

INDEX

	PAGE
Petition	1
Citation	3
Affidavit of Petitioner	6
Affidavit of Solicitor	7
Answer	9
Replication	11
Order	12
Amended Answer	14
Replication and Answer to Counter-Claim ...	18
Order of Reference	19
Designation	20
Notice of Hearing	22
PETITIONER'S TESTIMONY:	
Earl F. Bartling—Direct	24
Cross	32
Re-direct	45
Norman Benner—Direct	46
Cross	50

	PAGE
Caroline Beasley—Direct	51
Cross	57
Charles Pettit—Direct	61
Cross	67
John Zepke—Direct	69
Cross	76
William D. Coffin—Direct	79
Cross	85
Herbert Keen—Direct	88
Cross	98
Re-direct	106
Re-cross	108
Ralph Patton—Direct	109
Cross	112
Harry H. Hobroyd—Direct	113
Cross	118
Beth Bartling—Direct	151
Cross	155
Re-direct	157, 159
Re-cross	159
Raymond Bartling—Direct	161
Cross	161
Florence Bartling—Direct	162
Cross	164
Re-direct	166
Re-cross	166
DEFENDANT'S TESTIMONY:	
Althea Bartling—Direct	121
Recalled—Direct	167

	PAGE
Recalled—Cross	170
Recalled—Re-direct	174
John Y. McDowell—Direct	134
Cross	140
Re-direct	145
Gertrude Runge—Direct	147
Thomas Runge—Direct	174
Cross	177
Erma Neel—Direct	179
Cross	181
Petition for Re-hearing	184
Notice of Motion	187
Order	188
Notice	189
Conclusions	191
Decree of Dismissal	194
Notice of Appeal	196
Amended Notice of Appeal	197
Petition of Appeal	199

130
 131
 132
 133
 134
 135
 136
 137
 138
 139
 140
 141
 142
 143
 144
 145
 146
 147
 148
 149
 150
 151
 152
 153
 154
 155
 156
 157
 158
 159
 160
 161
 162
 163
 164
 165
 166
 167
 168
 169
 170
 171
 172
 173
 174
 175
 176
 177
 178
 179
 180
 181
 182
 183
 184
 185
 186
 187
 188
 189
 190
 191
 192
 193
 194
 195
 196
 197
 198
 199
 200

PETITION.

(Filed Nov. 12th, 1927.)

IN CHANCERY OF NEW JERSEY.

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

The petition of Earl F. Bartling, of the Borough
of Oaklyn, County of Camden and State of New
Jersey, respectfully shows:

10

1. Your petitioner was lawfully joined in the
bonds of matrimony to his present wife, Althea
Bartling, the defendant in this suit, on the 1st day
of March, 1915, by Reverend Harvey L. Jacoby, a
minister of the Gospel at Oaklyn, in the State of
New Jersey.

20

2. Defendant since her marriage to your peti-
tioner and in the month of June, 1926, and the suc-
ceeding months in the year 1926, and in the month of
January, 1927, and in the succeeding months of 1927
and particularly in the months of October and No-
vember, 1927, and on the different days in said
months committed adultery with one, John Y. Mc-
Dowell at Oaklyn in the County of Camden and
State of New Jersey.

30

3. Petitioner and defendant were *bona fide* resi-
dents 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, residing at Oak-
lyn, in the County of Camden and State of New
Jersey.

4. Two children were born of the marriage to wit: Beth Bartling, age nine years and Earl F. Bartling, Jr., age twenty-two months, who are in the custody of the defendant who is unfit to have the custody of said children and that the welfare of said children requires that they should be removed from her custody.

10 5. 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 the two children and that he may have such further relief as may be just.

And your petitioner will ever pray, &c.

EARL F. BARTLING.

S. RUSLING LEAP,

20 *Solicitor for Petitioner.*

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

30 EARL F. BARTLING, 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 her and the defendant, but in truth and good faith for the causes set forth in the petition.

EARL F. BARTLING.

Sworn and subscribed before me, this 10th day of November, 1927.

MELBOURNE H. BEEBE,
Notary Public of N. J.

My commission expires Mar. 23, 1931.

CITATION.

(Filed Dec. 15, 1927.)

NEW JERSEY, TO WIT: THE STATE OF NEW JERSEY TO
ALTHEA BARTLING:

GREETING: You are hereby cited to answer the petition of Earl F. Bartling, a
(Seal) copy of which petition is herewith served upon you, by filing your answer in writing in the office of the clerk of the Court of Chancery at Trenton, within twenty days after the 10th day of December, 1927; and in default of your so doing such order or decree will be made against you as the Court shall think equitable and just.

Witness, his HONOR, EDWIN ROBERT WALKER,
Chancellor of our said State, at Trenton, the 14th day of November, 1927.

THOMAS BARBER,
Clerk.

S. RUSLING LEAP,
Solicitor.

[ENDORSED]

30

Dec. 1, 1927

I hereby deputize and appoint Harry Gleason for me and in my name to serve this citation, together with a certified copy of the petition therein mentioned.

Citation

Witness my hand and seal the day
and year above written.

Walter T. Gross, (L. S.)

Sheriff of Camden County.

By J. M. Ackley,

Under Sheriff.

10

Received Nov. 16, 1927, 3:11 P. M.

Walter T. Gross,

Sheriff.

20

December 3, 1927.

I served this citation on the within-
named defendant by exhibiting the
same to her and delivering to her per-
sonally a copy thereof together with a
certified copy of the petition therein
mentioned.

Walter T. Gross,

Sheriff of Camden County.

By Harry Gleason,

Special Deputy Sheriff.

Sheriff Fees \$5.44.

30

IN CHANCERY OF NEW JERSEY.

Between
 EARL F. BARTLING,
Petitioner,
 and
 ALTHEA BARTLING,
Defendant.

10

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

HARRY GLEASON, of full age, being duly sworn according to law, on his oath deposes and says that he is the officer who was deputed by Walter T. Gross, Sheriff of the County of Camden, New Jersey, on the 3rd day of December, 1927, to serve a true copy of the attached citation, together with a certified copy of the petition for divorce on Althea Bartling, defendant mentioned in the above-entitled cause, that he served the same on her personally at No. 33 Beechwood Avenue, Oaklyn, Camden County, New Jersey, and from a description furnished him by the solicitor of the petitioner, which was as follows: Age: 31 years. Residence: 33 Beechwood Avenue, Oaklyn, N. J. Occupation: 30 Housekeeper.

HARRY GLEASON.

Sworn and subscribed before me this 3rd day of December, A. D. 1927.

WM. GARWOOD,
Notary Public.

AFFIDAVIT OF PETITIONER.

(Filed Feb. 17, 1928.)

IN CHANCERY OF NEW JERSEY.

10

Between

EARL F. BARTLING,

Petitioner,

and

ALTHEA BARTLING,

*Defendant.*On Petition for
Divorce.
Affidavit of Petitioner.20 STATE OF NEW JERSEY, }
COUNTY OF CAMDEN, } ss.

EARL F. BARTLING, of full age, being duly sworn according to law, upon his oath deposes and says:

1. I am the petitioner in the above-entitled cause. The present age, residence and occupation of the defendant are known to me. Her age is 31 years; and her occupation is housekeeper.

30

2. The defendant resides at No. 33 Beechwood Avenue, in the Borough of Oaklyn, County of Camden and State of New Jersey. The source of my knowledge respecting the same is that I frequently visit said house in order to see my children who live with the defendant.

EARL F. BARTLING.

Sworn and subscribed before me this 16th day of February, 1928.

BERTHA C. HACK,
Notary Public of New Jersey.
Commission expires Dec. 15, 1932.

AFFIDAVIT OF SOLICITOR.

10

(Filed Feb. 17, 1928.)

IN CHANCERY OF NEW JERSEY.

Between

EARL F. BARTLING,
Petitioner,
and
ALTHEA BARTLING,
Defendant.

On Petition for
Divorce. 20
Affidavit of Solicitor.

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

S. RUSLING LEAP, being duly sworn upon his oath
deposes and says: 30

1. I am the solicitor of the petitioner.
2. Before delivery of process in this cause to the sheriff I made diligent inquiry respecting defendant's age, residence and occupation.

3. Such inquiry was made by me personally of the petitioner, Earl F. Bartling, to whom I am satisfied, the facts were fully and personally known. The said Earl F. Bartling informed me of the facts stated in the written description that I delivered to the sheriff with the citation and certified copy of the petition, a copy of which description is hereunto annexed.

S. RUSLING LEAP.

10

Sworn and subscribed before me this 16th day of February, 1928.

BERTHA C. HACK,

Notary Public of New Jersey.

Commission expires Dec. 15, 1932.

20

In re: Earl F. Bartling, petitioner and Althea
Bartling, defendant.

To Walter T. Gross, Sheriff of Camden County:

Sir:

With the citation and certified copy of petition in the above-entitled cause, I herewith deliver to you the following description of Althea Bartling, the defendant, upon whom service of process is to be made, viz:

30

Age: 31 years.

Residence: 33 Beechwood Avenue, Oaklyn, N. J.

Occupation: Housekeeper.

Respectfully,

S. RUSLING LEAP,

Solicitor.

Dated Camden, N. J.,
November 16, 1927.

ANSWER.

(Filed Dec. 31, 1927.)

IN CHANCERY OF NEW JERSEY.

EARL F. BARTLING,

Petitioner,

v.

ALTHEA BARTLING,

Defendant.

On Petition for
Divorce.
Answer.

10

The answer of Althea Bartling, defendant, to the
petition of Earl F. Bartling, petitioner.

20

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

2. This defendant denies that since her said marriage, and in the month of June, 1926, and the succeeding months in the year 1926, and in the month of January, 1927, and in the succeeding months of 1927 and particularly in the months of October and November, 1927, and on the different days in said months committed adultery with one, John Y. McDowell, at Oaklyn, in the County of Camden and State of New Jersey, as in said petition alleged, or that she committed adultery with said person, or with any other person, at any other time or place; but to the contrary, this defendant says that she

30

has ever faithfully observed her obligations as the wife of the petitioner.

3. This defendant admits it to be true that the petitioner and this defendant were *bona fide* residents of the State of New Jersey when this supposed cause of action arose as alleged in the petition, that this defendant has ever since continued to be a *bona fide* resident of this State down to the time of the
10 commencement of this action, residing at Oaklyn, in the County of Camden and State of New Jersey, as has the petitioner, to the best of the knowledge, information and belief of defendant.

4. This defendant admits it to be true that children were born of the marriage aforesaid, to wit, Beth Bartling whose age is ten years, and Earl F. Bartling, Jr., whose age is two years; she admits that both of said children are in the custody of de-
20 fendant. This defendant denies that she is unfit to have the custody of said children but, to the contrary, says that she has faithfully cared for them and their welfare requires that they should continue under her care and control.

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

FRANK NELSON JESS,
Solicitor of Defendant.

REPLICATION.

(Filed Jan. 19, 1928.)

IN CHANCERY OF NEW JERSEY.

Between

EARL F. BARTLING,	}
<i>Petitioner,</i>	
and	
ALTHEA BARTLING,	
	<i>Defendant.</i>

On Petition for
Divorce.
Replication.

10

The petitioner joins issue on the answer of the 20 defendant.

S. RUSLING LEAP,
Solicitor for Petitioner.

[ENDORSED]

Consent is hereby given to the filing
of the within replication out of time.
Frank Nelson Jess,
Solicitor for Defendant.

30

ORDER.

(Filed Apr. 17, 1928.)

IN CHANCERY OF NEW JERSEY.

10

Between

EARL F. BARTLING,

Petitioner,

and

ALTHEA BARTLING,

Defendant.} On Petition for
Divorce.
Order.

20

This matter being opened to the Court by Frank Nelson Jess, solicitor for the defendant, Althea Bartling, in the presence of S. Rusling Leap, solicitor for the petitioner;

30 And it appearing that a petition has been filed herein by the defendant alleging that she has heretofore filed her answer in this cause and that since the filing of said answer a cause of action for divorce against her husband, Earl F. Bartling, on the ground of desertion has accrued to petitioner and that she desires to amend her answer by filing a cross-petition against her said husband, Earl F. Bartling, for divorce for the cause of desertion.

And it further appearing that due notice of this application has been given to all parties entitled thereto;

And the Court having read said petition and having heard and considered the arguments of counsel, the Court being satisfied that the prayer of said petition should be granted;

It is, on this 17th day of April, nineteen hundred and twenty-eight, ordered that the said defendant have leave to amend her answer by adding thereto a cross-petition for divorce against her said husband, Earl F. Bartling, for the cause of desertion.

E. R. WALKER, 10
C.

Respectfully advised,
E. B. LEAMING,
V. C.

The above order is approved as to form.

S. Rusling Leap, 20
Solr. of Petitioner.

A true copy.
THOMAS BARBER,
Clerk.

AMENDED ANSWER.

(Filed May 21st, 1928.)

IN CHANCERY OF NEW JERSEY.

10

EARL F. BARTLING, <i>Petitioner,</i>	}	On Petition for Divorce. Amended Answer.
v.		
ALTHEA BARTLING, <i>Defendant.</i>	}	

20 The answer of Althea Bartling, defendant, to the petition of Earl F. Bartling, petitioner.

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

30 2. This defendant denies that since her said marriage, and in the month of June, 1926, and the succeeding months in the year 1926, and in the month of January, 1927, and in the succeeding months of 1927 and particularly in the months of October and November, 1927, and on the different days in said months committed adultery with one, John Y. McDowell at Oaklyn, in the County of Camden and State of New Jersey, as in said petition alleged, or that she committed adultery with said person, or with any other person, at any other time or place;

but to the contrary, this defendant says that she has ever faithfully observed her obligations as the wife of the petitioner.

3. This defendant admits it to be true that the petitioner and this defendant were *bona fide* residents of the State of New Jersey when this supposed cause of action arose as alleged in the petition, that this defendant has ever since continued to be a *bona fide* resident of this State down to the time of the commencement of this action, residing at Oaklyn, in the County of Camden and State of New Jersey, as has the petitioner, to the best of the knowledge, information and belief of defendant. 10

4. This defendant admits it to be true that children were born of the marriage aforesaid, to wit, Beth Bartling whose age is ten years, and Earl F. Bartling, Jr., whose age is two years; she admits that both of said children are in the custody of defendant. This defendant denies that she is unfit to have the custody of said children, but, to the contrary, says that she has faithfully cared for them and their welfare requires that they should continue under her care and control. 20

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

And this defendant by way of cross-petition exhibited against the petitioner, says: 30

1. Petitioner cohabited with defendant for about eleven years after their marriage and until petitioner deserted defendant in the month of March, 1926. Ever since which time and for more than two

years last past petitioner has wilfully, continuedly and obstinately deserted defendant.

2. Petitioner and defendant have been *bona fide* residents of the State of New Jersey for the period stated in petitioner's petition and as admitted in the preceding part of this answer.

3. Defendant's maiden name was Althea Ruth
10 Hovey.

4. Defendant prays that the marriage between this defendant as cross-petitioner and the petitioner as defendant to said cross-petition may be dissolved for the cause aforesaid, according to the statute in such case made and provided; and that the petitioner may be compelled by the decree of this Honorable Court to support her and the said children of this marriage, and that she may be awarded the
20 custody of said children and may be permitted to resume the use of her maiden name; and that she may have such further relief as may be just.

And this defendant will ever pray, etc.

ALTHEA BARTLING,
Defendant.

FRANK NELSON JESS,
Solicitor for Defendant.

STATE OF NEW JERSEY, }
COUNTY OF CAMDEN, } *ss.* 10

ALTHEA BARTLING, being duly sworn according to law on her oath deposes and says:

That she is the cross-petitioner named in the foregoing cross-petition; and that her cross-petition is not made by any collusion between her and the defendant therein, but in truth and good faith, for the causes set forth in said cross-petition.

ALTHEA BARTLING.

20

Sworn and subscribed to before me this 18th day of May, 1928.

FRANK NELSON JESS,
Atty. at Law of N. J.

A true copy.
THOMAS BARBER,
Clerk.

30

[ENDORSED]

Consent is hereby given to the filing of the within replication and answer to counter-claim out of time.

Frank Nelson Jess,
Solicitor for Defendant.

10

ORDER OF REFERENCE.

(Filed March 28, 1928.)

IN CHANCERY OF NEW JERSEY.

Between

EARL F. BARTLING,

Petitioner,

and

ALTHEA BARTLING,

Defendant.

On Petition for
Divorce.
Order of Reference.

20

This matter being opened to the Court by S. Rusling Leap, solicitor for and of counsel with petitioner, and Frank Nelson Jess, solicitor for and of counsel with the defendant, and upon reading the consent hereto underwritten: 30

It is, thereupon, on this 28th day of March, 1928, ordered that the above stated cause be referred to Honorable E. B. Leaming, one of the Vice-Chan-

cellors of this Court, to hear the same for the Chancellor and to report thereon to him and advise what order or decree should be made herein.

E. R. WALKER,
C.

We hereby consent to the above order.

S. RUSLING LEAP,
Solicitor for Petitioner.

FRANK NELSON JESS,
Solicitor for Defendant.

10

A true copy.

THOMAS BARBER,
Clerk.

DESIGNATION.

(Filed May 14, 1928.)

20

IN CHANCERY OF NEW JERSEY.

Between

EARL F. BARTLING,
Petitioner,

and

30 ALTHEA BARTLING,
Defendant.

On Petition for
Divorce.
Designation.

An order having been made by his Honor Edwin Robert Walker, Chancellor, bearing date the 28th

day of March, 1928, referring the above matter to Honorable E. B. Leaming, one of the Vice-Chancellors, to hear the same for the Chancellor, and report thereon to him and to advise what order or decree should be made therein:

It is, therefore, on motion of S. Rusling Leap, solicitor for and of counsel with petitioner, ordered that this cause be set down for hearing on the 19th day of December, 1928, at 10:00 o'clock in the forenoon, or as soon thereafter as the same may be heard at the Chancery Chambers, in the City of Camden, County of Camden, New Jersey. 10

E. B. LEAMING,
V. C.

We hereby consent to the above designation.

S. RUSLING LEAP,
Solicitor for Petitioner.

FRANK NELSON JESS,
Solicitor for Defendant. 20

A true copy.

JOHN M. SUMMERILL, JR.

NOTICE OF HEARING.

(Filed Dec. 19, 1928.)

IN CHANCERY OF NEW JERSEY.

10 Between
 EARL F. BARTLING,
Petitioner,
 and
 ALTHEA BARTLING,
Defendant. } On Petition for
 Divorce.
 Notice of Hearing.

To Frank Nelson Jess, Solicitor of the Defendant:

20 Take notice of the hearing of this cause before the Honorable Edmund B. Leaming, the Vice-Chancellor of this Court to whom the said cause has been referred, on the 19th day of December, 1928, at ten o'clock in the forenoon, at the Chancery Chambers, in the City of Camden, the time and place designated by the order of the said Vice-Chancellor.

S. RUSLING LEAP,
Solicitor for Petitioner.

30

[ENDORSED]

I hereby acknowledge service of the within notice of hearing this 16th day of May, 1928.

Frank Nelson Jess,
 Solr. for Deft.

TESTIMONY.

IN CHANCERY OF NEW JERSEY.

Between	}	On Petition, etc.	10
EARL F. BARTLING,			
<i>Petitioner,</i>			
and			
ALTHEA BARTLING,	}		
<i>Defendant.</i>			

December 19, 1928.	20
December 20, 1928.	
January 2, 1929.	

LEAMING, V. C.

S. RUSLING LEAP, ESQ., for petitioner.	30
FRANK NELSON JESS, ESQ., for defendant.	

The Court: Are counsel ready in the case set for this morning?

Mr. Leap: Yes, I think so, if the Court please.

The Court: You may as well proceed with the evidence, I have read the pleadings.

Mr. Leap: If the Court please, I would like to offer first the certificate of marriage.

The Court: Let it be filed.

Mr. Leap: Your Honor has the order of refer-
10 ence?

The Court: Yes.

EARL F. BARTLING, SWORN.

By Mr. Leap:

20 Q. Where do you live, Mr. Bartling?

A. 104 Kendell Boulevard, Oaklyn.

Mr. Jess: If the Court please, interrupting the course of things for a moment, there are two suits involved, and as to the proofs I am wondering whether each case will be taken up separately, that is, the adultery case, and then we would prove the desertion case.

30 The Court: No, I think the adultery case should go ahead, because that excludes everything else. There might be adultery and subsequent desertion. I think I would hear the adultery case first.

Q. How long have you lived in Oaklyn, Mr. Bartling?

A. For thirty years.

Q. You were married to the defendant in this case, as set forth in the record of marriage, on the first day of March, 1915, by the Rev. Harvey L. Jacoby, at Oaklyn?

A. I was.

Q. What has been the attitude of your wife toward you in the last three or four years?

A. The last three or four years all that I found when I lived with her was everything I did was wrong, everything I was interested in — 10

The Court: Will it be necessary to go outside of the specific charge?

Mr. Leap: Except just to form just a little foundation; it won't take over three or four questions, that is the only thing, and to show how the adultery was discovered, and to show the facts leading up to that.

20

The Court: Make that short, because we have got to get down to the specific charge.

The Witness: In general, nothing pleased her.

Q. As the result of that attitude, what did you do?

A. We made a temporary separation.

Q. When?

A. About 1923.

Q. Come on down to date.

30

A. I don't quite understand you.

Q. What did you do around about the year 1926 in reference to your wife?

A. We lived together again, but we couldn't hit it, and in 1926 —

Q. What time of the year?

A. In the early months, February, January, even

in December, when the youngest child was born, I came into the house unexpectedly one day at noon, and I found my wife, her sister and the nurse pan-ning me in general. I was everything a man could be but what was right, and I called them over the mat for it, and told my sister-in-law to get out.

Mr. Jess: I think this is rather irrelevant.

10 Mr. Leap: I admit it is irrelevant.

The Court: Make it very short. This is not an issue, of course, in your case.

Q. Did you, or didn't you, discover any circumstances around the house in February, March or April of 1926 that aroused your suspicions?

20 A. Yes, I did. My wife was so cold toward me, she took no interest in me at all, and I began to think that after 13 years I would have to admit I was wrong, she wasn't interested in me, and because of that I decided I would live somewhere else temporarily and see whether she would take any more interest in me by being away, and I hadn't been away from home but a very short time when friends told me —

The Court: You need not tell what the friends told you.

30 Q. Just what you found.

A. The result was that one evening, on April 15th, I found an automobile —

The Court: That was 1926?

The Witness: April, 1926, April 15th, I found an automobile parked in front of the house —

Mr. Jess: If the Court please, I don't want to interrupt any more than I have to, but all of these allegations are far preceding the times alleged in the petition, all antedate that, and I can't see the relevancy of it.

The Court: The adultery charge is for approximately what time?

Mr. Jess: In the month of June, 1926, and the 10 succeeding months.

The Court: This, perhaps, leads up to that. I can't exclude it.

The Witness: I saw my wife and a man who I later identified as Albert Ackley get out of a car sometime after 11 o'clock and go into the house. My brother was with me in the car, and we drifted down that way because I was still very much interested in the family, and I waited—take that off, please—20 as my memory serves me, I decided to drive away, but at second thought I came back, and I went in the house and I found Albert Ackley and my wife in the kitchen with the shades pulled down, refreshments sitting on the breakfast nook table, that was more than my wife done for me, and I warned Ackley I was paying the bills around the house, it was my house, and he had better get out, and my wife told me to mind my own business and she would entertain who she saw fit. I left the property, left 30 the house, and went outside, and my brother and I remained outside for a period of at least half an hour, because Ackley did not leave. I sent for Mr. Benner —

Q. Leaving that point, as the result of that dis-

covery made by you, did you attempt to check up the actions of your wife from that time on?

A. I did.

Q. Coming down to the month of June, 1926, tell us what you discovered at that time?

A. In June, 1926, and various months after that, I found a car parked anywheres but in front of the house. I took the license number and verified it with Harrisburg that the car belonged to John McDowell, and two or three evenings a week you would
10 always find the car parked in the neighborhood, and on a number of occasions I saw John McDowell in the neighborhood, and one evening while watching the house he finally reached his car, how I don't know.

Q. Where was he at the time when you first saw him?

A. I saw him get in the car that night for the first time.

20 Q. Had you been watching the house?

A. I had been watching the house and watching the car.

Q. Do you know whether or not he was in the house at the time?

A. I do not.

Q. You saw him get in the car?

A. I saw him getting in the car.

Q. Then what did you do?

A. I watched the house every opportunity I had
30 after that. Sometimes I saw McDowell pull up with my wife in the machine at six o'clock in the evening and leave her out.

Q. Leave who out?

A. Leave my wife out. They had apparently been out driving together, and at other times I saw him leave her out of the car at 11 o'clock or 11.30.

Q. That is in the night or in the daytime?

A. At night. One night I was in touch with Officer Zepke on Beechwood Avenue, he came off duty at 12 o'clock, and I was waiting for him on a business matter, and I saw the Ford car McDowell was driving at that time parked in front of the property adjacent to 33 Beechwood Avenue.

Q. Who lived in that property?

A. 33 Beechwood Avenue?

Q. Yes.

A. My wife and children. This was next door, it 10 was in front of 35.

Q. Who lived in that house?

A. Mr. Charles Pettit at that time; directly before that the property had been empty. I left Mr. Zepke's house about half past twelve, and Mr. McDowell had been endeavoring to start his car, he had stalled it on Lakeview Avenue, which is only about 150 feet from the house, but before I drove away I identified both McDowell and the car that night.

Q. Then what happened, what did you do? 20

A. I decided one night I would endeavor to check up very carefully on them, and I went back to my home about 9 o'clock. There was no one home, the light was burning in the living room, and I endeavored to unlock the door with my key and I discovered the front door lock had been changed, and I decided to go inside, so the window was open on the side, and I climbed in the window, and I found my boy asleep in the crib.

Q. How old was your boy at that time? 30

A. About a year old. I had another young man with me at the time, and I left him in the front door, and we went all through the house and there was no one home, and we endeavored to secrete ourselves—

The Court: No one home but the children?

The Witness: But the one child, just the baby, that is all. At 11 o'clock we flashed a flashlight where there were toys and everything else cluttered around the second floor, you couldn't move your foot without stumbling, and a Ford car pulled down the street and they saw the light and they went next door and they called Mr. Keen.

Q. Who is Mr. Keen?

10 A. The man who lived next door with Mr. Pettit, and he came in—they told him it was burglars—by they, I mean my wife and Mr. McDowell—and he held me and the young man that was with me at the point of a revolver until the officer came in, Officer Zepke.

The Court: Who held you at the point of a revolver?

20 The Witness: Mr. Keen, assuming I was a burglar. I wasn't known to Mr. Keen, he had moved in at a later date, and when Mr. Zepke came in he identified me, told them who I was, told him it wasn't a burglar, and I came down-stairs, and my wife was there with Mr. McDowell, they had gotten out of the car together, and they had been out together.

Q. What time of the night was that?

A. Sometime after eleven.

30 Q. What time had you first gone into the house?

A. Nine o'clock.

Q. You had been in there all that time?

A. I wouldn't say I was in the house from 9 to a little after 11, I was on the premises, I probably was in the house from 10 o'clock to 11.

Q. All right, go on.

A. So we went on out, went over on the other side of the street, and remained behind a hedge, and everybody else left, and after they had left John McDowell left.

Q. What is your next recollection, what next did you find at the house?

A. I didn't make any more survey, but I had some friends of mine make a survey to watch the situation.

Q. Did you at any time arrange with this next-door neighbor, Keen, to watch the house? 10

A. I did the following day.

Q. What is his full name?

A. Herbert L. Keen.

Q. The first night you met him was that night when he thought you were a burglar?

A. Yes, sir.

Q. Where does John McDowell live?

A. 5214 Castor Road, Philadelphia.

Q. Is he a married man or single? 20

A. Married, and I understand he has eight children.

Mr. Jess: Now, if the Court please —

The Court: Let it stand for what it is worth.

