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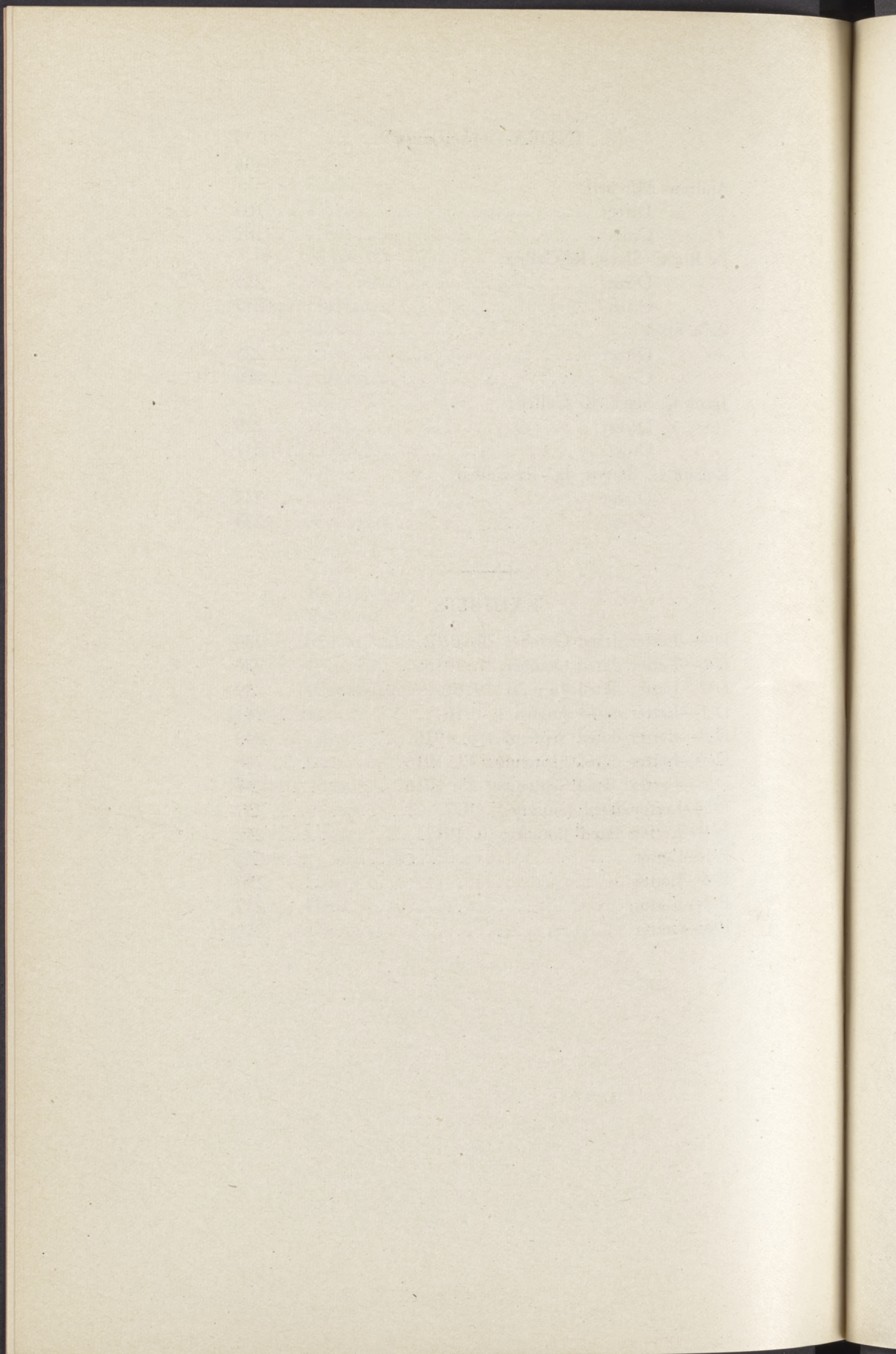
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In Chancery of New Jersey

10

Between

Le Roi C. Slack,

Petitioner,

and

Grace Pope Slack,

Defendant.

} On Petition.
} Notice of Appeal.

Grace Pope Slack, the above named defendant hereby ap- 20
peals from the decree nisi filed in this cause and dated June
8th, 1917, and from every part thereof to the Court of
Errors and Appeals in the last resort in all causes.

A. S. BRENNAN,

Solicitor of Defendant.

Dated October 17th, 1917.

30

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

MARTIN P. DEVLIN,

Of Counsel.

Petition of Appeal.
NEW JERSEY COURT OF ERRORS
AND APPEALS.

	<i>Between</i>		
	Le Roi C. Slack,	}	On Appeal from Chancery. Petition of Appeal.
	(Petitioner)		
	<i>Respondent,</i>		
	<i>and</i>		
10	Grace Pope Slack,	}	
	(Defendant)		
	<i>Appellant.</i>		

*To the honorable the Court of Errors and Appeals
in the last resort in all causes:*

20 The petition of Grace Pope Slack, appellant, respectfully shows, that your petitioner finds herself aggrieved by a decree nisi made in the Court of Chancery by His Honor Edwin W. Walker, Chancellor of the State of New Jersey, on the 8th day of June, A. D. 1917, in that the said decree recites and adjudges, that the defendant is guilty of adultery; and doth decree that the marriage existing between your petitioner and the respondent, Le Roi C. Slack, be dissolved for the cause aforesaid. And your petitioner appeals from the said decree, and from every part thereof, on the ground that the same is erroneous, for that the said chancellor should have recited and adjudged that your petitioner was not guilty of adultery, and should have dismissed the petition of the respondent.

30 Your petitioner therefore prays, that the said decree nisi may be reversed, rescinded and for nothing holden, and that your petitioner may have such further relief as shall be meet.

A. S. BRENNAN,
Solicitor of Petitioner.
MARTIN P. DEVLIN,
Of Counsel with Appellant.

Notice to Petition of Appeal.
NEW JERSEY COURT OF ERRORS
AND APPEALS.

Between

Le Roi C. Slack,
(Petitioner)
Respondent,

and

Grace Pope Slack,
(Defendant)
Appellant.

} On Appeal from
Chancery.
Answer to Petition
of Appeal.

10

The answer of the respondent to the petition of appeal of the appellant.

The respondent admits it to be true that a certain decree nisi was, on the 8th day of June, 1917, made and entered in the Court of Chancery, as in the petition of appeal is stated; but as to the substance and form thereof this respondent prays to refer thereto when the same shall be produced. And this respondent is advised and believes that the said 20
decree is agreeable to law and equity and he prays that the same may be affirmed, with costs to be adjudged to this respondent.

SCOTT SCAMMELL,
Solicitor and of Counsel with Respondent.

30

Petition for Divorce.

IN CHANCERY OF NEW JERSEY

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

The petitioner of Le Roi C. Slack, of the City of Trenton, in the County of Mercer, and State of New Jersey, respectfully shows:

10 1. Your petitioner was lawfully joined in the bonds of matrimony to his present wife, Grace Pope Slack, the defendant in this suit, on the 13th day of July, 1910, by the Rev. William R. Shallfont, a minister of the Gospel, at the residence of said minister, 13th Street, in the city of Philadelphia and State of Pennsylvania.

20 2. Defendant, since her marriage to your petitioner, and on the 24th and 25th days of December, 1916, and other days in said month of December, 1916, committed adultery with one Andrew Mitchell, at the residence of your petitioner and defendant, No. 1002 Stuyvesant Avenue, in the aforesaid City of Trenton.

3. Petitioner and defendant were bona fide residents of the State of New Jersey when this cause of action arose, and they have ever since continued to be bona fide residents of this state, down to the time of the commencement of this action, residing at the aforesaid 1002 Stuyvesant Avenue, in the County of Mercer and the State of New Jersey aforesaid.

30 4. One child was born as a result of said marriage; viz., Charles Rodman Slack, who is two years of age, and who is in the custody of the defendant, who is unfit to have custody of said child; that the welfare of said child requires that he should be removed from the custody of said defendant and placed in the custody and care of your petitioner.

Petitioner prays that the marriage between petitioner and defendant may be dissolved for the cause aforesaid, according to the statute in such case made and provided; that your

petitioner may be awarded the ^{Petition for Divorce} custody of said child of the marriage; and that your petitioner may have such further relief as may be just.

And your petitioner will ever pray, &c.

SCOTT SCAMMELL,

Solicitor of Petitioner.

State of
County of

} ss.

10

Le Roi C. Slack, of full age, being duly sworn on his oath according to law, deposes and says:

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

LE ROI C. SLACK.

Sworn and subscribed before me
this 12th day of February
A. D. 1917.

20

EDITH L. WARNER,

Notary Public, Wayne Co., Michigan.

30

Answer.

IN CHANCERY OF NEW JERSEY.

<i>Between,</i>	Le Roi C. Slack,	}	On Petition for Divorce. Answer.
	<i>Petitioner,</i>		
<i>and</i>			
Grace Pope Slack,	<i>Defendant.</i>		

10 The answer of Grace Pope Slack, defendant, to the petition of Le Roi C. Slack, petitioner.

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

2. This defendant denies that since her said marriage and on the 24th and 25th days of December, 1916, and other days in said month of December, 1916, she committed adultery with Andrew Mitchell, at the residence of petitioner and defendant, No. 1002 Stuyvesant Avenue, in the City of Trenton, as in said petition is alleged, or that she committed adultery with said person, or any other person, at 20 any other time or place; but on 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 she was a bona fide resident of the State of New Jersey when this supposed cause of action arose as alleged in the petition, and that she 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 No. 1002 Stuyvesant Avenue, Trenton, New Jersey, but whether the said petitioner has, ever 30 since the supposed cause of action arose, continued to be a bona fide resident of this State, as alleged in said petition, this defendant is without information and neither admits or denies the same.

4. This defendant admits it to be true that one child was born of the marriage aforesaid, to wit: Charles Rodman Slack, age two years, and who is now in the custody of this

Answer.

defendant. This defendant denies that she is unfit to have the custody of the said Charles Rodman Slack, but, on the contrary, says that she has faithfully cared for, and is now supporting said child, whose welfare requires that it 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.

GRACE POPE SLACK, 10
Defendant.

A. S. BRENNAN,
Solicitor of Defendant.

20

30

Filed April 24, 1917.

Order of Continuance.

IN CHANCERY OF NEW JERSEY.

Between

Le Roi C. Slack,
Petitioner,

and

Grace Pope Slack,
Defendant.

} On Petition for
Divorce.
} Order of
Continuance.

- 10 This matter being opened to the Court by A. S. Brennan, solicitor of defendant, and in the presence of Scott Scammell, solicitor of the petitioner, and on good cause being shown:

It is on this 24th day of April, A. D. 1917, ORDERED, that the above stated cause be, and the same hereby continued until May 1st next, at the hour of ten o'clock in the forenoon, at the State House, Trenton, New Jersey.

E. R. WALKER, C.

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

Filed May 1, 1917.

Order of Reference.

IN CHANCERY OF NEW JERSEY.

<i>Between</i>	}	On Petition for Divorce. Order of Reference to Vice Chancel- lor.
Le Roi C. Slack,		
<i>Petitioner,</i>		
<i>and</i>		
Grace Pope Slack,		
<i>Defendant.</i>		

This matter being opened to the Court by Scott Scammell, 10
Solicitor and of counsel with the Complainant, and Anthony
S. Brennan, solicitor and of counsel with the defendant; and
it appearing that the solicitor of the defendant has appended
his consent hereto:

IT IS thereupon, on this first day of May, nineteen hun-
dred and seventeen, ORDERED that the above stated cause
be referred to Hon. John H. Backes 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 therein.

20

E. R. WALKER, C.

I hereby consent to the making of the foregoing order.

A. S. BRENNAN,
Solicitor of defendant.

30

Designation.

IN CHANCERY OF NEW JERSEY.

Between

Le Roi C. Slack,
Petitioner,
and
 Grace Pope Slack,
Defendant.

} On Petition for
 Divorce.
 Designation.

- 10 Application being made to fix a time and place for the hearing of the above stated cause, it is ORDERED, that Wednesday, the twenty-third day of May, 1917, at the hour of 10.30 in the forenoon, at the State House at Trenton, be, and the same is, hereby designated as the time and place for the hearing of the said cause.

Dated, May 1st, 1917.

JOHN. H. BACKES, V. C.

- 20 We hereby consent to the making of the foregoing designation.

SCOTT SCAMMELL

Solicitor of Petitioner.

A. S. BRENNAN,

Solicitor of Defendant.

Notice of Hearing.

IN CHANCERY OF NEW JERSEY.

*Between*Le Roi C. Slack,
*Petitioner,**and*Grace Pope Slack,
Defendant.} On Petition for
Divorce.
} Notice of
Hearing.

PLEASE TAKE NOTICE, that I will move the hearing 10
of the above stated cause before Hon. John H. Backes, Vice
Chancellor, on Wednesday, the 23d day of May, 1917, at
the hour of 10.30 in the forenoon, at the State House, at
Trenton, pursuant to the designation made and filed in this
cause.

