said yes; is that the fact? A. I said I never saw anything real wrong.

Q. Now you say you never saw anything real wrong, but— (interrupted). A. Nothing real wrong.

Q. It doesn't seem anything real wrong that you should see a woman kissing a man in an automobile on the bridge— didn't see anything wrong? A. I didn't see them on the bridge.

Q. On the bridge or off the bridge, that isn't anything real wrong, is that right? A. No, it isn't right to be kissing a man.

Q. Then why did you tell Reilly, as you say you did, you never saw anything real wrong, if you saw what you now say you saw? A. Real wrong —I meant something out of the way more.

Cross examination. (V. 1, p. p. 144).

HAROLD DOUGHTY, a fireman, testified on February 25, 1926:

Q. Are you acquainted with Owen Cummings, the petitioner? A. Yes, sir.

Q. Do you know his wife? A. I know her by sight. (V. 1, p. p. 149).

Q. How long have you known his wife by sight? A. About a year or so.

Q. Do you see her here in Court this morning? A. Yes, sir. * * *

Q. Where did you see her a year ago? A. It was in June, in front of the Library with Mr. Cummings, his wife and little girl and another girl. * * *

Q. Did you see her after that? A. I seen her once in a Chinese Restaurant.

Q. Where? A. On Broad Street, or Market Street, the Central not the Globe—right below Central Avenue there.

Q. On Broad Street? A. On Broad Street right hand side.

Q. What time of day or night was this? A. It was after the theatre.

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

Q. Was she alone or was she in company with somebody? A. She was with a gentleman.

Q. Do you see the gentleman here in Court? A. Yes, sir.

Q. Kindly indicate him? A. The gentleman right here in the second row.

THE COURT: Is it Mr. Young? (V. 1, p. p. 150).

WITNESS: Mr. Young, I was told. I don't know the gentleman.

Q. (Stand up, Mr. Young.) Is that the gentleman? A. Yes, sir.

Q. Where were they in that restaurant? A. Why, I was sitting in a booth myself. I just came from the theatre and Mrs. Cummings and this gentleman came in. They were in a booth. I don't know what booth they went in ,it was near Broad Street.

Q. Did you see them as you came out? A. As I came out I seen them in the booth; yes, sir.

Q. Were they alone or was some one else with them? A. They were alone. * * *

Cross Examination.

Q. When was this? A. In June.

Q. You don't know the time? A. Around the 10th, I think. I am pretty sure it was the 10th. You mean the Chinese Restaurant or the Library?

Q. Yes. A. I couldn't say what time it was, in the restaurant. I just came from the theatre myself and dropped in there. (V. 1, p. p. 151).

Q. Do you know what month it was? A. Well, it was in August or September, around in that time.

Q. You have no more idea than August or September? A. August or September. I couldn't tell you the date or anything about it. * * *

Q. Were you just accidentally in that place? A. Accidentally, yes, sir; both times was accidental, that I ran into them.

Q. How did you come to see them at the Library? A. Through a friend of mine that was in the car and pointed Mrs. Cummings and Mr. Cummings and the little girl and the other girl out to me, and this gentleman was standing near the park across the street.

Q. That is Mr. Young? A. Mr. Young. And after Mr. Cummings, I suppose said all he wanted to, he went towards Orange Street, why, Mrs. Cummings met this Mr. Young and they went across the street in the candy store at the corner of Bridge and Broad Street.

JOHN F. SMITH, who is a cousin of Mrs. Cummings, testified as follows:

Q. Did you ever see Mrs. Cummings and Harold Young together? A. Yes, sir, I did.

Q. How many times? A. Twice. * * *

Q. Where did you see them? A. Why, opposite the Globe Restaurant on Broad Street.

Q. Who was with them? A. Just the two.

Q. When was it? A. Eleven-thirty. (V. 2, p. p. 693).

Q. Eleven-thirty at night? A. Yes, sir.

Q. No. But how long were they there together? A. I passed them right at that church there.

Q. What church? A. The church right on Broad Street here opposite the Globe Restaurant. Well, Hahne & Company is right on the opposite side.

THE COURT: At the entrance of the park?

WITNESS: Yes, yes, sir.

THE COURT: Is that Park Place?