Q. What else did you discover at the house?

A. I didn't discover none at the house, the next thing I discovered was based on my evidence where I swore out a warrant for their arrest, and I came in the following morning, that was sometime in November, the early part of November, and I found my friends had had them arrested. 30

Q. Had you between June and November personally been keeping a check on the house, had you

been watching the house yourself to see whether or not McDowell was there?

A. In a general way, any night you drove up there to watch the house, at least two nights a week, McDowell's car was in the locality, and sometimes you could find McDowell and sometimes you couldn't.

Q. How many children have you by the marriage, Mr. Bartling?

A. I have two.

10 Q. What are their names and ages?

A. Althea Elizabeth.

Q. How old is she?

A. Eleven. And Earl Francis, Jr., almost three.

Q. Who has custody of the children at the present time?

A. My wife.

Q. Have you at any time since the discovery of the fact that this man McDowell was visiting your house had intercourse with your wife?

20 A. I have not.

Cross-examination.

By Mr. Jess:

Q. When did you say, Mr. Bartling, that you first discovered Mr. McDowell was visiting your home?

A. In June, 1926.

Q. In June, 1926?

30 A. Yes.

Q. When did you first see Mr. McDowell?

A. In June.

Q. Where?

A. On Beechwood Avenue walking down to the house; he had been described to me by friends of mine who told me he was visiting there.

Q. You had heard he had been visiting at your home when you first saw him?

A. I had.

Q. Did you engage Mr. McDowell in conversation?

A. I did, I called on Mr. McDowell at the Maytag agency on Federal Street.

Q. I mean on this occasion when you first saw him?

A. I did not, for I had no positive evidence and therefore I had no right to charge the man at the time. 10

Q. You did not speak to him at all?

A. I had never been introduced to the man.

Q. Mr. Bartling, who owns the property known as 33 Beechwood Avenue?

A. You mean today or previous?

Q. Who owned it at that time?

A. The Suburban Lumber Company.

Q. Who owns it today?

20

A. Smith-Austermuhl Insurance Company.

Q. You say you decided, in your direct examination, to check up. When did you come to that decision?

A. Following a conversation with some of my friends.

Q. About when, I mean.

A. Probably March, 1926.

Q. Were you then living with Mrs. Bartling?

A. Not when I decided to check up.

30

Q. Beg pardon?

A. Not when I decided to check up I wasn't living with her.

Q. Then you were not living with Mrs. Bartling in March, 1926?

A. Not the latter part. If my memory serves me

right, I was living with her in the early part of March, 1926.

Q. When did you leave her, Mr. Bartling?

A. Early in March, 1926.

Q. Do you remember the date?

A. No, I do not.

Q. How many times have you talked to Mr. McDowell during the period of time when you first learned, as you say, he was visiting at your home,
10 to the present date?

A. Just once.

Q. When was that?

A. Probably in July, 1926.

Q. Where?

A. At the place where he is employed, where he was employed, the Maytag Agency in Camden.

Q. You knew what his business was, didn't you?

A. I did.

Q. What was his business?

20 A. Salesman for the Maytag Washing Machine Company.

Q. Do you know whether he conducted that business in Oaklyn, among other places?

A. No.

Q. You don't know?

A. No.

Q. When did you first meet this Mr. Keen, to whom you spoke?

A. In October, 1927.

30 Q. In October, 1927?

A. That is correct.

Q. Now, you say —

Mr. Leap: I don't think he understood your question.

Mr. Jess (To the stenographer): Will you please repeat the question?

(Question repeated.)

The Witness: That is right, 1927, October.

Q. You spoke of having friends who you spoke to about watching your home, who were those friends?

A. My brother, Raymond Bartling, on Beechwood Avenue; Mr. Ralph Patton, of Philadelphia; Mr. Harry Hobroyd, of Camden.

Q. Anybody else?

10

A. Mr. Norman Benner, of Oaklyn, and my brother, Fred Bartling.

Q. Anybody else, Mr. Bartling?

A. Not that I can remember offhand.

Q. Did you on any other occasion take this same matter up, or question, with anybody else?

A. I don't understand you.

Q. Well, you say you procured several of your friends to do some so-called detective work, I don't think you used that term, but to watch your home, 20 didn't you?

A. That is correct.

Q. Were there any other individuals, or was there any other person, on any occasion, which you employed for that same purpose?

A. Not that I know of.

Q. Not that you know of?

A. No.

Q. How long have you known Mr. Batten, Mr. Bartling?

30

A. Mr. Batten?

Q. Didn't you mention Mr. Batten?

A. Mr. Patton, I met him the day following the day Mr. Keen held me up.

Q. What do you mean, Mr. Keen held you up?

A. The night I told you he held me up in the house assuming I was a burglar, and the following day I

made the friendship of Mr. Patton, Mr. Keen, who I had met the night before, and Mr. Hobroyd.

Q. You had not met Mr. Patton on any previous occasion?

A. No.

Q. Up to that time he was not a friend?

A. No.

Q. What is Mr. Patton's business?

A. Jewelry and optician salesman, Philadelphia.

10 Q. Has he any other business?

A. He has been engaged in private detective work.

Q. How about Mr. Hobroyd, of Camden, when did you first meet him?

A. I said that was the first time.

Q. What is his business?

A. Collection business with Judge Shoemaker at Highland Park.

20 Q. Collection business with Judge Shoemaker at Highland Park?

A. That is right.

Q. Has he any other business?

A. He has done some private detective work.

Q. Now, you speak of Mr. Benner, of Oaklyn, you have known him for some little time, Mr. Bartling?

A. Yes, indeed.

Q. You live with Mr. Benner?

A. At the present time I do.

Q. And you have lived with him for how long?

30 A. Something over a year.

Q. So that, Mr. Bartling, when you speak of Mr. Patton and Mr. Hobroyd as friends of yours, you mean detectives, men who engaged in private detective business who were introduced to you by Mr. Keen?

A. That is correct.

Q. What is the business of Mr. Keen?

A. I don't know what his business is; at that time he was also interested in private detective work.

Q. He was?

A. Yes.

Q. Mr. Bartling, you said another young man was with you on this particular night when you two went into your home in Oaklyn, who was this other young man?

A. A young man named Richard Stutzenberg.

Q. Where does he live?

10

A. I don't know; at that time he lived in Garden Lake.

Q. How long had you known him?

A. About three or four years.

The Court: What time of the year, what date was it, about, that this occurred, when you say you were held up in your house?

The Witness: In October, 1927, the 27th. I had been watching the house from June, 1926, until October, 1927, a little over a year. 20

Q. Now, you say you saw Mr. McDowell's machine around the streets of Oaklyn and in the vicinity of your home on many occasions?

A. I wouldn't make it so general, I would say within a square of the house.

Q. Did you see Mr. McDowell, or his automobile?

A. Mostly his automobile. Sometimes Mr. McDowell with the car, sometimes him on the street. 30

Q. Was this usually in the evening?

A. It was at various times, either half past three in the afternoon until half past one, just beyond midnight.

Q. How frequently did you say you saw him?

A. I didn't go near the house every night, for I

have a lot of private business I have to take care of for the company.

Q. How often would you go near the house?

A. Never less than one week in a month, sometimes two weeks in a month, and I could always find him there a couple of nights a week.

Q. You say you would go there perhaps one week a month and you would find him there a couple of times a week?

10 A. Yes.

Q. Do you mean during that particular week you would visit more than once a week?

A. I made a practice of driving through that locality both afternoon and evening.

Q. You had seen Mrs. Bartling in his company?

A. I had.

Q. On how many occasions did you say that you had seen Mrs. Bartling in his company?

A. How long? Are you including altogether?

20 Q. Yes.

The Court: Are you speaking of Bartling now or McDowell?

Mr. Jess: Speaking of Mr. McDowell.

The Witness: I saw them together at least a dozen times.

30 Q. Where were they when you saw them?

A. I saw them in the car.

Q. Where?

A. In front of the house, coming to and going from, I saw them inside of the house in the living room.

Q. When did you see them inside of the house in the living room?

A. I don't know the exact date.

Q. About when was it?

A. I would say in October, 1927.

Q. What were you doing in the house on that occasion?

A. Checking up on them.

Q. Did you go into the house on this particular occasion?

A. I did not, because the man was getting ready to leave at the front door.

Q. Where were you when you saw him?

A. Right near the front door.

Q. Was he fully attired?

A. Yes, sir, he was.

Q. You didn't say anything to him then?

A. No.

Q. Did you say anything to Mrs. Bartling?

A. No.

Q. Mr. Bartling, did you ever complain to Mrs. Bartling about this conduct of which you complain?

A. She told me to mind my own business with Ackley, and I was doing what she told me to do.

Q. You have made no complaint against Mr. Ackley in your petition, have you?

A. I believe I have.

Q. You haven't mentioned his name, have you?

A. I believe I have.

Q. I don't find his name.

Mr. Leap: No, his name is not in this petition.

Q. As far as Mr. Ackley is concerned, you said you simply went home one night and he and Mrs. Bartling were eating in the breakfast nook?

A. You didn't let me go on with the story.

Q. I didn't stop you.

A. I will give the rest of it now. When they had

10

20

30

finished eating the shades were pulled down in the kitchen.

Q. Where were you, Mr. Bartling?

A. I was in the lot alongside of the house.

Q. The shades were pulled down?

A. In the kitchen, but not in the dining room windows, and a view was obtained, not into the kitchen, but just into the corner of the breakfast nook, and the passage way that went between the dining room
10 and kitchen in front of the breakfast nook, and when they got through eating they went back into the kitchen, I could see them leave the breakfast nook, and they turned the kitchen light out and they remained there, I would say, for at least 10 minutes, and then they came from the kitchen back toward the dining room, and I saw Mr. Ackley put his arms around my wife's neck, but I couldn't see whether they kissed.

Q. Was that the only time you complained to Mrs.
20 Bartling?

A. It was.

Q. During all these times when you saw that Mr. McDowell was in her company you never complained to her on one occasion, did you?

A. No, I did not.

Q. You loved Mrs. Bartling, didn't you?

A. I did.

Q. You wanted to protect her as your wife, didn't you?

30 A. I did.

Q. You felt it was your duty to?

A. I did.

Q. Why didn't you complain to her about this course of conduct?

A. Because I realized there was no use, because she had told me to mind my own business.

Q. You were satisfied to let the matter go at that?

A. There was nothing else to do, I found she never respected my wishes anyhow, at any time.

Q. Then the only occasions on which you saw Mr. McDowell and Mrs. Bartling together were outside in the automobile, except on this one occasion when he was in the living room with his hat and coat on?

A. Beg pardon, they were in the living room together on the night they called Mr. Keen in there.

Q. Were you there?

A. I told you Mr. Keen held me with a gun. 10

Q. That is the night to which you referred?

A. No, that is another night.

Q. Mrs. Bartling came in from the outside with Mr. McDowell?

A. She had been riding with Mr. McDowell, they got out of the machine together.

Q. How do you know that?

A. I was on the second floor looking out the window.

Q. What were you doing in the house that night? 20

A. I was in there checking up, because I expected to find them together.

Q. Did you find them there?

A. I told you I did not, I found the baby by himself.

Q. Your friends were directed along the line of checking up rather than putting a stop to this conduct, you tried to find them there?

A. Every time I made an effort to address my wife she paid no attention to me. On a few occasions I did talk with her. I was interested in the welfare of the children, for when they got scarlet fever they sent for me, and I went up there with Mr. Benner, I hired a doctor, and I told them I would hire a trained nurse, and she told me she had hired a nurse and that it would cost me \$15 a week, and I paid the \$15 a week, and I told the druggist to give 30

them whatever they wanted and to send the bills to me, and I discovered afterwards I was paying her sister-in-law. I take my children out, I buy them clothes, I give my little girl spending money, I take her to a show, and I am very much interested in my children, but not in my wife today.

Q. Were you interested in your wife at the time you left her?

A. I was.

10 Q. And the only complaint you had to make was when you on one occasion took her to task about being in the company of this Mr. Ackley?

A. She said, "I will entertain who I see fit and it is none of your business."

Q. And you were satisfied to leave her under those conditions, not to make any effort to remain with her and carry out your duty as a husband to your wife and children?

A. I told you I was temporarily residing elsewhere at that time.

20 Q. What do you mean, temporarily residing elsewhere?

A. I was residing at the Walt Whitman.

Q. When did you go to the Walt Whitman?

A. When I left her.

Q. You had been living with her up to this particular time in March, hadn't you?

A. The Ackley affair was in April, I left her in March, I was living at the Walt Whitman during
30 that time.

Q. The Ackley affair was when?

A. In April.

Q. So you left her before the Ackley affair?

A. Temporarily.

Q. What do you mean temporarily?

A. Every time I came home in the evening all I heard—I got a lacing for being late.

Q. Your time for returning home was somewhat irregular?

A. Always has been, and it is today.

Q. Sometimes you were not able to get home all night, were you?

A. That is true, even now I wouldn't be able to get home every night.

Q. What is your business?

A. I am connected with the lumber business, and with the Garden State Damp Wash Laundry. 10

Q. Where does your business require you to go that requires you absenting yourself from home all night?

A. At the laundry plant at Audubon, sometimes on a business trip to various cities where I buy lumber and other material.

Q. Why didn't you tell Mrs. Bartling on these occasions you wouldn't be home, and where you were going?

A. I never knew when I went to the laundry plant whether I would be there all night or not. 20

Q. You didn't tell her when you were coming home.

A. I didn't know when I left.

Q. When you went to the laundry plant and found you weren't coming home you didn't think it was necessary to let her know?

A. I had no way to let her know.

Q. Didn't you think she would be interested in your whereabouts during the night? 30

A. I couldn't do otherwise.

Q. You had some means of communicating with her, didn't you?

A. I did not.

Q. Audubon is not so far removed from Oaklyn that you couldn't let her know?

A. I didn't know up until twelve or one o'clock

whether I would have to stay all night or not, damp laundries operate all night.

Q. When you were going on these business trips couldn't you let her know you weren't going to return home?

A. I didn't know I was going on them.

Q. Couldn't you communicate with her and tell her, "I won't be back all night, my business detains me"?

10 A. I had no way to communicate with her, we had no telephone.

Q. You left her, with the children, there in the house alone at night and not letting her know where you were going or coming back, isn't that true?

A. I wouldn't say many nights.

Q. On some occasions you did that?

A. A few times.

Q. And the baby was quite young?

A. Yes.

20 Q. Would you say that was the conduct of a devoted husband?

A. I couldn't do any different.

Q. Now, as a matter of fact, Mr. Bartling, in your petition you allege adultery as having been committed in June, 1926, and the succeeding months, 1926, January, 1927, and the succeeding months of that year, and particularly in the months of October and November, 1927; as a matter of fact, as far as you know no acts of adultery were ever committed
30 on those occasions, or on any other occasions, isn't that true?

A. I wouldn't say so. I have no positive evidence myself.

Q. And the only evidence you have is the fact you have seen them together in the automobile, and once or twice you saw them in the living room in your home, and on none of these occasions did you

remonstrate with Mrs. Bartling that she should change her course —

The Court: Don't you think you have asked that question so much now that it might be eliminated? I would like to get through today. I think that has been asked many times.

Mr. Jess: I think that is sufficient, if the Court please.

10

By Mr. Leap:

Q. You started to tell us about a conversation you had with Mr. McDowell at the Maytag Washing Machine Store in Camden, will you tell us what that was?

A. There were people coming in and out at their agency, and I said, "McDowell, I am Bartling, I am from the Suburban Lumber Company, and I live at Oaklyn; you know my wife, and you had better stay away from there, and my advice to you is to come down to my office and talk the matter over," but he never showed up.

Q. What did he say to you?

A. He said nothing, he wholly ignored me.

Q. When was that that you had that conversation?

A. In June or July, 1926.

Q. At the times you have seen your wife and Mr. McDowell in each other's company, how did they act toward each other?

A. Very much interested in one another.

The Court: Isn't that a part of your principal case? Is there any reason for going back to the principal case?

30

Mr. Leap: Except I would just like to show this, I overlooked it during my part of the principal case.

The Court: If there is anything you overlooked you might supply it, but that opens up the entire cross-examination again, but go ahead, ask him that.

Q. How did they act that made you feel they were
10 interested in each other?

Mr. Jess: I object to that, I think that is a conclusion which you can't very well state.

The Court: He may describe what he saw.

The Witness: McDowell always helped her out of the car, helped her up the walk, helped her up the steps and in the door.

20 Q. Did you ever hear him address her?
A. I did not.

NORMAN BENNER, SWORN.

By Mr. Leap:

30 Q. Where do you live, Mr. Benner?
A. 104 Kendell Boulevard, Oaklyn.
Q. Mr. Bartling is living at your home?
A. Yes.
Q. How long has he been living there?
A. Very close to two years.
Q. You are employed, aren't you, with the Sub-urban Lumber Company?

- A. Yes, sir.
- Q. What is your capacity there?
- A. Salesman.
- Q. How long have you known Mr. Bartling?
- A. Approximately eight years.
- Q. During that time he has been engaged in business at Oaklyn?
- A. Yes.
- Q. Do you know the defendant, Althea Bartling?
- A. By living in Oaklyn. 10
- Q. Did you, at Mr. Bartling's request, accompany him to his home—is it on Beechwood Avenue—33 Beechwood Avenue, Oaklyn?
- A. That is right.
- Q. Sometime in April, 1926?
- A. Yes.
- Q. Please tell us what you discovered there and saw that night.
- A. About 12.35 on the 16th of April his brother Fred came to my home and rang the bell and woke me up out of bed and asked me to get dressed and come around to the home of Earl Bartling, there was something there he wanted a witness to, so I went with Fred around there, and when I got there there was some gentleman in the breakfast nook of the home, with the lights lit, with Mrs. Bartling, and we stayed on the outside for a considerable time —

The Court: At what time was that?

The Witness: About half past twelve. 30

The Court: After midnight?

The Witness: Yes. Then Fred left and went after an officer, I didn't know where he was going at the time. The officer came, and Earl asked the

officer, or told the officer, that this gentleman was in there with his wife, and the officer explained to him that he couldn't do anything unless he swore out a warrant for his arrest, and Earl said, "All right, I will go in with you and swear out the warrant to have them arrested," and the officer entered and arrested a man by the name of Albert Ackley, and took him down to the Recorder and gave him a hearing.

10

Q. What did you see at the time you were looking in the window, did you see Mr. Ackley and Mrs. Bartling?

A. I saw them in the breakfast nook, and I saw them enter the kitchen through the light into the darkness of the kitchen, and they were in there for a short time.

Q. How long would you say?

20

A. About 10 minutes, not more than that.

Q. Then what did you next see?

A. I saw Mr. Ackley go to the dining room, or the living room, to get his overcoat, I presume, as they were leaving the darkness he went through where the light shone through the window, and Mr. Ackley had his arm around Althea's neck as they entered into the other room where Mr. Ackley was getting his coat. I saw him going through motions as if putting on a coat, and they stood there together for a short time, and then the officer arrived.

30

Q. Do you know a man by the name of John Y. McDowell?

A. I do not.

Q. Do you know who he is?

A. I do not.

Q. Have you on any other occasion been to Mr. Bartling's house to see whether or not anyone was

in the house with Mrs. Bartling, or have you been keeping a watch on the house?

A. I was asked on another occasion to go with Mr. Bartling the night that he was in there that Mr. Keen came there when Mr. McDowell and Mrs. Bartling came home in the car.

Q. Were you there that night?

A. Yes, sir.

Q. Tell us what you saw.

A. I was on the other side of the street with Fred. 10

Q. Fred Bartling?

A. Fred Bartling, Earl's brother; I had been there, I would say, for an hour or an hour and a half, not in the one particular spot, walking around there, and at this time I was on the other side with Fred when, I believe, Mr. McDowell and Mrs. Bartling drove up, and Mr. Bartling and Mr. Stutzenberg were in the house at the time, Fred had told me they were in the house, and I seen Mr. Bartling flash a light up-stairs as they drove up, and Mrs. Bartling got out of the car first, and Mr. McDowell followed, and as they got out they seen this light on the second floor and they hesitated. Mrs. Bartling ran into the house next door and said there was someone in the house, and as she did Mr. Keen and another lady came out and went into the house with Mrs. Bartling, and I believe Mr. McDowell, and they went up-stairs and found Mr. Bartling there, and through the excitement someone went down to Mr. Zepke's house, which is about half a square away, and Mr. Zepke came back and went up into the house—I had never entered the house, I was across the street, just stood on the other side observing this excitement—and Mr. Zepke went up and told — 20 30

Q. Were you in the house at that time?

A. No.

Q. You can't testify as to that. What happened afterwards, did you see Earl come out and see Zepke come out?

A. I saw Earl come out and Mr. Zepke come out.

Q. Did you see Mr. McDowell come out?

A. I did not.

Q. Was he in the house when Earl came out?

A. Yes.

Q. You did not wait any longer?

10 A. I did not.

Q. Have you ever seen McDowell around the house at any other time?

A. I wouldn't know the gentleman if I seen him.

Q. Do you know his automobile?

A. I do not.

Cross-examination.

20 By Mr. Jess:

Q. Mr. Benner, where were you standing when you say you saw Mrs. Bartling and this man Ackley together?

A. In the driveway alongside of the house.

Q. What part of the house, front or back?

30 A. The side toward the pike, there is a porch, a side door on that side, and the dining room, and I believe the kitchen; I am not familiar with the house to that extent, but I believe it is a dining room and an entrance there.

Q. Were you standing at the front or rear of the house?

A. Toward the center.

Q. The shades were drawn?

A. In the kitchen, or the back room, of that side of the house.

- Q. Where was Mrs. Bartling when you saw her?
A. In the breakfast nook.
Q. Where is that?
A. It is just an offset of the kitchen, towards the center of the house.
Q. The shades were drawn there, weren't they?
A. I believe they were, I was looking in the side toward the Pike, and the breakfast nook is in the back of the house toward the center.
Q. How could you see? 10
A. There is a doorway through, and the light being lit in the breakfast nook would attract your attention to that particular corner.
Q. You could see from the side all the way back to the breakfast nook?
A. It is a direct line.
Q. You weren't in the house at all?
A. No.
Q. You have known Mrs. Bartling for some time, too, haven't you?
A. Yes. 20

CAROLINE BEASLEY, SWORN.

By Mr. Leap:

- Q. Where do you live, Mrs. Beasley?
A. 29 E. Beechwood Avenue.
Q. Do you know the petitioner, Earl Bartling? 30
A. Yes.
Q. Do you know his wife, Althea Bartling?
A. Yes.
Q. How long have you lived at 29 E. Beechwood Avenue?
A. Nine years this June.

Q. And the Bartling home is right next to your house?

A. Right next door.

Q. Were you in the Bartling house during the month of April, 1926, at the time a young man by the name of Ackley came in with Mrs. Bartling?

A. Yes, I was.

Q. Why were you in the house?

A. To take care of the children while she was out.

10 Q. And did Mr. Bartling come into the house while you were there?

A. As soon as they came in I went out.

Q. Was there anyone else in the house?

A. Just the two children, that is all.

Q. So when you left there was no one in the house but Mr. Ackley —

A. And Mrs. Bartling, that is all.

Q. Do you know a man by the name of McDowell, John Y. McDowell?

20 A. I do.

Q. Will you tell us what you know about him, and whether or not you have seen him at the Bartling house, tell us in your own words what you know of the affairs between them?

30 A. Well, I knew him for about 10 years, he used to be a neighbor to my mother when we lived in the city, and I knew his wife personally, and I guess I seen him down there three or four times a week, his car parked next door, between the two houses, and the last I saw them go out was Armistice Day, they were out all day.

Q. When was the first you noticed McDowell going into Mrs. Bartling's house?

A. It will be three years sometime this summer he came there.

Q. Would you say in June or July, 1926?

A. I just don't know when, but it must have been around that time.

Q. What time in the day would he be at the house?

A. Any time at all.

Q. How long would he stay when he went in?

A. I never watched how long he stayed, but I saw them lots of times leaving the house at twelve, one o'clock, sometimes later than that.

10

The Court: At night?

The Witness: Yes, at night, yes. And it was nine o'clock on Armistice Day when they came home because his wife was in our house.

The Court: About what time was it when you saw him go in the house?

The Witness: I saw him go in so many times I couldn't tell you that.

The Court: Did you ever see him go in the house so late as that more than once?

The Witness: Yes, more than once, many times, many times, yes.

The Court: And how long would he stay on those occasions?

30

The Witness: Well, I don't know, I just happened to be sitting up at the window, and that is how I happened to see them.

The Court: You don't remember whether he re-

mained long or whether he went in and came right out?

The Witness: No.

The Court: Maybe he has gone in and come right out, so far as you know?

10 The Witness: Yes.

Q. Do you remember the first time you saw him go in the Bartling house, do you remember about when it was?

A. No, I couldn't tell you.

Q. Was it after the Ackley affair, or before that?

A. It was after that.

Q. It was after that?

A. Yes.

20 Q. Could you say whether it was the same summer after the Ackley affair?

A. Yes.

Q. It was the same summer?

A. Yes.

Q. When he would go in the house did you ever watch to see when he came out?

A. No, I just happened to be at the window, that is how I happened to see them go in.

Q. Did you ever notice him —

30 A. They were out one day and it was two o'clock in the morning when they came home, it was a real hot night, and I was sitting at the window and saw them come home.

Q. When did you see him leave the house?

A. It was shortly after that he left the house.

Q. About how long after?

A. I imagine he was in there about 10 minutes.

Q. Do you know whether or not he has ever stayed at the house overnight?

A. I saw him leave at 8 or 9 o'clock in the morning, but whether he stayed overnight, I don't know.

Q. You have seen him leave at 8 or 9 o'clock in the morning?

A. Yes, sir.

Q. Can you give me any idea what time of the year it was?

A. I think it was in cold weather.

10

Q. Do you remember the time when Mr. Bartling was arrested, or this affair Mr. Bartling described between he and Mr. Keen?

A. No, I don't remember that night.

Q. You don't remember that night at all?

A. No.

Q. You say Mr. McDowell is a married man?

A. Yes, has eight children.

Q. Is he living with his wife?

A. I don't know whether he is or not now.

20

Q. You said something about Armistice Day?

A. Mr. McDowell came down, I happened to be at the living room window —

Q. This year?

A. Yes, around 11 o'clock they went out, and it was 9 o'clock they came home in the evening, for his wife was at our house, and she went out and stood on the running board, and he took her from next door from Mrs. Bartling's house down to the corner, about a square, with her standing on the running board, and it had been raining, if you remember that.

30

Q. Did he drive slowly or fast?

A. He wasn't going fast.

Q. Why did he do that?

A. He was afraid his wife had someone down there to beat him up.

Mr. Jess: I object to this, I think it is immaterial.

The Court: Yes.

The Witness: She was on the side where he was driving the car and Mrs. Bartling got out of the other side.

Q. You know Mr. Bartling's two children?

10 A. Yes.

Q. Do you know whether or not these children were ever left in the house alone?

A. One night, it was over a year ago, I know both came in my house, and she said her mother ——

Mr. Jess: I object to that.

The Court: Yes.

20 Q. Tell what happened, nothing that the girl said.

A. She wanted me to come into the house, she said she was afraid to stay in the house.

Q. Did you go there?

A. No, I didn't go there. I told her I was too tired, I had been working hard, and couldn't go there.

Q. Did you notice that night what time Mr. McDowell and Mrs. Bartling returned?

A. No, I went to bed before 10 o'clock, and I don't know.

30 Q. Do you know of any other occasions when the children were left there all alone?

A. No, I do not.

Q. When you have seen Mr. McDowell and Mrs. Bartling together tell us what they did and how they acted toward each other?