To Anthony S. Brennan, Esq.,
Solicitor of Defendant.

And Grace Pope Slack, Deft.
Dated, May 1, 1917.

20

Yours, &c.,

SCOTT SCAMMELL,
Solicitor of Petitioner.

30

Filed June 8, 1917.

IN CHANCERY OF NEW JERSEY.

<p><i>Between</i> Le Roi C. Slack, <i>Petitioner,</i> <i>and</i> Grace Pope Slack, <i>Defendant.</i></p>	}	<p>On Petition for Divorce. Decree Nisi.</p>
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10 This cause coming on to be heard in the presence of Scott Scammell of counsel with petitioner and Anthony S. Brennan of counsel with the defendant on petition, answer and oral proofs, whereupon and upon duly considering the said pleadings and proofs and hearing and considering the arguments of counsel from all of which it now appears satisfactorily to the Chancellor that the petitioner and defendant were lawfully joined in the bonds of matrimony on or about the thirteenth day of July, 1910, and that the defendant has been guilty of the adultery charged against her in the said petition, and that at the time the cause of action for divorce
20 therefore arose, the petitioner and defendant were bona fide residents of this state, and have continued so to be down to the commencement of this action, and

It further appearing that jurisdiction herein has been acquired by personal service of process upon the defendant within this state as well as by the appearance and answer of the defendant, and

It further appearing that one child was born to the petitioner and defendant as a result of their marriage, named Charles Rodman Slack, who is approximately two years of
30 age, and is now in the custody of the defendant,

IT IS thereupon, on this eighth day of June A. D., 1917, by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, ordered, adjudged and decreed, and the said Chancellor by virtue and authority of this court, and of the acts of the legislature in such case made and provided, doth hereby order, adjudge and decree, that the said

Decree Nisi.

petitioner Leroy C. Slack, and the said defendant Grace Pope Slack, be divorced from the bonds of matrimony for the cause aforesaid, and the said parties and each of them be freed and discharged from the obligations thereof, unless sufficient cause be shown to the court why this decree should not be made absolute within six months from the date hereof, and

It is further ordered, adjudged and decreed that the said defendant Grace Pope Slack have the custody, care and education of said Charles Rodman Slack, the infant child of the marriage, until the further order of this court; and that the said defendant shall permit the petitioner to have, during his visits to the City of Trenton, not only access to the said child at her residence, at all reasonable times, but to have the privilege of taking and keeping his child with him during the time of his visits; 10

It is further ordered, adjudged and decreed that the said petitioner do pay to the said defendant for the maintenance and support of said child, the sum of \$10.00 per week from the date hereof, until the further order of this court, and 20

It is further ordered, adjudged and decreed that within five days after the filing of this decree, the petitioner enter into bond to the Chancellor of the State of New Jersey, with sufficient surety to be approved by one of the Vice-Chancellors of this court, said bond to be in the penal sum of \$1000.00, conditioned for the payment of said sum of \$10.00 per week, until such time as this court shall otherwise order, and

It is further ordered, adjudged and decreed that either party be at liberty to apply for the modification of this decree touching the custody of said child, and the sums herein provided to be paid for the maintenance and support thereof, and the security herein provided to be given for the payment of said sums as shall be equitable and just. 30

E. R. WALKER, C.

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

L. C. Slack—Direct.

- A. I can't recall the minister.
- Q. You don't know the minister's name?
- A. No; the last name began with a "C" I think.
- Q. The Rev. William R. Shallfont?
- A. That is the man.
- Q. Were you married at the minister's residence?
- A. Yes, sir.
- Q. Were there any witnesses present?
- A. I think the minister's wife and one of Mrs. Slack's friends. 10
- Q. Do you recall her name?
- A. Eleanor Housell.
- Q. Do you know of what denomination the minister was?
- A. He was a Methodist.
- Q. He was a Minister of the Gospel?
- A. Yes, sir.
- Q. After your marriage, where did you go to live; state the different places you lived up to the time you went to reside at 1002 Stuyvesant Avenue. 20
- A. After our marriage we lived with Mrs. Slack's parents until we went to housekeeping on Norway Avenue in October, 1910; then in July, 1912, we returned to the home of Mrs. Slack's folks, and lived there with the exception of three months, June, July and August and the first of September, when we lived at Atlantic City. Then we returned to the home of Mrs. Slack's folks and lived there until April, 1916, when we went to 1002 Stuyvesant Avenue.
- Q. Did you have any children born as a result of this marriage? 30
- A. One.
- Q. What was its name?
- A. Charles Rodman.
- Q. When was he born?
- A. August 18, 1914.

- Q. Where is this child, so far as you know?
 A. So far as I know—well, I have heard he is with the mother.
- Q. Do you know Andrew Mitchell?
 A. Yes.
- Q. How long have you known him?
 A. I have known him for, I suppose, ten or twelve years.
- Q. Boys together, were you; did you go to the same school?
 10 A. To the same school, but not in the same class.
- Q. Your business is what, Mr. Slack, what do you do?
 A. Sell books for the Houghten, Mifflin and Company.
- Q. Your headquarters are where?
 A. Detroit, Michigan.
- Q. From time to time, did you receive letters from your wife?
 A. Yes.
- Q. Did you write to her in reply to some of those letters?
 20 A. Yes.
- Q. Correspondence passed between you during all the time up to January of this year?
 A. Yes, sir.
- Q. Did you receive any intimation from your wife in the form of a letter, as to any talk being passed between the neighbors with respect to visits of Andrew Mitchell to your home?
 A. Yes.
- Q. How did you receive that information and from whom?
 30 A. From Mrs. Slack.
- Q. Your wife?
 A. My wife.
- Q. How, by letter?
 A. By letter.
- Q. About when was it that you received this letter?

L. C. Slack—Direct.

A. I received several letters; they began about July, 1916, and continued on up until about October, 1916.

Q. In October, 1916, did you receive a letter from your wife asking you to send certain letters to certain neighbors?

A. I did.

Q. I show you a letter or paper, comprising four papers, upon paper marked "Magnolia Farm;" in whose handwriting is that letter?

A. Mrs. Slack's.

Q. Did you receive that through the mail? 10

A. I did.

MR. SCAMMELL: I offer the letter in evidence.

Said letter, dated "Morrisville, Pa., Sunday, Your loving wife and baby to my darling husband," is marked "Exhibit P I."

Q. With that letter were there certain papers sent with it, copies of letters which were to be written to different people? 20

A. There were.

Q. I show you one addressed "Mr. John Mitchell, Cadwallader Park, Trenton, N. J.," and ask you whether that accompanied the communication?

A. That is one of them that accompanied it.

MR. SCAMMELL: Said letter to Mr. John Mitchell, signed "L. C. S." is offered in evidence. 30

Said letter is marked "Exhibit P 2."

Q. I show you another letter and ask you whether it is your recollection that that likewise came with it?

A. That is the letter.

L. C. Slack—Direct.

MR. SCAMMELL: I offer that letter in evidence.

Said letter to Mr. John Mitchell, signed "L. C. S.," is marked "Exhibit P 3."

Q. In respect to the request contained in the letter marked "P 1," did you return to Mrs. Slack a letter written according to one of the forms suggested?

A. I returned one for her approval.

10 Q. And did you afterwards ask for the return of that letter?

A. I asked for the return of that letter and she returned it.

Q. She returned it to you?

A. Yes, sir.

Q. And what was done with the letter she returned to you?

A. I tore the letter up.

20 Q. After the receipt of the letter and the form suggested, did you seek some advice from your father in connection with it?

A. I did; I wrote to ask him whether such letters should be written neighbors.

Q. And on the receipt of his advice, you destroyed the letter?

A. On receipt of his advice I destroyed the letter.

Q. Were you in Trenton on December 24 and 25, 1916?

A. I was not.

30 Q. Were you advised—did you receive word that something had happened in your house on the night of the 24th and the morning of the 25th of December, 1916?

A. Yes, sir.

Q. And in respect to that did you write your wife a letter in January?

A. I did.

L. C. Slack—Direct.

MR. SCAMMELL: We ask for the production of the letter, dated January 30, 1917.

MR. BRENNAN: We will make a search for it at noon time; we don't think we have it.

Q. Did you make a copy of that communication?

A. Yes.

Q. I show you a paper and ask you whether that is a copy of it, dated January 30, 1917? 10

A. Yes, sir, that is a copy.

MR. SCAMMELL: I offer it in evidence.

MR. BRENNAN: Objected to.

THE COURT: Objection sustained. Do counsel waive the requirement of a written demand?

MR. BRENNAN: Yes, sir.

Q. Did you receive any reply from your wife in response to that letter? 20

A. I never received a reply.

MR. SCAMMELL: I ask to have this letter marked for identification.

Said letter, dated Detroit, Michigan, January 30, 1917, addressed "Dear Madam;" signed "Le Roi C. Slack," is marked "Exhibit P 4 for identification." 30

It is admitted by counsel for the defendant, that the defendant received a letter, of which "P 4 for identification" is a copy, and consents to its introduction in lieu of the original letter.

Said letter is marked "Exhibit P 4."

L. C. Slack—Direct—Cross.

Q. When did you come to Trenton, Mr. Slack, from Detroit last after December 24th and 25th?

A. On May 13.

Q. Have you had any conversation in the presence of your wife?

A. None whatever.

Q. Since your return home have you seen Mr. Mitchell go to your home?

A. I have.

10 Q. When?

A. On Monday morning, May 21, at 10.45 A. M.

Q. Who was with you?

A. Mrs. Maher and my sister.

Q. What year?

A. This year.

Q. Just state what you saw Mr. Mitchell do?

A. I saw Mr. Mitchell go across Stuyvesant Avenue, walk up on my porch into the vestibule, take a key out of his pocket, unlock the inside front door and walk into my
20 house; that was the first I knew he had a key to my house.

Q. Did you see him come out?

A. I didn't see him come out.

Cross Examination by Mr. Brennan:

Q. Mr. Slack, I show you some letters here and ask you if those are in your handwriting; is that in your handwriting? (Exhibiting letter).

A. It is.

30 Q. Is that one in your handwriting (showing witness another letter)?

A. Yes, sir.

Q. There are several enclosed in there; are they in your handwriting?

A. This is not in my handwriting.

L. C. Slack—Cross.

- Q. I mean the letter proper?
 A. This is mine, that is not mine, that is not mine.
 Q. Is that in your handwriting (showing witness another paper)?
 A. It is.
 Q. Is that in your handwriting (exhibiting another letter)?
 A. It is.
 Q. And that one?
 A. It is.

10

MR. BRENNAN: I offer the seven letters for identification.

Said letter, dated August 1, 1916, at Columbus, Ohio, addressed "My darling little wife," signed "Bud," together with envelope addressed to "Mrs. L. C. Slack," is marked "Exhibit D 1 for identification."

20

Said letter, dated Columbus, Ohio, July 26, 1916, addressed and signed in the same manner, is marked "Exhibit D 2 for identification."

The letter on the letterhead of the Hotel Sherwood, Newark, Ohio, dated September 6, 1916, addressed in the same way, is marked "Exhibit D 3 for identification."

The letter on the letterhead of the Adams House, Boston, dated October 28, 1912, addressed in the same way, is marked "Exhibit D 4 for identification."

30

Letter on the letterhead of the Hotel Havlin, Cincinnati, dated September 28, 1916, addressed and signed in the same manner, together with

the envelope addressed to "Mrs. L. C. Slack," is marked "Exhibit D 5 for identification."

The letter on the letterhead of the Sailor Hotel, Massillon, Ohio, dated October 21, 1915, addressed and signed in the same manner, is marked "Exhibit D 6 for identification."

10

The letter dated Columbus, Ohio, September 13, 1916, addressed and signed in the same manner, together with the envelope, is marked "Exhibit D 7 for identification."

Q. Mr. Slack, how long have you known Mr. Mitchell?

A. I should say about ten or twelve years.

Q. Did you ever convey any information to your wife, either by letter or talk to her personally, objecting to Mr. Mitchell going there?

A. None whatever.

20

Q. You knew that Mr. Mitchell had been an intimate friend of yours as well as her family, for years?

A. I did.

Q. And had visited her mother at your home while you were there?

A. Yes.

Q. And he was looked upon as a member of the family almost?

A. That's the way I looked upon him.

Q. And did you say anything to anyone or to Mr.

30 Mitchell with reference to having a key to your house?

A. None whatever.

Q. Did you speak to your wife about it?

A. No, I didn't know he had a key.

Q. This was May 21, 1917?

A. Yes; I knew he had a key then after I saw him take it out of his pocket.

L. C. Slack—Cross.

Q. When was the last time you were at the Stuyvesant Avenue house?

A. June, 1916.

Q. How long were you there at that time?

A. A week.

Q. Had Mr. Mitchell visited the house while you were there at that time?

A. Not to my knowledge.

Q. You hadn't spoken to him or seen him there during that week? 10

A. I had seen him over in the park.

Q. Where, prior to that, were you at your home?

A. Prior to June?

Q. Yes.

A. July, 1915, at Atlantic City; I took Mrs. Slack down to Atlantic City for three months.

Q. Did Mr. Mitchell visit you there?

A. Not to my knowledge.

Q. While you were living at the house of Mrs. Pope in Morrisville, with your wife, did Mr. Mitchell visit there? 20

A. Not to my knowledge.

Q. You never saw him there?

A. I never saw him there, not that I recall.

Q. You don't recall, then, at any time while you were at the Pope homestead in Morrisville, that Mr. Mitchell visited there?