WITNESS: Well, the church is right in the park. * * *

Q. How long did you observe them together that night?

THE COURT: Just passed them.

A. Just passed them.

Q. I see. Did you see them on any other occasion?

THE COURT: Which way were they going when you passed them?

WITNESS: They were going north and I was going south.

THE COURT: They were walking?

WITNESS: Yes, sir.

(V. 2, p. p. 694).

Q. Where did you next see them? A. At Riviera Park on Sunday afternoon.

Q. Can you fix the date? A. I cannot recall the date.

Q. Can you recall the approximate time of the year? A. It was in the summer time, around five; around five o'clock; they were just raising the balloon—they have a balloon ascension— * * *

Q. Never mind where you were. Now, who was with them at that time, any one? A. Why, the two of them and her little girl.

Q. No others? A. No, sir.

Q. Where were they, inside the park? A. Yes, sir.

Q. How long a time did you observe them inside the park? A. Well, she noticed me and then the both of them went back.

CHARLES L. SNIVELY, a dentist who has an office at 486 Broad Street, just diagonally across the street from the Public Library, testified that he could not positively identify the defendant.

THE COURT: Assuming this man to be Mr. Young.

Q. (Continuing) If he is Mr. Young, did you

see this man with the woman whom you saw with a little Olive Cummings at the Library? A. Yes, sir.

Q. Together? A. Yes.

Q. Where? A. I walked from the Library across by the flag pole and saw the gentleman standing there and (V. 2, p. p. 705) walked over the corner in a confectionery store, purchased a pack of cigarettes, come down, walked down about seventy-five feet on Broad Street, stood there waiting for a jitney bus. The man walked across Broad Street on the left hand side. Shortly afterwards, about five minutes, the lady with the child that I saw at the Library, come across the street and walked down Broad Street, and was— just before you get to the part where the Reo Automobile store was—they joined and walked down the street.

Q. Which way? A. South on Broad.

Q. What time of night was this? A. This was about eight o'clock or a few minutes before eight.

Q. And did you see them after that at any other time? A. I did not see them. I saw the man once after that.

Q. Where? A. Right opposite my office on Broad Street, where the Durant Automobile store was.

Q. Just a moment. While you were looking over towards the Library, did you see any unusual action on the part of the woman who was with the child? A. While I was standing there, I was looking across the street and I saw the man standing by the flagpole. I see the man kept going this way. It was natural to be curious; I didn't know whether they meant me or who he was motioning to. There weren't many people around there.

Q. What did the woman do? A. I seen the woman do this (indicating); point something.

Q. Did you notice what time it was? A. Yes, sir, ten minutes to eight. (V. 2, p. p. 713-714.)

FRED H. BAUM, who is in the bakery business for himself, but who for some time previous to June 1, 1925, had been the superintendent of the A & P Bakery in Belleville, New Jersey, where Mrs. Cummings worked.

Q. Was Mrs. Cummings employed in the Belleville Bakery while you were superintendent? A. Yes, sir.

Q. And was Young employed there while you were superintendent? A. Yes, sir.

Q. Was Mrs. Cummings employed steadily there or not during the year 1924? A. I would say steady.

Q. Did she terminate her employment at any time during that year? A. She left me once, just when, whether it was 1924 I would not say. I don't (V. 2, p. p. 723) recall those dates.

Q. Was it during the year Young was there? A. It was the day after Mr. Young left.

Q. The day after Mr. Young left? A. Yes, sir.

Q. And how long was she out at that time? A. I don't remember.

Q. Well, was it a week or a month or about how long? A. It was more than a week and I would say more than a month. * * *

Q. Now, upon the occasion of her first leaving the bakery did you discharge her? A. No, sir.

Q. What was the reason for her leaving the bakery at that time; what reason did she give to you? A. She left because I discharged a man by the name of Marshall (V. 2, p. p. 724).

Q. And who else?

Q. Did she tell you that Marshall and another

man had had a fight the day before? A. I knew they had a fight. That is why I discharged one of them.

Question repeated.

A. No.

Q. Have you told us all the conversation you had with Mrs. Cummings at the time she quit work? A. No, sir (V. 2, p. p. 725).