A. I never took notice, because I just saw them

get out of the car together, but I never bothered looking.

Q. Did you notice whether he paid any attention to her?

A. Yes, he always took her arm, always led her into the car.

Q. Always led her into the car?

A. Yes.

Q. Did you ever see any display of affection between them? 10

A. No, I did not.

Q. What is the last time you ever saw McDowell there?

A. Armistice Day.

Q. On an average how many days would you see him a week?

A. Sometimes I would see his car down there three times a week at night.

Q. You said you saw him leave the house at 8 o'clock in the morning? 20

A. Nine o'clock in the morning.

Q. Was his car out front?

A. No.

Q. Did you see his car anywhere around there?

A. He was walking.

Cross-examination.

By Mr. Jess:

Q. Do you know what kind of a car Mr. McDowell had? 30

A. A Chevrolet.

Q. What kind of a Chevrolet?

A. Did you ask what kind of a car he had?

Q. Mr. McDowell, does he have a Chevrolet?

A. Yes.

- Q. Did he have that car when you first saw him?
A. No.
- Q. What kind of a car did he have then?
A. I don't know, he has had quite a few cars.
- Q. How many different cars has he had?
A. I couldn't tell you that.
- Q. He has had quite a few different cars?
A. Yes.
- 10 Q. What time have you retired at night this week, so far, about what time, approximately?
A. I guess about half past ten.
- Q. About half past ten?
A. Yes.
- Q. You usually retire about that hour, you say?
A. Yes.
- Q. Now, what time did you see Mrs. **Bartling** come in at night?
A. Sometimes I would see her come at that time, or before.
- 20 Q. Ten thirty or before?
A. I saw her lots of times in warm weather come home later than that.
- Q. Would you still be up?
A. Yes, I didn't go to bed so early in the summer.
- Q. In what part of the house is your living room?
A. The front.
- Q. On the Bartling side?
A. Yes, sir.
- 30 Q. Would you sit out on the porch a great deal during the summer?
A. Not in the daytime, I did in the evening.
- Q. How many times did you say you saw them returning after 10.30?
A. I couldn't tell you that.
- Q. More than once?
A. Yes.

Q. It would just so happen that on these particular occasions you would not have retired?

A. Yes.

Q. How long did you say Mr. McDowell usually remained in the house?

A. That I couldn't say how long, sometimes he would be there—if he came early he would stay a couple of hours.

Q. How did you know that?

A. I would see his car come up, and I would see 10 him when he came out.

Q. What time would he usually come down on these occasions?

A. Sometimes around 6 o'clock, sometimes after that.

Q. So you would be seated on the porch both when he came and when he left?

A. No, not always, because my kitchen is on that side, too, and if I was in the kitchen I could see his car.

Q. How do you account for the fact that you saw Mrs. Bartling and Mr. McDowell together so many times, you had something else to do, didn't you? 20

A. I would be there and I would see them, I would go out in the yard, or something, and see his car.

Q. Did you go out in the yard at nighttime?

A. Lots of times.

Q. Late at night?

A. If I was out to a show and came home lots of times his car was outside. 30

Q. How did you know it was his car?

A. I could tell it.

Q. Do you know whether anybody else would be with him on any of these occasions?

A. No, I do not.

Q. You say you don't know?

A. Lots of times he came himself.

Q. And some other times he had somebody else with him?

A. Very few times he had.

Q. Do you know, as a matter of fact, on these occasions, that there were some adult persons in that house?

A. I never have been in there when he was in there.

Q. You say you knew Mr. McDowell from living
10 in Philadelphia?

A. Yes, sir.

Q. You were friendly, neighbors?

A. Right next door to one another.

Q. Friendly?

A. Yes.

Q. Now, have you ever seen Mr. McDowell come to that home after midnight?

A. No.

20 Mr. Leap: At whose home do you mean?

Mr. Jess: To the Bartling home.

The Witness: No, I did not.

By Mr. Leap:

30 Q. Did Mrs. McDowell visit the Bartling house with Mr. McDowell?

A. Not with him, she did by herself, her and another lady.

Q. But he did not take her with him to the Bartling house?

A. No.

By Mr. Jess:

Q. Did anybody hire you to watch this house?

A. Nobody.

Q. You did this purely of your own volition?

A. Yes.

Q. You were interested in the matter?

A. Yes.

Q. So you paid unusual attention?

A. I did, yes.

10

Q. And sometimes you would sit up late at night and watch?

A. I didn't stay up late at night to watch, no.

By Mr. Leap:

Q. Why were you interested in it?

A. For his wife's sake, and the children.

Q. For Mrs. McDowell's sake?

A. Yes.

20

By Mr. Jess:

Q. What about Mrs. Bartling and the children?

A. I was until she started to go with him, with Mr. McDowell.

Q. And then you lost interest?

A. Yes.

30

CHARLES PETTIT, SWORN.

By Mr. Leap:

Q. Where do you live, Mr. Pettit?

A. Lucastown, New Jersey.

Q. Where did you live in the year 1926 and '27?

A. In 1926 I lived at 37 East Beechwood Avenue, Oaklyn.

Q. Where?

A. 37 East Beechwood Avenue, Oaklyn.

Q. That is next to the Bartling house?

A. Yes.

Q. Do you know Mr. Bartling?

A. Yes, sir.

10 Q. Do you know his wife, Althea Bartling, the defendant in this case?

A. I only know her to talk to.

Q. How long have you know Mr. Bartling?

A. About three years.

Q. About three years?

A. Yes, sir.

Q. When did you first meet him?

A. I met him about three years ago in his lumber yard, in the office.

20 Q. Now, do you know a man by the name of John Y. McDowell?

A. Yes, sir.

Q. Where did you meet him?

A. To meet him personally I met him at Lakeview Avenue and Johnson Avenue, Oaklyn.

Q. When was that?

A. I don't know exactly what date it was, but it was 12.30 at night.

Q. What was the occasion?

30 A. Well, I was working on the Oaklyn police force, and I was patrolling around the town with another friend with me, and as we got along by Bartling's house McDowell was trying to start his car, and he couldn't get it started, so he pushed it, and it is down-grade there, and when he got to Johnson Avenue the car hadn't got started yet, and he made a left-hand turn around Johnson Avenue, and

he kept pushing along, so he couldn't get it started, and naturally I drove up to notice who it really was, and when I got up there I found it was Mr. McDowell, and I asked him who he was, and where he was going, and he told me he had been around to 33 Beechwood Avenue, and he said his name was McDowell, from Philadelphia, and I said, "All right," I felt as though he was all right, and I said, "If I can help you out, I will help you out."

Q. Were you in uniform at the time? 10

A. And I was going to tow him with the police car, and then I thought no, because it might do something to the car, and a fellow by the name of Oscar Collon was with me at the time, he used to ride with me, and Oscar said something to McDowell about fixing the car, and McDowell said he couldn't get to a garage, and Oscar jumped in and fixed it, the starter was jammed, it is the first time I knew a Ford starter to jam, but his was jammed, and Oscar, knowing a little about a Ford, got underneath, and between Oscar and myself we arranged his starter, and Mr. McDowell thanked us, and he said he would pay us the next day and give us a cigar, but I never saw him until about a week after that. 20

Q. He said he had been at 33 —

A. 33 East Beechwood Avenue; he didn't say the name, or what he was doing.

Q. Who lived at 33 Beechwood Avenue?

A. Althea Bartling.

Q. What date did you say that was? 30

A. I don't know exactly.

Q. What time of the year was it?

A. I don't just remember what month it was, either.

Q. Do you recall at the time that Mr. Bartling was arrested in his house?

- A. In his house?
- Q. Or was it Officer Zepke?
- A. The night that there was a call that there was a burglar at 33 East Beechwood Avenue I went around, and Mr. Zepke was there, he was off duty —
- Q. Was this occasion you were speaking of before that or after that?
- A. Before that.
- Q. Would you say about how long before that?
- 10 A. Probably three weeks.
- Q. Three weeks before that?
- A. Yes.
- Q. Had you ever seen that car of Mr. McDowell's in the neighborhood before or afterward?
- A. Many times.
- Q. Where did you see it?
- A. Oh, sometimes on Johnson Avenue, sometimes on the White Horse Pike, sometimes on Beechwood Avenue, and a couple of times on Lakeview.
- 20 Q. Did you ever see Mr. McDowell get into this car?
- A. No, I never seen him get in it.
- Q. Did you ever see him get out of it?
- A. With the exception of the time he stopped in front of the house when I was going to work —
- Q. How many times would you say you had seen him?
- A. I don't know.
- Q. Did you ever see Mrs. Bartling and McDowell
- 30 in his car?
- A. Never.
- Q. Did you ever see him go into the Bartling house?
- A. Several times.
- Q. Will you tell us about it, when it was?
- A. I am not very good on memorizing dates or days, and I never took any interest in it.

Q. Was it before this incident with the starter?

A. Oh, yes, it was times before that, and times after that.

Q. What time of night or day have you ever seen him go in the house?

A. I have seen him go in there probably 6 or 7 in the evening, and I have seen him stop his car there at 9 or 9.30 in the evening.

Q. Do you know how long he has stayed at the house at any one time?

10

A. I never stayed around to find out.

Q. How many times altogether have you seen his car in the neighborhood of the Bartling home?

A. I couldn't say, I don't exactly know.

Q. Would you say five?

A. I couldn't say, because I don't exactly know.

Q. You don't know?

A. No.

Q. Did you at any time ever have a warrant in your possession for the arrest of John McDowell?

20

A. Yes, sir.

Q. Did you serve that warrant?

A. Yes, sir.

Q. Will you explain the circumstances surrounding that?

A. I just forget the date, but the evening that the warrant was given to me, it was given to me by Mr. Keen —

Q. Who was it that issued the warrant?

A. Judge Shoemaker, if I am not mistaken, from Highland Park, and Mr. Keen and Mr. Warren, who at that time was supposed to be in the State detective business, they said they had a warrant for Mr. McDowell and wanted to know if I could give them a hand, and they handed me a warrant, and the warrant was O. K., and we went up to the house and knocked at the door and Mrs. Bartling came to the

30

door and I asked her if I could see Mr. McDowell, and she said he wasn't there, and I said, "Are you sure he is not here?" and she said, "I am." Well, I seen him go in there, and I knew he was in there, and I said, "All right, but I think you are mistaken, he is in there," and I grabbed hold of the net door and pulled the net door open. It was hooked, and when I did, the hook came off, and I went in, and there stood Mr. McDowell in the parlor.

10 Q. How was he dressed?

A. An overcoat lying on the chair, and a hat lying on the chair.

The Court: What time was it?

The Witness: Probably around 11 o'clock in the evening.

20 Q. Was there anyone else there with them at that time?

A. I don't think there was. I don't recall exactly whether there was anyone there or not, but if there was anyone at all it would be his little girl, there was no grown people there, I know.

Q. Did you see the little girl in the house when you went in there?

A. It seems to me she was in the parlor, but I wouldn't want to say for sure.

30 Q. Do you know what time he went into the house that night?

A. Yes, it was around 9.30 or 10 o'clock when they went in there, somewhere around that time.

Q. Had they been out together?

A. Yes, they had been out together.

Q. In the automobile?

A. Yes, the Ford coupe.

Q. And you went to this house with the warrant about 11?

A. About 11, yes.

Q. Did you ever hear Mr. McDowell address Mrs. Bartling?

A. Never did.

Q. Ever hear him call her by name?

A. No.

Q. Ever hear her call him by name?

A. No, I did not.

Q. Did you take him away with that warrant?

A. Yes, I read the warrant to him, and he said, "All right, we will have to go," and they got their hats and coats on, and she went with him, and I took him over to Judge Shoemaker, where this warrant was served, and I turned him over to Mr. Keen and Mr. Warren, and it happened to be quarter past twelve, and I was done. I was finished with my shift, and Mr. Zepke was coming on at 12 o'clock, and Mr. Keen said if I wanted to take a ride over I could take them over in my machine, and I gave them a lift to Highland Park in my machine.

10

20

Cross-examination.

By Mr. Jess:

Q. You say this was a Ford car?

A. Yes.

Q. You are sure about that?

A. Yes.

Q. You never saw him there in a Chevrolet?

A. I don't remember.

Q. When you went to the house that night Mr. McDowell was fully attired, wasn't he?

A. Yes, sir.

Q. Mrs. Bartling fully attired?

30

A. Yes, sir.

Q. And you say the little girl may have been home?

A. I just can't recall whether she was there or not.

Q. Do you know, as a matter of fact, whether or not Mrs. Bartling's niece—do you know Mrs. Bartling's niece?

A. No.

10 Q. Wasn't there that night, that is, up-stairs?

A. I don't recall, she might have been, I wouldn't say she was not.

Q. Did you ever see Mr. McDowell come there in the company of anyone else?

A. It seems to me I have seen him come there with another gentleman in the car, but this gentleman waited outside.

Q. Do you know what Mr. McDowell's business was at that time?

20 A. Only from hearsay, he was a Maytag Washer salesman.

Q. Do you know whether or not he endeavored to make sales in Oaklyn?

A. That I don't know.

Q. And it was just this one occasion you saw them in the house together?

A. Oh, yes, that is, in the house together.

Q. Are you related to Mr. Keen?

A. Son-in-law.

30 Q. Are you presently on the police force?

A. No, sir.

The Court: A brother-in-law of whom?

The Witness: A son-in-law of Mr. Keen.

Q. You say you are not presently on the police force?

A. No, sir.

Q. Mr. McDowell when you addressed him the first night when he was having difficulty with his car made a frank statement about where he had been, and who he was?

A. Yes, he showed me the owner's card, and driver's license for the machine, and it was a Ford coupe.

10

Q. You never on any occasion, outside of the time when this warrant was issued, had any occasion to suspicion his actions there?

A. No, I never paid any attention to it, I felt as though it was none of my business.

JOHN ZEPKE, SWORN.

By Mr. Leap:

20

Q. Where do you live, Mr. Zepke?

A. 101 E. Beechwood Avenue, Oaklyn.

Q. You are a member of the police force of Oaklyn?

A. I used to be.

Q. Were you in 1926 or 1927?

A. Yes, sir.

Q. Do you know John Y. McDowell?

A. Yes, sir.

30

Q. Do you know Althea Bartling, the defendant?

A. Just by sight.

Q. Do you know Earl Bartling?

A. Yes, sir, I know him.

Q. How long have you known Earl Bartling?

A. About 5 years.

Q. How long have you known McDowell?

A. Oh, I judge, about 2½ years.

Q. Where did you first meet McDowell?

A. On the highway.

Q. Where?

A. Beechwood Avenue, Oaklyn.

Q. Will you tell us the circumstances under which you first met him?

A. I followed the man, and I later found out who
10 he was.

Q. What occasion did you have to follow him?

A. In police work, according to the laws of Oaklyn, there was no loitering on the highways, especially in automobiles, and I saw the car on Beechwood Avenue, and I was curious, being on duty, and I watched the car, and I couldn't find anybody around, so I figured there was nobody in there, and I thought maybe somebody was trying to steal some lead pipes from this estate, and I goes behind the
20 trees to look around, and while I was there Mr. McDowell came out of 33 Beechwood Avenue, and he went across and cut through this private property over on to Bettewood Avenue and got in this machine.

Q. Do you know what time of night it was?

A. Sometime after midnight.

Q. Do you know about what time of year it was?

A. I wouldn't want to say, because I never paid that much attention.

30 Q. See if I can fix the time. You were called to the Bartling house sometime in April, 1926, to serve a warrant?

Mr. Jess: I object to that question as leading.

The Witness: No, I never had a warrant to serve at that house.

Q. Did you at any time make an arrest at the Bartling house?

A. No, sir.

Q. Were you called to the Bartling house some time in October, 1927?

A. Yes, sir.

Q. For a burglar scare at the Bartling home?

A. Yes.

Q. Can you recall whether this occurrence of McDowell's crossing this lot was before that time or 10 after?

A. Long before that time.

Q. How much before?

A. I would say 9 months to a year.

Q. Before the time you went to the Bartling house?

A. Yes, something like that.

Q. You said you stood watching this car and saw him come across the lot from the Bartling home?

A. Yes, sir.

20

Q. Was anyone with him?

A. No, sir, by himself.

Q. You saw him get in the car and drive away?

A. Yes, sir.

Q. When did you next see Mr. McDowell?

A. The next time I seen him, I seen this particular car parked pretty near the same place on Bettlewood Avenue, and it was occupied by a man and a woman.

Q. Do you know who was in there?

30

A. Undoubtedly. I went up to the car, and when I opened the door I recognized Mrs. Bartling, and she got highly indignant because I even opened the door, and I asked him what he was doing there, and he said he was just sitting there talking to the lady, and I laid down the law as it is in Oaklyn, and I asked Mrs. Bartling what her husband would say

catching her out that hour of the night sitting in a machine —

The Court: What time was it?

10 The Witness: It was after midnight. I went on duty at 12 o'clock, and she told me it was none of my business, and I told her it was none of my business who the man was, but she must entertain him at home, if she must entertain him, because we wouldn't allow it on the highway, and I closed the door and walked on.

Q. How long did they stay there after that?

A. I couldn't say, I drove away, and came back in half an hour, and the car was gone.

Q. Was that before or after the burglar scare?

A. Long before.

20 Q. How much before that?

A. Months before, I couldn't say, because we see so many cases, have so many cases like that, that we don't write it down in the book.

Q. At the time you went to the Bartling home in 1927, what did you see, tell us who was there?

30 A. I ran in quick on a burglar call I got, and I didn't notice who was down-stairs, or anything, I ran up-stairs, and Mr. Keen was standing at the head of the stairs with a revolver on these two gentlemen with their hands up in the air and their faces to the wall, and I told him to step aside, and I walked around and grabbed these two men to lock them up, if necessary, and I told them to face about, and when they faced about I recognized the man.

Q. Who were they?

A. Mr. Bartling and another young man, I believe, who worked for him at that time, I seen him

a number of times before, but never knew his name, and I told Mr. Keen to put the gun down, these are no burglars, it is Mr. Bartling, and we all came down-stairs.

Q. Did you see Mr. McDowell in the house that night?

A. When we came down-stairs Mr. McDowell was standing in the living room with Mrs. Bartling.

Q. Were they talking to each other?

A. I couldn't say, I think they were just standing and staring more than anything else. I would say there was just about breathing space between them, that is about all, like anybody would that is scared.

Q. Did you ever at any other time have occasion to go back into the Bartling home after that night?

A. Go back in there?

Q. Yes.

A. No, I don't believe I did.

Q. You never went there on any other occasion? 20

A. Only when I was called.

Q. Were you ever called at any other time?

A. I was called to go there one time with the Chief of Police, but I didn't go in, I was on the outside.

Q. What did you see that night, and when was it?

A. What night was this?

Q. The night you went there with the Chief of Police?

A. He went there to make an arrest. 30

Q. Do you know who he went there to arrest?

A. Yes.

Q. Who?

A. McDowell.

Q. When was that, do you know, about?

A. I couldn't say exactly, I have so many of these

things to contend with we don't write them all down and try to memorize each and every date and time.

Q. Did you ever notice the McDowell car in front of the Bartling house at any other times other than those which you have spoken of?

A. Yes.

Q. How many times would you say?

A. Numbers of times.

Q. At what time of the night?

10 A. I would say any time from 4 o'clock in the afternoon until 2 in the morning.

Q. Would you say you have seen the car there more than once at 2 o'clock in the morning?

A. Numbers of times I said.

Q. Did you ever have occasion to notice any time when he went in the house and to notice how long the car stayed in front of the house from the time he went in?

A. Hours.

20 Q. You have seen the car there for hours?

A. Hours, yes.

Q. Would that occur in the daytime, or night?

A. It would generally be after 4 o'clock in the afternoon when I could notice it, I would be sleeping up to pretty near that time.

Q. You went on duty at 12 o'clock at night?

A. Sometimes, it depended on the shift.

30 Q. Have you at any time ever noticed—I will withdraw that—as an officer in Oaklyn did you make regular beats around the town?

A. Yes, sir.

Q. Over all the streets?

A. Every street.

Q. Would you go back on the same street more than once?

A. Oh, my, yes.

Q. Have you at any time at night noticed on one

of your first trips the McDowell car and then see it at the time of your second trip?

A. Yes.

Q. And how much time would there be intervening?

A. Hours. You mean between the second trip and the first trip? Sometimes 10 minutes, sometimes it would be an hour, or an hour and a half, it all depended on what turned up.

Q. Do you make more than one trip? 10

A. Yes, probably 20, some nights 2, 3, 5, some other nights 20, it depends on how much work you run into.

Q. When you speak of the car being in front of the house for hours did you say it was 2 hours, 3 or 4?

A. Anything from 3, 5, 6, 7, 8 hours.

Q. Did you ever see Mr. Bartling—rather Mrs. Bartling and Mr. McDowell walking together, or ever see them come from the house? 20

A. Only from the house to the car.

Q. What did they do, how did they act toward each other?

A. Like any gentleman would that is taking his lady friend out, had her by the arm, assisting her down to the curb.

Q. Helping her into the car?

A. He would take her by the elbow and give her a little assistance.

Q. Would he have her by the arm coming out of the house? 30

A. I never paid that strict attention, I am only saying what I ran into and couldn't help but see.

Cross-examination.

By Mr. Jess:

Q. How much territory did you cover on your beat in Oaklyn?

A. About 8 miles of territory.

Q. You individually, how much did you cover?

A. 8 mile of territory, the whole town we take in.

10 Q. Do you mean to say that you personally covered the whole town?

A. Certainly.

Q. You alone?

A. Yes, sir.

Q. Just one officer on duty at a time?

A. One in the hall and one on the street.

Q. How long were your shifts?

A. 8-hour shift.

Q. 8-hour shift?

20 A. Yes.

Q. And sometimes you would pass by the same spot as many as 20 times?

A. Sometimes, certainly.

Q. 8 miles to cover, and you covered it 20 times?

A. We don't start here and make the same round, we went any where we liked, whatever strikes your mind.

Q. Didn't you have any defined route?

30 A. No, we had no regular route where you had to be at each point at a certain time.

Q. But you had to cover the whole town?

A. Yes.

Q. And that consisted of 8 miles?

A. Yes, sir.

Q. And sometimes you would pass the one identical spot sometimes as many as 20 times?

A. Certainly.

Q. Now, what was this law to which you referred when you spoke to young Mrs. Bartling?

A. No loitering on the highway at any time.

Q. No loitering on the highway. Do you go up to everybody?

A. Every car that has anybody occupying them we go up to them.

Q. You find a number of cars around?

A. We used to find plenty of them.

Q. You go up to every car? 10

A. Every car.

Q. When you saw Mr. McDowell on this particular night when you say his car was parked some distance from the house and he came across this private property, there was nothing strange about that?

A. The place the car was parked, yes, it was strange looking.

Q. Where was the car parked?

A. On Bettleground Avenue, along a big estate, no 20
houses within a hundred and fifty to two hundred feet from where this car was parked.

Q. How near was this to the White Horse Pike?

A. 50 to 75 feet from the White Horse Pike.

Q. There are houses on Bettleground Avenue on the south side all along?

A. Yes, but measure the distance and see how far the first house is from White Horse Pike.

Q. What is on the corner?

A. A church. 30

Q. And a house right in back of it, isn't there?

A. Measure it and see how near that is.

Q. Isn't there a house right in back of it?

A. Yes.

Q. And houses all along?

A. Yes, sir.

Q. About 50 feet apart?

A. Yes.

Q. Then how far do you say he was parked from the nearest house?

A. I said about 150 feet, we will say.

Q. He was opposite a house on the far side of the street, wasn't he?

A. No, he was not.

Q. He was about 50 feet from the White Horse Pike, wasn't he?

10 A. That, or probably more.

Q. And it is a heavily traveled highway?

A. No, a very secluded spot at night-time.

Q. He wasn't far from the White Horse Pike?

A. That makes no difference.

Q. You say it was a funny place; it was all illuminated around there?

A. No, there is one little street light, that is all.

Q. Where is that?

A. On the corner of White Horse Pike.

20 Q. Where is the next street light?

A. I would say about 300 feet back on Bettewood Avenue.

Q. Do you mean to tell me it is not well illuminated 50 feet from White Horse Pike on Bettewood Avenue?

A. No, sir, it is not.

Q. How wide a street is Bettewood Avenue?

A. I judge 60 feet.

30 Q. And he was parked on one side of this street, wasn't he?

A. Yes, sir.

Q. Now, there are houses all along this street?

A. He was on the side where there are no houses.

Q. There are houses all along that street, aren't there?

A. Plenty of houses in Oaklyn over there.

Q. And on this street, Bettewood Avenue?

A. I said there were houses there.

Q. When you saw Mr. McDowell coming across the private property of which you speak of that night you don't know where he was coming from?

A. I told you I saw where he was coming from?

Q. Where was that?

A. 33 Beechwood Avenue.

Q. How far were you away from Beechwood Avenue that night?

A. I would say half a block. 10

Q. Where were you standing?

A. In the middle of this private estate.

Q. There may have been some other people in that property that night?

A. I didn't see them, I am only telling you where he was coming from.

Q. You don't know who else was there?

A. I don't know anything about them.

By Mr. Leap: 20

Q. How do you cover the town, by foot, automobile, or motorcycle?

A. Either automobile or motorcycle.

WILLIAM D. COFFIN, SWORN.

By Mr. Leap: 30

Q. Where do you live, Mr. Coffin?

A. Oaklyn, New Jersey.

Q. Have you any official position in Oaklyn?

A. I am Chief of Police there.

Q. Were you Chief of Police in 1926 and 1927?

A. I was Chief of Police in 1926, the latter part of it, and 1927 up to the present date.

Q. Do you know Earl Bartling, the petitioner in this case?

A. Yes, sir.

Q. How long have you known him?

A. I have known him as Earl Bartling, on account of being associated with the Suburban Lumber Company, as one of the company, well, for about

10 3 or 4 years.

Q. Do you know his wife, the defendant in this case, Althea Bartling?

A. As Mrs. Bartling.

Q. Do you know John Y. McDowell?

A. Yes, sir.

Q. You were called at the Bartling house, weren't you, in April, 1926?

A. Yes, sir.

Q. Why did you go to the house that night?

20 A. One of the Bartling boys, there are two brothers, Fred and Earl, and the brother came to me and said I was wanted around to his brother's house on Beechwood Avenue.

Q. Did you go?

A. Yes, sir.

Q. What did you find?

A. Mr. Bartling told me he wanted to put a man out of his house, and I said I couldn't unless you enter a complaint against him of some kind.

30 Q. Did he enter a complaint?

A. Yes, sir.

Q. Did you get a warrant?

A. Yes, sir.

Q. Did you go back again?

A. I arrested the man.

Q. When you went in there who did you find?

A. I just don't recall the man's name, I have it here on my notes.

Q. Was it Ackley?

A. Yes, sir.

Mr. Jess: If the Court please, I think again this testimony is all incompetent. In the first place, the petition dates from June, 1926, and there is no man Ackley mentioned in the petition anywhere.

10

The Court: It may be doubtful whether you ought to go into that, but I will let it in, simply as surrounding circumstances touching the general conduct, but, of course, there can be no allegation of adultery with a man she has not been apprised of, and I don't think you ought to be charged with meeting this testimony.

Q. You arrested the man at that time?

A. Yes, sir.

20

Q. At the time you went into the house who did you find in there?

A. I found this gentleman and Mrs. Bartling.

Q. Did you see anyone else in there?

A. No, sir.

Q. Was Mr. Benner in the house with you that night?

A. I don't believe Mr. Benner came in the house, I think Mr. Bartling came in with me and Mr. Benner stayed outside until I was about ready to leave. I wasn't interested in who was in there except the gentleman I was placing under arrest.