A. I don't recall any such.

Q. How about the time when you were residing on Norway Avenue?

A. I don't recall his being out there. 30

Q. Then how many times did Mr. Mitchell visit you and your wife when you were present?

A. I think I do recall that he visited us once on Norway Avenue.

Q. I show you a letter, "Exhibit D 1," and ask you to read that that is underlined in blue pencil.

THE COURT: You may ask him as to the subject matter.

Q. I ask you if, in "D 2" you didn't say the following, among other things: "I am sorry that you are obliged to take any boarders, and if you intend to take another besides Harry, why I am sure I have no reason to object to your taking Ann Mitchell; he is a big improvement over Harry, and since you used to be such good friends, I am sure that
10 he would be good to you; so if you want to take him, do not hesitate, for I'm perfectly willing?"

A. Yes, I recall that.

THE COURT: Mr. Brennan, he says he wrote those letters, and the letters speak for themselves.

Q. Were you willing that Mitchell should take a room as a roomer or boarder at your wife's house?

A. I was.

20 Q. When you were courting your wife, do you ever recall, at her mother's home in Morrisville, of Mitchell visiting their home at that time?

A. Not when I was around there; I think Mrs. Slack mentioned he had been visiting there.

Q. And you had never seen him?

A. I had never seen him.

Q. So far as you knew, what was your general opinion, or what was Mitchell's general reputation at the time, all
30 right?

A. So far as I knew, all right.

Q. His general reputation for morality?

A. So far as I knew, it was all right.

Q. Did you know of Mitchell doing any work around the house, around your house on Stuyvesant Avenue?

A. I did, Mrs. Slack wrote me she had him to do things a woman couldn't do.

L. C. Slack—Cross—Re-Direct.

Q. What about taking care of the heater; had she made you cognizant of that fact?

A. She had.

Q. What about attending to the yard and cutting the grass, and things of that kind; in other words, doing odd work around her house; had you been made aware of that fact?

A. I had.

Q. Did you know that Mitchell was also employed at Mrs. Pope's at your mother-in-law's?

10

A. I did not.

Q. You didn't know whether he had been or not?

A. I did not.

Q. Did you know that Mr. Pope is an invalid?

A. I heard it since I got home.

Q. Then you didn't know whether Mitchell had taken care of Mr. Pope or not?

MR. SCAMMELL: That is objected to.

20

A. I did not.

Re-Direct Examination by Mr. Scammell:

Q. Who suggested that Mr. Mitchell should go there as a boarder?

A. I don't recall whether Mrs. Slack suggested it or how that came about.

Q. The fact that Mr. Mitchell came there and did these odd jobs was mentioned by your wife, was it not?

30

A. Yes, sir, it was.

THE COURT: Don't lead him; he is your witness.

Q. Were you ever advised that Mr. Mitchell was a boarder?

L. C. Slack—Re-Direct—Re-Cross—Re-Direct.

A. No, I never was.

Q. Were you ever told by Mrs. Slack that Mr. Mitchell had a key to your home?

A. I never was.

Re-Cross Examination by Mr. Brennan:

10 Q. I call your attention to "Exhibit D 1," did you not say in this letter that I have shown you, marked "Exhibit D 1," "As to taking Ann Mitchell for a boarder, dear, I think it foolish to pay any heed or attention to what the neighbors might say; if you want him for a boarder, take him; I would be glad if you could replace Harry Gano by him; I don't like to think all the time about Harry coming home drunk; you can't tell what a drunken fool might take a notion to do. I am quite sure that trusting you is much better and easier for both of us; distrust always breeds trouble, and the one who is distrustful is usually to blame; so if I were you, I would ask Ann Mitchell to take a room, and 20 if he will, then if I were you I would serve notice on Harry Gano to leave at once." Did you expect of the man under a letter of that kind to be a boarder, but what he would have a key to your house?

A. Yes, sir, but I never was given to understand he became a boarder.

Q. "Exhibit D 1," that is your handwriting?

A. Yes, sir.

Re-Direct Examination by Mr. Scammell:

30

Q. Who told you about Harry Gano's condition, coming to the house at night?

A. Mrs. Slack.

Q. And in writing this letter dated August 1, that was

L. C. Slack—Re-Direct—Freeman—Direct.

in response to a letter which you had from your wife, was it not?

A. It was.

ALLYNE FREEMAN, a witness produced on behalf of the Petitioner, being duly sworn, testified as follows:

Direct Examination by Mr. Scammell:

10

Q. Mr. Freeman, did you ever reside at 1002 Stuyvesant Avenue this city?

A. I did.

Q. How long did you reside there?

A. Approximately six months.

Q. During what period was that six months?

A. I left there in the fall, I think, about October of last year.

Q. 1916?

A. Yes, and six months previous to that time.

20

Q. You went there to board?

A. To room, not to board.

Q. While you were there, did you ever see Mr. Mitchell, Andrew Mitchell, do you know him?

A. I do.

Q. Did you ever see him come to that house while you were there?

A. I did.

Q. How often have you seen him there?

A. My hours were such I didn't see him very often, 30 possibly every two days, or possibly nearly every day.

Q. What times of the day did you see him there?

A. Different times during the day, no regular time.

Q. While you were there, did you ever see him doing anything around the house?

A. Yes.

Freeman—Direct—Cross.

Q. State what you saw him do?

A. I saw him fix the furnace and help with the dishes, and do other things to help Mrs. Slack, which I did also myself, at times.

Q. Did you ever see him help put the baby to bed?

A. I did.

Q. On how many occasions?

A. Possibly three of four.

10 *Cross Examination by Mr. Devlin:*

Q. Mr. Freeman, is what you have said all you did see?

A. I don't recall seeing him mow the lawn; he might have done it, because there was no one that was around to do it.

Q. Did you know who lived at Mrs. Slack's house?

A. I think I do.

Q. How many persons during the time you lived there?

20 A. Three.

Q. Who were they?

A. Mr. Gano, Mr. Custer and myself.

Q. And Mr. Mitchell came while you were there at these various times you have stated?

A. Yes.

Q. And he did the different work you said he did?

A. He did.

Q. You were boarding there while those other people were there?

30 A. Not boarding, rooming.

Q. When did you begin to room there, and when did you stop?

A. I stopped in about October, I don't know exactly when it was.

Q. And the things you saw Mitchell doing was giving assistance around the house?

A. Yes.

Q. And that's all you did see?

A. Well, I saw him eat once in a while, which I did myself.

Q. Can you tell us when Mitchell put the baby to bed, where he took the boy to, what were the circumstances?

A. Why, Mrs. Slack had that entire house to take care of herself; she had no servants of any kind, and she had us three men rooming there, and had to clean all our rooms, and it would make her tired, as it would make anyone tired; she was naturally tired; I have seen her tired a great many times, and I would pitch in and help myself to wash the dishes and do anything I could; I have rocked the baby myself and tried to keep him quiet; the baby would be put to bed on the couch downstairs, or put to bed upstairs; I have known Mr. Mitchell to put the baby to bed while she was downstairs washing the dishes. 10

Q. Did you undress the baby?

A. No, I didn't.

Q. When the baby was put to bed, would Mitchell remain in the room until the baby went to sleep? 20

A. No, I don't necessarily think he would; I didn't see him remain in the room until he went to sleep.

Q. What hour of the night would this occur?

A. In the daytime.

Q. Did it occur in the evening while you were there?

A. I was not there in the evening, I was at the Y. M.

C. A. at that time.

Q. And about the washing of the dishes?

A. Any time. 30

Q. What were the circumstances?

THE COURT: He said he would pitch in and wash them.

Q. Can you relate any other circumstances under which those things happened?

A. No, I don't know of any other circumstances.

Q. How about attending to the heater?

A. That's not a lady's work, and Mr. Mitchell was a good friend of the family and he would do the same as anybody else; I have tended to the heater myself once in a while.

Q. Under the same circumstances?

10 A. That would be sort of chivalrous, perhaps; a man don't like to see a lady do that kind of work, and he would help her.

Q. How many rooms are there in this house?

A. I think seven, four upstairs—let me see, four upstairs, and two or three down, I don't know how many it was now.

Q. What is your occupation?

A. I am a soldier of the United States at the present.

Q. At that time?

A. I was business secretary of the Y. M. C. A.

Q. How long had you held that position?

20 A. Been in the Association work for the past four years.

BY THE COURT:

Q. You have just enlisted?

A. No, I have been in the Guard for about five years.

Q. What is your age?

A. 22.

Q. And is Trenton your home?

30 A. It is not my home.

BY THE COURT:

Q. How old is Mitchell?

A. I don't know.

Q. How old is Custer?

A. A middle-aged man, I don't know.

Freeman—Cross—Re-Direct.

- Q. Did you know Custer?
 A. Yes.
 Q. Was his health good or was he an invalid?
 A. He was an invalid.
 Q. He was there all the time you were there?
 A. No, he wasn't.
 Q. What part of the time was he there?
 A. He came there, I imagine, about a month before I left, possibly a little longer than that.
 Q. Did he follow an occupation while he was at that 10
 home?
 A. A sort of an occupation; he was engaged in making a map of the Lincoln Highway, I think.
 Q. Do you know the other man, Gano?
 A. I do.
 Q. Was he there all the time you were there?
 A. He was.
 Q. Do you know what his occupation was?
 A. No, sir.
 Q. Do you know how old he was? 20
 A. I don't know, I know approximately.
 Q. What would you say it was?
 A. About 57.

Re-Direct Examination by Mr. Scammell:

- Q. You were not there at night?
 A. I slept there at night, but I didn't get in until late.
 Q. At any time you got in late, did you ever see 30
 Mitchell there?
 A. Well, no, not when I got in late, lots of times I would have my nights off and get in about seven o'clock or so, and I saw him there a good many times.
 Q. Did you see him eat there; what do you mean by late?

Freeman—Re-Direct—Bowne—Direct

A. Well, late would be 11 or 11.30, I usually got in about then, sometimes later.

Q. Did you ever see him there upon any occasion you came home late?

A. I recall seeing him one time on the couch asleep when I came in late.

Q. When was that?

A. I can't tell you just when.

10 Q. About when with reference to the time you left, if you can recall?

A. Possibly two months before.

Q. Three months before?

A. Two or three months before.

BY THE COURT:

Q. Right in the summer?

A. Yes; I left in the fall.

20 ROLAND C. BOWNE, JR., a witness produced on behalf of the Petitioner, being duly sworn, testified as follows:

Direct Examination by Mr. Scammell:

Q. Mr. Bowne, where do you live?

A. 486 West State Street, Trenton.

Q. Do you know Andrew Mitchell?

A. Yes.

30 Q. Do you know Mrs. Slack, the defendant?

A. I have met her, yes.

Q. Were you in her home on the early morning of December 25, 1916?

A. Yes.

Q. Please state just what occurred when you went there, and don't say anything which occurred outside of the presence of Mrs. Slack, and state how you come to go there.

A. On December 25th, in the morning, Mr. Thompson came to my house and told me that Mr. Mitchell had gone to Mrs. Slack's room—

THE COURT: Strike that out.

Q. Just state in response to the notice you went to the Slack home?

A. Yes, sir.

Q. When you went there just state whom you saw and what occurred. 10

A. Well, at half-past seven in the morning—I went there at 3.30 in the morning and waited there until 7.30 in the morning.

Q. Before 7.30?

A. There was a telephone call about 6.30 and Mrs. Slack went down the stairs, and her little child ran after her; it was Christmas morning; she talked, as I understood, to her mother, and I understood from the conversation that she said she would be over there. After the telephone call Mrs. Slack came upstairs with the child, and as soon as the child got in the room the child said, "Look, Ann; look, Ann; look, Ann;" and then I heard Mr. Mitchell ask who it was, and the reply was from her mother, that she was going over there for her Christmas dinner. I was right in the next room and heard this conversation. I waited, probably, for about five minutes, when I opened the door, and Mrs. Slack and Mr. Mitchell were in bed together, and the child was in between them, playing with the toys on the covers. 20

Q. Go ahead. 30

A. I said to Mr. Mitchell—the first off, they pulled the covers over their heads and then pulled them down—I said, "Is this your wife?" He said, "No;" I said "What are you doing in bed with her?" Mrs. Slack said, "I am so nervous;" I said, "Put your clothes on." He put his clothes on and Mrs. Slack put a kimona on, and she went into

the next room, and she said "Such a thing as this to happen on Christmas day; it's awful, Christmas;" and she half cried, and she called up her mother and said Ann would be arrested, probably, "will you go his bail?" she said no amount, and that was all that was said, and I went with Mr. Mitchell out of the house.