Q. What was the rest of the conversation? A. Shall I relate the whole story, your Honor?

THE COURT: No, answer the question.

Q. I want the conversation you had with Mrs. Cummings as to her reason for leaving the bakery. A. (Witness pauses) I discharged Mrs.— * * *

Q. The conversation. * * *

Q. I want the conversation you had with Mrs. Cummings as to her reason for leaving the bakery. A. "Why are you leaving, "Sadie?" She said, "Because you fired Mr. Marshall." I said, "What have you got to do with this?" She said, "I think they had a fight over me." She walked out. (V. 2, p. p. 725.)

The testimony of this witness was given most reluctantly, and if the Court recalls his demeanor on the stand it was perfectly apparent that he was a most unwilling witness. His testimony is of the greatest importance, because it shows that Mrs. Cummings knew that Young and Marshall had a fight over her, and that she was willing to leave her employment on account of one of these two men having been discharged.

The testimony of the defendant and all of her witnesses not only denies the acts of adultery charged, but denies that the defendant was ever alone with either the co-respondent Grimm or the co-respondent Harold Young. It has been proven beyond question and beyond the possibility of contradiction that the defendant herself has committed intentional and deliberate perjury, and if

the Court applies the usual rule of false in one, false in all, then the Court must utterly disregard the testimony of the defendant.

The defendant testified, with reference to a certain anonymous letter, as follows:

MR. CHILD: I omitted to ask one thing.

Q. I show you exhibit C 1 for identification, and ask you if that is in your handwriting. You needn't read it; you can tell whether it is or not. A. Yes, sir, it is mine.

Q. Now, I show you exhibit C 2, and ask you if that is in your handwriting. A. No, that is not my handwriting (Vol. 1, p. p. 470) (Exhibit C 2 is the anonymous letter).

Q. I show you exhibit C 3 and ask you if that is your handwriting. A. No, sir, that is not mine, no. (Exhibit C 3 is the envelope in which it is alleged C 2 was mailed).

Q. Did you know that exhibit C 2 had been witten. A. No. I never wrote that; never seen it before.

Q. Did you know that it had been written? A. No, sir.

Q. And you knew nothing about it? A. No, sir.

Q. I ask you if you recognize the paper on which Exhibit C 2 is written? A. No, sir, I do not.

Q. I call your attention to the fact that the paper on which C 2 is written is identical to the paper on which Exhibit C 1 is written. Do you see that it is? A. I don't know. I cannot tell. * * * *

Q. Did you know that Frank Grimm was going down to the Newark Fire House shortly after January 15, 1926? A. No, I did not.

Q. When did you tell Frank Grimm that he was named as co-respondent in this case. (Vol. 1, p. p. 471) A. About four week before we

came in, maybe five, something like that. Short time before we came into Court.

Q. Do you remember when the last hearing was, about? A. Yes, sir.

Q. That was when? A. Well, that was February 18, was the first hearing.

Q. And did you communicate with him about four weeks before that time? A. Yes, sir; about that; four, maybe five weeks before. * * *

Q. And the first you communicated with him in regard to this case then, was in January, 1926; is that right? A. Yes, sir, I believe so; yes, sir. (Vol. 1, p. p. 472.)

It is interesting to note that the envelope in which exhibit C 2 was enclosed bears the post mark of Newark, January 15, 1926.

The following is a copy of this anonymous letter, exhibit C-2:

> "Cummings. hears a good tip so use your brains I cant give you my name as I don't want to get in to it. but see Frank grims he is up against it and a little money will make him see your way and she played him rottengs you can see him where he works or call him up number 0503 Mulberry he also knows some one that will help you get more goods. If you see him take him slow but he'll work if you take him rights."

The defendant was recalled by the court:

> THE COURT: Write "Cummings," will you? Write "Will bring Olive down to you." Now next line, "Here's a good tip; use your brains."
>
> WITNESS (Complying)
>
> THE COURT: You say you did not write Exhibit C 2?
>
> WITNESS: No, sir, I did not (Vol. 1, p. p. 475).

THE COURT: How do you write "Here's?"

WITNESS: "Hears."

THE COURT: Now C 2 has "Heares," as well—no, you spell it here h-e-r-e-s. That is all.