30

Q. You did arrest him?

A. Yes, sir.

Q. When did you next have occasion to go to the Bartling house?

A. The 1st of January, 1927.

Q. The 1st of January, 1927?

A. Yes, sir.

Q. What was that occasion?

A. Mrs. McDowell had sworn out a warrant for her husband's arrest.

Q. Was that 1927 or 1928?

A. 1928.

Q. What did you do at that time?

10 A. I placed Mr. McDowell under arrest on a warrant under complaint of his wife, Mrs. McDowell.

Q. You found Mr. McDowell at the house that particular night?

A. It was in the afternoon.

Q. Will you state the circumstances?

A. I got a call on the telephone to go to Mr. Beasley's house, which is next door to Mrs. Bartling's, and Mrs. McDowell explained that her husband was in Mrs. Bartling's house and he had been in there for quite some time and she said she wanted him placed under arrest, and I said, "All right, I will serve the warrant," and she obtained the warrant and I went to Mrs. Bartling's residence and placed Mr. McDowell under arrest. I knocked on the door and Mrs. Bartling answered the door and I asked if Mr. McDowell was there and she said "No" and I told her I had every reason to believe he was, from information and belief, and I was going to ask her not to offer any resistance or create a scene but to open the door and let me search the premises and she could accompany me, and she did. While Mrs. Bartling and I were searching the first floor Mr. Keen went down the cellar and found Mr. McDowell hiding under the cellar steps.

20

30

Mr. Jess: I object, if the Court please.

The Court: We will let Mr. Keen testify to that.

Q. Did you find Mr. McDowell in the house?

A. Yes, sir.

Q. Where did you find him?

A. When I went down the cellar he was coming out from under the steps, and I asked if he was Mr. McDowell and he said, "Yes," and I said, "I have a warrant for your arrest on complaint entered by your wife," and I read him the warrant 10 and he went up-stairs, and he took his hat and coat, they were hanging up in some closet, or some affair for the hanging of clothes, I don't know whether it was a closet or a rack, but anyhow he took his hat and coat off the rack and put on his overcoat and he said, "Just a minute, I want to speak to Mrs. Bartling," and he stepped over and said something to her, he stepped away from me and had a conversation in an undertone with Mrs. Bartling, which I wasn't interested in, and paid no 20 attention to, and then he came on with me and went to the Justice of the Peace, Mr. Fox, and Mr. Fox heard the complaint, and if my memory serves me correctly he held Mr. McDowell under bail for further hearing in court, then Mrs. McDowell swore out a further warrant for Mrs. Bartling on the charge of harboring her husband, she stated she had visited Mrs. Bartling and pleaded with her not to allow her husband to come there, he was the father of a family —

30

Mr. Jess: I object to this, if the Court please.

The Court: Yes.

Q. Did you go and arrest Mrs. Bartling?

A. The warrant was given me and I went back

after Mrs. Bartling, and when I went up on the porch to get Mrs. Bartling Mr. McDowell walked up just in front of me, and he seemed quite surprised when he saw me back of him, and I placed Mrs. Bartling under arrest and took her before Mr. Fox and the case was stated there, and the Justice disposed of the case at that time.

Q. When was the first time you ever saw this man McDowell?

10 A. That was my first association, that is, with Mr. McDowell, on January 1, 1928.

Q. Have you ever seen him since that time at the house, or anywhere else?

A. I have seen him on the street in that vicinity, I have never seen him in the house, because I had no complaint and I didn't feel it was my business as a police officer to play detective.

Q. Did you know his car?

20 A. At the time I kept the license number but I later on disposed of that. Yes, I knew his car by the license plate.

Q. Had you ever seen his car in that vicinity of the Bartling home?

A. On numerous occasions.

Q. On how many occasions?

A. I wouldn't venture any statement as to the number of times, but on diverse occasions I have seen the car.

Q. At what time of the night or day?

30 A. I would say from 4 o'clock in the afternoon until 1 or 2 o'clock in the morning, that is, the machine bearing the license number I knew to be Mr. McDowell's car at that time. I don't recall what the license number is now.

Cross-examination.

By Mr. Jess:

Q. What kind of a machine was it?

A. I wouldn't make a statement as to that because I wasn't interested in the make of the machine, but the license plate I was interested in, the number of the license plate.

Q. Did you pass by this machine on numerous occasions? 10

A. Numerous occasions.

Q. Close enough to read the license plate?

A. When the tail light is lit you don't have to be very close on it, you could read it at 40 feet.

Q. You came within 40 feet of it then?

A. Yes, sir.

Q. When you saw Mr. McDowell on this occasion he offered no resistance to you, did he?

A. He did not, no. 20

Q. He gave his name right frankly?

A. He answered to the name I read on the warrant, yes.

Q. And this was on New Year's Day, wasn't it?

A. Yes.

Q. Who else was in the house at that time?

A. Mrs. Bartling was in the house, Mr. McDowell was in the house, and Mr. Keen was in the house; further than that I wouldn't say because I wasn't interested in other parties, I was there for a man, and that is all I was interested in. 30

Q. Didn't you observe the fact there were some others in the house?

A. I wasn't interested in that fact.

Q. Would you say there were not others in the house?

A. I wouldn't say there were or were not.

Q. Mr. McDowell was fully attired?

A. He was in his shirt sleeves, if you call that fully attired.

Q. Otherwise he was completely dressed?

A. Sir?

Q. Otherwise he was completely dressed outside of his having his coat off?

A. I would say he was in a presentable appearance.

10 Q. And Mrs. Bartling was fully attired?

A. I didn't inspect Mrs. Bartling.

Q. Wouldn't it have struck you as being peculiar if she had been in any other condition than her street attire?

A. I didn't pay any attention to Mrs. Bartling, I just asked her to allow me permission to search her house; I didn't observe her apparel in any way, shape or form.

20 By the Court:

Q. At what hour of the night did you say this was?

A. The afternoon of January 1st, I would say it was approximately 4:30 or 5 o'clock, maybe a little later than that, between the hours of 4 and 6.

Q. This was on the warrant of the wife?

A. On the warrant of the husband.

30 Mr. Leap: The husband or the wife?

The Witness: The warrant for the husband on the complaint of the wife.

The Court: Mrs. McDowell?

The Witness: Mrs. McDowell's complaint against her husband, Mr. McDowell.

By Mr. Jess:

Q. When you went there Mrs. Bartling answered the door, didn't she?

A. Yes, sir.

Q. Very promptly, there was no delay, no cause to arouse your suspicion?

A. I don't believe there was any great period of time that elapsed. 10

Q. She answered the door, and you would have observed, wouldn't you, if she had not been in proper attire?

A. That wasn't my interest.

Q. Won't you please answer my question. Wouldn't you have observed the fact if she had not been in proper attire?

A. If she had been nude I probably would have observed it. 20

Q. You say this machine was seen around the streets on numerous occasions. There was no other complaint made about it on the part of anyone, no investigation instituted by you as an officer of the township?

A. It is my orders that every machine with a foreign license, or where ownership could not be established, to be watched, and any suspicious actions to be checked up. These orders I had from Council on account of an ordinance, and to make investigation and if satisfied that someone in the machine was a resident, and if there were any actions or suspicions where the person could not be held the car would have to move and get off the street. We don't allow cars to park promiscuously around the highway. 30

The Court: With people in them especially?

The Witness: Yes, we allow, no disorder if we can prevent it.

Q. There was never any complaint made to Mr. McDowell, was there, about parking, as far as you know, you never raised any question about the fact that the machine was there, did you?

10 A. It first came to my attention when Officer Zepke reported his findings on Bettewood Avenue.

Q. You yourself never made any complaint about it?

A. I told him if the man repeated the order to place him under arrest on the charge of suspicion, or loitering.

20

HERBERT KEEN, SWORN.

By Mr. Leap:

Q. Where do you live, Mr. Keen?

A. At present?

Q. Yes?

A. Lindenwold.

Q. Where were you living in October, 1927?

A. October, 1927?

30

Q. Yes.

A. 37 Beechwood Avenue.

Q. How long had you been living at that house at that time?

A. I think from the latter part of September.

Q. Are you acquainted with the petitioner, Mr. Bartling?

A. The first time I met Mr. Bartling was that eventful night, I never met him before.

Q. What night?

A. The night I had him with a gun.

Q. Tell us about that.

A. It was sometime after 11, maybe half past 11, I don't recall, but Mrs. Bartling came to our door, and I think my daughter answered the door, but anyhow, I went to the front door and Mrs. Bartling said, "I think there is a man in the house"— I re- 10
member at the time I had no coat on, I was in my shirt sleeves, and I ran up-stairs and got a gun, and Mrs. Bartling had a key, and I asked her to open the front door and to step aside, that is all I asked her —

Q. You went in the house?

A. Yes, and made a quick survey of the front, didn't go far, I thought if there was anybody in the house they are going to be up-stairs, and up the stairway I went, and I met Mr. Bartling, I didn't 20
see his face, and I pulled the gun on him and told him to throw his hands up and face the wall, and that was my first view of Mr. Bartling with his back to me, and I called to someone, I don't know who, and told them to go down and get Officer Zepke to make the arrest, and in the meantime I heard a noise in the closet, and I called to the fellow and told him I would shoot if he didn't come out, and he came out, and I lined him up with Mr. Bartling, and it 30
certainly looked funny, one had his shoes in their hands, and one with a flashlight, but at that time I had not seen their faces.

Q. You didn't know Mr. Bartling?

A. No.

Q. Was anyone with Mrs. Bartling?

A. Only she and Mr. McDowell.

Q. Where had they been?

A. God knows, I don't know.

Q. Had they been walking, or automobiling, or what?

Mr. Jess: I object, he says he doesn't know, and I think that answers the questions.

The Court: I think if he doesn't know it will be rather difficult to get him to say.

10

Q. I will withdraw that question. Was there an automobile in front of the house?

A. When?

Q. At the time when Mrs. Bartling came to your house and told you about the burglars?

A. Yes.

Q. Do you know whose automobile it was?

A. Yes.

Q. Whose?

20

A. McDowell's.

Q. Do you know who had been in that automobile?

A. Who had been in it?

Q. Yes.

A. No, I could only surmise.

Q. Do you know whether or not Mrs. Bartling had been in her own home at the time she came to the house for help?

A. I can only guess, but I imagine they had been out in the machine.

30

Q. Did she say whether or not she had been in the house?

A. No.

Q. She did not say that?

A. No.

Q. Did McDowell go on in the house with Mrs. Bartling?

A. No.

Q. Where did he stay?

A. Outside.

Q. Was he there all the time?

A. Well now, I don't know, Mrs. Bartling opened the door for me with her key, and I asked her to stand aside, and I went in and got Bartling, who I thought was a burglar, and I don't know what went on, I was up-stairs with Mr. Bartling.

Q. Later on you said an officer came in? 10

A. Yes, Mr. Zepke.

Q. And he identified Mr. Bartling?

A. Yes, he identified Mr. Bartling.

Q. Had you ever seen Mr. McDowell before that time, before that particular night?

A. Not to know him, but I could say I had seen a man going and coming from that house.

Q. Did that man look anything like McDowell?

A. Yes.

Q. How did he come to the house? 20

A. Sometimes on foot and sometimes with a Ford coupe.

Q. Did you later find out who that man was?

A. Yes, I knew it before that night.

Q. And that was who?

A. Mr. McDowell.

Q. How many times would you say altogether you had seen him at the Bartling house at the time you lived as neighbors there?

A. Well, 2, 3 or 4 times a week. 30

Q. What time of the day or night would he usually come?.

A. Anytime, 3 o'clock in the afternoon, 4 o'clock in the afternoon, 7 o'clock at night, 9 o'clock at night.

Q. Did you observe at any time he arriving at the

house and then as to the length of time the car was there and when he left?

A. Sometimes I would see the car pull away, but it would be an accident. You would see it, but as to observe a car coming there, and parking, and then going away again, no.

Q. After this occurrence, the burglar incident, did Mr. Bartling make any arrangement with you to watch the house?

10 A. Yes.

Q. Now, tell us what you observed from that time on, that was in October, 1927, you say?

A. Yes.

Q. All right, tell us what you observed, so far as the actions of McDowell and Mrs. Bartling were concerned?

A. To the comings and goings?

Q. All you know, everything you saw, and what you found?

20 A. Do you want to know about the arrangement Mr. Bartling made?

Q. I want to know how many times after that did you see Mr. McDowell come to the house?

A. I can't remember how many times.

Q. More than once?

A. He came plenty.

Q. More than once?

A. Yes.

30 Q. Did you ever see him go out with Mrs. Bartling?

A. Only on one or two occasions.

Q. But you have seen him out on 1 or 2 occasions?

A. Yes.

Q. How did they go out?

A. Well, they did not act like enemies.

Q. Did they go out in an automobile?

A. Yes, sir.

Q. How did they act coming from the house to the automobile?

A. He was always very courteous, very attentive.

Q. Did he ever take hold of her arm?

A. Yes, sir.

Q. Did you ever have occasion to look into the window of the house and watch them in their actions on the inside of the house?

A. Yes, after I was employed by Mr. Bartling.

Q. Tell us what you saw and when, if you can, 10 please.

A. As to when I won't try to state, the exact date, because it has been over 13 months ago.

Q. Tell us what you saw. It all occurred right after the burglar scare, is that correct?

A. Yes.

Q. Tell us what you saw.

A. I have seen Mr. McDowell go in the house, I have seen him leave, I could see his shadow and the silhouette of on the shade, sometimes I could see 20 his body, but generally the shades were drawn or down probably 4 or 5 inches from the bottom of the sash, and blame little you could see.

Q. Did you ever notice how they acted toward each other in the house?

Mr. Jess: If the Court please, when he says the shades were drawn and there was blame little you could see, that almost excludes any testimony as to what he saw in the house.

30

The Court: No, I will let him testify to how much he did see, and what he saw.

Q. Tell us what you did see.

A. I don't know hardly—you will have to coach me along just what you want.

Q. All I want you to do is to tell us what you saw in the house between Mrs. Bartling and Mr. McDowell, how they acted toward each other, and what they did when you looked in the window.

A. I have seen them sit down, standing up, talking, walking about the place, and I have seen them seated at the table.

Q. Did you ever see them kissing each other?

10 The Court: I don't think that question should be asked.

Mr. Leap: All right.

The Court: I think the witness has been given every opportunity to tell what he saw.

Q. Is there anything else you have seen which you haven't told us?

20 A. Well, the Judge has kind of sewed me up in a knot.

Q. Tell us what you saw, he didn't want me to ask any leading questions, you tell me what you saw.

A. I have seen Mr. McDowell kiss Mrs. Bartling good night, but just exactly when now I can't remember.

Q. Where were they when you saw them?

30 A. Well, he was—I guess you would call it in their front living room, with his overcoat and hat on.

Q. Where were you at the time?

A. I was at the side of the house.

Q. How was it possible for you to see them?

A. The shade was about 2 inches above the window frame of the door.

Q. You were looking through that window, you say?

A. Yes.

Q. What else did you see?

A. That would cover everything, that is all I ever saw happen.

Q. Did you have occasion to go into the house about 2 weeks later than the burglar incident?

A. 2 weeks later?

Q. With an officer?

10

A. No, it was much later than that.

Q. When did you go in the house with the officer?

A. The next time was on New Year's Day, in the afternoon, I think it was around 4 o'clock, I don't remember whether I was going out in my car or coming back, but someone told me I was wanted at Mr. Beasley's house, that was the house to the west of the Bartling's —

Q. Did you go there?

A. I went in Mr. Beasley's house, and there was Mrs. McDowell there, Coffin, and a couple of men I didn't know, and Mr. Coffin told me he had a warrant for Mr. McDowell and he had every reason to believe he was in the house.

20

Q. Did you go to the house with Mr. Coffin then?

A. Yes.

Q. Did you go in?

A. Yes.

Q. What did you find?

A. What do you mean?

Q. What did you find when you got in the house, who did you find?

30

A. The only person I saw then was Mrs. Bartling, outside of our own folks.

Q. What did she say?

A. She didn't talk with me.

Q. Did you hear her talk with Coffin?

A. Yes, I could hear her tell Mr. Coffin that Mr. McDowell wasn't in the house.

Q. Did you and Mr. Coffin then go in the house?

A. Yes.

Q. Did you both search the house?

A. Yes.

Q. Where did you go and where did Mr. Coffin go?

A. I don't know where Mr. Coffin went, I went
10 on through and down the cellar way, and as luck would have it, I turned to the right, and underneath the cellar stairs was McDowell in his shirt sleeves.

Q. What was he doing?

A. Trying to keep out of sight.

Q. What did you do then?

A. I said, "Come on, John, we have a ticket for you."

Q. Did he go with you?

A. Yes.

20 Q. Did he put up any resistance?

A. No.

Q. Did Mrs. Bartling make any statement as to why he was in the house when he came up-stairs?

A. Not to me.

Q. Did she make any comment at all about it?

A. Not that I ever heard.

Q. Have you any time heard Mr. McDowell address Mrs. Bartling?

A. Yes, sir.

30 Q. By what name?

A. When Mr. McDowell spoke to Mrs. Bartling he called her Althea, which is her first name.

Q. Where did you hear him call her that?

A. Why, in the house the night that they were arrested, and in the machine when we were going over to Judge Shoemaker's, and I think the after-

noon that McDowell was arrested on New Year's Day.

Q. Then you were in the house the night that McDowell was first arrested, is that correct?

A. Yes.

Q. When was that?

A. I don't know, but I imagine early in November.

Q. How many weeks after the burglar incident?

A. About a month, 4 weeks, 5 weeks, right close, 10 it wasn't far.

Q. How did you happen to go in the house that night?

A. Which night?

Q. The night he was arrested.

A. We were employed by Mr. Bartling to get Mr. McDowell, that is, to get some evidence against him of his comings and goings, and we were armed that night with a warrant, which we gave to Mr. Pettit to serve.

20

Q. Did you go in the house with Mr. Pettit?

A. Yes.

Q. Who did you find in that house when you went in there?

A. Mr. McDowell and Mrs. Bartling.

Q. And who else?

A. That was all. I guess the children were in bed, as far as I knew, I never went beyond the front room.

Q. What time was it you went in there to make that arrest? 30

A. I don't know, I imagine around half past eleven.

Q. About half past eleven?

A. I think so.

Q. Had you been watching the house that evening?

A. Yes, sir.

Q. How long had McDowell and Mrs. Bartling been in the house that night before you went to make the arrest?

A. As I remember now over 2½ hours they had been in there, pretty near all evening long.

Q. Were the lights all lighted?

A. I wouldn't say they were all lighted, but the first floor was generally illuminated, with all the
10 shades pulled down.

Q. Did you observe anything that occurred on that evening?

A. Just give me a minute. I remember Mr. McDowell and Mrs. Bartling standing very, very close to each other in the front living room, he with his coat on, hat in his hand, and he was about to leave.

Q. Anything else?

A. Just at that time I don't think so.

Q. Or before that time?

20 A. I can't quite remember.

Cross-examination.

By Mr. Jess:

Q. When was this occasion of which you are now speaking, Mr. Keen?

A. Sir?

30 Q. About when was this occasion you are speaking of, when, what month?

A. You mean this last question Mr. Leap asked me?

Q. Yes, sir.

A. That would be the night of the arrest, that I think was early in November.

Q. Early in November?

A. Well, it might have been the latter part—confound it, I can't remember.

Q. You can't remember?

A. I can't remember the date, I can't.

Q. How did you happen to be there that night?

A. How did I happen to be there?

Q. Yes.

A. I was still in the employ of Mr. Bartling.

Q. By the way, you spoke of an arrangement with Mr. Bartling, what was your arrangement? 10

A. Mr. Bartling arranged with the State Detective Service to check up and collect evidence.

Q. The State Detective Service?

A. Yes.

Q. How did you know that?

A. I was a witness to the arrangement.

Q. What connection have you with the State Detective Service?

A. I was employed by them.

Q. Where was this contract of employment made, 20
in what place?

A. Mr. Bartling's office.

Q. Who else was present?

A. Mr. Bartling, Mr. Warren, and myself, that morning.

Q. Were you employed by Mr. Warren?

A. Yes, sir.

Q. Is he affiliated with the State Detective Service?

A. Yes, sir. 30

Q. And you were assigned to this job?

A. Yes, sir.

Q. What was your work in connection with this?

A. To generally check up as near as I could of the comings and goings of one Mr. McDowell.

Q. Did you know Mr. McDowell?

A. Yes, I knew him at that time.

- Q. When did you first see him?
A. Probably a week or two before I caught Mr. Bartling as a burglar. I would see him go in the house and come out of the house, sometimes in the evening and sometimes at daylight.
- Q. How long before you went into the house and found Mr. Bartling there and you pointed a gun at him had you made this arrangement?
A. I had not.
- 10 Q. When was that arrangement made?
A. The next day.
Q. The day after this incident?
A. Yes.
Q. Just what were you doing for Mr. Bartling besides keeping a watch on Mr. McDowell?
A. That is all.
Q. Just watching Mr. McDowell to see where he went?
A. Not to see where he went, to keep tabs on Mr.
- 20 Bartling's house.
Q. Did you do that?
A. Tried to?
Q. Did you do it?
A. As far as I could, yes.
Q. Did you have any employment other than this detective business at that time?
A. No.
Q. That is all you did?
A. Yes.
- 30 Q. How many cases were you working on when you were working on the Bartling case, how many other cases?
A. Two, I think.
Q. Name them, will you?

Mr. Leap: I think it is immaterial.

Mr. Jess: I think to check up the credibility of the witness it is material.

The Court: I think so.

The Witness: We had a case down in Verga, I can't recall the name, and this McDowell affair.

- Q. Just one other case?
A. The two, yes. 10
Q. One other case?
A. Yes, two.
Q. You were just working on the two cases?
A. Yes, sir.
Q. How many cases have you worked on in the course of your experience, Mr. Keen, would you say?
A. Two or three.
Q. How long have you been engaged in that line of business? 20
A. Engaged in that line of business?
Q. Yes?
A. From September.
Q. September of what year?
A. That year, 1927.
Q. Then, was the Bartling case your second case?
A. Yes.
Q. And you are engaged in that business at the present time?
A. No. 30
Q. You gave the business up?
A. Yes, sir.
Q. So you just worked on those two cases?
A. Yes.
Q. You were employed on some basis of compensation?
A. Sir?

- Q. You were to be compensated for your work?
 A. Yes, sir.
 Q. Were you compensated for your work?
 A. Yes, sir.
 Q. What is your present employment?
 A. I am out of work.
 Q. Then the only work you have done since September, 1927, is on these two cases?
 A. No, I didn't say that.
 10 Q. Perhaps I misunderstood you.

The Court: The only detective work, I think he said.

- Q. What other employment did you have during the course of that time?
 A. In between that time and now?
 Q. What other employment did you have while working on the Bartling case?
 20 A. How was I employed?
 Q. What other employment did you have?
 A. What other employment?
 Q. Yes.
 A. With the Union Finance.
 Q. That took you out of town very much?
 A. No, not a whole lot.
 Q. Where was this?
 A. 21 Broadway.
 Q. Did they keep you there during the day?
 30 A. I was in and out all day long.
 Q. In and out where, 21 Broadway?
 A. Yes.
 Q. Where did you go most of the time, was your work confined to the City of Camden?
 A. No.
 Q. Where was most of it?

A. Camden, Gloucester, Merchantville, Moorestown, never far.

Q. When did you go into the employ of the Union Finance Company?

A. Along about April, 1927.

Q. Were you employed with anyone else from the period of September, 1927—you say you went in there April, 1927?

A. Yes, sir.

Q. Are you still in the employ of that concern— 10
that has been the only employment which you have had from that time to this time when you say you are presently out of work?

A. No, I worked for 4 or 5 people since that time.

Q. You would be out of town all day and then come home at night?

A. Yes, sir.

Q. Since you went on the Bartling case in September, 1927?

A. Yes. 20

Q. You testified in your direct examination that Mr. McDowell would come at any time in the afternoon, 3 or 4 o'clock, how do you know that if you were out of town?

A. Sometimes I would come home early, or take lunch, and sometimes I got home late.

Q. How often would you take lunch at home?

A. I would say at least twice a week.

Q. What time would you come home from work?

A. Around lunch time, 12, half past 12, something 30
like that.

Q. If you came home for lunch about what time did you return in the evening?

A. Around 6, sometimes quarter of, sometimes half past 6.

Q. When you testified you saw this McDowell machine any time in the afternoon, you were mistaken?

A. No.

Q. How could you be somewhere else on business and see the machine?

A. My wife was living there, and naturally we were interested in the case.

Q. She told you about it?

A. She would tell me, yes.

Mr. Jess: I ask that that testimony be stricken
10 out.

The Court: Yes, the testimony is almost destroyed if he depended on the statements of his wife, but it may stand.

Q. What did you do in the Bartling case?

A. What do you mean?

Q. You were working for a compensation, what
20 did you actually do?

A. I, along with 2 other operators, checked up, as far as we could, on the comings and goings of Mr. McDowell.

Q. You never made any arrests, did you?

A. There was only one arrest made.

Q. And that was of whom?

A. Of Mr. McDowell, and Mrs. Bartling in November.

Q. By whom?

A. By Officer Pettit with a warrant Mr. Bartling
30 had sworn out.

Q. You never made any arrest, did you?

A. No.

Q. Now, did you keep any records of the work done by you on this case?

A. No.

Q. Why not?

A. Because the work was all checked up, there was an affidavit taken at that time.

Q. Who took the affidavit?

A. I think Judge Shoemaker.

Q. What do you mean by an affidavit being taken?

A. All of the work that was done on the case, day and date, and the time.

Q. What did Judge Shoemaker have to do with it, he wasn't employed —

A. No, he acted as a Notary Public to take the 10 affidavit.

Q. He signed the affidavit?

A. I think I signed mine. There were 3 affidavits by the different operators, and I was one.

Q. Now, you say you addressed Mr. McDowell as "John," why did you address him as John, did you know him quite well?

A. No, I didn't know him quite well, I just said, "John, come on, I have a ticket for you."

Q. You say when you saw him at the door he had 20 his hat and coat on?

A. Yes.

Q. Do you remember the testimony, as I recall it, of Chief Coffin?

A. Yes, I think I do.

Q. You heard his testimony, didn't you?

A. Yes.

Q. Do you remember whether or not Chief Coffin said his hat and coat were on the chair in the living room? 30

A. You have the 2 nights mixed up, you are talking about 2 different occasions.

Q. What occasion had you in mind?

A. You were talking to me about a night McDowell was arrested, and now you are talking about the afternoon that Coffin arrested McDowell, which was New Year's.

Mr. Jess: Perhaps I have that confused, but not intentionally so. I think that is all.

By Mr. Leap:

- Q. How many times in the afternoons that you worked on this case did you actually see, that is, you personally, see the McDowell car in front of the Bartling home?
- 10 A. I would say at least 4 times, but I wouldn't say 40.
- Q. Four that you saw yourself?
- A. Yes, sir.
- Q. Were you home at that time?
- A. Yes.
- Q. You personally saw the McDowell car there four times in the afternoon?
- A. Yes.
- 20 Q. On these occasions how long did that car remain there, and where was McDowell?
- A. Now, you have got me, I don't know. The car was parked there in front of the house, or close to the house, and I surmised McDowell was in the house, I was home to lunch.
- Q. Did you ever see Mr. McDowell come out of the house in the daytime?
- A. Yes, on 2 occasions.
- Q. Do you know how long he had been in there on those occasions?
- 30 A. No.
- Q. How long have you seen the car in front of the house before you saw him come out?
- A. I couldn't answer you, it might have been half an hour, or three-quarters.
- Q. Was it as much as half an hour?
- A. Yes.

Q. What else did you ever notice around the house, what did you notice McDowell doing around the Bartling house at any time?