Q. Where did you go?

A. To Mr. Slack, Senior's; they pleaded they didn't want to be arrested on Christmas day.

10 Q. What time was it you went to the house?

A. It was around about eight o'clock in the morning or a quarter to eight.

Q. What time did you go to Mr. Slack's at 1002 Stuyvesant Avenue?

A. About 3.30 in the morning.

Q. Did you go to a room near their room?

A. The next room.

20 Q. Between three o'clock, when you went to the Slack home on Stuyvesant Avenue, and seven o'clock, or the time you entered the room, did you see Mrs. Slack go out of her room?

A. Yes, I was within three feet of her.

Q. Did she go out of the room more than once?

A. No, in the early morning, of course, I had a man working there, an operator working there, and he let me know, and he said Mr. Mitchell—

THE COURT: Strike it out.

30 Q. What did you do between three o'clock and the time you went into the room?

A. I sat there right by the door.

Q. How many times did she go out of the room?

A. Twice.

Q. On the first occasion did anyone go out with her?

Bowne—Direct—Cross.

- A. No, just herself.
- Q. And on the second occasion?
- A. The child came out with her.
- Q. What is your business?
- A. I am a detective.
- Q. A licensed detective?
- A. Commissioned by the Government.
- Q. You spoke of someone by the name of Thompson?
- A. I expect him here at any time.
- Q. We have not been able to get him under subpoena, 10
have we?
- A. No, he is in Washington, and I wrote to him and
expect him here at any time.
- Q. How was Mr. Mitchell dressed?
- A. He didn't have anything on only his undershirt.
- Q. Nothing but his undershirt?
- A. That's all.
- Q. When you were there, was anyone else with you be-
sides Mr. Thompson? 20
- A. No, sir.
- Q. How about Mr. Slack's father?
- A. That was earlier in the evening.
- Q. What time was he there?
- A. About three o'clock.
- Q. How long did he stay there with you?
- A. About twenty minutes.
- Q. And then he left?
- A. Yes, sir.
- Q. He was not there at the time you went in at seven
o'clock in the morning? 30
- A. No, sir.

Cross Examination by Mr. Devlin:

- Q. How long have you been in the detective business?
- A. About ten years.

- Q. Who engaged you on this date?
 A. Mr. Slack, Jr., through Mr. Slack, Sr.
 Q. Who personally interviewed you?
 A. Mr. Slack, Sr.
 Q. Have you met Mr. Slack, Jr. at all?
 A. No.
 Q. You never met him in the transaction?
 A. No, sir.
 Q. When you were engaged in this case what was to
 10 be your compensation?
 A. So much a day.
 Q. A day?
 A. Yes, sir.
 Q. And dependent upon results?
 A. No, until I was notified.
 Q. What I mean to say, did the result of your investi-
 gation affect your pay?
 A. The quicker it was over the quicker the case was
 over.
 20 Q. I mean, did the result of your investigation increase
 your salary?
 A. No, sir.
 Q. When did you go to the home of Mrs. Slack?
 A. On December 25th, in the morning at 3 a. m.
 Q. Hadn't you been there before that?
 A. No, sir.
 Q. Hadn't you engaged a room there?
 A. No, sir.
 Q. And who let you in?
 30 A. Mr. Thompson.
 Q. He was your fellow operator?
 A. Yes.
 Q. At three o'clock in the morning?
 A. Yes, sir.
 Q. And when you got in, where did you go?

A. I first went upstairs in the back room, Thompson's room, and then I went front to the next room to Mrs. Slack's.

Q. What kind of a window was there in that room, a bay window?

A. That I couldn't say; I believe it was Custer's room.

Q. Was that room the room next to Mrs. Slack's?

A. Yes.

Q. Are you sure of that?

A. Yes, sir; that was not the room that Mr. Thompson was in. Mrs. Slack's room was front, and this was the second room, and the back room and then the bath room. 10

Q. How many rooms are there upstairs?

A. Three and the bath on the second floor.

Q. Do you know there are four and bath?

A. No, sir.

Q. Do you know you were not in the room next to Mrs. Slack's?

A. I was, because I was there in the morning.

Q. Do you know that the room next to Mrs. Slack's has a bay window? 20

A. I didn't look at the window; Mr. Mitchell dressed himself—

Q. Didn't you know that the shape of the floor in that room indicated a bay window; it has an octagonal shape?

A. There was a brass bed there, that's all.

Q. After you got in that room at three o'clock, what did you do?

A. I stayed there.

Q. Who with? 30

A. Mr. Thompson.

Q. Did you see Mr. Slack at three o'clock in the morning?

A. Yes, he came to the house with me.

Q. Did you see Mrs. Slack?

A. I seen her about 3.30 in the morning.

- Q. Where?
- A. Come out of the door.
- Q. What door?
- A. Her bedroom door.
- Q. In the front?
- A. Yes.
- Q. Where did she go?
- A. Downstairs.
- Q. Do you know why she went out of the door?
- 10 A. Yes.
- Q. Why?
- A. My man rapped on the door and said he smelled smoke, thinking that Mitchell would come out, but he didn't. She went downstairs.
- Q. And when she went downstairs did you go into her bedroom?
- A. No, sir.
- Q. Why didn't you?
- A. Because I thought Mitchell was coming out.
- 20 Q. But you wrapped at the door and expected Mitchell to come out?
- A. Yes.
- Q. If you expected Mitchell to come out and he didn't come, why didn't you go into the bedroom and find him?
- A. I wasn't sure he was in there.
- Q. I am asking you; you thought the two were in there?
- A. My man said they were in there.
- Q. You got her out of the bedroom; why didn't you go into that bedroom if you thought Mitchell was in there?
- 30 A. I didn't know but what she would be coming upstairs.
- Q. Did that make any difference to you whether she was coming up or down stairs?
- A. Yes.
- Q. Your purpose was to find Mitchell in that room?
- A. No.

Q. Isn't it a fact that Mitchell wasn't in that room at that time?

A. He was.

Q. How do you know?

A. Because I waited there and caught him there at seven o'clock in the morning; he didn't have any way to get out.

Q. Are you sure you were in the room next to Mrs. Slack?

A. Yes. 10

Q. You don't think it was possible for him to get in that room after three o'clock?

A. No, sir.

Q. Who went and made the smoke alarm of fire?

A. Thompson stated that to her.

Q. Did you hear her come up?

A. Yes, Thompson went to the door, and she said "There goes a mouse," and closed the door in his face.

Q. Where was Mr. Slack?

A. In the back room, if that is the time the mouse— 20

Q. Mr. Slack came with you at three o'clock in the morning?

A. Yes.

Q. He remained in Thompson's room?

A. Yes, sir.

Q. After she came upstairs and went into her bedroom, where did Mr. Slack go?

A. He went home.

Q. And you remained with Thompson in Thompson's room after Slack went away? 30

A. No, sir, I moved up.

Q. Up to what room?

A. Next to her room.

Q. You say you moved up next to her room?

A. Yes, sir.

Q. Are you sure that room was next to her room?

- A. Yes, sir.
- Q. Will you described, if you can, what kind of furniture was in that room?
- A. There was a brass bed there; of course, it was dark; there was no light.
- Q. What else?
- A. There was a telephone in there.
- Q. A telephone?
- A. Yes.
- 10 Q. In that bedroom?
- A. Yes, a branch from downstairs.
- Q. Any other furniture besides a bed?
- A. Yes, a bureau.
- Q. You say there was a brass bed in there?
- A. Yes.
- Q. What else?
- A. That's all I recall; I didn't take much notice; I was interested in the front room.
- Q. You were in there from three to seven?
- 20 A. Yes, it was dark at seven in the morning.
- Q. There is an electric light in that room?
- A. I didn't light the light.
- Q. You are sure there was no bay window in that room?
- A. I am not sure, there may be.
- Q. At seven, you say, you came out of the room?
- A. Around seven.
- Q. When you came out, what did you do?
- A. I walked to this other room; there's only one—
- 30 Q. What happened to bring you out of the room at that hour?
- A. I heard Mr. Mitchell ask who it was; I heard a man's voice, and the child was saying, "Look Ann; look, Ann; look, Ann," showing the toys.
- Q. And then you went into the room?
- A. Yes, sir, the door was unlocked.

Bowne—Cross.

- Q. After Mrs. Slack got in?
 A. Yes, sir, the door had been locked previously.
 Q. How do you know?
 A. Mr. Thompson tried it; I was alongside of him; I heard her lock the door after she closed it
 Q. Are you sure you heard a key turn?
 A. I can't say; I heard a click.
 Q. When you saw Mrs. Slack and Mitchell in the room where do you say you found them?
 A. In bed together. 10
 Q. Where was the bed?
 A. Why, it was facing—the head of the bed was facing towards the door; the door was here, and the bed here (indicating); Mrs. Slack was on this side of the bed, and Mr. Mitchell was on the other side (indicating, and the baby was in between them, playing, on top of the covers.
 Q. What was the first thing you said?
 A. "Is this your wife?"
 Q. What did he say?
 A. "No, sir." 20
 Q. Then what else was said?
 A. I said, "Get your clothes on."
 Q. To him?
 A. Yes, sir.
 Q. What did he say?
 A. He got out of bed.
 Q. In the presence of the woman there?
 A. Yes.
 Q. How was he dressed?
 A. He just had an undershirt on. 30
 Q. Is that all?
 A. Yes.
 Q. When he got out where did he go?
 A. I think he put his under drawers on in the bedroom.
 Q. In this bedroom?
 A. Yes, sir.

- Q. And you were standing there?
A. Yes, I stood right by the door there, and she got up and put on a kimona.
Q. How was she dressed?
A. She had a nightgown on.
Q. And that was all?
A. Yes, sir.
Q. Are you sure of that?
A. Yes.
- 10 Q. After that, where did he go?
A. He slipped on his trousers, and then afterwards he went out of the room; I don't know whether he had his tie or collar on; I know his hat was downstairs.
Q. Did you follow him out of the room?
A. No, sir.
Q. Why?
A. I went to the door.
Q. You say he went downstairs?
A. Yes.
- 20 Q. Why didn't you follow him down?
A. Because my man was there.
Q. Downstairs?
A. Yes, sir.
Q. You remained in the room?
A. Yes.
Q. What did Mrs. Slack say to you?
A. She said, "This happened on such a day; what's going to be done?" I said, "I suppose your husband is going to get a divorce;" she said, "I don't care, as long as I have the child."
- 30 Q. Isn't it a fact that when you went into that room, that Mrs. Slack was sitting up working on a piece of fancy work almost fully dressed; isn't that true?
A. No, sir.
Q. Was Thompson in that room with you at that time?

Bowne—Cross.

A. Yes, right at the door.

Q. Didn't he go inside?

A. No, because the bed was right there; he was within two feet of the bed.

Q. I understand this door goes in this way (indicating)?

A. It goes in this way, right to the left as you go in the door you are only, probably, a foot from the door; in other words a person lying on the bed could lock the door.

Q. Isn't there a closet between the bed and the door?

A. No, sir. 10

Q. In the presence of Mrs. Slack did you threaten to arrest Mitchell or place him under arrest?

A. No, they pleaded and said it was Christmas day, and that was the first night he ever slept with her; so I said to walk down to Mr. Slack's home, and Mr. Slack tried to get in touch with Mr. Scammell.

Q. You went into the room; first, both were in there, weren't they, both persons were in that room when you went in at seven o'clock?

A. Yes, sir. 20

Q. Can you give us any other explanation than you have given why you didn't go in at three o'clock?

A. Because I didn't think he was in there.

Q. You didn't think he was in there?

A. I didn't think he was in there.

Q. At three o'clock?

A. No, sir, because my man had left the house for thirty minutes, and I didn't know it until I got to the house.

BY THE COURT: 30

Q. Didn't know what?

A. That the man had left the house, Thompson.

Q. Then, if you didn't think he was in, where did he come from, did you think?

A. He was there, my man was right and I was wrong.

Q. I understood you to say in the last question, that you didn't think he was in, and that's why you didn't go in at three o'clock in the morning?

A. I didn't hear him.

Q. You said you didn't think he was in?

A. I didn't think so, no.

Q. Where do you think he came from?

10 A. He was lying in bed there; he couldn't get in the room only through the way I was sitting; he had to pass me to get in the room between three and seven in the morning.

Q. You think you were surely in the next room?

A. Well, I heard their voices very plain in the morning.

Q. (Stenographer repeats the question).

A. Yes.

Q. You say you heard a conversation before you entered the room at seven o'clock?

A. Yes.

20 Q. Who with?

A. Who the conversation was with?

Q. In Mrs. Slack's room you heard talking?

A. Just before I went in, just as the child came upstairs and said, "Here, Ann, look, Ann," I heard Mr. Mitchell ask who it was; I heard his voice very plainly.