(Paper marked Exhibit C-10 (Vol. 1, p. p. 476).

The Court may be of the opinion that the letter, Exhibit C-2, was written by the defendant for the purpose of fooling or annoying the petitioner, but there is a more likely and more sinister reason for the writing of this letter, and that was to entrap the petitioner into paying money in order to get evidence, and then have the person swear that he had been paid money for testifying. This motive clearly crops out in the testimony of the defendant's witness, Edwon Theall, who testified that he was introduced to Cummings, the petitioner, by a man named Andrew Rothrock, who called Theall from work at the A & P Bakery in Belleville at three o'clock in the morning, (Vol. 1, p. p. 353) and that the petitioner offered him (Theall) $5000 to entrap Mrs. Cummings (Vol. 1, p. p. 354).

THE COURT: Q. Was it $500 or $5000, he offered you? A. $5000. (Vol. 1, p. p. 356.)

This witness admitted that he had been sent to Rahway (the Rahway Reformatory) for nine days for carrying a revolver.

To bolster up the extraordinary testimony of Edson Theall, the defendant called Joseph Williams, who testified that Cummings tried to get him to go to a hotel with his wife.

Q. And what did he say? A. He approached

me and asked me if I would like to make some money, and I asked him in what manner, and he said he would like to have some one go and take his wife to a hotel and they will—he would come (Vol. 1, p. p. 357 with a detective and see us there.

Under cross examination, this witness admitted that he had not been employed for some fifteen months prior to the time of the hearing in June, 1926.

Q. Who did you work for before you worked for the Sinclair Company? A. Before I worked for the Sinclair Company?

Q. Yes. A. I worked for the United Public Market.

Q. Where is that? A. 196 Belleville Avenue.

Q. Newark? A. Yes, sir.

Q. How long did you work there? A. I have been with the United Public Market off and on for about three years.

Q. How long? A. Off and on for about three years.

Q. When did you leave their employ? A. Back in 1923.

Q. Who did you work for between 1923, when you left the United Public Market, until you went to work for the Sinclair Company? A. No one.

Q. What have you been doing since May, 1925? A. Since May, 1925?

Q. Yes. A. Nothing.

Q. How do you—have you independent means? A. Indirectly.

Q. What do you mean by that? A. Well, I have a home and supported by my folks (Vol. 1, p. p. 360).

Q. You are supported by your people; is that right? A. Yes, sir.

Q. Have you been ill? A. No.

Q. Why haven't you worked in the last year and a half? A. Why?

Q. Yes. A. Well no reason.

Q. Why didn't you work for the year preceding the time that you went to work for the Sinclair Oil Company? A. Well, for no reason at all.

Q. Your parents furnish you with spending money? A. Yes, sir.

Q. Board you? A. Yes, sir.

BY THE COURT: Married? A. No, sir.

Q. You are physically able to work? A. Positively.

Q. Why don't you work? A. Maybe I will some day.

Q. So the first time you saw Cummings was when he walked into your house and made you this offer? A. Yes, sir.

Q. Never seen him before? A. Not to my knowledge, no.

Q. He walked ito your home and said, "I am Owen Cummings?" A. Yes, sir.

Q. "And I want you to go out with my wife?" A. Yes, sir.

The co-respondent, Frank Grimm, testified that Mrs. Cummings called him on the telephone, and that he then went down to the Fire House and saw Cummings.

Q. And did you see Cummings? A. I did.

Q. What did you tell him? A. I asked him to come outside.

Q. And then what happened? A. He wouldn't.

THE COURT: What?

WITNESS: He wouldn't. He refused. I says, "Come out," and he wouldn't come out with me. (Vol. 1, p. p. 533). * * *

A. That is the man right there, so I said, "Are you Mr. Cummings?" He says, "Yes. What

do you want of me?" I said, "Do you know me?" "No." I said, " Well, my name is Grimm?" and he said, "Get out," he says, "I don't want to talk to you." I said, "Come on out." I didn't want to come in, "Come on out with me." So he wouldn't do it. He turned around and walked towards the back (Vol. 1, p. p. 534).