A. What do you mean?

Q. What other things did you ever observe McDowell do around the house?

Mr. Jess: If the Court please, I think that question ought to be clarified.

10

The Court: I think it should have been a part of the direct examination anyway.

Mr. Leap: My purpose, your Honor, in questioning was that Mr. Jess, by his cross-examination, had apparently developed the fact that Mr. Keen had obtained some of this information from his wife, and I simply wanted to clear that up in your Honor's mind to show that he himself had actually seen these different things.

20

The Court: Make it short. What is your question?

Q. Did you ever see McDowell do any repair work, or any housework around the Bartling house?

A. No housework, but the night after the burglar scare, the Sunday night following, I saw McDowell with a hammer and nails.

30

The Court: Now, you are talking about other things, I thought you were re-examining him about something in the afternoon which you were fearful —

Mr. Leap: As long as he brought up this propo-

sition about this one thing I would like to find out

The Court: No, I won't go into a re-examination of this thing. You have pressed him and pressed him as to all he had seen in that house. Now, you may ask him about anything in the afternoon, in view of the cross-examination.

10 Q. Have you ever seen Mrs. Bartling come out with him in the afternoon?

A. Yes.

Q. How many times?

A. On two occasions.

Q. What did they do when they came out of the house?

A. Walked on out into the machine.

Q. Into whose machine?

A. McDowell's.

20 Q. Do you know in which direction they drove?

A. Yes, both times they went toward the Pike, that would be east on Beechwood Avenue.

By Mr. Jess:

Q. Did you report that to Mr. Bartling, did you report those two instances to Mr. Bartling?

A. No.

30 Mr. Leap: You reported it to me?

The Witness: I reported it —

Mr. Jess: I object to that.

The Court: I think it is leading, anyway. You

are putting a lot of testimony into the mouth of the witness.

RALPH PATTON, SWORN.

By Mr. Leap:

Q. Where do you live, Mr. Patton?

A. 852 E. Cornwall Street, Philadelphia.

Q. What is your business, Mr. Patton?

10

A. Optician.

Q. What were you doing in October of 1927?

A. October, 1927, I became associated with Mr. Warren in his employ as a private detective.

Q. Do you know Earl Bartling, the petitioner in this case?

A. I do.

Q. Do you know Althea Bartling, the defendant in this case?

A. I met her on one occasion only.

20

Q. Where did you first meet Mr. Bartling.

A. I first met Mr. Bartling at 21 Broadway at Mr. Warren's office.

Q. After you met Mr. Bartling what did you do in reference to—I will withdraw that question—you said you were employed by Mr. Warren?

A. Yes, sir.

Q. Did you receive an assignment in connection with the Bartling case?

A. In general, yes.

30

Q. Tell us what you did and what you observed so far as Bartling —

A. I was on that particular case 4 nights, I would say, and if the dates are correct they would be November 1, 4, 5 and 9th, in the evenings only. The first two evenings, the 1st and the 4th I was there from approximately 7 to 11.

Q. Where do you mean?

A. At Beechwood Avenue, 35, or whatever the number might be, at Mr. Bartlings home, or, at least, across the street from it, or in the neighborhood, and there was nothing unusual that occurred, and I went home. On the evening of the 1st a man, who was shown to me as Mr. McDowell, at that time left the premises at approximately 9:30, and there was nothing more that developed that evening, and
10 I naturally went home. The evening of the 9th I was there from 7 o'clock, and no one was sure whether McDowell was in the home, nor did I see anyone, and there were three other associates with me at the time, and we stayed around, and between 9:30 and 10 o'clock we got up very close to the house, in fact, the side of it, I would term that the west side, nearest White Horse Pike, and I did notice that evening that a girl came, and it was told to me it was the daughter, and she was accompanied
20 by another young girl, they came at 9 o'clock, they had apparently been to a show, or something, and the other girl went on down the street, probably a neighbor's child, and this other girl went in the home, I would say between 10 and 10:30, and we could distinguish faces of a man and a woman in the home, the lights were lit and curtains drawn with the exception of a door leading in the driveway, and the curtain on the front door, they were both up about 6 inches, and from this driveway it
30 was more or less shadowy, and you could look beneath this curtain and observe the people in the front part of the house, which I might term the living room, but beyond that you couldn't see. At the time I was at the side of this door we became positive that McDowell was there, in fact, he had his hat in his hand, and his coat on, about ready to leave.

The Court: What time was that?

The Witness: That I would say was about quarter to 11, or thereabouts, getting close to 11 o'clock, so this was a signal for us to get in and get hold of Mr. McDowell, and Mr. Pettit was given a warrant to serve, and he done his duty, and the rest of us went into the home.

Q. Were you in the party that took them out of the house? 10

A. You might term it assisted, I merely walked in the back of them.

Q. Where did you go?

A. We went from the Beechwood home in 2 different machines, I wasn't in the machine with McDowell and Mrs. Bartling, I was in the machine in back of them, and we went over to Judge Shoemaker's office in Highland Park, where the Judge admitted us to the home, and I believe it was then around midnight. 20

Q. Was Mrs. Bartling there at the time?

A. Mrs. Bartling came along in the first machine, along with McDowell, and Warren and Pettit, if I remember correctly.

Q. What did she say, if anything?

A. Mrs. Bartling had very little to say except she said, "There is a child here," and she went out to see if she could get a neighbor to take care of the child, but she couldn't get a neighbor. So, as I understood, although I did not see the daughter in the home, but I knew she must have been there because I seen her go in the house around 9 o'clock, we left the daughter and the child there by themselves. 30

Q. Was the daughter in the living room when you went in there?

A. Nobody, neither child came out all the time we were there.

Q. Did you ever hear Mrs. Bartling address McDowell, or McDowell address Mrs. Bartling?

A. No, but I did hear McDowell address her, that was in Judge Shoemaker's office, after they were held under bail, McDowell wanted to know if he could use the telephone, and Judge Shoemaker said, "Yes," and the telephone was in a room or an entry
10 adjoining where we were at, and he went out to the 'phone, and Mrs. Bartling was in the room where we were, and he called in to her by her first name, Althea, some name like that, and wanted to know the 'phone number of someone, and I believe it was their attorney they were calling up, but I wouldn't say for certain.

Q. That is all you observed at the house?

A. Yes, sir.

Q. Did you ever see them together at any other
20 time?

A. No, sir.

Cross-examination.

By Mr. Jess:

Q. How long have you known Mr. Bartling would you say?

A. I would say I made his acquaintance the latter
30 part of October, 1927.

Q. Was this the first time you ever had done any detective work?

A. Yes, sir.

Q. The first and only time?

A. No, we had a couple of cases after that, but I readily admit I had sufficient, and I am out of it.

Q. You were paid for this work by Mr. Bartling?

A. There was a certain compensation given to Mr. Warren for that particular work, and I was in Mr. Warren's employ and he naturally compensated me for what I done.

HARRY H. HOBROYD, SWORN.

10

By Mr. Leap:

Q. Where do you live, Mr. Hobroyd?

A. 101 N. 37th Street, Camden.

Q. Were you employed by Mr. Bartling to make some investigations at 33 Beechwood Avenue in October, or the early part of November, 1927?

A. No, sir, I was employed by the State Detective Service.

Q. Were you assigned to this particular job?

20

A. I was.

Q. Will you tell us what you did, what you saw, and when you saw it?

A. I believe I was given this assignment on November 1, to make a survey of that number on Beechwood Avenue to ascertain the comings and goings of a Mr. McDowell, whom I had not seen, and I did not know him, and I spent some few hours each evening only, I placed myself in a position— there was a tall hedge directly opposite the house— and I tried to observe his actions, and I had seen Mrs. McDowell ———

30

Q. Mr. McDowell you mean?

A. Mrs. Bartling, pardon me, both leave and enter the house. I have also seen Mr. McDowell do likewise, and I made my reports to my superior,

Mr. Warren, as to what I had taken notice of. There was nothing definite around, I believe I was on that case on 5 different nights, 4 of them, either 3 or 4 of them by myself, 3, I believe, and another night with another man. I will have to make an explanation there, I was there with Mr. Warren on 2 occasions, and Mr. Warren was the one that pointed out Mr. McDowell to me, and on his entry to the home that evening Mr. Warren left me, but I didn't
10 see anything wrong until the night of the arrest, and that night I went on about 7:30 in company with Mr. Patton, Mr. Warren and Mr. Keen, and I made observations from different points of vantage, including the homes on either side of Mr. Bartling's house, there was nothing developed until the 2 girls came home, I don't know where they had been, they entered the house, and I felt convinced that McDowell was there, for this reason, I had gotten at a point at the kitchen door and had heard a man's
20 voice and two female voices, and I felt that it was possibly the daughter, Mrs. Bartling and the child, but I couldn't say it was. I made my report to Mr. Warren, and he said, "Can you make a closer survey?" and I said, "I will endeavor to do so," and it was very hard to make the survey there at times, but eventually I saw a light in the cellar, and I got down to the cellar window, and Mrs. Bartling came down the cellar steps to give the heater some attention —

30 The Court: The what?

The Witness: The heater. She gave it the necessary attention, and I saw her go to the first floor again—the lights in the living-room at that time had been out for a short period, but they went on again.

The Court: What time of night was this?

The Witness: I believe it was on November 9th.

The Court: At about what hour?

The Witness: At this point I am at now it was about 10:15. At about quarter to 11 I was able to get on to the side porch and to get a very fairly clear view of the interior of the living room, I assumed it was the living room by the furniture, and I saw the man's hat and coat —

The Court: Overcoat?

The Witness: Overcoat, yes, sir, on the back of a rocker, or some piece of furniture, an easy chair, and I remained in that position for some 15 minutes, and I could hear voices inside, but could see no one, and I became cramped and had to remove myself, and I made a report to Mr. Warren and he said, "Is McDowell in there?" and I said, "I can't say definitely whether he is or not, but I will tell you in a few minutes," and I went around the house to see if there were any lights in the upper windows. and I saw a dim light on the second floor, what room it was I don't know, it might possibly have been the bath room, I had never been in the house, and I didn't know the layout, and I came back and took my point again and turned to the living room, and I saw 2 people in that room, one person was Mrs. Bartling, and the other person, whom I later identified, was Mr. John McDowell, he had placed his hat and coat on, and they were up against this chair that he has just removed his hat and coat off, and he stepped aside, evidently to

20

30

put it on, and standing there they were both in rather close contact.

Q. What do you mean by that?

A. Well, embraced, apparently preparatory to leaving.

Q. Did he put his arms around her or not?

A. Yes, sir.

10 The Court: I will overrule that. I wish you would leave the witness testify, he knows just as well as you do what you want without your prompting him to any extent or suggesting him to say what he might not be inclined to say; it simply destroys his testimony when an answer is given that is responsive to a question of that kind. It is foolish to force those things on my mind, and, in fact, it casts a shadow of doubt over it, and I wish you wouldn't do it.

20

Q. Continue.

A. I had seen all I had wanted to see, and I stepped down and gave a verbal report to Mr. Warren, I said, "There is a man in there, and it is McDowell, and I think it is time to go in," and he said, "Get Pettit and give him the warrant," and Mr. Pettit, Mr. Warren, Mr. Keen and Mr. Patton and myself stepped on to the porch, stood there for a moment, and I said, "Ring the bell," and one of these gentlemen, I don't know who it was, rang the bell, and Mrs. Bartling came to the door and Mr. Warren, I believe, or Mr. Pettit, asked the question as to whether Mr. McDowell was there and Mrs. Bartling said Mr. McDowell was not there, there was no one there at that time, so Mr. Pettit pulled the screen door open and stepped in and said he had

30

a warrant and he had very good reason to believe that Mr. McDowell was there, and as he stepped in the door I followed him; and Mr. McDowell was standing there with his overcoat and hat, and he told him he had a warrant for him, and Mrs. Bartling remonstrated, she said, "You are not going to arrest him," so I think Mr. Warren stepped up and said, "We have a warrant for Mr. McDowell" he said, "and one for you, too," and she said, "You can't take me out of this house," and Mr. Pettit 10 said, "Well, possibly not, but I think you had better prepare yourself, you are going out now," and she said, "What about my child?" and Mr. Warren said, "Well, can't you get someone to take care of that child while we are away, we will endeavor not to put you to any inconvenience, is it a young child?" and Mrs. Bartling said, "Yes," and Mr. Warren said he would do everything in his power to keep Mrs. Bartling from being inconvenienced. 20

The Court: Are these details going to be of any service to you?

Mr. Leap: I don't think so.

The Court: Well, I think I wouldn't bother with them.

Q. Did you hear at any time Mrs. Bartling address McDowell or hear McDowell address Mrs. Bartling? 30

A. Yes, I did.

Q. When and what did they call each other?

A. If my memory serves me correct, but I wouldn't take an oath —

The Court: Then don't testify to it.

The Witness: I can't do it.

Q. Did you ever hear McDowell call her by any name?

A. Yes.

Q. Where was that?

A. That was in Judge Shoemaker's office.

Q. Tell us about that.

10 The Court: He asked her for a telephone number.

The Witness: And he used the term "Althea" I believe that is the name he used.

Cross-examination.

By Mr. Jess:

Q. You just saw Mr. McDowell just one night?

20 A. No, I had seen him previously, he had been pointed out to me by Mr. Warren.

Q. You worked on this case 5 nights?

A. Yes, sir.

Q. Then you saw him in the Bartling house only on this one occasion?

A. Saw him in there?

Q. Yes.

A. Yes. I have seen him come out on another occasion.

30 Q. The only time you saw him in there was this night?

A. Yes, sir.

Q. You say you heard the voice of one man and apparently 2 females?

A. Yes, sir.

Q. What window were you looking in?

A. Not any window, I was at the back kitchen door.

Q. Could you see into the kitchen from the back door?

A. No, the shades prevented me having any view into the kitchen with the exception of possibly three quarters of an inch on the side.

Q. You say you saw them in the living room?

A. Yes.

Q. Where were you when you saw them?

10

A. On the side porch.

Q. Through what window?

A. Through the door.

Q. There was no shade on the door?

A. The shade was drawn about 5 or 6 inches from the bottom.

Q. Yet you saw them in an embrace?

A. It was quite possible, I was in a prone position on the floor of the porch and could look up into the room, I could see the whole interior.

20

Q. 5 or 6 inches of the shade —

A. The shade was drawn to about 5 or 6 inches from the bottom of the glass panel.

Q. You could see through 5 or 6 inches of this panel and see all around the room?

A. Pretty near all, yes.

Q. And you saw them in an embrace?

A. Yes.

Q. You could see them at full length, could you?

A. When they were standing in front of this chair which was directly opposite my point of vision, yes.

30

Q. You saw them at full length?

A. Yes.

Q. Did you see anything else?

A. Nothing.

Q. And you said, "Now, it is time to go in"?

A. I made my report to Mr. Warren, I said, "He

is in there” and I said, “Now is the time to get them.”

Q. Why did you think that was the time?

A. I had finished, I knew the man was in there, and that was all I was detailed to find out.

Q. You said you didn't know McDowell at that time?

A. I beg pardon, Mr. Warren had pointed McDowell out to me previous to that.

10 Q. On that night?

A. No, on a previous night.

Q. And when you went to the door you saw Mr. McDowell standing there and Mrs. Bartling?

A. When I entered the room they were both standing there.

Q. Mrs. Bartling fully attired?

A. Absolutely.

Q. And Mr. McDowell with his coat and hat on?

A. Overcoat and hat on.

20 Q. You were there how long that night?

A. From about 7:30 until about the time of the arrest, which was about 11:30, I should think, around that hour.

The Court: How many more witnesses have you?

Mr. Leap: That is our case, if the Court please.

The Court: It is one o'clock, I think we had better adjourn until two.

30 (At this point a recess was taken until two o'clock P. M.)

(Trial of the cause resumed at 2 o'clock P. M., pursuant to adjournment, in the presence of counsel for the respective parties.)

THE CASE FOR THE DEFENDANT.

The Court: I should suggest, Mr. Jess, that the testimony you may wish to introduce can probably be directed to both features of your defense, the defense against the bill, and the defense in the way of a cross-bill; I think you will probably find it convenient. You may adopt any methods you want, but I think probably you will find no difficulty in uniting the two. 10

Mr. Jess: I would like to adopt your Honor's suggestion in that regard. 20

ALTHEA BARTLING, SWORN.

By Mr. Jess:

Q. Mrs. Bartling, you are the defendant in this petition instituted by your husband?

A. Yes, I am. 30

Q. You are the cross-petitioner named in the cross-petition?

A. Yes.

Q. And you are the wife of Earl Bartling?

A. I am.

Q. Where do you reside, Mrs. Bartling?

A. 33 E. Beechwood Avenue, Oaklyn, New Jersey.

Q. How long have you lived there?

A. I have lived there about 4 years.

Q. The testimony, Mrs. Bartling, shows you were married to your husband in Oaklyn, that is correct, isn't it?

A. Yes.

Q. And on what date did the ceremony take place?

10 A. Took place the 1st of March, 1915.

Q. Where did you go to reside right after the marriage?

A. We went to live with my sister, in West Collingswood, for 1 year.

Q. Then where did you go?

A. Then we later came to Oaklyn, on Clinton Avenue, 31 Clinton Avenue, we just had 2 rooms there with friends.

Q. Just 2 rooms?

20 A. Yes.

Q. Then did you move anywhere else, that is, before going to your present address?

A. Yes, we then moved to 412 Newton Avenue, Oaklyn, and rented a house there.

Q. Now, when was the oldest child born, Mrs. Bartling?

A. She was born July 25, 1917.

Q. She is now how old?

A. 11 years.

30 Q. Where were you living at that time?

A. 412 Newton Avenue.

Q. Where did you move to when you left that address?

A. We moved to 215 White Horse Pike, Oaklyn.

Q. Were you renting a property there?

A. No, we owned it.

Q. You owned the property?

A. Yes.

Q. Mrs. Bartling, do you recall about what year it was you lived at this White Horse Pike address?

A. Well, it was the same year the baby was born, she was only 15 days old when we moved there, it was 1917.

Q. How long did you remain on the pike, approximately?

A. Well, we were there about, I should say, 4 years.

Q. Now, while you were there did you take up a temporary residence at any other place?

A. Yes, we broke up housekeeping and went to live with Mrs. Bartling, that was my husband's mother, that lived next door.

Q. You went to live with your husband's mother?

A. Yes.

Q. About how long?

A. Several months, maybe 6 months, I am not sure, but around that time.

Q. Then where did you go?

A. Then from there we moved back to 215 White Horse Pike and went to housekeeping again.

Q. And you were there how long, about?

A. Maybe a year or two, I am not sure.

Q. Then did you move to the present address?

A. After a separation of 6 months.

Q. That is, you were separated for 6 months while you were living on the pike?

A. Yes.

Q. Your husband, however, returned to you?

A. Yes, but not to that residence, the one on Beechwood Avenue.

Q. Did you say he left you at that time?

A. Yes.

Q. Then he returned to you when you were living on Beechwood Avenue?

A. Yes, sir.

Q. And that is where you presently live?

A. Yes.

Q. So you have lived in and about Oaklyn, New Jersey, ever since your marriage down to the present date?

A. Yes, and long before.

Q. Your married life was happy and congenial for some period of time, was it, Mrs. Bartling?

10 A. To a certain extent it was.

Q. When did you —

A. I suppose as marriages go it was, we had no real quarrels, but there was always some slight disturbance, but nothing to amount to anything until that time at 215 White Horse Pike when he left me.

Q. By the way, Mrs. Bartling, there was a second child, wasn't there?

A. Yes.

20 Q. Where were you living?

A. 33 Beechwood Avenue house.

Q. When was that child born?

A. He was born December 21st.

Q. Of what year?

A. 1926.

Q. And the child is about how old?

A. He will be 3 this month.

Q. He was born in 1926?

A. It was 1925.

30 Q. He will be 3 years?

A. Yes, the 21st of this month.

Q. Now, was Mr. Bartling living with you when the child was born?

A. Yes.

Q. Did you notice any change of conduct in Mr. Bartling's attitude toward you about the time the child was born?

A. Yes, decidedly so.

Q. In what respect?

A. Well, he was very indifferent, he stayed out, he went out a lot, sometimes stayed overnight, and I didn't know where he was, he never told me, and before the baby was born I was there hours at a time at night, until way in the morning, and even the night he was born we couldn't locate him. Well, it was that way quite a while before the child was born. 10

Q. What seemed to be the real cause of disagreement between you?

A. Well, he claimed I wasn't affectionate enough, and he became disinterested, I suppose he went other places, and he wasn't interested in the home any longer, and he told me he cared no longer for me.

Q. When did he tell you that?

A. Sometime before he left.

Q. Now, on Christmas Day of 1925, you will recall that that was shortly after the baby was born? 20

A. Yes, the baby was 4 days old.

Q. What was Mr. Bartling's attitude toward you on Christmas Day that year?

A. The same as it had been before, he wasn't interested, he didn't come into the room only for a few minutes all day, and he simply ignored us.

Q. Did he ignore you from that time on?

A. Well, at times he was—I can't say completely, no. There were times, I think, when he was interested in the children, but that is all, and that is what 30 kept him there.

Q. Did he make that fact known to you?

A. Yes.

Q. Mrs. Bartling, did Mr. Bartling on any occasion bring anyone home to dinner when he would come in irregularly?

A. Yes, a number of times his business took him

away and he used to work quite late at night, and he used to bring a man from the lumber yard home, and I would serve them dinner, and then they would go back to work, and on one occasion he brought a colored driver in, and because I was indignant he was mad about it.

Q. At your dining room table?

A. Yes.

Q. With Mr. Bartling?

10 A. Yes.

Q. He expected you to take dinner with them at that time?

A. Yes, of course, and I was too proud to eat with him, and I just didn't.

Q. Didn't he make a practice of bringing men in when he would come at irregular hours?

A. Not so often, his brother lived with us, and the two of them came in very irregular.

Q. His brother did live with you?

20 A. Yes.

Q. When did the brother come to live with you?

A. Oh, for some time I think he lived there with us, and he left when my husband left.

Q. Did you have any domestic help, Mrs. Bartling?

A. No.

Q. Who attended the heater most of the time, Mrs. Bartling?

30 A. I did, because he wasn't home; I attended the furnace morning and night.

Q. Now, Mrs. Bartling, you, however, lived together after the birth of the child for how long?

A. Three months.

Q. Then what happened?

A. Well, I suppose he had been thinking of it, and had had it planned, and this one night in particular he said he was through, he was going, and he didn't

intend to keep the house any longer, I was to break it up and go and live in rooms, or with some friends, it didn't matter, but he couldn't keep the expense of the house up.

Q. What provoked that being brought up?

A. Nothing particular that night, but I suppose it was just an accumulation of differences that had occurred, but nothing really that I could tell you, nothing tangible.

Q. What time of the evening did he make known to you his intention to leave? 10

A. Early in the evening, around 7 o'clock, somewhere around there.

Q. Were the children both in bed at that time?

A. No. The baby was only an infant, and my daughter was there.

Q. Did you protest against his leaving?

A. Yes, I did, I begged him not to go.

Q. What did you say, if you recall, in so many words, that is, do you recall just what was said? 20

A. Well, I asked him if he no longer loved me, if he loved someone else, and why he was going, and I asked him not to go, but he was determined, and he simply went, he wouldn't listen.

Q. Was anything else said or done at that time?

A. Nothing, except to tell me I must move out of there, I must find another residence.

Q. Did he offer to take you to this other residence of which you spoke?

A. No. 30

Q. Did you know, as a matter of fact, where he was going?

A. No, I had no idea where he was going.

Q. When did he first return to you, that is, to see you, about when?

A. Why, I never saw him, he never returned to see me.

Q. Did he ever come back to the house after going?

A. Only the one occasion when he came in and I wasn't home, when he came in through the window, that is all I know of, that is the only occasion.

Q. He never lived with you after leaving at that time?

A. No.

Q. Do you remember that date?

10 A. Very well, yes.

Q. What was the date?

A. The 21st of March.

Q. Of what year?

A. The 22nd, I believe, of March of—it was 3 years ago—1926.

Q. Did you know, as a matter of fact, where he was living?

A. I just heard he was living at the Walt Whitman at the time he left, he was there for a short
20 time.

Q. Did he provide any support for you, Mrs. Bartling, after he left?

A. Yes.

Q. Did he ever communicate with you by letter?

A. No.

Q. He did not?

A. No, never.

Q. Did he ever attempt to get you to take up your residence at this new address of his, or any
30 other place?

A. No, only except through my daughter, he would tell her—ask her if I was going to move, if I had found a place at different times, and she would say no, she knew nothing about it.

Q. Was that a place for yourself alone?

A. And the children.

Q. Not for him?

A. Oh, no.

Q. Mrs. Bartling, you are acquainted with one John McDowell who has been named as the co-respondent in this suit?

A. Yes.

Q. Do you recall when you first met Mr. McDowell?

A. It was around the 1st of July.

Q. Of what year?

A. 1926.

10

Q. How do you fix that approximate date?

A. Well, I know it was the Saturday before the 4th, because Mr. Bartling had come to bring some fireworks for the children and had left them in Beasley's, and I remember at that time it was right before the 4th, and he was going away, it was a few days before the 4th, it was around the 1st or 2nd of July.

Q. Under what circumstances did you meet Mr. McDowell, and where?

20

A. Well, he was a salesman for the Maytag Washing Machine, and he was canvassing that district, and, of course, he stopped at my place, and it was his business to try to sell a washing machine, and I told him I was in no position to buy a washing machine, and explained in particular why and, of course, he tried to persuade me I could, and he tried to show me how I could by giving him different leads, and by having a washing machine in my home to show to my friends. I was then connected with the Oaklyn Baptist Church, and I had quite a few friends, and in that way he thought I could sell them, and I could receive a commission in order to pay for my washing machine that way. And about the house, I told him I was supposed to vacate and he wanted to know who owned it and I told him I thought the Suburban Lumber Company owned it,

30

and he advised me to stay there, and it was through that we became friendly.

Q. Did he finally place a washing machine in your home?

A. Yes, I have bought one.

Q. How was it purchased?

A. By this, and by saving every penny I could, I have finally paid for the washing machine.

Q. You have paid for it?

10 A. Yes, I have paid for it.

Q. Did you give him any leads?

A. Yes, I gave him several.

Q. Did you introduce him to some of the church folks at this particular social?

A. Yes, I did, they gave a sour kroust supper at the church, and he brought a number of salesmen down there, and I believe he sold the minister of the church one, and several others.

Q. Mrs. Bartling, when Mr. McDowell came to
20 your home did he ever bring anyone else with him?

A. Yes, on quite a few occasions he would bring different salesmen down, I have met quite a few of them, and it was also arranged—of course, they understood my circumstances pretty well, and I wasn't nearly receiving enough to get along to pay my expenses, and they said they would come down and receive their meals from me, also Mr. McDowell, and they would pay me the same as they would at a restaurant, and I agreed to that, and I have served

30 quite a number of meals to them.

Q. At a charge?

A. Yes.

Q. How much did you charge them?

A. I charged 75¢ for dinner and just a few times for lunch I charged 50¢.

Q. Now, Mrs. Bartling, there has been testimony

to the effect that Mr. McDowell has been at your home at night, that is true, isn't it?

A. Yes.

Q. On some of these occasions, at least, has there been one other than yourself there?

A. On a lot of these occasions. I have a niece, she is past 21 and she visits me every Wednesday evening, and most every Saturday, she makes it a point to be there, because she knows I am alone a lot of the time, she comes there and we spend the evening together, she is there every Wednesday, and almost every Saturday. 10

Q. Has there been any other person there?

A. Oh, on different occasions, yes, and then it was during the fall I had my nephew there for 6 weeks boarding, my sister had scarlet fever in the house, and I offered to take him so he could continue school, and he was there, yes.