Q. Did you hear that through the wall or the door?

A. I was right at her door there; I went there and listened when she closed the door.

30 Q. You had your operator engage board there, didn't you?

A. Yes.

Q. How many weeks before this?

A. About two weeks.

Q. And it was he that reported to you to come out at three o'clock in the morning?

A. Yes, sir.

Bowne—Cross.

- Q. How long have you lived in Trenton?
 A. Why, about eight years.
 Q. What has been your occupation all that time?
 A. The detective business.
 Q. Divorce cases?
 A. No, sir.
 Q. Other cases?
 A. Yes, sir.
 Q. Do you solicit divorce business?
 A. No, sir; I have also worked for the Prosecutor's 10
 office.
 Q. Not while I was there?
 A. Yes.
 Q. How much compensation were you to get for this
 work?
 A. At the rate of \$6.00 a day.
 Q. And expenses?
 A. And expenses.
 Q. For whom, how many men?
 A. One man. 20
 Q. Suppose you put two men on?
 A. \$12.00 a day.
 Q. And expenses?
 A. Yes, sir.
 Q. How many days had you been on the job?
 A. About two weeks.
 Q. In this case there was only man engaged?
 A. Yes, sir.
 Q. Was that the first results you had obtained in two
 weeks? 30
 A. Yes, sir, that I got, yes.
 Q. Did any complaint come to you before that two
 weeks, that you were not getting results, from Mr. Slack?
 A. No, sir.
 Q. Had you interviewed Mr. Slack, senior?
 A. Yes, sir, once.

Bowne—Cross.

- Q. Did you offer any excuse for not obtaining results?
 A. No, sir, I told him if the evidence was there I would get it, but—
 Q. And did he complain about results not coming sooner?
 A. No, sir.
 Q. As a result of your interview with Mr. Slack, did that stimulate you to get results quicker?
 A. No, sir.
 10 Q. Isn't it a fact that your detective agency, as well as others, have to get the results?

MR. SCAMMELL: That is objected to.

THE COURT: Objection sustained.

- Q. Were you to get any more compensation if you got the evidence than if you didn't?
 A. No, sir.
 Q. Why didn't you arrest Mitchell right there?
 20 A. Well, it was on account of being the Christmas morning, and they were crying and one thing and another.
 Q. If that were a good reason, why did you go there on a Christmas morning?
 A. It was up to Mr. Slack to make the complaint.
 Q. Slack wasn't there; you went there to get the information?
 A. Yes, sir.
 Q. Why didn't you arrest both him and the woman?
 A. It was on account of being Christmas morning, and
 30 I was told not to arrest them.
 Q. Who told you that?
 A. Mr. Scammell.
 Q. Did you see Mr. Scammell before you went there?
 A. Yes, sir.
 Q. What time did you see him?
 A. In between the time I took the case—

Q. You went there Christmas morning?

A. I didn't see him Christmas morning; he was out of town.

Q. But Mr. Scammell didn't instruct you not to arrest them because it was Christmas morning?

A. No.

Q. The question of why you didn't arrest them, was a question of your own judgment?

A. No, on account of Mr. Scammell telling me; he said not to arrest them, not to have the scandal on account of Mr. Slack, Jr. didn't want them arrested. 10

Q. And that was the reason you didn't arrest them?

A. Yes, sir.

Q. Is that the only reason?

A. Yes, sir.

BY THE COURT:

Q. How old is this baby?

A. About two and a half years old. 20

Q. Does it talk?

A. Yes.

Q. Intelligently?

A. Yes, sir; if he knows a person, he could call him by name.

Q. Two and a half years old?

A. Yes.

Q. He is not old enough to say after a lapse of time what had happened?

A. I don't suppose, no; the only thing I heard the child say— 30

Q. Was the child of that age that it could repeat to someone else what it saw?

A. It may.

Q. Could it have told his father that Ann was in bed with his mother?

Bowne—Cross.

A. I think so, yes, sir.

Q. Who is this man Custer?

A. He boarded there.

Q. And that you were in Custer's room?

A. I was told it was his room.

Q. Were you familiar with the lay of that house before you got there?

A. I was told, that's all.

10

Q. And it was about three o'clock that Thompson got word to you?

A. Yes, sir.

Q. And you went in the house to Thompson?

A. He came downstairs and let me in.

Q. What information did you give Thompson that you were there to be let in?

A. Did I give him? He knew I was coming there, he came down and let me in.

Q. He was watching for you?

A. Sure.

20

Q. When he let you in—

A. Mr. Slack was with me.

Q. Was the house dark?

A. Yes.

Q. Were there carpets on the floor?

A. Yes, sir.

Q. All three of you were in Thompson's room?

A. Yes, sir; Mr. Thompson had his shoes off.

Q. Did you keep your shoes on?

A. Yes, sir.

30

Q. Mr. Slack as well?

A. Yes.

Q. Did you talk while going upstairs?

A. No, sir.

Q. You followed the lead of Thompson to his room?

A. Yes.

Bowne—Cross.

- Q. Did Thompson take you to Custer's room?
 A. Afterwards.
 Q. Did he inform you that the room was empty?
 A. He said, "We'll go up to the room——."
 Q. Did he inform you that Custer's room was empty?
 A. Yes, sir.
 Q. Did he tell you where Custer was?
 A. He was away. 10
 Q. Was the Custer door open when you entered?
 A. Wide open.
 Q. Did Mr. Slack go with you into that room?
 A. No, sir.
 Q. Where did you leave Slack when you went to the Custer room?
 A. In Thompson's room.
 Q. Did you leave him there alone?
 A. Yes, sir.
 Q. Or, did you leave him with Thompson? 20
 A. I left him with Thompson.
 Q. You said he followed you, didn't you?
 A. He let me into the room, and then got out again.
 Q. I understood you to say that Thompson was in the room all the time you were in there?
 A. Oh, no, not at the time Mr. Slack was there, because he was going in between the two.
 Q. What intimation had you that Mr. Slack left? Did he tell you? 30
 A. Why, just as we walked out of the room, he went on downstairs and I went front.
 Q. I thought you said you left Thompson in the room with Slack?
 A. I say they were in there together.

Q. When you went to Custer's room, Thompson took you there?

A. Yes, sir.

Q. I also understood you to say, that when you left with Thompson to go to this room, you left Slack with Thompson?

A. No, Thompson come through with me, and Slack went downstairs; Slack went downstairs by himself, and Thompson and I come in front.

10

Q. Did Slack go out?

A. Yes.

Q. How do you know?

A. Mr. Slack told me.

Q. Did Thompson stay with you all the time after you went to Custer's room?

A. Yes, sir.

Q. Did you close the door in Custer's room?

A. I left it open about that much (indicating).

20

Q. How did the Custer room door swing with reference to the room of Mrs. Slack?

A. It was swinging towards it.

Q. So that when you had it ajar, you had a view?

A. Yes, sir, I was in the room within two or three feet of Mrs. Slack's room, and when the telephone rang, she closed the door and went and listened.

Q. The telephone was in your room?

A. No, she answered the 'phone downstairs.

30

Q. It was a pretty cold morning Christmas day, wasn't it?

A. Yes

Q. How was this house, pretty well heated?

A. Yes, sir.

Q. And when Mrs. Slack left her room to answer the telephone, how was she dressed?

A. She had a kimona on.

Bowne—Cross.

- Q. How, as to her feet?
- A. I couldn't say.
- Q. Did she have slippers on or were her feet bare?
- A. I guess she had slippers on.
- Q. When she passed your room, or the room you were in, was the door closed?
- A. As soon as she passed, she closed the door.
- Q. Did she do anything, that you know of, after she got downstairs, except to answer the telephone? 10
- A. She looked at the toys with the child.
- Q. Did she do anything else?
- A. That's all.
- Q. This telephone in the room which was right next to her room was available to her, wasn't it?
- A. I believe it was disconnected.
- Q. Didn't you listen at that 'phone?
- A. No, sir.
- Q. I got the impression from a gesture you made, that you went to the 'phone and listened? 20
- A. No, I didn't know the 'phone was in the room until after I came out of her room; it was dark; I didn't see the 'phone until after seven o'clock.
- Q. Seven o'clock in the morning on Christmas day was very dark, wasn't it?
- A. Yes.
- Q. How could you see the telephone then?
- A. It was after they were getting dressed; I guess they lit lights.
- Q. Where? 30
- A. In Custer's room.
- Q. Did they go in?
- A. They came in afterwards.
- Q. And called up?
- A. They called up to the mother.
- Q. I thought you said it was not connected?

Bowne—Cross—J. C. Slack—Direct.

A. I didn't know whether it was or not.

Q. I want to know whether you know why, on this Christmas morning, dressed only in a kimona, and only for the purpose of answering a telephone, this woman should go away downstairs to answer that 'phone, instead of going into an adjoining room?

A. No, sir.

10 It is admitted that the date of the birth of the baby was August 28.

JACOB C. SLACK, a witness produced on behalf of the Petitioner, being duly sworn, testified as follows:

Direct Examination by Mr. Scammell:

Q. Where do you live, and what is your business?

20 A. At 537 Rutherford Avenue, Trenton, New Jersey, and I am Assistant Cashier of the Mechanics National Bank.

Q. Mr. Slack, do you know Andrew Mitchell?

A. I do.

Q. And you, of course, know your son's wife?

A. Yes, sir.

Q. How long have you known Andrew Mitchell?

A. I have known him since the morning he came into my house.

Q. What morning was that?

30 A. The 25th of December, 1916.

Q. Whom did he come there with?

A. With Mr. Bowne.

Q. The witness just preceding you?

A. Yes.

Q. What was his physical condition?

J. C. Slack—Direct.

MR. DEVLIN: That is objected to.

THE COURT: Objection overruled.

A. He seemed to be very nervous and excitable.

Q. And about what time was it they came to your house?

A. Around eight o'clock in the morning.

Q. Did he spend quite a little while there?

A. I think he was there about fifteen or twenty minutes.

Q. When he came there, who was in your house at the 10
time?

A. Mrs. Slack, my wife, my daughter and our maid up-
stairs.

Q. After this visit of Mr. Mitchell's, did you go to see
Mrs. Slack, your son's wife?

A. I did.

Q. Where?

A. At 1002 Stuyvesant Avenue, her home.

Q. State what took place there.

A. I said to Mrs. Slack that "I suppose you know what 20
called me here to-night; that after what has taken place
Le Roi will petition for divorce;" Mrs. Slack said, "It can
all be explained; if Le Roi would only come home I could
explain everything to him satisfactorily." I said to Mrs.
Slack, that "You couldn't explain a situation like this; no
one would believe it; we have the evidence and can prove
that you were guilty; and then, "Mrs. Slack," I said, "did
you know that Andrew Mitchell was down to my house on
Christmas morning and admitted that he was in bed with
you?" She said, "Did he say that; it's a lie." I said, "We 30
know you are guilty;" and then Mrs. Slack broke down and
cried, and she said, "What about the baby? I couldn't give
up my baby; I would go to Europe before I would give up
the child." I told her I thought if she were reasonable,
there would be no trouble about that, that I would personal-

J. C. Slack—Direct—Cross.

ly be willing she should have the baby, and I thought the boy would also.

Q. When was this?

A. About a week after Christmas.

Q. Is that practically all that took place at that interview?

A. That's practically all that took place at that interview, yes.

10 Q. After that, did you see her again, did you see Mrs. Slack again?

A. Yes, sir, I saw her. At that time I spoke about keeping the matter from the papers, and she called me on the 'phone about a week afterwards, if I would give her two week's more grace; I told her the matter was in your hands, and as soon as the petition was ready it would be filed, but before it was filed I would let her know. Unfortunately, the matter did get in the papers, as I didn't have sufficient notice. I called her up before it went in, and she said she would like it kept from the papers. She didn't render any
20 decision. I am unable to say, but possibly two weeks after that, I called upon Mrs. Slack again to explain why it appeared in the papers.

Q. What took place at that interview?

A. At that time Mrs. Slack protested her innocence, but at the same time she asked me—she said that her lawyer advised her that if a decree was granted on the charge that was made, the husband could come on her any time and sue for the child, even though it might be given to her now, and asked me if we couldn't make another charge in the peti-
30 tion. I told her we had the proof on those grounds and would not consider anything else, but would fight it out on that line.

Cross-Examination by Mr. Brennan:

Q. Mr. Slack, at the time you went to see Mrs. Slack at

J. C. Slack—Cross.

this first conversation about a week after the 25th, who was present besides yourself and Mrs. Slack?

A. No one but the baby.

Q. The second time that you went to see her was there any one present?

A. No, sir, no one but the child.

Q. At any of these conversations that you have related here to the court, was there anyone present besides yourself and Mrs. Slack?