The witness, under cross examination, was unable to give any reason for his going to the Fire House to see Cummings, and it is very significant that his visit to the Fire House was immediately after the receipt by Cummings of the anonymous letter. The witnesses, Theall and Williams, state that Cummings offered to pay them money to go out with his wife was held in the presence of one Andrew Rothrock and a man named Reilly. Neither of these witnesses were called by the defendant, although the witness Rothrock was in Court up to the last two days of the trial, and the testimony of the petitioner is that when he attempted to find Rothrock to serve him with process, was unable to do so.

The testimony of Williams and Theall, the one a self-confessed loafer and the other a jail bird, shows that the purpose of writing this letter was to entrap Cummings, the petitioner. The very amount of the bribe alleged to have been offered to Theall—$5000—is absurd. This testimony produced by the defendant shows the desperate methods resorted to by her to bolster up a desperate and untruthful defense. This is quite in keeping with the original answer and counterclaim filed by the defendant, in which she charged that the petitioner in this case was suffering from a lothsome, venerial disease, and that she, the defendand, had contracted this disease from the petitioner. The fact being that neither she nor the petitioner had ever suffered from such a disease.

With reference to the testimony of Mildred Young, it might be stated that Mildred Young admits that she is practically lacking in personl recollection of anything that transpired during the years 1924 and 1925. It may be that, as the Court remarked, that this failure of memory is due to the habit of keeping a diary. In reference to the diary the Court must bear in mind the great opportunity for the fraud and manufacture of evidence with reference to diary entries. There is virtually no way in which such entries can be impeached where the writer, as did Mildred Young, disclaimed independent recollection of the occurrences which she claimed to have written down in her diary. The diary of Mildred Young does not have any entries in regard to Mrs. Cummings on August 29, 1925, or September 19, 1925. The first of these dates was the occasion of the visit of the defendant and co-respondent Young to the Newark Theatre and afterwards to Chinatown. The adultery charged on the 19th of September and the early morning of the 20th is referred to on page 194, V. 1. On both of these dates, Mildred Young was working at Kresge's Five and Ten Cent Store.

The co-respondent, Young, as is to be expected, denies all wrongdoing, and claims that Mrs. Cummings was a friend of the family. He testified, with reference to the fight testified to by Baum, the superintendent of the A & P Bakery, that the fight was over bread pans (Bk. 5.) He denies absolutely that he ever met Mrs. Cummings alone, his testimony being as follows:

Q. Didn't you, after calling there on your sister, meet Mrs. Cummings? A. I did not. I never met Mrs. Cummings after meeting my sister at any other time.

Q. Have you ever at any time or place aside from an accidental meeting on the trolley car, as

you have testified to, been with Mrs. Cummings alone with Mrs. Cummings and Olive without other persons being present? A. No, I have not. V. 2, p. p. 579-580.)

Q. Have you ever been to the Public Library to meet Mrs. Cummings or while Mrs. Cummings was across the street in the Public Library? A. I have not. Never been told when she was there.

Q. You have never been at the Public Library when she was there either alone or in company with others? A. No. (Bk. 5, p. 114)

Q. Why did you go around and spend money on Mrs. Cummings knowing she was married and living separate and apart from her husband—what was your reason for doing it? A. Why, no particular reason, except when any one goes with me I usually take and pay the way.

Q. Well, you went with her very frequently with her, didn't you, in company with others? A. I did.

Q. Almost weekly, isn't it a fact? A. Yes, sir.

Q. How much were you getting at the A & P as baker? A. $27.50, but it usually comes to $30.00 because we worked over time on one of the nights (V. 2, p. p. 581).

Q. Why did you always have your mother go along with Mrs. Cummings from your house to hers?

THE COURT: Why did the mother always go along?

WITNESS: My mother went along with Mrs. Cummings partly I guess for protection for her in a way, but mostly because she had to go to the store every night.

Q. Why did your mother feel it encumbent upon her to go along instead of letting you go alone? A. Why, I never tried to go alone. I usually went to bed after Mrs. Cummings came

to the house. I offered to go to the store lots of times with my mother and she is very particular what she gets; if one thing doesn't look good, if it looks as if it had been in the case too long, why, something else— (interrupted)

Q. I am not talking about the times you went to bed; I am talking about the times you and your mother went around to Mrs. Cummings' house; why did your mother always go along? A. Why, I don't know as my mother went along—I went along with my mother, would be a better way of putting that.