Q. Do you recall whether or not Mr. McDowell changed his employment, and if so, with whom he made business connections thereafter? 20

A. Yes, he wasn't with the Maytag Company so very long and then I believe he went to the U. G. I., after that.

Q. In what capacity?

A. The same, he was sales manager.

Q. What did he sell?

A. Vacuum cleaners.

Q. Did he offer you the same proposition as well on the vacuum cleaners? 30

A. Yes, he put a vacuum in my home, and I was to do the same with that, I was to show it to my friends, and if he sold any through me I was to receive a commission.

Q. Did you receive any commissions?

A. Yes, a number of them, that is how I was able to pay for my machine.

The Court: What was the second machine?

The Witness: A sweeper—vac, that is vacuum cleaner.

10 Q. Now, do you remember the occasion on or about the 1st of November, 1926, when it was alleged and testified to that Mr. McDowell was in your home and these various persons came in there, the detectives, that night and found him?

A. Yes.

Q. Who was present on that occasion except Mr. McDowell and yourself?

A. No one but my children.

Q. But the children?

A. No.

Q. Were they in bed?

20 A. I believe they were, I know the baby was, he is always in bed early, and it seems to me the girl had just gone to bed, at least, she wasn't there at the time.

Q. Do you remember about what hour it was that these folks came into your home?

A. Yes, I do, because I was very much surprised to think they would do that. I looked at the clock, and it was just 20 minutes of 11.

Q. Where were you and Mr. McDowell at the time they came in, what part of the house?

30 A. We were in the living room where we had been all evening, and he was about ready to go, he had his overcoat and hat on at the door when someone knocked at the door, and it was Mr. Pettit and he asked me if there had been any man prowling around that night, and I said no, and I think he asked some more questions, and then this other man jumped up on the porch and pulled my screen door

open and came into the house and he said they had a warrant for Mr. McDowell.

Q. Were you arrested?

A. Yes, they told me to come, too.

Q. Where did you go, Mrs. Bartling?

A. We went to Gloucester, finally. We started and they lost the way a lot, they didn't seem to know where they were going, and we finally reached Gloucester, got the judge up, and had the hearing and then instead of bringing me home, which they said I was under my own recognizance, they took me to Camden and then brought me back later to Oaklyn, and it was quite late when I reached home, and it was a very cold night. 10

Q. Did you make any effort to safeguard the children while you were gone?

A. Yes, I didn't want to leave them, and I asked if I could find someone to keep them, and they waited, and I tried to get a neighbor, and they were asleep, and I couldn't, and I had to go and leave them. 20

Q. Mrs. Bartling, it is alleged in the petition for divorce made by your husband that in certain months in the year, 1926, and various months of the year, 1927, and on different days of the month you committed adultery with this man John Y. McDowell. Is that a fact, or is it not a fact?

A. No, it is not a fact.

Q. Have you at any time or place committed adultery with McDowell? 30

A. No, I have not.

Q. Did you love your husband when he left you?

A. Yes, I did, I asked him not to go, I didn't want him to go, and I asked him not to, I really think I did.

Q. You felt you were a devoted wife?

A. Yes.

Q. Did you discharge your marriage vows to the best of your ability?

A. Yes.

(No cross-examination.)

JOHN Y. MCDOWELL, sworn.

10

By Mr. Jess:

Q. Mr. McDowell, where do you reside?

A. Where do I reside?

Q. Yes.

A. 1935 N. 13th Street, Philadelphia.

Q. Are you acquainted with Mrs. Althea Bartling who was just on the witness stand?

A. Yes, sir.

20

Q. When did you first meet her?

A. I met her about the first Saturday preceding the 4th of July, 1926.

Q. By whom were you employed at that time?

A. I was employed by the Maytag Company of Newton, Iowa.

Q. In what capacity?

A. Sales promoter.

Q. Did you have occasion to go to Oaklyn in the course of your business?

30

A. Yes, I was transferred from the Philadelphia district to the New Jersey district to open a store on Federal Street, and I was advised that down through that section was a good section for the sale of our product, and I organized some salesmen who went down there. Our custom had been to get in as many machines as possible and to pay commissions to these people for a resale or getting us

in touch with other people, and through that proceeding I got in touch with Mrs. Bartling.

Q. Was your branch office opened in Camden?

A. 509 Federal.

Q. Did you know Mr. Bartling at the time?

A. No.

Q. Had you heard of him?

A. No, I didn't know anything about him. I had heard at the time I went to his house, or just preceding that, a few days prior, from a neighbor, that he had a damp wash laundry in Oaklyn, and I figured to sell one to his wife would be a great achievement, and I used every method possible to sell her. 10

Q. Was a demonstrator placed in the home?

A. Yes, I had one placed in the home.

Q. Has Mrs. Bartling ever paid you for that?

A. For that machine?

Q. Yes, sir.

A. I sold it to her on a contract, on a lease contract we had with that company, and, of course, her dealings were with the company. 20

Q. Do you know whether, as a matter of fact, it was ever paid for, to your knowledge?

A. I don't know, I was no longer with the company, that is, in this district.

Q. Were any other of your machines sold in Oaklyn?

A. Yes, to Mrs. Rieter, who lived next door bought one, one to Mrs. Beasley; at that time I was trying to place one in both of those houses and I succeeded in placing one in Mrs. Rieter's, and selling it. 30

Q. What other territory did you cover?

A. Burlington County and Camden County down as far as Berlin.

Q. Did you change your business connections at

any time subsequent to this connection with the Maytag Company?

A. I was transferred back to the Philadelphia district, it had gone down, and they transferred me back to build up that district, and I was with them until September of 1927, and then I took on a sales promotion for the S. M. White Company of Massachusetts, through the U. G. I., and started to organize a sales force.

10 Q. Is that your business, to organize sales forces?

A. That is my business.

Q. Did you place a demonstrator with Mrs. Bartling?

A. I placed one in Mrs. Bartling's home with the same understanding that she likewise could draw commission should they be sold to any of her friends, or any recommendation she gave us.

Q. Were any sold to her friends?

A. Not of those machines.

20 Q. Were there of the Maytag machines?

A. Yes.

Q. Were commissions paid to her?

A. Yes, regularly. I sold them through the salesmen, and each time I transferred a salesman from that district—I had a district for the various salesmen—I allowed 2 men to a district, and each time I made a change I would take them around and introduce them to these various women who were getting leads for us, and each time I changed the salesmen I took them down and introduced them to Mrs. Bartling, together with other women, always.

30 Q. When you first met Mrs. Bartling was anything said as to the fact that she was living alone?

A. Yes, Mrs. Bartling told me she couldn't purchase one at that time because her husband had left her.

The Court: You are speaking of the washing machine?

The Witness: Yes, sir. She said she couldn't purchase one at that time because her husband had left her and she got a very small allowance, and that she expected to be put out of the house, she was notified she was to get out of the house, and therefore, it was impossible, but seeing the advantage of selling one to her I persuaded her to have one put in for demonstration purposes and to try to sell them, and when I sold one to Mrs. Rieter, and one to the minister of the church, why, I told her that that money would go toward a down payment and I was sure she could get enough to keep up her payments, and then she told me of the sour krout supper, and I took the salesmen down there, and I think we had 5 sales from that meeting, altogether.

Q. Did you make any other sales?

A. Yes, we made quite a number of sales through Oaklyn, quite a number.

Q. Mr. McDowell, was any arrangement made with Mrs. Bartling to have you and the salesmen take meals at her home?

A. When I first came here I didn't know anything about Jersey at all, I had only gone through it to Atlantic City, and the salesmen, when they would be down through that section, they couldn't buy any lunch anywhere, or in the evening, they couldn't find a place to buy anything to eat, and I told Mrs. Bartling that while the men were working through that district if she would make arrangements to let them have their meals at her home I would be glad to pay for it, and on a number of occasions I had the men to eat there when they were working in the

evening, or at noontime when they were working that district.

Q. Can you recall any occasion when you visited the Bartling home when there was no one there other than you and Mrs. Bartling?

A. No, I can't recall, always the children were there.

Q. On any other occasions would anybody else be there?

10 A. Her cousin, Thomas Runge, and her niece, and sometimes her sisters, or her daughter, or someone, would be there.

Q. Do you remember an occasion when this detective came to the house?

A. Very well.

Q. What had happened that evening?

A. We were having a drive in Philadelphia for the Light Company, we had a certain contract to fulfill with the U. G. I., and we had to get a certain
20 number of sales by the end of the year to hold the contract for the following year, and we were doing everything possible to force or try to get as much business as possible from what we call our sub-agents, leads, and I had a Mr. Rutherford, who had charge of the Broad Street office, to bring me over, and we got over about 8 o'clock and he left me off, and I took it in to Mrs. Bartling and I demonstrated it and showed her the different features and asked her if she would have her friends come
30 around, or talk to them, about this cleaner, and the more sales we would get, of course, the more money would be in it for her, and I had just about finished, I suppose, and I was getting ready to leave, I put on my overcoat, rubber shoes, umbrella, and was about to go out, and I heard a knock, and I stepped aside, and I said, "Mrs. Bartling, you had better open the door," I didn't know whether I had better go out or

wait, it was after 10 o'clock at night, and this man said he wanted to get in, and I seen quite a crowd, and I said, "I wouldn't open the door until I found out what they wanted," and they broke the door open and he said he was a State detective and he said he had a warrant, and I asked what it was for, and he told me, and I said I would like to read it, so he let me read it, and I laughed, I said, "Mrs. Bartling, you had better call Mrs. Rieter and Mr. Jess on the phone," and he said, "You won't call anybody——"

The Court: I don't see that these details are at all necessary.

Mr. Jess: No, I don't think so either, if the Court please.

Q. You had met the Runge family?

A. Yes.

20

Q. The young man Runge, is he the son of the lady who lives in West Collingswood?

A. Yes.

Q. Mr. McDowell, it has been testified, or the petition names you as the co-respondent, as having committed adultery with Mrs. Bartling at various times alleged in the petition; have you, or haven't you, on any occasion, at any time, or anywhere, committed adultery with Mrs. Bartling?

A. I have not.

30

Q. On this particular night to which you have just referred when these detectives came in do you remember whether or not you actually embraced Mrs. Bartling?

A. I did not.

Q. Did you or did you not?

A. I did not.

Cross-examination.

By Mr. Leap:

Q. When did you first meet Mr. Bartling?

A. Mr. Bartling?

Q. Yes.

A. The first time I seen Mr. Bartling was a night
that Mrs. Bartling phoned to me in Philadelphia and
10 asked me if I would stop over to see her, and I
came over, and she told me that it had been about
4 or 5 weeks since she had received any money from
her husband and she asked me to take her over to
her sister's in West Collingswood and I told her I
would, and I took her and the little child over to
her sister's, and when she got there her sister was
about to leave the house, they were going to a church
entertainment, or something, and she told me she did
not succeed, whatever it was she wanted to do, and
20 that she had not had any dinner that night, and the
result is I offered to take her to Camden, to Mr.
Brewer's, to buy her dinner and then to take her
home, but the child was so sleepy she took it home
first and then she came out and got in the car and
I took her to Brewer's, and just as we got back I
saw a man's figure in the house, and I said, "I
wouldn't go in, I would call the man next door,"
and she did, and when they got in they saw Mr.
Bartling and another man prowling through the
30 house.

Q. Why should she have called you to tell you
about the non-support of her husband?

A. Yes, I could see that very readily, Mrs. Bart-
ling had sold machines for us, we had commissions
then due her —

Q. What kind of a machine had she sold up to that
time?

A. Washing machines.

Q. You weren't working for the Maytag people at that time, were you?

A. I had been away only about a month.

Q. So she wasn't receiving any money from the company you were with then?

A. No, she had just taken on the agency, but she continued with the washing machines.

Q. You gave up the agency for the Maytag?

A. No, I still had connections with the salesmen 10 for the Maytag Company.

Q. How many Maytags did she sell altogether?

A. I don't know, I introduced the salesmen to her.

Q. Do you know of one that she sold?

A. Yes, Mrs. Rieter, and Dr. Wyett.

Q. That she sold personally, or some of your salesmen sold?

A. Through her we sold them.

Q. That is the reason she called you and told you about her husband not supporting her? 20

A. She called me and I took her to her sister's in West Collingswood and it was after I took her to her sister's that she mentioned that to me.

Q. Why did she call you to take her to her sister's?

A. Why did she call me?

Q. Yes.

A. I don't know, Mrs. Bartling will have to answer that.

Q. When did you next see Mr. Bartling? 30

A. Mr. Bartling, the next time I seen him I was down to the Maytag Company and Mr. Bartling came to the office, I think it was the next morning after that affair, or maybe the following day, I am not sure which. He came into the office, and I didn't know him, I didn't recognize him at all, and when I went in he told me who he was and he asked me

if I was Mr. McDowell, and he said he wanted to talk to me and I said, "I am very busy now," and he said, "Will you get in touch with me?" and I said, "I will get in touch with you on the phone and make an appointment." They are the only two occasions.

Q. That is all he said to you at that time?

A. That is all I can recall, but he may have said more or less.

10 Q. Did he say anything about staying away from his house?

A. No, he said nothing about that at all.

Q. Do you remember the incident the officer told about while you were sitting in the automobile?

A. No, I don't know anything about that.

Q. The officer was wrong about that?

A. I don't know what you are referring to.

20 Q. One of the police officers of Oaklyn testified that, about 6 or 7 months prior to the burglar scare at the Bartling home, that you and Mrs. Bartling were in an automobile quite late at night and the officer came up and told you to move on, do you recall any such an incident?

30 A. Yes, I do. Mrs. Bartling was in the automobile, I took her home, and instead of stopping at her house I stopped on Bettelwood Avenue about 20 or 30 feet from the White Horse Pike under an electric light, the electric light was on the opposite side, and we had just about stopped and I was talking with her before running around to the house, and this officer came over to the automobile and knocked on it and he said, "You know this woman is married?" and I said, "I do" and he said, "What are you parked here for?" and I said, "I think I have a perfect right to park under this light, I am on the right side, we are on a main road, what is the matter?" and he said, "We have had numerous

complaints about people parking around here” he said, “Why don’t you park in front of her house?” and I said, “It is dark there and it is light here” and I said, “I wanted to park here because it is light, and I know she is married,” and then I drove around to her house.

Q. Is that the reason you left your automobile at that same point several nights before that?

A. I never left my automobile.

Q. And come out of her house and cross the lot 10 and go in your automobile?

A. I never did that in my life.

Q. Never did?

A. No, sir.

A. You always talked about washing machines and vacuum cleaners when you talked to her?

A. I don’t know that I did talk about washing machines and vacuum cleaners, I became acquainted with her family, and I visited most all of them.

20

Q. You were at the Bartling house in January, 1928, weren’t you, January 1st?

A. Yes, sir.

Q. You were arrested while you were down in the cellar, weren’t you?

A. Yes, sir.

Q. Under the cellar steps hiding, weren’t you?

A. No, sir.

Q. What were you doing?

A. I was down attending to the heater fire.

30

Q. Why were you tending to the fire?

A. They asked me to.

Q. Were you still selling vacuum cleaners that day?

A. I was.

Q. Yet you were attending the heater?

A. That wasn’t the reason I went there.

Q. You had your coat and vest off and was down there in your shirt sleeves?

A. No, I was over in the office on Arch Street on that morning and I picked up a Camden Newspaper and seen where detective Warren and these other fellows had been rounded up by Detective Miller for operating a bogus detective bureau, and I came over to Mrs. Bartling's house about 10:30, brought the newspaper to her, and asked her if she
10 thought Mr. Jess knew it, and I said I thought he had better know about it.

Q. What time was the arrest?

A. About noontime.

Q. Wasn't it 2 or 3 o'clock—had you had lunch there that day?

A. Yes, I did, they asked me to have dinner while I was there.

Q. Who are they?

A. Mrs. Bartling and 5 or 6 people in the house
20 at the time.

Q. You knew the husband didn't want you around the house, didn't you?

A. Beg pardon?

Q. You knew the husband didn't want you around the house, didn't you?

A. I didn't know anything about it.

Q. You knew he had you arrested one time in the early part of November?

A. Yes, sir.

30 Q. And yet you still persisted in going around there?

A. I couldn't see any harm in it.

Q. You have been going around there as late as Armistice Day this past year?

A. Yes, sir.

Q. You are a married man?

A. Yes, sir.

Q. And have 8 children?

A. No, sir.

Q. How many do you have?

A. 7.

Q. Your wife actually had you arrested on the 1st of January?

A. My wife was sent for.

Q. Answer that yes or no?

A. Yes, as the result of this other affair.

Q. There is no other question pending. 10

By the Court:

Q. Why did you persist in going there when you knew her husband and your wife didn't want you to go there?

A. I was simply carrying out the business transactions I had with this lady.

Q. Didn't you think it time that your business transactions terminated when your own wife and her husband both had you arrested because you were going there, didn't you think the time had arrived when you should terminate business connections which made such antagonism? 20

A. I suppose I had.

Q. Why did you insist?

A. Simply because of the business I received from going there.

Q. Did you think the sale of a few washing machines or a few vacuum cleaners would compensate for all this domestic trouble? 30

A. Not now, I don't.

By Mr. Jess:

Q. Did you ever know, did Mr. Bartling tell you he objected to it?

A. No, he never did.

Q. Did you ever meet him around the house on any occasion?

A. No, I never came in contact with Mr. Bartling.

By the Court:

10 Q. You knew what he wanted to see you for, surely you did, you didn't think he wanted to see you to make a present?

A. No, I understood he was entirely away from there, he had no connection with Mrs. Bartling, and it was just a matter that he had deserted her and that was the end of it, as far as I knew.

Q. Didn't you know perfectly well he wanted to see you and ask you to stay away from his wife?

A. No, I had no such idea.

Q. What did you think he wanted to see you for?

A. I don't know.

20 Q. And didn't care?

A. I figured this way. The only connection I had there was a straight communication with my business, and that she had bought the machine and I was due to see that she got it, at least, the various leads.

30 Q. Did that necessitate you going there every evening? Can you think that I could believe for a moment that any business connections that you had there necessitated your going there as often as the evidence in this case discloses you did, going there at night? Why do you suppose I would believe that a little business transaction of that kind would necessitate any such intercourse as the evidence discloses existed between you and her, and such a friendship, and such an association, both of you married? Why do you think I would believe anything like that? How can I?

A. After this acquaintance, your Honor, I got to know her family, her cousins, and nephews, sisters, brothers, and they would play cards there, and they would invite me down to play cards.

The Court: All the more reason why you should have left her alone. You knew she was in estrangement with her husband, and you had a wife, and the best place in the world for you was anywhere but there.

10

By Mr. Jess:

Q. You testified you did not meet Mrs. Bartling until when, Mr. McDowell?

A. The Saturday preceding the 4th of July.

Q. Did you know at that time how long Mr. Bartling had been away from Mrs. Bartling?

A. I didn't know exactly, I knew he had been away for quite some time.

20

GERTRUDE RUNGE, SWORN.

By Mr. Jess:

Q. Mrs. Runge, where do you reside?

A. 408 Taylor Avenue, West Collingswood.

Q. Are you related to Mrs. Bartling?

30

A. I am her sister.

Q. Do you know Mr. McDowell, who just left the witness stand?

A. I have been acquainted with him, yes.

Q. You, of course, know Mr. Bartling?

A. Yes.

Q. When did you first meet Mr. McDowell, do you recall?

A. Why, about 2 years.

Q. Where did you meet him?

A. I think I met him at Mrs. Bartling's home.

Q. At your sister's home?

A. Yes.

Q. Do you know whether or not your son used to visit the house of Mrs. Bartling, too?

10 A. Oh, yes, he was there 6 weeks last winter when we were quarantined.

Q. The niece that Mrs. Bartling speaks of, is that your daughter?

A. No, my niece, my oldest sister's girl.

Q. Do you know, as a matter of fact, that she goes there to visit the Bartlings?

A. Yes, twice a week.

Q. You heard Mrs. Bartling's testimony?

A. Yes.

20 Q. And you confirm that fact?

A. Yes.

Q. Do you remember any event leading up toward March, 1926—do you remember when Mr. Bartling left Mrs. Bartling?

A. When he met her?

Q. No, when he left her?

A. Yes.

Q. Do you recall when that was?

A. I remember the time.

30 Q. Do you know about when that was?

A. About March, 1926.

Q. Do you know whether or not he has ever lived with her since that time?

A. I don't think he has ever been in that house since.

Q. Have you been in the house on many occasions?

A. Yes.

- Q. Have you ever seen Mr. Bartling there?
A. No.
Q. Do you remember about the time the younger child was born, were you with your sister?
A. Yes, I was there a number of times.
Q. Was her husband home about that time?
A. No, neither time I was there was he home.
Q. Do you remember about when the child was born?
A. Yes, it was the 21st of December. 10
Q. Did you attempt to locate the husband when you thought the child was about to arrive?
A. I was there the night before the baby was born and tried to get him on the 'phone as late as 12 o'clock that night, I got the neighbor to use her 'phone, I got her out of bed, and I couldn't locate him.
Q. How late did you stay at the house on that occasion?
A. Well, on to 1 o'clock. 20
Q. Had he appeared?
A. No, he had not.
Q. Did Mrs. Bartling know where he was?
A. No, she did not, she asked me to try to get him, she was in misery, and I thought she needed the care of a doctor, and also her husband.
Q. Were you in close touch with Mrs. Bartling during that period of time?
A. Yes.
Q. Had you observed any change or anything 30 strange about the attitude of one towards the other, between this husband and wife?
A. I didn't see so much of him because when I was there he wasn't home.
Q. Were you there on any occasions when he was home?
A. I can't recall. I know at one time, it must

have been 6 months or so before that, I was there and he had very little to say to anyone, he was reading the whole time I was there, and he wasn't a bit sociable with anybody in the house.

Q. In your opinion did Mrs. Bartling evidence in conversations regarding her husband and in her general attitude love and affection toward him?

A. Why, I thought she did.

Q. As far as you observe was she a devoted wife,
10 or wasn't she?

A. As far as I knew.

Q. There was nothing to suggest otherwise to you?

A. As far as I could see.

Q. Did you ever see Mr. McDowell around there before he left?

A. No, never.

(No cross-examination.)

20 Mr. Jess: If the Court please, that constitutes the defense.

The Court: Any rebuttal?

Mr. Leap: No, sir.

The Court: I will hear counsel. It is now 4 minutes of 3, and I would like to leave at 3:15, if possible, today, and I can give counsel the 20 minutes I have now, or I can hear you tomorrow morning. Perhaps if counsel will think over their case
30 they can present it better tomorrow morning than now, and if it is convenient to counsel to present it tomorrow I think that will be better.

Mr. Jess: There will be no more testimony?

The Court: No, I understand both sides rest.

(At this point an adjournment was taken until Thursday, December 20, 1928, at 10 A. M.)

December 20, 1928.

(The arguments of counsel were heard by the Court on the above date.)

The Court: I will ask you to hand to my sergeant-at-arms the authorities which you have cited, just give him a list of them, and any you have you may do the same with, and I will advise counsel of my determination subsequently. 10

January 2, 1929.

(The following testimony was taken in the above matter, on the above date, in the presence of the Court and respective counsel.)

Mr. Leap: I am filing the notice of this hearing. 20

BETH BARTLING, SWORN.

By Mr. Leap:

Q. Beth, you are Mr. Earl Bartling's daughter, are you? 30

A. Yes.

Q. You live with your mother down on Beechwood Avenue in Oaklyn?

A. Yes.

Q. You were talking to your father on the Saturday before Christmas, weren't you?

A. Yes.

Q. Did you tell your father about Mr. McDowell?

A. Yes.

Q. Will you tell us just what you told him?

A. I don't remember exactly what I did tell him.

Q. Do you know Mr. McDowell?

A. Yes, sir.

Q. How long have you known him?

A. As long as he has been with the Maytag Company.

10 Q. Did he ever stay at your house?

A. Only when Tom was there, and he only stayed 2 times, only 2 times then, and when Erma was there he stayed about 2 times there.

Q. Who is Tom?

A. My cousin.

Q. How old is Tom?

A. I don't know.

Q. The young man standing over there?

A. Yes, sir.

20 Q. Who is Erma?

A. My cousin.

The Court: Who is Tom?

Mr. Leap: The young man sitting over there.

Q. How old is Erma?

A. I don't know.

Q. Is she a sister of Tom's?

30 A. No.

Q. Is she younger or older than Tom?

A. I think she is older, isn't she?

Q. How many times would you say that McDowell has stayed at your house altogether?

A. At night?

Q. Yes.

A. About 4 times.

Q. Not more than that?

A. No.

Q. Are you sure about that?

A. I am positive.

Q. Did McDowell take your mother shopping on the Saturday before Christmas?

A. Yes, sir. Mother was ready to go to Camden and he came in and asked her how she made out, so he took her up to Camden and brought her back and let her off at the door and went on home and mother walked in the house. 10

Q. Do you remember about when it was that Mr. McDowell stayed at your mother's house on these different times?

A. No, I do not.

Q. Couldn't you tell us, Beth, about when it was he was there these different times?

A. I don't know which night it was, or anything, but when it was Tom was there and Erma, that is all I know. 20

Q. How do you know it was when Tom and Erma was there, is that what your mother told you?

A. No, mother didn't tell me, it was either when Erma was there or when Tom was there, or when we played cards, that is when Erma stayed.

Q. Do you know why he stayed there?

A. Yes, because we played cards late and we all coaxed him.

Q. Would you say it was a year ago he stayed there, or not that long ago? 30

A. No, about a month or so ago, I guess.

Q. All these 4 times were about a month ago?

A. I don't know, it was when I had scarlet fever when Tom was there.

Q. How many times has Tom been to your house?

A. He was there for 6 weeks.

Q. He was there for 6 weeks?

A. Yes, and Mr. McDowell only stayed 2 times then, and 2 times when we played cards when Erma was there.

Q. Were any of Mr. McDowell's salesmen with him at these times he stayed all night?

A. No.

Q. Did he just come in to see the folks, is that all?

A. No, sometimes he brought his salesmen, and lots of times he talked about the Maytag, and I
10 don't know what he did talk about the other times.

Q. But you are sure every time he stayed there at night either Tom or Erma were always there?

A. Yes, sir.

The Court: Both of them, or one?

The Witness: Sometimes Erma and Tom was there, too, and Erma would sleep with us and Tom would sleep with Mr. McDowell upstairs, and we
20 would sleep down-stairs.

Q. You would sleep in the house with your door closed?

A. Yes, we always lock it down-stairs.

Q. Do you lock your bedroom door?

A. No, we couldn't lock that, we have a hall between the dining room and bedroom.

Q. Did you close the bedroom door?

A. Yes, closed the bedroom door and locked the
30 hall door.

Q. What do you mean?

A. Between the dining room and bedroom and the hall, between them, we locked this door and you can't get into the bedroom and you can't open the door.

Q. You say Erma used to sleep with you?

A. Yes, my mother and I.

Q. Your mother slept in your room?

A. Yes, we always slept together.

Cross-examination.