A. Not in these conversations.

10

Q. I understand you to say that when Mr. Mitchell was taken down to your house, that your wife was present and your daughter was present?

A. My wife was in the house and my daughter was in the house.

Q. But not present where Mr. Mitchell was?

A. Not in the room; my daughter was within hearing and seeing.

Q. Did Mrs. Slack inform you—when was the first time that Mrs. Slack informed you, Mr. Slack, that she had taken counsel in this matter, or did she say that to you at all?

20

A. My recollection is, in the second interview, after she had told me that counsel said—

Q. Can you recall just what Mrs. Slack said to you on your first calling upon her?

THE COURT: He has already told us that; do you care to have it repeated?

MR. BRENNAN: No, sir.

30

Q. Didn't Mrs. Slack at that time deny—

THE COURT: She did; he has already so testified.

MR. BRENNAN: Question withdrawn.

J. C. Slack—Cross—Re-Direct.

Q. Who employed Mr. Bowne, the detective that is brought here on the stand, you or your son?

A. I made the arrangements for my son.

THE COURT: This is not cross-examination.

Re-Direct Examination by Mr. Scammell:

10 Q. Mr. Slack, on the morning of December 25, did you go to your son's residence, 1002 Stuyvesant Avenue?

A. I did.

Q. In response to a telephone call?

A. Yes.

Q. With whom did you go there?

A. Mr. Bowne.

Q. About what time was it you went there?

A. I should say we reached there around 3.30.

Q. Who let you in the house?

A. Mr. Thompson.

20 Q. Which door did you go in?

A. In the front door, just on the side of the house.

Q. Where did you go?

A. Directly to Mr. Thompson's room.

Q. Which was where?

A. In the back part of the house.

Q. How long did you stay in that room?

A. I think about a half an hour.

30 Q. While you were there did you overhear any statement being made by anyone in the house to Mrs. Slack? Just state what you heard and saw, if anything, while you were there.

A. Mr. Thompson went to the room—

MR. DEVLIN: We object to that.

J. C. Slack—Re-Direct—Re-Cross

A. And knocked on the door and said he smelled smoke, and Mrs. Slack came out and they went downstairs together.

Q. Did you see her come out?

A. No, sir.

Q. Did you hear her?

A. I heard her.

Q. Where did she go?

A. She went downstairs and looked around; I could hear them talking, and when she came back I heard Mrs. Slack say to Mr. Thompson, "Well, that scare is over;" and Mr. Thompson went to the door with her, and I heard her say, "There goes a mouse in Custer's room," and with that she went in the room and closed the door and locked it. 10

Q. You heard the lock or the catch?

A. Yes.

Q. How many times did Thompson go to the door, that you recall?

A. Twice.

Q. The first time was when he spoke about the smoke, or the second time? 20

A. The second time.

Q. The first time did Mrs. Slack come out?

A. No, sir.

Q. How long after the second, or smoke incident, did you leave the house?

A. I think in ten minutes.

Q. Who let you out of the house?

A. I went out myself down the back stairway, through the kitchen and dining room, and out the front door again. 30

Re-Cross Examination by Mr. Brennan:

Q. You spoke of Mr. Thompson going to the door; did Mr. Thompson go to the door of Mrs. Slack and knock on it before this fire incident?

A. Yes, sir.

Q. Did anybody answer?

A. He came back and told us he could hear them whispering, but no one responded to his call.

Q. He went to the door, but didn't knock at the door?

A. He knocked at the door.

MR. DEVLIN: I move to strike that out as not responsive.

10

THE COURT: Strike out the previous answer, except "No one responded to his call."

Q. Now answer the question.

A. No, sir.

Q. Who was in the room besides you and Mr. Thompson at this time?

A. Mr. Bowne.

Q. What did you observe Mr. Thompson to do next?

A. After the first time at the door?

Q. Yes, and what happened?

20

A. Mr. Bowne told him to go back to the door again and say that there was a fire. Mr. Thompson went to the door, and called Mrs. Slack and said he thought he smelled smoke, he thought there was a fire.

Q. Did you observe whether Mrs. Slack came out of her room again?

A. I didn't see her.

Q. Then where was Mr. Bowne then?

A. Mr. Bowne was in the room with me.

Q. In the Thompson room?

30

A. Yes, sir.

Q. Did you see Mrs. Slack go back into her room?

A. I did not.

Q. Or Thompson come back to the room where you were?

A. Yes.

Q. Then, what did you do?

J. C. Slack—Re-Cross.

- A. After the second time, after they came back upstairs?
 Q. Yes.
 A. Mr. Bowne told me—
 Q. No, not that.
 A. I went home.
 Q. What was the elapsing time between the first time that Mr. Thompson went to Mrs. Slack's room and the second time?
 A. Not more than three minutes, I would think.

10

BY THE COURT:

Q. And how old is this baby? As to its ability to talk, how was this baby?

A. Rather slow at talking.

Q. Was it a bright child?

A. Yes, sir.

Q. You saw it often?

A. Not frequently, and yet quite a good many times.

Q. Was it beyond the prattling period, or in the prattling period? 20

A. Yes, he could connect his sentences a little bit.

Q. And relate to you happenings?

A. I would hardly think he could.

Q. Did he ever tell you things that happened, or were supposed to have happened?

A. No, sir; he was an interesting child, but I don't think he could relate anything that happened.

Q. Where was Mr. Bowne and where was Mr. Thompson when you left the house? 30

A. They were at the head of the stairs in the hall as I went down the back stairs.

Q. What were they doing there?

A. I just left them there, and after that I don't know any more than what Mr. Bowne says in his testimony; that was after Mrs. Slack had gone back in the room and locked the door.

J. C. Slack—Re-Cross—Maher—Direct.

Q. When Mr. Thompson first knocked on her door, did he say anything to her that you heard?

A. No, he just called "Mrs. Slack."

Q. How many times did he knock?

A. I think he knocked four or five times.

Q. And no response?

A. No response.

Q. And you understood it, that it was because he got no response that he was sent back by Mr. Bowne?

10

A. Yes, sir.

Q. Did you see where Mr. Bowne or Mr. Thompson went, just before you left?

A. No, sir.

Q. Were they standing at the head of the stairs?

A. Yes, as far as I can remember.

Q. From anything they had said, did you know where they were going?

A. No, sir, only Mr. Bowne told me he would stay there and close the case.

20

Q. You didn't expect him to come downstairs with you?

A. No, sir.

KATHERINE MAHER, a witness produced on behalf of the petitioner, being duly sworn, testified as follows:

Direct Examination by Mr. Scammell:

30 Q. Mrs. Maher, where do you reside?

A. 948 Stuyvesant Avenue.

Q. Right near the Slack home?

A. Yes.

Q. Is it adjoining?

A. No, on a corner, on corners; we are on the East corner and she is on the West corner across from the park.

Maher—Direct.

Q. How long have you known Mrs. Slack?

A. I was never personally acquainted with her; she moved there over a year ago; I just bow to her, and I think, perhaps, we exchange a few words across the street, but I have never visited her and I know very little about her.

Q. Do you know Andrew Mitchell?

A. Yes, sir.

Q. Have you ever seen Mr. Mitchell going to Mrs. Slack's home?

A. Yes. 10

Q. During the year 1916, have you seen him going there often?

A. Yes.

Q. About how often?

A. Oh, well, that's hard to tell; I don't know; I may have been going sometimes running for a car, and I may have seen him, I couldn't tell how often.

Q. Did you often see him?

A. Yes, I often seen him; I couldn't tell how often.

Q. Have you ever seen him go in there late at night? 20

A. No, I don't think I have; well, yes, there were, I think, occasions when I think I saw him go in with her once or twice, but we usually retire quite early with the children, and I don't be out very much in the evening, and I don't see very much at night.

Q. Did you ever see Mr. Mitchell coming out of there early in the morning?

A. Yes, not very early after I would be up and about, you know.

Q. About what time would you see him go away from there? 30

A. I never kept any time of it, only by what I have been doing at that hour; about eight o'clock, I think, all hours, ten or eleven, no special time.

Q. Did you ever see him go in at night and see him come out the next morning?

A. I don't know whether I have or not noticed just whether it was the next morning; we don't think much about it; we see him go in and out; we get used to it.

Q. Did you ever see him go there with Mrs. Slack and the baby at night?

A. I couldn't say that I did; I don't recall him going with the baby, and at night, we are across the street, and you can't always distinguish who it is after dark.

Q. You have seen it after dark?

10 A. I say I can hardly swear as to who it was after dark, but I have seen them go out sometimes and in sometimes; I don't know just how often.

Q. Referring to the 14th and 15th of May of this year, did you see Mr. Mitchell leave the house in the morning about eight o'clock?

A. Yes.

Q. On May 16th last, this month, did you observe Mr. Mitchell go in the house on the evening of May 15th?

20 A. I don't know; I haven't any dates; that would be hard for me to tell, not being concerned—

Q. That is a week ago yesterday?

A. A week ago yesterday.

Q. Going in that evening, last Tuesday night?

A. I don't think I saw him go in last Tuesday night—I saw him come out Tuesday morning.

Q. What time?

A. About eight or 8.30.

Q. Did you watch the house to see whether he went in between six o'clock in the morning and 8.30?

30 A. Yes, I think that one particular morning that there was so much talk about it, I did look it up one time to satisfy my curiosity, to see whether he come in or come out.

Q. You didn't see him go in?

A. No.

Q. And you observed it from what?

Maher—Direct.

A. From a little after six, it may be, until about a quarter of eight.

BY THE COURT:

Q. Did you watch all the time?

A. No, I have a large house to take care of and the garden, and I could hardly get time to watch—

Q. Did you watch all the time on this morning?

A. Oh, yes, on this morning.

Q. What did you do, sit down? 10

A. Yes, on the chair in the dining room; you could see very plain.

Q. Do you recall Sunday, May 6th, seeing Mr. Mitchell return to the house with Mrs. Slack and the baby?

A. I have no dates, and I don't recall seeing Mrs. Slack and Mr. Mitchell coming with the baby; I saw them come without the baby, but I don't know what date it was.

Q. And about fifteen minutes after the lights were turned out in the house? 20

A. Yes, we had—

Q. Mrs. Maher, I am referring particularly to May 6, which is a Sunday, when they were returning from the country, that is, from Mrs. Slack's mother or relative, Mrs. Pope; do you recall seeing them return to the house on that particular date?

MR. DEVLIN: That is objected to.

MR. SCAMMELL: I will withdraw the question. 30

Q. Do you recall seeing Mrs. Slack and Mr. Mitchell returning on a Sunday in May when you thought they were returning from the country?

MR. DEVLIN: That is objected to.

THE COURT: Objection overruled.

A. I recall the Sunday that I saw them coming home; I don't recall the date.

Q. How long ago?

A. It seems two or three weeks; I don't know just—

Q. Was it a Sunday in May?

A. Two or three weeks ago.

10 Q. State what you saw at that time.

A. Well, I didn't see them get off the car, evidently they had got off the next corner.

Q. What did you see?

A. When I saw the two of them coming in.

Q. In where?

A. In her own home. I didn't see them get off the car. Sometime after, while we were all there talking, I happened to be facing towards the house, the lights went out; I didn't see anyone coming out.

20 Q. How long after they went in did you see the lights go out?

A. Maybe twenty or twenty-five minutes, or fifteen.

BY THE COURT:

Q. You don't know whether Mitchell went out in the meantime?

A. I didn't see him.

Q. Were you watching?

A. Not purposely.

30 Q. Were you watching at all?

A. I was facing the house.

Q. Were you watching to see whether he came out?

A. No.

Q. Were you watching to see whether he stayed in?

Mahe—Direct—Cross.

- A. No, I can't say that I was.
 Q. You were not concerned that day?
 A. No.

Q. Were you in a position where you could see Mr. Mitchell if he did come out?

A. Yes, because I was facing towards the window.

Q. Please describe, Mrs. Maher, the location of your house with reference—

10

BY THE COURT:

Q. Do you live on the South or North side of Stuyvesant Avenue?

A. I live on the Northeast corner.

Q. Stuyvesant Avenue and what?

A. Maple Avenue.

Q. Where do the Slacks live, on the Northwest corner?

A. Yes.

20

Cross Examination by Mr. Brennan:

Q. How far is it, Mrs. Maher, from your house over to the Slacks', in distance?

A. Just across the street.

Q. Then across the sidewalk and then both houses set back quite some, don't they?

A. Yes.

Q. Could you estimate the distance—this particular time, about three weeks ago, about what time was it?

30

A. It was something after nine o'clock.

Q. And you could see distinctly who the people were?

A. Yes.

Q. There is no doubt about it being Mr. Mitchell?

A. No.

Q. When they went in, were the lights of the whole house lighted or not?

A. Downstairs, but whether they were lighted upstairs, I couldn't say.

Q. When you speak of the lights going out, where do you mean, the lights downstairs?

A. There were no lights in the house, the house being dark.

Q. It was dark when they went in?

10 A. I think so.

Q. And they made no light at all?

A. Yes.

Q. The lights went out downstairs?

A. Yes, sir.

Q. They have shades there, have they not?

A. I think so.

ANN J. BARNHARDT, a witness produced on behalf of the Petitioner, being duly sworn, testified as follows:

20

Direct Examination by Mr. Scammell:

Q. Mrs. Barnhardt, you live in Trenton?

A. Yes.

Q. How near the Slack home on Stuyvesant Avenue?

A. About 200 feet.

Q. You are the owner of that property?

A. Yes.

30 Q. And rent to them?

A. Yes.

Q. Have you been frequently in the Slack home?

A. I have.

Q. Have you ever seen Mr. Mitchell in there?

A. I have.

Q. How often?

Barnhardt—Direct.