Q. I don't care—why was she taken along then? A. Why was my mother taken along? (V. 2, p. p. 582.)

Q. Yes. A. My mother wasn't taken along; I was taken along or asked along.

Q. Why didn't you ever walk home alone with Mrs. Cummings? A. Why, I don't know.

Q. How many times on an average would Mrs. Cummings come to your house in a week? A. I don't know, sometimes once, sometimes twice, sometimes she didn't come for a couple of weeks.

This witness admits that he was convicted, as he says, of assault, but in his explanation gives a very perfect picture of the crime of highway robbery for which crime he was sentenced by a General Court Marshall of the United States Army to five years in Leavenworth Prison, his sentence being afterward reduced to four years, which he served (Vol. 2, p. p. 586).

BRIEF OF EXTREME CRUELTY.

Little time will be spent in discussing the counterclaim of the defendant based upon the ground of extreme cruelty. The petitioner denies each and every act of the cruelty alleged. Many of the witnesses of the defendant testified as to vile and abusive language used by the petitioner toward

his wife, and it is also testified that there were some acts of physical violence. Nearly all of this testimony was given by witnesses who were either friends or relatives of the defendant, or who had some grudge against the petitioner. The testimony of one witness called by the defendant absolutely contradicts much of the testimony given by other witnesses with reference to vile language, etc. Mrs. Florence Walker, who lived on Cummings' property on Hinsdale Place from December, 1920, to October, 1921, who was called as a witness for the defendant and counterclaimant, testified that at the time of the birth of the child, she furnished clothing, and that she lived on the first floor. That during this ten months she never heard any vile language or talk, but did hear loud talking occasionally, but could not say that it was quarreling.

Q. You never heard any vile language? A. No. (Vol. 2, p. p. 637).

She also testified that during the time of Mrs. Cummings' confinement, Mrs. Cummings had a practical nurse for ten days or two weeks (Vol. 2, p. p. 638).

Mrs. Von Buckow, who lived in the house for eight months previous to Mrs. Walker, testified that the only bad language she ever heard during the eight months was upon one occasion when she heard Cummings call the defendant a bastard (Vol. 2, p. p. 622). It therefore appears that for a period of eighteen months from 1920 to 1921, the only evidence of persons living in the house was to the effect that one of these persons had heard Cummings call his wife a bastard.

Agnes McDermott, the sister of Owen Cummings, the petitioner, testified that when she was at Mr. Cummings house at 150 Washington Avenue, in his company about the middle of July, 1923 (Vol. 2, p. p. 679-683), that Mrs. Cummings called the petitioner an Army bum.

Q. BY THE COURT: What?

WITNESS: An Army bum. She said he wasn't able to make a decent living and had to go to the Army. She said to us, "His father was a bum before him." It happens that my father was a Civil War Veteran. * * * She said—she called him a bum and said if he was the only man in the world, she would not live with him, and she said she would look for a divorce only it would cost $300. She said she had friends that would do such and such on him, and that if he was the only man in the world, she would not live with him.

THE COURT: Well, tell us what she did. What did she say.

WITNESS: She said it was a good thing she left and went home to her mother or she would have shot him, but she said she intended to shoot him anyhaw, and that then Mrs. Cummings became very loud, and I do remember that there was two women on one side of the house and they were listening, and my brother closed down the windows in the dining room, and Mrs. Cummings opened the windows up again, and said she didn't care anything about the neighbors, and then Mrs. Cummings, she went in the dining room and kicked through the plate glass china closet and cut her leg on it. She then went to the front, and there were 100 pieces of dishes lying on the floor (V. 2, p. p. 681).

THE COURT: What?

WITNESS: She went in the front room, the living room and there was a set of dishes that lay on the table, and she

smashed the dishes on the ground, on the floor. She smashed the dishes and broke the—

THE COURT: Threw them on the floor, you mean?

WITNESS: Yes; she turned the chair over and broke the whole set of dishes—a hundred piece set. Then she threatened to break the windows at the front and my brother stopped her.