By Mr. Jess:

Q. Beth, you haven't met me before, have you?

A. No.

Q. And I haven't spoken to you on this matter 10
at all on any occasion?

A. No.

Q. You were in my office for a while this morning?

A. Yes.

Q. And I didn't ask you any questions then?

A. No.

Q. Beth, do you recall whether or not it was dur-
ing the winter of 1927 that Tom stayed with you?

A. I think it was 1928.

Q. You mean early in 1928—what part of the year 20
1928?

A. It was near Thanksgiving, that is all I know.

Q. Do you remember why he stayed at your home?

A. No, I do not.

Q. Do you know whether there was any illness in
his own home?

A. No, I don't, I don't think there was.

Q. Beth, had your mother ever told you not to
tell your Daddy that McDowell was at the house?

A. No.

Q. She never had?

A. No.

Q. Do you know how many bedrooms there are
in your home?

A. There are 4 bedrooms, but we only have 2
furnished.

Q. Just 2 furnished?

A. Yes.

Q. Are they both on the same floor?

A. No, one upstairs and one is down-stairs.

Q. The bedroom which you occupy, where is that, down-stairs?

A. Down-stairs.

Q. In what part of the house, front or back?

A. Towards this way.

Q. Toward the front?

10 A. No, it is toward the side.

Q. Where is this bedroom upstairs?

A. Towards the back.

Q. When Mr. McDowell stayed there at night did you stay up late those evenings?

A. Until after he went.

Q. When he stayed overnight?

A. What was that question?

Q. When Mr. McDowell stayed overnight you say he stayed overnight about 4 times, did you stay
20 up while he was there?

A. Yes.

Q. Were you all together during the evening?

A. Yes.

Q. Where would you spend the evening, what part of the house?

A. In the living-room.

Q. What did you do during the evening?

A. We played cards, sometimes mother read us a book.

30 Q. Did Mr. McDowell play cards?

A. Yes.

Q. You all played cards together?

A. Yes.

Q. Did you ever ask Mr. McDowell to stay all night?

A. We all did, and Tom was there, too.

Q. Why did you ask him that?

A. Because it was late and we didn't want him to go home.

Q. Do you know where he slept when he stayed all night?

A. Upstairs.

Q. With whom did he sleep, if anyone?

A. Well, when Tom was there he slept with Tom all the time when he was there.

Q. And when Tom wasn't there?

A. He slept upstairs by himself and Erma slept 10 with us.

Q. That is, do you mean you and your mother and Erma slept together?

A. Yes, sir.

Q. Do you know that Mr. McDowell always slept upstairs?

A. Yes.

Q. Was Mr. McDowell kind to you, Beth?

A. Yes.

Q. Kind to everyone in the family? 20

A. Yes.

Q. Do you think he seemed to care for one person more than he did for another?

A. No.

Q. He never showed that?

A. No.

Q. He was always the same toward everybody?

A. Yes.

By Mr. Leap:

30

Q. Didn't you tell your daddy that your mother said not to say anything about Mr. McDowell being at the house?

A. Not that I remember.

Q. Don't you remember telling your father that one day?

A. No.

Q. When he asked you about Mr. McDowell?

A. No, I don't.

Q. You don't remember that?

A. No.

Q. Don't you remember being down to your father's office about three months ago, going down to see him and talking with him, when your father asked about Mr. McDowell?

10 A. I often had been there and he asked me about him the Saturday before Christmas, but I don't know what he said.

Q. When he asked you then what did you say?

A. I don't remember what he said.

Q. Don't you remember being down there?

A. I don't remember.

Q. In September, right after school began, don't you remember being down to his office and don't you remember your father talking about Mr. McDowell

20 at this one time?

A. Yes.

Q. He has talked with you several times about him, hasn't he?

A. Yes.

Q. Didn't you ever tell him your mother told you she didn't want you to talk about McDowell?

A. I don't remember, maybe I did.

Q. Your mother didn't want you to talk about Mr. McDowell, did she?

30 A. She never told me not to tell him, she never told me not to tell him.

Q. What did she tell you about?

A. She didn't tell me anything.

Q. You don't remember telling your daddy that?

A. No.

By Mr. Jess:

Q. Do you and your mother talk very much about Mr. McDowell?

A. No.

Q. How often do you see your daddy?

A. Well, sometimes about—almost all the time about once a week.

Q. And where?

A. Down in the office. 10

Q. At his office?

A. Yes.

Q. Where is that, Beth?

A. Down at Greenwood Avenue, the Suburban Lumber Company.

Q. In Oaklyn, that is?

A. Yes.

Q. Do you know about how long it has been since daddy has lived at home?

A. What was that question? 20

Q. Do you know how long it has been since your daddy has lived at home?

The Court: There is no dispute about that, is there?

Mr. Jess: I don't think there is, your Honor.

The Court: I think everybody agrees to that, when he left. 30

By Mr. Leap:

Q. You don't remember telling your daddy that down at his office?

A. No.

Q. Don't you remember your daddy asking you if your little brother still called McDowell daddy?

A. Yes, I remember that.

Q. And you told him he still called Mr. McDowell daddy?

A. Yes.

Q. Don't you remember you told your daddy that your mother said not to say anything about McDowell?

10 A. No.

Q. How long has your little brother been calling Mr. McDowell daddy?

A. I don't exactly remember when it was.

Q. Quite a long while has it been?

A. No, not very long.

Mr. Leap: In reference, your Honor, to that Saturday trip when McDowell took Mrs. Bartling shopping on Saturday, I have found that Mr. Bartling's brother saw Mrs. Bartling and McDowell on
20 Kaighn Avenue in Camden on that particular Saturday shopping. Of course, the little girl has stated they went out together, and I only asked to produce this one witness and whether your Honor would like to hear —

The Court: I think you may examine him, if the other side needs time to rebut it they may take it.

RAYMOND BARTLING, SWORN.

By Mr. Leap:

Q. You are a brother of Earl Bartling?

A. Yes, sir.

Q. Were you on Kaighn Avenue in Camden on the Saturday before Christmas?

A. I was.

Q. Will you tell us who you saw with Mrs. Bartling that day?

A. I saw a gentleman that my wife called my attention to and I turned around and looked and saw Mr. McDowell.

Q. You know Mr. McDowell?

A. Not personally, just by having had him pointed out to me.

Q. What kind of a looking man was he?

A. Rather stout, middle aged man.

Q. What color hair?

A. From the back his hair looked gray.

Q. What were they doing?

A. Walking together with arms full of bundles toward a parked automobile, and it looked as though they got in this parked automobile.

Q. What time of day was it?

A. Late in the afternoon, but I don't remember what time it was, I think it was around 3:30.

Cross-examination.

By Mr. Jess:

Q. You don't know where they had been?

A. No.

Q. Or where they were going?

A. No.

Q. Or where they had met?

A. No.

Q. Or whether they had just met?

A. No, I don't know anything about them except I seen them together.

Mr. Leap: I also have a little girl, who is the daughter of this man, and it just came to my attention this morning that she has seen McDowell drying Mrs. Bartling's hair at the house, I have that little girl in court.

The Court: Examine her, if the other side needs more time to rebut it they may have it.

FLORENCE BARTLING, SWORN.

20

By Mr. Leap:

Q. Florence, how old are you?

A. 13.

Q. You are a niece of Mr. Earl Bartling?

A. Yes.

Q. Do you know Earl's wife?

A. Yes.

Q. Do you know Mr. McDowell?

30 A. Only when I was down to Beth's house and saw him.

Q. You have seen him at the house, you say?

A. Yes.

Q. What have you seen him doing?

A. I have seen him there eating breakfast, and I have seen him giving her a massage, and when we were out in the car one time, I went out with him,

and they bought some pretzels, and she was feeding pretzels to him.

Q. Who was?

A. Mrs. Bartling feeding Mr. McDowell.

The Court: In the car, you say?

The Witness: Yes.

The Court: You were with them?

10

The Witness: Yes.

Q. Did you tell your uncle about seeing McDowell drying her hair?

A. Yes, sir.

Q. Tell us about that and when it was.

A. It was in the summer time.

Q. What summer, this summer, or the summer before this?

20

A. The summer before this, I think, I just got home from school and went down after Beth, and we went in the hallway and Mrs. Bartling was sitting there and I seen Mr. McDowell drying her hair and afterwards he gave her a massage.

The Court: Gave her a massage?

The Witness: Yes.

The Court: What do you mean by giving her a massage, after drying her hair he gave her a dry rub, do you mean rubbing the scalp?

30

The Witness: No, he massaged her face, a facial massage.

Cross-examination.

By Mr. Jess:

Q. Were you in the habit of going down to the house each day?

A. Mostly every day.

Q. You went down there nearly every day?

A. Yes.

10 Q. Why did you go down to the house on this particular occasion?

A. Just to play with Beth.

The Court: I want to ask where they were when he gave her the facial massage and dried her hair.

The Witness: Right in the doorway of the bathroom.

20 The Court: At her home?

The Witness: Yes.

The Court: When was that?

The Witness: Last spring I think it was, it was in the spring time, but I don't remember which year.

30 Q. Is that the only time you ever saw him do that?

A. That is the only time I ever saw him giving her a facial massage.

By the Court:

Q. I don't quite understand how he dried her hair. How did he go to work to dry her hair, what did

he do to do that, I don't know much about drying hair.

A. He just dried it with a towel.

Q. You see, I don't dry my hair very often. And then he gave her a facial massage with what?

A. I don't know what he used, but I seen him doing it.

Q. Some kind of a lotion?

A. I think it was.

Q. Or just his hands without any lotion? 10

A. No, he had something on his hands.

Q. How long did that take?

A. I don't know.

Q. They were in the bathroom together?

A. Yes.

Q. By themselves?

A. I think Earl was in there with them, the baby.

Mr. Jess: Was Beth there on that occasion?

The Witness: No, she just got home from school, but when he was massaging her she was there. 20

Q. In the bathroom or in the home?

A. In the home and in the bathroom, too.

By Mr. Jess:

Q. On what floor is the bathroom?

A. First floor.

Q. Were they actually in the bathroom? 30

A. Yes.

Q. How did you happen to be in that part of the house?

A. Because Beth took me in there.

By Mr. Leap:

Q. How long had Beth been home from school before you got there?

A. Not very long, she got home the same time I did.

Q. You found Mr. McDowell and Mrs. Bartling in the house when you arrived there?

A. Yes.

10 Q. And he was massaging her face then or drying her hair?

A. Drying her hair.

By Mr. Jess:

Q. Did you go right out when you saw he was drying her hair?

A. No.

Q. You stayed around there?

20 A. Yes, we stayed for a while, I think Beth was asking her mother a question, or something.

Q. Did you leave as soon as he had dried her hair?

A. No, sir.

Q. How long were you there at that time?

A. I don't remember how long it was.

Q. 5 minutes, would you say?

A. I think it was a little longer than 5 minutes.

Q. Just standing around there talking together?

30 A. Yes.

By Mr. Leap:

Q. Did you both go out together then?

A. Yes.

Q. And left Mrs. Bartling and Mr. McDowell in the house with the baby?

A. Yes.

Q. Was anybody else there but them?

A. No.

The Court: How was Mrs. Bartling dressed when she was having her facial massage?

The Witness: Just in her regular clothes, I think.

Mr. Leap: That is all.

10

The Court: Make any rebuttal you care to.

Mr. Jess: I have a little counter testimony I would like to present.

ALTHEA BARTLING, recalled.

20

By Mr. Jess:

Q. Mrs. Bartling, you have heard testimony to the effect that Mr. McDowell spent about 4 nights in your home, is that true?

A. Yes, it is.

Q. Would you say he was there on more than 4 occasions?

A. Why, no, I know that he wasn't.

Q. You do know he was not?

30

A. Yes, I do.

Q. About when was it he stayed overnight, that is, in point of time, how long ago?

A. Well, my nephew was there, and that was last winter.

Q. That was last winter?

A. Yes, I know there were several occasions then.

Q. On how many occasions when your nephew was there?

A. About twice, I should say.

Q. Would you say anymore than 2 times?

A. No, I would not, it was about twice.

Q. How did he happen to stay those times, Mrs. Bartling?

A. Well, we were playing, we usually play some
10 kind of game during the evening, and before we knew it it was getting quite late, and we all sat up quite late, and instead of going home that hour we thought it would be better to stay, and he finally stayed after persuading him.

Q. Who persuaded him?

A. Why, we all did, in fact Beth would coax him, and we would ask him if he didn't think it better, and sometimes he didn't have his car, and bus connections were pretty bad, and he said, "All right,
20 if you think it is all right, I will stay."

Q. When he stayed what room did he occupy?

A. The second floor room. We have one bedroom furnished upstairs and we have one down-stairs, 2, in fact, one for Sonny and the other Beth, and I always sleep in —

Q. You slept in the one down-stairs?

A. Yes.

Q. Was there anyone else in the house on this occasion when Mr. McDowell stayed all night?

30 A. Only when Tom was there, or Erma, that is my niece.

Q. What were the sleeping arrangements when Tom was there?

A. Tom had his room, because he was there 6 weeks, and he slept upstairs, and naturally Mr. McDowell went upstairs and slept with him, because

Beth and I always slept down-stairs in the down-stairs bedroom.

Q. How did Tom happen to be there?

A. My sister had scarlet fever in the house and he wanted to continue school and she asked me if he could stay with me during that time, which he did.

Q. You say on 2 other occasions, as you recall it, he remained overnight?

A. Yes.

Q. Who was there on those occasions? 10

A. My niece, Erma Neal, she was in the habit of coming over twice a week, and usually Saturday nights, too.

Q. Did Mr. McDowell remain at the house on any occasions overnight other than those which you now mention?

A. No, positively he never did.

Q. When he stayed where did he sleep?

A. Upstairs in the furnished bedroom. When Tom was there several times he slept with him and other times he was up in the bedroom alone. 20

Q. Where did you sleep?

A. Down-stairs in the bedroom with Beth, always did.

The Court: Where did your niece sleep?

The Witness: She slept with us twice, it wasn't very often, it was only twice, and we thought it was great fun, the three of us sleeping in the bed, in fact, we have done that since, because it was cold up on the second floor and the nights she would be there since then we often slept three in a bed rather than have her go upstairs in the bedroom alone, which was far away in the back of the house, and she thought it was cozier to sleep in with us. 30

Q. Did you ever caution Beth not to tell her father as to Mr. McDowell's visits?

A. No, I have asked her if he ever asked her about him and she said yes, and I said—she has answered him and she has told me every time when he asked about him, and I said, "Well, that is all right."

Q. But you never told her not to say anything about Mr. McDowell?

A. No, I have not, because I knew he called there,
10 I knew Mr. Bartling knew he called there, and I didn't think there was anything in it, I thought it was all right for him to stay there while I had someone else in the house.

Cross-examination.

By Mr. Leap:

Q. You said at times he would be over to your
20 house without an automobile; were there many times he came without the car?

A. No, but there was a short time he had no car.

Q. The bus service is excellent, isn't it, from Oaklyn to Philadelphia?

A. Not always, no.

Q. You can get a car direct to the City Hall?

A. Yes.

Q. You said several times while Tom was there he used to stay and sleep with him?

30 A. Yes.

Q. He has stayed more than twice?

A. Nb.

Q. Why did you use the word several?

A. I mean twice.

Q. Did you mean twice or did you mean several?

A. Yes.

Q. You knew Mr. McDowell was married and had 7 children, didn't you?

A. I did not when I first met him.

Q. You later knew it?

A. Yes.

Q. Did you think it was fair to his wife to let him stay at your house at night?

A. Well, he wasn't living at home.

Q. He wasn't living at home?

A. Not at that time he wasn't?

10

Q. Why wasn't he living at home?

A. I don't know.

Q. Wasn't it about the time that Mrs. McDowell had him arrested at your house?

A. Around that time that he stayed?

Q. Yes, that he stayed overnight?

A. I really can't tell you whether it was that time or not, but I know it was last winter.

Q. You knew the reason he wasn't living with his wife was on account of you, don't you?

20

A. No, I do not.

Mr. Jess: I object to that, if the Court please.

The Court: I think it is proper cross-examination. Did you answer the question?

The Witness: Yes.

Q. Do you mean yes?

30

A. No, I told him no.

The Court: What was the answer to the question?

The Witness: I said I did not.

The Court: You don't know that?

The Witness: No, I did not.

Q. When he stayed overnight did he eat breakfast at your house?

A. On one occasion he did, other times he would get up early with Tom and they would go off together.

10 Q. Other occasions, you mean more than twice then?

A. No, I said once.

Q. Once he stayed at breakfast and the other time he went away with Tom. You did not mean other occasions?

A. I mean when my niece was there.

Q. Were all these business trips he made to your house?

A. No, I wouldn't say they were all business trips.

20 Q. He wasn't trying to sell vacuum machines or washing machines?

A. No.

Q. Do you think it was fair to your girl to let him come to the house, a married man, do you think it was a good example?

A. Beth liked him, they all liked him, my family had met him, and really, it was just in a friendly way.

Q. You liked him, did you?

30 A. I think he is all right.

By the Court:

Q. Why did you let him dry your hair and give you a facial massage, a married man, do you think that was right?

A. Well, perhaps —

Q. What was the answer? You say you did think it was right? I didn't hear your answer.

A. I thought it was all right in the way it was given, there was nothing wrong about it, anyone could have been there.

Q. But you knew he was a married man with children and living in estrangement with his wife?

A. He was only a good friend, and it seemed I had no one at all, and he just took the place of a friend and nothing more. 10

Q. You had no husband and to all appearances he was taking the place of a husband?

A. No.

Q. That is the way it looks to the outside world, and why did you let those things go on? Did he go shopping with you just before New Years?

A. Before Christmas, I was ready to go to Camden when he stopped at the door and asked me if I had heard anything and how things were turning out, and I said I had not heard, and I told him where I was going and he said, "I will take you along," which he did, and I was up in Camden shopping and rather than come home in a trolley car I let him bring me home, and he left me off at the door and went away. He had an appointment, anyway, and it took him a little longer. 20

Q. Notwithstanding this divorce case was pending and you were awaiting a decision by the Court you continued to associate with him. Are you determined to do that? 30

A. If there had been anything wrong I wouldn't have done it.

Q. How do you think it looks to anyone outside?

A. I can see how it would look, but appearances always are against a woman, I think.

The Court: Yes, very decidedly when they entertain affectionate relations with a married man, both you and he living in estrangement with your family, you with your husband, and he with his wife. I don't know how you can expect anyone to think you are innocent.

By Mr. Jess:

10

Q. Was there more than one occasion when he brought you home?

A. No, it just happened that once.

Q. When you were notified of this hearing to-day did you attempt to reach McDowell?

A. I beg pardon?

Q. When you were notified of the hearing did you attempt to reach Mr. McDowell?

20 A. Yes, I only received the order Monday evening about 6 o'clock, I guess it was, and, of course, I haven't seen him since, and I tried at his home to reach him, and he wasn't in town, this position takes him out of town quite a lot, and I left this message that if he should come in town to appear this morning, but evidently he hasn't come back.

Mr. Jess: I wanted your Honor to know that I made an effort to obtain his presence here this morning.

30

THOMAS RUNGE, SWORN.

By Mr. Jess:

Q. Mr. Runge, where do you live?

A. 418 Taylor Avenue, West Collingswood.

- Q. How old are you ?
A. 16, January 9th.
Q. You are related to Mrs. Bartling, are you?
A. Yes.
Q. What is the relationship?
A. She is my aunt.
Q. Did you know Mr. McDowell, the person whose name has been mentioned here?
A. I have met him, that is all, just an acquaintance. 10
Q. Where did you first meet him?
A. The first time I remember meeting him was at my house.
Q. At your home?
A. Yes.
Q. Have you seen him since that meeting?
A. Yes.
Q. On some occasions?
A. Yes.
Q. Do you remember the period of time when you 20 lived with Mrs. Bartling?
A. Yes, I do.
Q. About when was that?
A. It was, as near as I can remember, my little brother was taken sick on Lincoln's Birthday, that was last February, and I was there for 6 weeks at my aunt's house.
Q. How did you happen to go to live with your aunt?
A. My little brother was sick with scarlet fever 30 and I didn't want to miss school and I went over to her house to see if she would take me.

The Court: How long did you remain there?

The Witness: About 6 weeks.

Q. During the period of time in which you lived at that home did you see McDowell there?

A. Yes.

Q. Have you any idea how numerous were the occasions of his visits?

A. How many times?

Q. Yes.

A. No more than twice.

Q. Just understand, I am not referring to the 10 times when it is alleged he remained overnight, but during the day, or any other time?

A. Oh, he was there—I don't just know how many times, occasionally.

Q. That is, during that 6 weeks of time?

A. Yes, sir.

Q. You mention 2 times in particular that he stayed overnight on those occasions?

A. They were the only 2 times he stayed overnight.

20 Q. While you were there?

A. Yes, sir.

Q. You are sure of that fact, are you?

A. Yes.

Q. With whom did he sleep, do you know?

A. He slept with me.

Q. What room in the house did you occupy?

A. The upstairs room in the back.

Q. How many other bedrooms are there furnished in that house?

30 A. I don't know, but I suppose there was only the two big rooms, and there was a little one where the baby was.

Q. Do you know the room which Mrs. Bartling occupied?

A. Yes.

Q. What floor of the house was that?

A. The first floor.

- Q. The room which you occupied is on what floor?
A. The 2nd flor.
- Q. You say Mr. McDowell slept with you these two occasions?
A. Yes.
- Q. Do you know how it happened that he remained overnight?
A. We were playing cards, and it was late, and we wanted him to stay, and that was all.
- Q. Did you ask him to stay? 10
A. Yes, sir.
- Q. Was he kindly toward you all?
A. Yes, he was.
- Q. Do you think he evidenced any more affection toward any one more than the other?
A. No.
- Q. On these occasions when he visited the Bartling home did you see anything which would lead you to believe he was unduly affectionate toward Mrs. Bartling? 20
A. No.
- Q. Did you see anything in the attitude of either Mrs. Bartling or Mr. McDowell which seemed to you, as a young man, to be improper?
A. No, not at all.
- Q. Was there anything secrefiv about Mr. McDowell's visits to that home, any attempt to conceal the fact that he was there?
A. No.

30

Cross-examinatiou.

By Mr. Leap:

- Q. You said you first met him at your house?
A. Yes, sir.

- Q. Who was he there with?
A. He was there with my aunt.
Q. With Mrs. Bartling?
A. And Beth.
Q. Were they there selling washing machines?
A. No, they came to visit my mother.
Q. To spend the evening?
A. Yes.
Q. Just a social call?
10 A. Yes.
Q. You spoke about it being late when you asked Mr. McDowell to stay all night, do you know how late it was?
A. No, I don't, it was after 12, I am pretty sure.
Q. Did you spend the evenings together when he was there?
A. Yes.

20 By the Court:

- Q. Did the daughter stay up until after 12?
A. Not all the time, sometimes on a Friday night when she didn't have to go to school she was allowed to stay up later, but during the week she went to bed earlier.
Q. On these occasions when McDowell stayed overnight did she remain up until after 12?
A. No.
Q. She had already gone to bed?
30 A. She didn't go to bed right away, but it wasn't very much later than that.
Q. Had she gone to bed when he determined to stay overnight?
A. The two occasions that he stayed overnight was the time when she didn't have to go to school the next day, I think it was on a Friday or Saturday

night, and she didn't go to bed, we were all up at that time.

Q. Up to the time when you all went to bed?

A. Yes.

ERMA NEEL, SWORN.

By Mr. Jess:

10

Q. Miss Neel, where do you live?

A. 311 Sloan Avenue, West Collingswood.

Q. Are you presently employed?

A. Yes.

Q. With what concern?

A. Campbell Soup Company.

Q. You are here under subpoena?

A. Yes.

Q. Are you related to Mrs. Bartling?

20

A. I am her niece.

Q. Do you know Mr. McDowell, whose name has been mentioned in this suit?

A. Yes.

Q. When did you first see him?

A. The night I went over there I met him over there.

Q. Met him at the Bartling's?

A. Yes.

Q. Do you make it a practice to visit your aunt with any frequency at all, do you go there often? 30

A. Yes, for almost the past year I have been over there once a week, and sometimes twice a week.

Q. How often would you find Mr. McDowell there?

A. You mean when I arrived there?

Q. Yes.

A. Very seldom when I arrived, sometimes he called during the evening.

Q. Sometimes he called?

A. Yes, but not when I arrived, because I went right from work.

Q. Do you remember any occasion on which Mr. McDowell remained overnight when you were there?

A. Yes, a couple of occasions.

Q. When was that?

10 A. Saturday night.

Q. On Saturday each time?

A. One Saturday night and one Wednesday night.

Q. What time of the year or during what month, do you remember that?

A. It has been just a few months ago I was over there and we played cards on a Wednesday night and he stayed all night.

Q. One Wednesday night and one Saturday night?

A. Yes, sir.

20 Q. You are sure there were no more than two occasions?

A. No, he was there quite often, but he wasn't there overnight.

Q. At whose invitation did he remain overnight?

A. As far as I remember we asked him if he couldn't stay, I said we could all bunk up together—I didn't like the back room, and I often slept with my aunt and cousin, and he decided to stay and sleep up in the back room.

30 Q. And you slept with your aunt?

A. Yes, on several occasions I slept with her.

Q. And her bedroom is where?

A. On the first floor.

Q. Was there any particular urging on the part of your aunt to have Mr. McDowell remain?

A. No, sir, more probably on the part of my cousin, she always liked to have him stay.

- Q. By your cousin you mean who?
A. Beth.
Q. The little girl who testified this morning?
A. Yes.
Q. Did you see any attitude between Mrs. Bartling and Mr. McDowell at any time which you thought anyway improper?
A. Never.
Q. Did you think he evidenced any more affection toward Mrs. Bartling than he did toward anybody 10 else?
A. Never.
Q. Was there anything to indicate he was anything more to Mrs. Bartling than a mere friend?
A. Nothing at all.
Q. Did he embrace the same friendly attitude toward you all?
A. All of us.
Q. He wasn't friendly toward anyone in particular? 20
A. No.

Cross-examination.

By Mr. Leap:

- Q. How late was it you were playing cards on this Wednesday night?
A. Close to 12.
Q. Was Beth playing cards? 30
A. Yes, we played 4 handed.
Q. She was up at that time, around 12 o'clock?
A. Yes, sir.
Q. She had school the next day?
A. Yes, we all retired the same time.
Q. You say that you, Mrs. Bartling and Beth all slept in the one bedroom?

- A. Yes.
- Q. How far is the bathroom from this bedroom?
- A. Right the next room.
- Q. Isn't there just a little entry between the bathroom and this bedroom in which you slept?
- A. No, except the wall, that is all I remember, there is a linen closet right across there.
- Q. How far is the bathroom door from the bedroom door, the bedroom in which you sleep?
- 10 A. Why, I imagine a couple of yards; there was a closet on the inside, probably.
- Q. Just a little hall between?
- A. There is a hall between the two.
- Q. Just a little hall between the bedroom and bathroom?
- A. One long hallway, and the bedroom here, and the bathroom here.
- Q. Are they on the same side of the hallway or the opposite side?
- 20 A. On the same side of the hallway.
- Q. Isn't it a fact the bedrooms are opposite each other, that you come out of the door of one bedroom and go across the hall into another bedroom?
- A. No, you go from the dining-room into the hallway and right across to the bedroom—if you go from the dining-room to the bedroom you go back where Sonny sleeps.
- Q. You go into this hallway and go into the room where Sonny sleeps?
- 30 A. Yes.
- Q. And on the other side of this hall you go into the bathroom, don't you?
- A. Yes, sir.
- Q. So the 3 doors are right close together?
- A. The bedroom door, and down further the bathroom door, and down further Sonny's door.

Mr. Jess: We have no further testimony unless your Honor feels Mr. McDowell ought to be produced.

The Court: That I will leave entirely to you, Mr. Jess, but I think you are entitled to more time if you want it. If you wish it I will have to hear you at some other time.

Mr. Jess: If your Honor will pardon me a minute, I would like to confer with my client. 10

The Court: Yes.

Mr. Jess: We will have no further testimony.

The Court: All right. Then the case will now be considered closed, and I hope it will not be necessary to reopen it again. I apprehend there is no further argument counsel desire to make, but if so, I will hear them. 20

Mr. Jess: I think your Honor is well conversant with the facts.

The Court: Very well, we will consider the case closed.

PETITION FOR RE-HEARING.

(Filed Dec. 31, 1928.)