A. Very often.

Q. Very often?

A. Yes, sir.

Q. Have you ever been on the second floor in Mrs. Slack's bedroom?

A. Yes.

Q. Have you ever been there at 11 o'clock or 11.30 at night?

A. Yes.

Q. Have you ever seen Mr. Mitchell there at 11 or 10 11.30?

A. No.

Q. Are you sure of that?

A. I have seen him there, yes, but not in that room; he has been in the house that late, yes.

Q. Have you seen him on the second floor as late as that?

A. Yes, sir, I have seen him up there as late as that.

Q. Have you seen Mr. Mitchell in Mrs. Slack's bedroom as late as 11.30 o'clock at night?

A. No, I have not. 20

Q. How often have you seen Mr. Mitchell going to Mrs. Slack's house?

A. I guess as often as I would go; I couldn't tell how often; I have seen him going in and out very often; I have been in there to telephone at 7 o'clock, and have seen him go in there just before that, seven o'clock in the morning, and I have seen Mr. Mitchell go in and I have seen him go out before I would go out; maybe I would be there an hour or a half hour, and maybe two hours.

Q. Have you ever seen him eating any meals there? 30

A. Yes, sir.

Q. How often?

A. Pretty near every time I ate there he ate there.

Q. And you have only seen him eating there when you were there?

A. Yes.

BY THE COURT:

Q. Is it a boarding house, or was she a friend of yours?

A. A friend of mine, and she always made me sit down and eat because I was alone.

Q. You said Mrs. Slack was a friend of yours?

A. Yes, she is.

10 Q. You never made any comment to Mrs. Slack about having Mr. Mitchell come there?

A. No, I didn't.

Q. You never did?

A. No.

Q. Nothing that you have ever said to Mrs. Slack would imply that you had any criticism of Mr. Mitchell's going there?

MR. DEVLIN: That is objected to.

THE COURT: Objection overruled.

20

A. No. Do I understand the question?

Q. (Stenographer repeats the question).

A. No.

Q. Did you ever see Mr. Mitchell going to the Norway Avenue house when Mrs. Slack lived on Norway Avenue?

A. No.

Q. Did you ever go to Mrs. Slack's house on Norway Avenue?

A. No.

30

Cross Examination by Mr. Brennan:

Q. Mrs. Barnhardt, have you seen Mr. Mitchell doing odd things around the house—fixing the garden?

A. Yes.

Q. And trimming the shrubbery?

A. Yes.

Q. Do you know he attended to the heater and fixed the heater?

A. Yes, sir.

Q. As well as did other work around the house for Mrs. Slack?

A. Yes, sir.

BY THE COURT:

Q. What would you do at her house at 11 o'clock at night in her room? 10

A. Just a friendly call; I have stayed there later, as long as 12 o'clock.

Q. And when you saw Mr. Mitchell on the second floor, what was he doing up there?

A. He would like carry the baby up and then go down; I didn't see him remain up there; that's all I seen him do—or bring it a drink or something like that.

Q. Sort of a handy boy around the house?

A. Yes; I have always seen him do that. 20

MR. SCAMMELL: I offer the letters, and rest.

RECESS UNTIL 2 P. M.

AFTER RECESS. 30

HARRY W. GANO, a witness produced on behalf of the defendant, being duly sworn, testified as follows:

Direct Examination by Mr. Brennan:

- Q. Where do you reside?
 A. 1002 Stuyvesant Avenue.
 Q. That is the house kept by Mrs. Slack?
 A. It is.
 Q. How long have you known Mrs. Grace Pope Slack?
 A. About eighteen years.
 Q. Do you know the petitioner, her husband?
 10 A. I do, yes.
 Q. How long have you known him?
 A. Only about five years, three or four years, I guess;
 I met him the first time over at the farm.
 Q. Do you board with Mrs. Slack?
 A. About thirteen months.
 Q. At the present residence where she is now living?
 A. Yes.
 Q. You are still boarding there?
 A. Yes, sir.
 20 Q. Do you know Andrew Mitchell?
 A. I do.
 Q. Have you seen Mr. Mitchell around there?
 A. I have.
 Q. In what capacity and doing what?
 A. As a servant.
 Q. Doing what, please?
 A. Partly as a servant, attending to the heater and doing household duties as he may be called upon to do or asked to do, and taking on his own shoulders a little of the
 30 responsibility really that he wasn't asked to do.

MR. SCAMMELL: That is objected to.
 THE COURT: Objection overruled.

- Q. You are still residing there?
 A. I am.

Q. Have you ever seen any undue familiarity between Mrs. Slack and Mr. Mitchell?

MR. SCAMMELL: That is objected to as being a construction placed upon actions, and I think I am entitled to have the direct question.

THE COURT: Objection overruled.

A. I have not.

Q. While you have resided there, have you at any time 10
during the time you were residing there, seen Mr. Mitchell take the baby to bed?

A. I have.

Q. Just state to his Honor, if you will, just what you have seen Mitchell do there, please, in that respect, with reference to the baby.

A. To carry the baby upstairs and put it away into its crib, give it its evening nourishment and walk away and leave it.

Q. What hours was that? 20

A. Between the hours of seven and nine o'clock.

Q. In what bedroom was the crib located?

A. In the front room.

Q. Which room do you occupy there?

A. The third room from the front.

Q. How many rooms are there on that second story?

A. Four, three and a bathroom, four and a bath room, I beg your pardon.

Q. What have you observed Mitchell to do, after his 30
action of placing the child in the crib?

A. Leave the room, go downstairs and sit in the library.

Q. Have you ever known Mr. Mitchell to eat meals there?

A. Yes, sir, frequently.

Q. Were you present at the time?

A. Yes, sir.

Q. Have you ever known him to stay all night?

- A. Yes.
- Q. Where would he sleep?
- A. In one of the other rooms.
- Q. Who occupied the room?
- A. Mr. Custer.
- Q. Do you know, of your own knowledge, whether there is a telephone in Mr. Custer's room?
- A. There was one there, yes.
- 10 Q. Was that connected with their telephone, or was it a private telephone?
- A. Direct to the telephone exchange; it was put in for Mr. Custer's benefit.
- Q. Were you there on the 24th of December last?
- A. I were not.
- Q. Were you there on the 25th?
- A. No, sir.
- Q. Were you there on the 23rd?
- A. No, I was not there on the 25th.
- Q. Were you there on the 23rd?
- 20 A. I was there on the 23rd, in the afternoon, that was all.
- Q. Where did you go?
- A. To Philadelphia.
- Q. How long did you stay?
- A. Until Monday evening.
- Q. The Monday after Christmas?
- A. Yes, sir, that is, Christmas night.
- Q. Did you notify Mrs. Slack that you were going away?
- 30 A. On the Saturday afternoon before I did.
- Q. Were you frequently in Mr. Custer's room?
- A. Occasionally, yes.
- Q. Do you know what the furniture is?
- A. I do.
- Q. Kindly tell us.

A. There was a brass bedstead, a chiffonier and a bureau; it was a bay window room, and two rugs and a couch.

Q. Are you sure as to the kind of a bed?

A. It was an iron bed; I am not positive whether it was brass or white enamel; I think it was a brass bed; my memory just fails me about that, but I think it is either white enamel or brass, I couldn't tell you which.

Q. At the time on the 23rd did Mrs. Slack make any request of you at that time?

A. She did.

10

Q. What was it?

MR. SCAMMELL: That is objected to.

THE COURT: Objection overruled.

A. Why, I told Mrs. Slack on coming over from the office that afternoon—she says “Harry, are you going away this afternoon?” I said “I am;” I said, “I am going to Philadelphia for to see the little ones;” she said, “I am very sorry, because the gentleman that rents the back room I am afraid of.”

20

MR. SCAMMELL: That is objected to.

THE COURT: Objection overruled.

A. “He acts so funny; he seems to act so funny; he seems to be like a sneak.” I said “Don't let that fear you; I guess he is a gentleman enough to be a gentleman in the house.” She says, “I wish you were not going;” I said “It's up to me every Christmas to go to see the little ones;” so I went under a protest from her.

30

Q. Who was the man referred to, in the back room?

A. A man by the name of Thompson.

Q. Do you know how long he had been there?

A. About two weeks.

Q. Did you see him very often?

Gano—Direct—Cross.

A. Very little. I would meet him on the corner waiting for a car to go down town on two occasions only.

Q. Did he state what his business was?

A. Yes, a Prudential Insurance agent.

Cross Examination by Mr. Scammell:

Q. You were at the house, Mr. Gano, before Mr. Custer came there, were you not?

10 A. I was.

Q. And did Mr. Custer have this telephone put in his room while you were there?

A. I couldn't say whether Mr. Custer put it in or Mrs. Slack, but it was installed independent of our house 'phone.

Q. There were two 'phones in the house?

A. Yes.

Q. And the 'phone on the second floor was not connected with the first floor?

A. No, sir.

20 Q. You are certain of that, are you?

A. Well, I can't say positively, but I am very sure so; my convictions are that way, yes, sir. I beg your pardon; can I answer that over again in regard—

Q. If you want to correct anything, you may.

A. I think Mr. Custer had that 'phone put in, because I know the bill was charged to him and it wasn't paid for.

Q. And that fixes it particularly certain in your mind that it was a separate 'phone?

A. Yes.

30 Q. Mrs. Slack had a 'phone on the first floor?

A. Yes, sir.

Q. And that was in her name?

A. Yes, sir.

Q. You have already stated that you saw Mr. Mitchell spend the night at the Slack home?

A. I have.

Q. How often has he stayed all night?

Gano—Cross.

A. I couldn't say how often, but on numerous occasions, yes.

Q. And when he would stay over night he would sleep in Mr. Custer's room?

A. Either there or in the rear room, the one next to me.

Q. There's a bathroom between Custer's room and your room?

A. There is.

Q. Custer's room was on the one side of the bathroom and yours was on the other side, to the rear of the house? 10

A. Yes.

Q. The Custer room was immediately adjoining the front room, or Mrs. Slack's room?

A. Right.

Q. And that is the room you say Mr. Mitchell slept in?

A. On one or two occasions, yes, but the majority of times he slept in the rear back of me.

Q. The majority of times?

A. Yes, whenever he was there.

Q. He slept there on a good many occasions? 20

A. Yes, when I have been under the roof, when I have noticed it, because I know at one time he was incapacitated and couldn't get away; he had to stay there for blood poison.

Q. How long did he stay there then?

A. About three nights, and I was there with him of the evenings.

Q. How far, if you know, does Mr. Mitchell live from the Slack house?

A. In the park, just across Stuyvesant Avenue, and down in the park. 30

Q. A very short distance?

A. Yes, sir.

Q. You say you have seen Mr. Mitchell put the baby to bed on several occasions?

A. I have, the same as I have done myself.

Q. The baby's crib was in what room?

Gano—Cross.

- A. The front room.
 Q. That was in Mrs. Slack's room?
 A. In Mrs. Slack's room.
 Q. You are certain of that?
 A. I certainly am, yes, for I put the baby to bed myself.

BY THE COURT:

- Q. Did you wash the dishes too?
 10 A. No, thank you, I haven't washed the dishes yet.

- Q. Did you have table board there too?
 A. I did.
 Q. Did you see Mr. Mitchell there taking meals on a number of occasions?
 A. I have, he has been with me at the table.
 Q. He has been there with Mrs. Slack too?
 A. Mrs. Slack and I and him together, yes.
 Q. Did you ever see him in Mrs. Slack's room with
 20 Mrs. Slack alone?
 A. Never, only when I was there with them; I have been there with them when they were together.

BY THE COURT:

- Q. You have been in Mrs. Slack's room yourself?
 A. Yes, sir.
 Q. Alone?
 30 A. Yes, alone evenings with her, reading the paper, when she was doing sewing. Her bedroom is partly a living room.

- Q. What rooms are there on the first floor?
 A. A parlor, a dining room, a kitchen and pantry—there's a door intervening between the parlor and the library; the library opens the same as the vestibule in the hall.

Gano—Cross—Mrs. Slack—Direct.