GRACE McDERMOTT, who is the sister-in-law of the defendant, testified as to certain acts of violence by Cummings, and also as to the fact that Mrs. Cummings never entered the house without the witness knowing it, and was always home at an early hour in the evening.

The testimony of this witness is contradictory, and, it is submitted, unworthy of belief.

"Q. Do you remember Mrs. Cummings going out that night and getting some ice cream or something for the child? A. No.

Q. He did ask you where the family were, didn't he? A. Certainly did.

Q. And the child was up stairs alone on that floor, was it not, and you were down stairs? A. It was not alone up stairs at that time.

Q. Who was with it? A. I had three children of mine all sleeping up stairs at that time, but now I have things changed.

Q. I thought you told the Court a moment ago that you had two children sleeping down stairs with you? A. I have now, yes, but at that time I had three up stairs because I had one room up stairs. The things has been changed.

Q. And you slept down stairs and had

three of your children sleep up stairs? A. I had three up stairs at that time.

Q. (By the Court) And you slept down stairs? A. And I slept down stairs, yes, sir. (V. 2, p. p. 666).

Q. Why did you have your three children on the second floor and sleep on the first floor yourself? A. Well, because I wanted two bedrooms, and then I changed things around later on.

Q. How old was the youngest child then? A. My youngest child?

Q. At that time, February, 1924? A. Two years old.

Q. Now what time of night would Mrs. Cummings come in during February, 1924? A. What time of night did she come in?

Q. Yes. A. When she went out at night?

Q. Yes.

THE COURT: Yes.

WITNESS: Around ten o'clock. Not later than ten o'clock.

(V. 2, p. p. 667).

Q. February, 1924? A. February, 1924.

Q. Yes, and never was out during the year 1924, never later than ten o'clock at night or eleven o'clock? A. Very seldom, maybe eleven. I would be out when she would get in.

Q. What? A. I would be out when she would get in.

Q. And you would always be up when she came in? A. Yes generally always was up.

Q. And what was the latest that you ever remember seeing her come in during the year 1924? A. Oh, around half past eleven.

Q. Half past eleven? A. Yes, sir.

Q. Where was Mrs. Cummings working during the year 1924? A. In the A and P.

Q. (By the Court) What time did she come home from work? A. Well, when she was working she came home two o'clock in the morning, the same time my husband did.

THE COURT: That is what the lawyer wants to know.

Q. And then you let her in or saw her at two o'clock in the morning, did you, every time she came in? A. My husband had a key.

Q. I am not asking you what your husband had. I am asking you whether you saw her whenever she came in at night? (V. 2, p. p. 668.) A. No, not two o'clock in the morning because the door was locked and my husband had a key and opened the door, and she came in right after him.

Q. Why did you say a moment ago that she never got in that year later than eleven thirty? A. Well, I forgot about her working at that time.

Examined (By the Court)

Q. Hadn't she a key to get in? A. Yes, sir, there was a key for her.

Q. Hadn't she a key to get in? A. Well, sometimes she did and sometimes she didn't. She generally came home when my husband come home.

Q. She generally came in—she was generally let in by your husband, is that what you mean? A. Yes, he comes home two o'clock in the morning and she comes right after him.

Q. Do you know how that happened? A. Well, she gets through at that time with work.

Q. Well, would your husband wait for her

to let her in? A. Well, he would wait a few minutes, certainly, because he knew she came in at that time. * * * *

Q. You think he would wait to let her in, eh? Is that your idea? A. Yes, because she always came in two o'clock in the morning when he came.

Q. Well, she carried a key of her own, didn't she? A. No.

Q. Eh? A. No. There was one key.

Q. And who carried that? A. My husband because he came in a few minutes before her. If she came ahead of him she would knock on the door and I would get up and open the door (V. 2, p. p. 669-671).

Q. Unlock the door for her? A. Unlock the door, because there is another key besides.

Q. Then there are two keys? A. There are two keys, certainly.

Q. I don't know, certainly, you said he carried the key, your husband? A. Well, there had to be another key inside.

Q. I don't know. I don't know. One key would be enough. A. (No answer).

BY MR. CHILD.

Q. What run did your husband have in 1924 on the cars? A. Paterson.

Q. And where did he get off at the end of his run; where did his run stop? A. Where does it stop?

(By the Court) The carbarn? A. Up at the carbarn.