IN CHANCERY OF NEW JERSEY.

10

Between

EARL F. BARTLING,
Petitioner,

and

ALTHEA BARTLING,
*Defendant.*On Petition for
Divorce.
Petition for Re-
hearing.

20 *To the Honorable, Edwin Robert Walker, Chan-
cellor of the State of New Jersey:*

The petition of Earl F. Bartling, petitioner in the above-entitled cause, respectfully shows that:

30 1. Since the hearing of this matter petitioner has had an opportunity to talk with his daughter, Beth Bartling, who is now eleven years of age and as the result of that talk has discovered evidence which was not available at the time of the hearing; the nature of the evidence is that he was able to secure a statement from his daughter to the effect that John Y. McDowell had, on many occasions, remained over night in the Bartling home on Beechwood Avenue, Oaklyn, when the only other occupants of the house were Beth Bartling, the daughter, Earl F. Bartling, Jr., the son, and Mrs. Althea Bartling.

2. Petitioner had been unable to get any direct statement as to this fact from his daughter until after the hearing.

3. Petitioner further shows that his daughter also told him that after the hearing in this matter, John Y. McDowell again called at the Bartling home in Oaklyn and took Mrs. Bartling out in his automobile to do some shopping.

10

4. Your petitioner further shows that he believes this evidence to be important and to have a direct bearing on the case, and therefore prays that this Honorable Court will permit him to introduce this additional testimony, and further that this Honorable Court will make an order directing Althea Bartling, the defendant, to produce Beth Bartling, petitioner's and defendant's daughter, before this Honorable Court in order that her testimony be taken.

EARL F. BARTLING,

20

Petitioner.

S. RUSLING LEAP,
Solicitor for Petitioner.

30

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

EARL F. BARTLING, being duly sworn according to law on his oath, deposes and says:

10 I am the petitioner in the foregoing petition named. I have read all of the statements contained therein and said statements are true.

Particularly is it true that on the Saturday following the hearing in the above-entitled cause, I had an opportunity to talk with my young daughter, Beth Bartling, and she, for the first time, made the positive statement that John Y. McDowell had many times remained over night at the house occupied by my wife, Althea Bartling, on Beechwood Avenue,
 20 Oaklyn, and further that McDowell took Mrs. Bartling out in his automobile after having appeared in court at the hearing. Deponent further says that this evidence was not known to exist until after the hearing.

EARL F. BARTLING.

Sworn and subscribed before me this 31st day of December, 1928.

30 BERTHA C. HACK,
Notary Public of New Jersey.
 Commission expires Dec. 15, 1932.

NOTICE OF MOTION.

(Filed Dec. 31, 1928.)

IN CHANCERY OF NEW JERSEY.

Between

EARL F. BARTLING,

Petitioner,

and

ALTHEA BARTLING,

Defendant.

On Petition for
Divorce.
Notice of Motion.

10

To *Frank Nelson Jess, Esquire, Solicitor for De-*
fendant:

20

Take notice that I shall apply to the Chancellor at the Chancery Chambers in Camden on Monday, December 31st, 1928, at 10 o'clock in the forenoon or as soon thereafter as counsel can be heard, for an order for a re-hearing in order to introduce newly discovered evidence which was not accessible to the petitioner by the exercise of due diligence at the time of the hearing.

30

S. RUSLING LEAP,
Solicitor for Petitioner.

Esquire, solicitor for defendant, it is on this thirty-first day of December, 1928,

Ordered, that a further hearing in this cause be had before this Court, and that upon notice from the petitioner, or his solicitor, that the defendant produce before this Court, Beth Bartling, the infant daughter of petitioner and defendant, in order that her testimony may be taken in this cause.

Respectfully advised,

E. B. LEAMING.

10

NOTICE.

(Filed Jan. 2, 1928.)

IN CHANCERY OF NEW JERSEY.

20

Between

EARL F. BARTLING,
Petitioner,
 and
 ALTHEA BARTLING,
Defendant.

} On Petition for
 Divorce.
 Notice.

To Frank Nelson Jess, Esquire, Solicitor for Defendant:

30

By virtue of an order entered in the above-entitled cause on the thirty-first day of December, 1928, wherein Earl F. Bartling was permitted to produce before the Court, Beth Bartling, the infant daughter

of the petitioner and the defendant, in order that her testimony may be taken in this cause and whereas in the order the defendant was required to produce said Beth Bartling;

Now, in accordance with the provisions thereof, take notice, that Wednesday, January 2nd, at 10 o'clock in the forenoon, at the Chancery Chambers, Camden, New Jersey, has been fixed as the time and place where additional testimony will be produced
10 on the part of the petitioner.

You are further notified to have you then and there said Beth Bartling in order that her testimony may be so taken.

S. RUSLING LEAP,
Solicitor for Petitioner.

20

[ENDORSED]

Service of the within notice hereby
acknowledged this 31st day of December,
1928.

Frank Nelson Jess,
Solr. for Defendant.

30

his wife for adultery he could not resume cohabitation with her without destroying his alleged cause of action. It must be here assumed that his suit was prosecuted in good faith. It necessarily follows that no decree can be awarded the wife on her charge of statutory desertion. But in addition to that circumstance it cannot be overlooked that although the husband initially left his wife the testimony touching the circumstances that may have brought about
10 that act and what thereafter transpired toward any efforts of either party looking to reconciliation is too meagre and uncertain to justify a decree of obstinate desertion, especially in view of the utter lack of corroboration in that field.

Touching the husband's charge of adultery it must be said that defendant has unquestionably exposed herself to grave suspicions of guilt; it is indeed difficult to see how any married woman living in
20 estrangement with her husband could receive the attentions of a married man to the extent that defendant has received the attentions of the co-respondent and reasonably expect to be thought free from the suspicion of wrong-doing of the nature charged against her. To this should be added the circumstance that her association with the co-respondent appears to have persisted up to this time and necessarily indicates a mutual fascination of the parties inconsistent with innocence. Should the association
30 of defendant and the co-respondent continue hereafter it is difficult to see how any Court can resist a conclusion of guilt; if she is to retain the benefits of a presumption of innocence this man should be removed from her affections and associations. But I am not at this time satisfied of her guilt with that degree of certainty required in suits of this nature; and she is entitled to the benefit of that doubt which the evidence fairly can be said to demand, since

suspicion of guilt which may be reconciled with purity of mind and conduct must not at this time be made the basis of a conclusion of guilt. Nor do I think that petitioner's conduct appropriately appeals with normal strength to a court of equity for relief. His aim appears more nearly to have been a desire to procure evidence of his wife's guilt than to protect her from the danger of wrong-doing. He left her alone and with meagre support, and her association with the co-respondent is alleged to have originated in an effort upon her part to add to her means, and that effort may have measurably contributed to her future associations with him. Had petitioner remained at his home the present charge could not have arisen; it was thus the want of a husband's protecting care which has in some measure occasioned the serious suspicions now cast upon his wife. 10

No relief will be awarded against either party; but the decree to be entered herein should be without prejudice to either party. Should defendant persist in receiving the attentions of co-respondent or other men, petitioner should not be denied any benefits that he may appropriately receive through a reconsideration by this Court of defendant's past in connection with future conduct; and defendant should not be denied the benefit of any claim she may at any time be able to sustain against her husband for desertion or other cause. 20

Submitted: January 2nd, 1929.

Determined: January 2nd, 1929. 30

DECREE OF DISMISSAL.

(Filed Feb. 21, 1929.)

IN CHANCERY OF NEW JERSEY.

10

Between

EARL F. BARTLING,

Petitioner,

and

ALTHEA BARTLING,

Defendant.

On Petition for
Divorce.
Decree of Dismissal.

20

This cause coming on to be heard in the presence of S. Rusling Leap, of counsel with the petitioner, and Frank Nelson Jess, of counsel with the defendant, on petition, answer, cross-petition, and answer, and oral proofs taken in open court; whereupon, and upon duly considering the said pleadings and proofs, and hearing and considering the arguments of counsel; from all of which it now appears that the petitioner has not sustained the truth of the allegations of his petition, and is not entitled to the relief therein prayed, and that the defendant has not sustained the truth of the allegations of her cross-petition, and is not entitled to the relief therein prayed.

30

It is thereupon, on this 21st day of February, 1929, ordered, adjudged and decreed, that the petitioner's petition be, and the same is hereby dismissed without prejudice and with the further right

of petitioner that should defendant persist in receiving the attentions of co-respondent or other men, petitioner will not be denied any benefits that he may appropriately receive through a re-consideration by this Court of defendant's past in connection with future conduct, should petitioner hereafter file a new petition for divorce.

And it is further ordered, adjudged and decreed that the defendant's cross-petition be, and the same is hereby dismissed without prejudice, and the said 10 defendant shall be entitled to the benefit of any claim that she may at any time be able to sustain against her husband for desertion or other cause.

It is further ordered, adjudged and decreed that this matter be dismissed without costs.

Respectfully advised,

E. B. LEAMING,

V. C.

I consent to the form of the above decree. 20

FRANK NELSON JESS,
*Solicitor for Defendant and
Cross-Petitioner.*

NOTICE OF APPEAL.

(Filed April 12, 1929.)

IN CHANCERY OF NEW JERSEY.

10 Between
 EARL F. BARTLING,
Petitioner, }
 and }
 ALTHEA BARTLING,
Defendant. } On Petition for
 Divorce.
 Notice of Appeal.

20 Take notice that Earl F. Bartling, the above-named petitioner, hereby appeals from a final decree filed in this cause and dated February 21, 1929, and from so much thereof as decrees a dismissal of his said petition, to the Court of Errors and Appeals in the last resort in all causes.

S. RUSLING LEAP,
*Solicitor for and of Counsel
 with Petitioner.*

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

S. RUSLING LEAP,
Of Counsel with Petitioner.

Dated March 15, 1929.

TO FRANK NELSON JESS, ESQ.,
Solicitor for Defendant.

[ENDORSED]

Service of the within notice of appeal hereby acknowledged this 16th day of March, 1929.

Frank Nelson Jess,
Solicitor for Defendant.

10

AMENDED NOTICE OF APPEAL.

(Filed April 12, 1929.)

IN CHANCERY OF NEW JERSEY.

20

Between

EARL F. BARTLING,
Petitioner,

and

ALTHEA BARTLING,
Defendant.

On Petition for
Divorce.
Amended Notice of
Appeal.

30

Take notice that Earl F. Bartling, the above-named petitioner, hereby appeals from a final decree filed in this cause and dated February 21, 1929, and from so much thereof as decrees a dismissal of his said petition, which decree was made by the Chancellor on the advice of Vice-Chancellor Leaming, to

the Court of Errors and Appeals in the last resort
in all causes.

S. RUSLING LEAP,
*Solicitor for and of Counsel
with Petitioner.*

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

S. RUSLING LEAP,
Of Counsel with Petitioner.

10

Dated March 15, 1929.

To FRANK NELSON JESS, Esq.,
Solicitor for Defendant.

[ENDORSED]

20

Service of the within amended notice
of appeal hereby acknowledged this
16th day of March, 1929.

Frank Nelson Jess,
Solicitor for Defendant.

30

and adjudged the several allegations of your petitioner's petition to have been proved, and the respondent, Althea Bartling, to have been guilty of adultery as alleged in your petitioner's petition, and should have ordered, adjudged and decreed, that your petitioner be divorced from the bonds of matrimony, with the respondent, for the cause aforesaid, and that your petitioner should have the other relief prayed in and by his said petition.

10

Your petitioner therefore prays, that the said decree may be reversed, rescinded and for nothing holden, and that your petitioner may have such further relief as shall be meet.

S. RUSLING LEAP,
*Solicitor for and of Counsel
with Appellant.*

20

30

NEW JERSEY COURT OF ERRORS AND
APPEALS.

Between
EARL F. BARTLING,
Petitioner-Appellant,
AND
ALTHEA BARTLING,
Defendant-Respondent.

ON PETITION FOR DIVORCE.

BRIEF OF PETITIONER-APPELLANT.

STATEMENT.

This is a suit for divorce on petition filed by Earl F. Bartling, on the grounds of adultery and on the part of the wife, by cross-petition, alleging desertion. The hearing was held before Honorable Edmund B. Leaming, Vice-Chancellor, and a decree was entered dismissing both the petition and the cross-petition.

Earl F. Bartling, the petitioner, and Althea Bartling, the defendant, were married March 1st, 1915 (p. 25, lines 1 to 5); they both continued to be residents of the State of New Jersey up to the present time. Temporary separation had occurred in 1923;

a second separation in March, 1926 (p. 33, lines 34, 35 and 36), there being considerable friction between them during the last three or four years that they were living together (p. 25, lines 8, 9, 10 and line 24, and p. 26, lines 18 to 26). In April, 1926, the petitioner found another man, named Albert Ackley, at the house and ordered him to leave (p. 27, lines 10 to 34). In the month of June, 1926, petitioner discovered that a man named John McDowell, the co-respondent, had been visiting his wife (p. 28, line 6). McDowell continued his visits from June 26 until the Saturday before Christmas, 1928 (p. 161, line 13). McDowell was a married man (p. 144, line 37), residing in Philadelphia, Pa., and has seven children (p. 145, line 4). In October or the early part of November, 1927, Bartling caused McDowell to be arrested (p. 31, line 30). Prior to and after the arrest, McDowell's car was parked in the neighborhood on an average from two to three evenings a week (p. 28, line 10), according to Caroline Beasley, a witness, who was a neighbor of Mrs. Bartling, the defendant (p. 52, line 20 to line 35). This continued until Armistice Day, 1928. The witness had seen McDowell leave the house at 12 o'clock and 1 o'clock at night, and sometimes later than that (p. 53, line 6). The witness, Beasley, has also seen him leave the house at 8 o'clock or 9 o'clock in the morning (p. 55, lines 1, 2 and 3). The co-respondent, McDowell, according to the testimony of Charles Pettit, police officer at Oaklyn, testified as to seeing the McDowell car in the neighborhood of the Bartling house, and one night at about 12.30 A. M. (p. 62, line 28), found McDowell attempting to start his car. When quizzed by the police officer, he stated that his name was McDowell, and stated that he had been around to 33 Beechwood Avenue. The officer, Pettit, on being questioned (p. 63, line

29), stated that Althea Bartling lived at 33 Beechwood Avenue (p. 64, line 15). The same witness testified that he had seen the car in the neighborhood many times; sometimes on Johnson Avenue, sometimes on White Horse Pike, sometimes on Beechwood Avenue, and sometimes on Lakeview Avenue. The officer testified that he at one time had arrested John McDowell on a warrant issued by Judge Shoemaker (p. 65, line 30); that he served the warrant at around 11 o'clock in the evening (p. 66, line 16). The defendant had first denied that McDowell was in the house, but on forcing his way in, the officer found McDowell in the parlor with his overcoat and hat lying on a chair (p. 66, lines 1 to 12).

John Zepke, another witness produced by petitioner, was a member of the police force of the Borough of Oaklyn. The witness testified that he saw a car parked on Bettewood Avenue (p. 71, line 26), which was occupied by a man and a woman. The officer testified (p. 71, line 31): "I went up to the car and when I opened the door, I recognized Mrs. Bartling, and she got highly indignant because I even opened the door, and I asked him what he was doing there, and he said he was just sitting there talking to the lady, and I laid down the law as it is in Oaklyn, and I asked Mrs. Bartling what her husband would say catching her out that hour of the night sitting in a machine—it was after midnight. I went on duty at 12 o'clock, and she told me it was none of my business, and I told her it was none of my business who the man was, but she must entertain him at home, if she must entertain him, because we wouldn't allow it on the highway, and I closed the door and walked on."

Witness had testified that he had first met McDowell on Beechwood Avenue, Oaklyn (p. 70, line

6). He testified that he had also met him at the Bartling house in October of 1927 (p. 71, line 4, and p. 73, line 7). Witness testified that he had noticed the McDowell car in front of the Bartling house numbers of times (p. 74, line 8), from 4 o'clock in the afternoon until 2 o'clock in the morning (p. 74, lines 10 and 11). Witness, John Zepke, also testified to seeing Mrs. Bartling, the defendant, and McDowell, the co-respondent, walking from the house to the car (p. 75, line 21). When asked as to how they acted, he answered (p. 75, line 24): "Like any gentleman would that is taking his lady friend out, had her by the arm, assisting her down to the curb."

William D. Coffin, a witness, (p. 80, lines 16, 17 and 18) testified that he was called to the Bartling house in April, 1926, and arrested a man named Ackley (p. 81, line 20). He testified that again on the 1st of January, 1928, (p. 82, line 10) "I placed Mr. McDowell under arrest on a warrant under complaint of his wife, Mrs. McDowell." Witness testified as to going to the house, and then at page 83, line 6, he testified:

"When I went down the cellar he was coming out from under the steps, and I asked if he was Mr. McDowell, and he said, 'Yes,' and I said, 'I have a warrant for your arrest on complaint entered by your wife,' and I read him the warrant and he went up-stairs, and he took his hat and coat, they were hanging up in some closet, or some affair for the hanging of clothes, I don't know whether it was a closet or a rack, but anyhow he took his hat and coat off the rack and put on his overcoat and he said, 'Just a minute, I want to speak to Mrs. Bartling,' and he stepped over and said something to her, he stepped away from me and had a conversation in an undertone with Mrs. Bartling, which I

wasn't interested in, and paid no attention to, and then he came on with me and went to the Justice of the Peace, Mr. Fox, and Mr. Fox heard the complaint, and if my memory serves me correctly he held Mr. McDowell under bail for further hearing in Court, then Mrs. McDowell swore out a further warrant for Mrs. Bartling on the charge of harboring her husband, she stated she had visited Mrs. Bartling and pleaded with her not to allow her husband to come there, he was the father of a family —"

Witness also testified that he had seen the McDowell car in the vicinity of the Bartling home on numerous occasions (p. 84, line 24) at from 4 o'clock in the afternoon until 1 and 2 o'clock in the morning (p. 84, line 30).

Herbert Keen, another witness, testified that he had first met McDowell as the result of a burglar scare at the Bartling house (p. 91, line 5), and testified that, although he had not known McDowell previous to that time, that he had seen a man coming and going from the house, and that the man looked like McDowell (p. 91, line 19). Keen testified that he had seen McDowell at the house two, three or four times a week; that he would usually come any time from 3 o'clock in the afternoon to 7 o'clock or 9 o'clock at night (p. 91, line 31). The witness, Herbert Keen, testified (p. 94, line 25): "I have seen McDowell kiss Mrs. Bartling good night, but just exactly when now I can't remember." Witness had previously testified that he had been looking through the window at the request of the husband, the petitioner, and saw them in the Bartling front living room (p. 94, line 30). Keen further testified that on New Year's Day, which would be 1928, he went into the Bartling house with Mr. Cof-

fin, chief of police, and assisted him in searching of the house (p. 95, line 10), down through page 96, at line 9, witness testified: "I went on through and down the cellar way, and as luck would have it, I turned to the right, and underneath the cellar stairs was McDowell in his shirt sleeves, trying to keep out of sight. I said, 'Come on, John, we have a ticket for you.'" Witness testified, at page 96, line 31, that when McDowell spoke to Mrs. Bartling he called her Althea, which was her first name; that he had heard him call her such the time of their first arrest in October of 1927, and again on New Year's Day (p. 96, line 34).

As to the question of opportunity, Ralph Patton testified that he was in the Bartling home at the time that Mrs. Bartling, the defendant, and McDowell, the co-respondent, were arrested (p. 111, line 3). Patton also testified, at page 112, line 1, that Mrs. Bartling stated (p. 111, line 27), "There is a child here," and she went out to see if she could get a neighbor to take care of the child, but she could not get a neighbor. From this testimony, it will be seen that McDowell and Mrs. Bartling were in the house with no one other than the children, and that neither child was with them at the time of the arrest.

Harry H. Hobroyd, another witness, testified that he had been engaged to watch the defendant and the co-respondent, and at page 115, line 30:

"A. I saw two people in that room, one person was Mrs. Bartling, and the other person, whom I later identified, was Mr. John McDowell, he had placed his hat and coat on, and they were up against this chair that he has just removed his hat and coat off, and he stepped aside, evidently to put it on, and standing there they were both in rather close contact.

Q. What do you mean by that?

A. Well, embraced, apparently preparatory to leaving.”

The co-respondent, John Y. McDowell, was produced as a witness on the part of the defendant, and testified (p. 134, line 21), that he had first met Mrs. Bartling on the Saturday preceding the 4th of July, 1926, and that he was a salesman for the Maytag Company of Newton, Iowa (p. 134, line 24), and claimed to be interested with Mrs. Bartling in the sale of washing machines (p. 136, lines 10 to 30). McDowell, throughout his entire testimony, stated that all of his visits were made in an attempt to sell washing machines or vacuum cleaners. In explanation of the incident related by Officer John Zepke (p. 71, line 30), he admitted the incident with the officer, and stated (p. 142, line 25) that he had taken Mrs. Bartling home in his automobile and had stopped on Bettewood Avenue and was talking with her before running around to the house. He further admitted the incident of being in the cellar on January, 1928 (p. 143, line 23), and at line 29, said that he was attending to the heater fire at the time.

The Court, at page 146, I consider, has very well analyzed the situation in his question at line 26:

“Q. Did that necessitate you going there every evening? Can you think that I could believe for a moment that any business connections that you had there necessitated your going there as often as the evidence in this case discloses you did, going there at night? Why do you suppose I would believe that a little business transaction of that kind would necessitate any such intercourse as the evidence discloses existed between you and her, and such a friendship, and such an association, both of you

married? Why do you think I would believe anything like that? How can I?

A. After this acquaintance, your Honor, I got to know her family, her cousins, and nephews, sisters, brothers, and they would play cards there, and they would invite me down to play cards.

The Court: All the more reason why you should have left her alone. You knew she was in estrangement with her husband, and you had a wife, and the best place in the world for you was anywhere but there."

After the original hearing which was held on December 19th, 1928, additional testimony was taken on January 2nd, 1929, where it was shown by the testimony of Beth Bartling, at page 153, line 7, that McDowell had again been out with Mrs. Bartling. This additional contact was corroborated by Raymond Bartling at page 161. Florence Bartling, another witness produced on the part of the petitioner, testified at page 162, line 35, that she had seen McDowell eating breakfast at the defendant's home, and had also seen him giving her a massage, and that one time when she was in the car with Mrs. Bartling and McDowell, Mrs. Bartling was feeding pretzels to McDowell. From the testimony of the witness, commencing at page 164, line 36, down through pages 165 and 166, Florence testified to the fact that Mrs. Bartling and McDowell were alone in the house, no one but the baby, Earl, and that as she, Florence Bartling, entered the house, Mr. McDowell and Mrs. Bartling were in the bathroom and he was giving Mrs. Bartling, the defendant, a facial massage and drying her hair. Florence further testified that, at page 166, line 35, she and the daughter, Beth, went out and left Mrs. Bartling and Mr.

McDowell in the house with the baby. The defendant, Althea Bartling, admitted in her testimony at page 167, at line 26, that McDowell had spent four nights at her home, and the witness, Althea Bartling, (p. 172, line 29) in answer to the question, "You liked him, did you?" "A. I think he is all right"; and again on page 172, line 34, the Court asked, "Why did you let him dry your hair and give you a facial massage, a married man, do you think that was right?" The answer was (p. 173, line 3):

"A. I thought it was all right in the way it was given, there was nothing wrong about it, anyone could have been there.

Q. But you knew he was a married man with children and living in estrangement with his wife?

A. He was only a good friend, and it seemed I had no one at all, and he just took the place of a friend and nothing more.

Q. You had no husband and to all appearances he was taking the place of a husband?

A. No.

Q. That is the way it looks to the outside world, and why did you let those things go on? Did he go shopping with you just before New Year's?

A. Before Christmas, I was ready to go to Camden when he stopped at the door and asked me if I had heard anything and how things were turning out, and I said I had not heard, and I told him where I was going and he said, 'I will take you along,' which he did, and I was up in Camden shopping and rather than come home in a trolley car I let him bring me home, and he left me off at the door and went away. He had an appointment, anyway, and it took him a little longer.

Q. Notwithstanding this divorce case was pending and you were awaiting a decision by the Court, you continued to associate with him. Are you determined to do that?

A. If there had been anything wrong I wouldn't have done it.

Q. How do you think it looks to anyone outside?

A. I can see how it would look, but appearances always are against a woman, I think.

The Court: Yes, very decidedly when they entertain affectionate relations with a married man, both you and he living in estrangement with your family, you with your husband, and he with his wife. I don't know how you can expect anyone to think you are innocent."

Apparently the Vice-Chancellor who heard the case was practically convinced of the guilt of the defendant. At page 192, in his conclusions, line 17, he stated:

"It is indeed difficult to see how any married woman living in estrangement with her husband could receive the attentions of a married man to the extent that defendant has received the attentions of the co-respondent and reasonably expect to be thought free from the suspicion of wrong-doing of the nature charged against her. To this should be added the circumstance that her association with the co-respondent appears to have persisted up to this time and necessarily indicates a mutual fascination of the parties inconsistent with innocence. Should the association of defendant and the co-respondent continue hereafter, it is difficult to see how any Court can resist a conclusion of guilt; if she is to retain the benefits of a presumption of inno-

cence, this man should be removed from her affections and associations.”

The point upon which the Court seemed to base its refusal to grant the relief prayed for by the petitioner was that summed up in the statement on page 193, line 6, when he stated that his aim appears more nearly to have been a desire to procure evidence of his wife's guilt than to protect her from the danger of wrong-doing; the Court has overlooked the fact that the petitioner had testified, on page 26, line 18, that he had been suspicious of his wife, that she was cold toward him and took no interest in him and that he had testified that back in 1926 (p. 25, line 29) they had separated once before. An attitude of coldness on the part of a wife would certainly warrant a husband to question as to the reason for that attitude, and I consider it only a natural result that the husband should leave the house and watch to learn, if possible, the cause of the coldness toward him.

Taking into consideration the fact that this man McDowell, according to the testimony, called on Mrs. Bartling on an average of two or three nights a week for two and one-half years; admittedly remained over night; took frequent automobile rides with her, and was cautioned by the police one time for sitting in a parked automobile after 12 o'clock at night; considering the fact that defendant admitted that she liked McDowell and that even though warned by the Court to give him up, within one week after the hearing again accompanied him on an automobile trip; I contend that we have proven all of the elements required; first, desire or inclination coupled with opportunity.

Hurtzig v. Hurtzig, 44 Eq. 329, which was affirmed 45 Equity, at 869.—The Court, in that case, said:

“It is not requisite that there shall be direct proof of this crime, for if that were the rule, there is not one case in a hundred where such proof would be attainable. The crime is almost invariably clandestine, and committed only when every precaution is taken to preclude the possibility of its discovery. Familiar indicia of it are: loss of affection that is due to, and was bestowed upon, its legitimate object, and the bestowal of affection upon an unlawful object; stolen interviews; private correspondence; amorous and passionate utterance; personal freedom; indecent familiarity; compromising situations, and the like. There may also be slight, delicate and indefinable circumstances, proximate to the adultery and peculiar to a given case, that, though less prominent as indicia, are, nevertheless, powerful factors in producing conviction of guilt.” “It has been held that where it is established that the defendant and her *particeps criminis* had the will and the opportunity to commit the crime, the Court will infer guilt.” *Berckmans v. Berckmans*, 1 C. E. Green, 122, at page 143; *Black v. Black*, 3 Stewarts Equity, 228, at page 230; *2 Bishop, Marriage and Divorce*, paragraph 619.

And I submit that the decree as entered should be set aside and that the Chancellor should have found and adjudged the several allegations of petitioner’s petition to have been proved and the respondent, Althea Bartling, to have been guilty of adultery as alleged.

S. RUSLING LEAP,
Solicitor for Petitioner-Appellant.