Q. What car barns? A. In Belleville.

Q. And how far are the car barns from your home? A. About five minutes ride.

Q. What? A. About five minutes ride.

Q. And how far is the bakery from your home? A. Oh, about ten minutes walk.

THE COURT: The same direction; in the same direction?

WITNESS: Well, no, the bakery is down; the car barn is up on Washington Avenue.

Q. How long does it take to get from the car barns to your home—there is no car directly to your home, is there? A. No. You come up Washington Avenue and have to walk up one block.

Q. And how many blocks away is the bakery, about? A. Well, I don't know how many blocks. It is about five or ten minutes walk.

Q. You said you kept a light, I understand, in your room in 1924. Was that for the purpose of tending to the children? A. Yes, sir.

Q. And how could you tend to the children if they were not in your room in 1924 and were up stairs? A. Well, because I could hear when they called.

THE COURT: Why would you want a light in your room to tend to the children if the children were up stairs; that is what he wants to know?

WITNESS: Well, because I am nervous and I don't like to sleep in the dark, so when I got up I would just know where I was going—being in a pitch dark room.

Q. Then it was not for the purpose of tending the children, it was on account of your—A. It certainly was.

Q. Nerves? A. Yes.

It is sought to prove that Cummings gave his wife a meager support.

On Cross-Examination. She testified as follows:

Q. Now at the time you left your husband you have testified you had no money whatever, is that right? A. I testified I had no money. I didn't have a quarter to my name.

Q. Didn't you take some money out of

the house at that time? A. I didn't take any money out of the house.

Q. At that time you had a building and loan, didn't you, about five hundred dollars available in it? A. Yes, sir; I didn't draw it until the following July (P. p. 458, Vol. 1.)

It clearly shows that the counterclaimant filed her cross petition as a defensive measure, she was told by Judge Brennan of the Domestic Relations Court, if she had any evidence of Cruelty he would allow her support.

Cummings charged his wife with adultery Sept. 17th, 1924, one year and five months after the separation, her answer was a complete denial, and a cross petition charging cruelty, on cross examination she testifies as follows on printed pages 461-462, Vol. 1:

Q. Now, you appeared before Judge Brennan and asked for support. A. Yes, sir.

Q. For yourself and child, is that right? A. Yes, sir.

Q. And Judge Brennan told you that if you could show any acts of cruelty, that he would compel Mr. Cummings to support you, didn't he? A. Yes, sir.

Q. Why didn't you produce any acts of cruelty while you were there? A. Because I had started suit for property—yes; I had started suit for the property and then after the suit was over I intended to bring in and get support for myself but before that was done and settled, Mr. Cummings had already brought in this charge of adultery against me.

Q. How long was it after you made the charge before Judge Brennan that the suit was started with regard to the property? A. I just couldn't tell you, but the suit was hanging on for a long while, because Mr. Quigley—I went to his office in regard to

the suit and Mr. Quigley wanted—offered me seven hundred dollars, if I would take seven hundred dollars and I refused to take seven hundred dollars, an he told me as long as I refused I would be without money for a long time.

Q. Why didn't you go to the Domestic Relations Court as Judge Brennan had told you to do? A. What is that?

Q. Why didn't you go to the Domestic Relations Court and produce the evidence of cruelty that Judge Brennan told you to? A. I wanted to wait until I got one suit over about the property and I didn't intend to bring it into the Domestic Relations Court; I wanted to bring it into the Chancery for support.

Q. Why didn't you go into Chancery first then, instead of making your complaint—(interrupted)

A. Because I didn't know enough and I didn't have money.

Q. You had a lawyer, did you not, in the law suit about the property? A. Yes, sir, but I didn't have money.

In Barkman v. Barkman, 16 N. J. E. XX4-122 at P. 141

> **"At the very threshold of the inquiry we meet the Significant fact, that the Bill filed by the complainant in this case is virtually a defensive measure.**

Carton v. Carton, 93 N. J. E. 175
Darby v. Darby, 21 N. J. E. 39-40
Brown v. Brown, 63 N. J. E. 348.

Respectfully submitted,

OWEN CUMMINGS,
For Himself.

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