BY THE COURT:

- Q. How old is Mitchell?
 A. About 33 or 35 years; I don't know exactly.
 Q. He is a sort of a servant around the house?
 A. Yes
 Q. Washing dishes and scrubbing and doing chores?
 A. Yes, cutting grass and doing chores around the house.
 Q. Was he strong-minded or simple-minded, or 10
 was there any trouble in that respect?
 A. No, indeed.

GRACE POPE SLACK, the above-named defendant, being duly sworn in her own behalf, testified as follows:

Direct Examination by Mr. Devlin:

- Q. You are the defendant in this case and the wife of 20
 Mr. Slack?
 A. Yes.
 Q. How long have you lived in Stuyvesant Avenue?
 A. Since the first of April.
 Q. Has your husband been to that place since you lived
 there?
 A. Once.
 Q. How long did he remain?
 A. One week.
 Q. How long have you been married? 30
 A. Since 1910.
 Q. After your marriage, where did you go to live?
 A. Norway Avenue.
 Q. This city?
 A. Yes.
 Q. Did your husband and you keep house there?

- A. We did.
- Q. What did he work at?
- A. Draughtsman for the Pennsylvania Car Shops.
- Q. How long did he continue as a draughtsman?
- A. I can't tell you that.
- Q. To the best of your knowledge?
- A. About a year and a half.
- Q. You still lived there when he ceased to be draughtsman?
- 10 A. I did.
- Q. After being draughtsman, where did he live?
- A. As near as I can tell, I think he left and went to New York.
- Q. What occupation?
- A. He didn't get a position, and then he came back.
- Q. Then how long did he remain?
- A. Then he went to work for the Metropolitan Insurance Company.
- Q. As insurance agent?
- 20 A. Yes.
- Q. In this city?
- A. Yes.
- Q. Tell the court your history up to this time, in your own way, up until last December.
- A. Well, as near as I can remember, he worked with the Metropolitan a short time, and then came in one day and said he was thoroughly disgusted with this life, and he left and wanted a travelling position; then I went home; it was around in June that he left, 1912, I think; but the house on Norway Avenue was still supported by mother, and I thought he would come back again. I don't know whether he got a position or not there, but in October he wrote and told me he wasn't coming home, and I may as well break up; so I went to live with mother, and lived on with her. I travelled with him in August of 1913, I think; I didn't see him then after he left the Norway Avenue house until he
- 30

Mrs. Slack—Direct.

came home in August; then I went back with him, and I travelled until December 22nd, and after I came back home. I thought it wasn't the proper thing for me to go back, at least, Dr. Clark thought it wasn't the proper thing for me to travel. Then I thought it wasn't the right thing to live with mother, and I decided to keep house. I wrote and asked him if he was satisfied that I should keep house; he said "Yes." You couldn't always depend upon his salary, so I couldn't keep house unless I took Mr. Gano or someone who could stay. It wasn't safe to be there alone, and Mrs. Gano sewed for us eighteen years, and I knew she had died suddenly, and he was boarding, and he might come with us. My mother asked him and he said he was willing. Then someone else suggested that why not fill up the other two rooms; so I got Mr. Freeman. 10

BY THE COURT:

Q. You rented the present home when?

A. Last April, 1916.

Q. Before that time did you live home with your mother? 20

A. Yes.

Q. Your baby was born home?

A. He was born at McKinley Hospital.

Q. While you were living with your mother?

A. Yes.

Q. Go ahead.

A. Then I didn't see him until after the baby was about three weeks old, it was about a year when he left in December; then he come after the baby was about three weeks old, it was about a year before I saw him—no, it wasn't quite that long, it was about eight months; then he went away again. He came home to see the baby about a week, then he went away, and his father sent for him when the baby was very, very ill. 30

Mrs. Slack—Direct.

Q. Tell me about your boarders up there.

A. I decided to take roomers; I called at the Y. M. C. A. and got this Mr. Freeman that was on the stand this morning, then just before he left, I had Mr. Custer.

Q. Then you kept on keeping these boarders?

A. Yes.

Q. And did your husband keep on sending you \$20.00 a week?

A. Not all the time.

10 Q. When did he start?

A. I don't know.

Q. After your husband came back and went to the Prudential, what did he do?

A. He worked with them.

Q. And lived with you in Trenton?

A. Yes, sir.

Q. Where?

A. On Norway Avenue.

Q. Tell me what he did up there?

20 A. I don't know; he went away and I went home until he got a position.

Q. With whom?

A. The Stoddard Lecture people.

Q. And he has been travelling, selling—

A. Yes.

Q. And sending you money from time to time?

A. Yes, sir.

Q. Have your relations always been pleasant?

A. I always thought so, as far as my part was concerned.

30 Q. You never had any serious trouble before?

A. No.

Q. Now, Mrs. Slack, in December, 1916, how many boarders did you have in the house in the month of December?

A. Mr. Custer and Mr. Gano, two.

Mrs. Slack—Direct.

Q. You remember another boarder coming there, Thompson?

A. Yes, sir, a roomer.

Q. What date did he come?

A. Two weeks before Christmas.

Q. Did he bring his trunk?

A. He certainly did not.

Q. Did you speak to him about his trunk? 10

A. I did.

Q. What excuse did he give for not bringing his trunk?

MR. SCAMMELL: That is objected to.

THE COURT: Objection overruled.

A. He told me they had volunteered to get so much new business; I asked him to be careful of the newel post and he said he would bring it in when there was another man to come with him, but he was busy trying to get this new business they had volunteered for the first of the year. 20

Q. Was there anything about his actions that inspired fear of him?

A. Yes, his actions to me were very mysterious; he would go out at five o'clock in the morning and come in in the afternoon, and come in as late as 12 or 1 o'clock at night; and when I talked to him I asked him not to have those late hours; and if I went upstairs, he would jump in the bathroom; his actions were very mysterious.

Q. You didn't know he was a detective? 30

A. No.

Q. Is there anything else that inspired your suspicion about this man?

A. I couldn't understand why he would go out at five o'clock in the morning.

Q. Anything else besides this stepping in and out of the bathroom?

Mrs. Slack—Direct.

A. He wouldn't have an interview with you, you couldn't talk to him; that's about all I know.

Q. Did he have anything to say to you?

A. No, he would go right upstairs to his room and wouldn't talk.

Q. You had Mr. Custer and Gano there at that time?

A. Yes.

10 Q. The day before Christmas, did you learn Mr. Custer and Gano were going to leave the house?

A. I did, and Mr. Thompson asked me whether they were going to be there over Christmas, and I said "No."

Q. When you learned they were going to leave, what did you do about having someone in the house, or did you do anything?

A. I asked Mrs. Barnhardt would she stay with me, as Mr. Gano and Mr. Custer were going away, and father had a stroke, and it was impossible for mother to come over; and

20 I asked Mrs. Barnhardt if she would stay, and I also asked Miss Cooper, which you can call on the 'phone—

Q. Those people declined?

A. Miss Cooper had to go away; I think she said she was going to Bristol to spend Christmas, and Mrs. Barnhardt was working up to the Girls' Home.

Q. Did you speak to your mother about it?

A. I did.

Q. And as a result of what talk you had with your mother, what was done, what did you ask your mother?

30 A. I asked my mother would she come over, and stay with me; she said on account of father, it wasn't the fit thing to leave father in that condition, and at the time we didn't have a nurse for him; then she said, "Is Ann going to do anything particular?" Mamma said, "I'll call Ann and see if he will stay."

Q. Whom do you mean?

A. Andrew Mitchell.

Q. The co-respondent in this case?

Mrs. Slack—Direct.

- A. Yes, sir.
- Q. What was said after that?
- A. She evidently called up and he came over.
- Q. What time did Ann appear?
- A. As near as I can tell you, it was about eight o'clock.
- Q. You knew Thompson was going to be in the house?
- A. Yes, sir.
- Q. He had told you so? 10
- A. He went to bed at seven o'clock in the evening.
- Q. Did you tell any of those people that you had any fear of Thompson, and that is why you wanted someone in the home?
- A. I did, I told it to Mrs. Barnhardt and Miss Cooper.
- Q. And how about your mother?
- A. I told it to mother, of course.
- Q. Did you tell Gano?
- A. I did.
- Q. You say Mitchell appeared at the house that evening? 20
- A. He did.
- Q. What hour?
- A. As near as I can tell you, eight o'clock.
- Q. That was the Christmas Eve?
- A. Yes.
- Q. State what occurred when Mitchell came into the house, so far as you can remember, between Mitchell and you, from eight o'clock that evening.
- Q. You mean until what time?
- A. Go right ahead and tell to the finish of this whole 30 transaction.
- Q. When Mr. Mitchell came over, he told me mother had called him on the telephone, and that he was to stay all night. So Mr. Custer was an invalid, and I had been lapping his Christmas packages, which took up until he went away; he went away on Sunday, and when I got through lapping his packages I had to lap my own, and Mr. Mitchell took the baby to bed that night, and I finished washing the

Mrs. Slack—Direct.

dishes; then I finished my Christmas packages; I would say it was about—well, I don't know—and we went up and trimmed the tree for the baby; I would say it was about twenty minutes of two Monday morning.

Q. Had you trimmed the Christmas tree for the baby?

A. Yes.

Q. Who assisted you?

10 A. Mr. Mitchell.

Q. It was twenty minutes of two in the morning?

A. Yes.

Q. Was anybody else in the house that night besides Mitchell and you?

A. No, except Mr. Thompson.

Q. What time did he come in?

A. Seven o'clock, and went to bed, so he said.

Q. When Mitchell and you finished trimming the tree at twenty minutes to two, what did you do?

20 A. I had a buffet cover to finish for mother, as in mother's estimation a little thing embroidered is worth anything I could do for her, and in my sitting room, bedroom and sewing room combined, I went to start sewing the buffet cover.

Q. You mean the bedroom?

A. Yes, that's my room, and I don't know where Mr. Mitchell went; I left him in the reception room.

Q. When you left downstairs, did you leave Mitchell downstairs?

30 A. Yes, sir.

Q. Go ahead with what transpired in your room; you say you went there to sew a cover and embroidery?

A. Yes.

Q. Tell us what you did.

A. I sewed until about three o'clock in the morning, and somebody hammered on my door and hollered "Fire."

Q. Did you open the door?

Mrs. Slack—Direct.

A. Well, it sort of startled me at first; I didn't know what to do, and the man insisted upon rapping at the door. I said "What is it." He said, "The house is on fire and smoke is coming up the steps;" so I immediately got up and went out and went downstairs. I said I didn't possibly see how there could be any fire. He said, "I thought some calendars or something on the baby's tree had caught fire."

Q. Who was he? 10

A. Mr. Thompson.

Q. Did you go downstairs with him?

A. I did.

Q. When you got to the front door, what was the condition of it?

A. The door was wide open, and I said, "What is my front door open for?" He said, "I have no idea; I didn't leave it open; I went to bed at seven o'clock in the evening." I said "I am sure I didn't leave it open, because the last thing I do is to go to the front door to see whether the catch is on." 20

Q. How were you dressed when you left the bedroom to go downstairs?

A. Why, the dress I work around the house in, bungalow apron, sweater and apron.

Q. Was that cold evening outside?

A. I don't remember being outside; I know it was cold in.

Q. And you were dressed warmly for the house?

A. Yes, I had on my sweater when I went upstairs; then I later put on a heavy bathrobe.

Q. Over the sweater? 30

A. Over the sweater.

Q. Did you have any shoes on your feet?

A. I did.

Q. How was your house, the floors, were they covered with carpet?

A. Well, downstairs are hardwood floors, with rugs.

Q. Was there any carpet on the steps?

A. No, they are bare, with three rugs, small rugs; a

Mrs. Slack—Direct.

small rug in front of the bureau, and one in front of the sewing table, and one in front of the bed.

- Q. Are these rugs small or large?
 A. Small.
 Q. You have no large rugs?
 A. No.
 Q. What are they, two or three feet?
 10 A. Yes.
 Q. And on the hall upstairs what have you got?
 A. A Crex runner.
 Q. Any carpet under it?
 A. No.
 Q. The back stairs?
 A. Nothing on them.
 Q. You had your shoes on when you went downstairs?
 A. Yes, sir.
 Q. When you went downstairs and found the door open,
 20 did you close the door?
 A. I did.
 Q. Then what did you do after closing the door?
 A. I went out in the kitchen with Mr. Thompson to see if the house really was on fire.
 Q. After you examined the house, what did you or Thompson do?
 A. I came back upstairs and went into my room.
 Q. The front stairs?
 A. Yes, sir.
 30 Q. When you left the room to go and find if there was any fire, did you leave that door open; I mean your bedroom door?
 A. Yes.
 Q. Will you describe the locks on your bedroom door?
 A. I have a lock and key.
 Q. A mortise lock?
 A. Yes; you might lock it and it would be all right, and the next time it wouldn't. Then I have—

Mrs. Slack—Direct.

- Q. Above that you have a small lock?
- A. Yes; it was there when I went there.
- Q. You remember if you left your door to go downstairs to see if there was a fire that morning—do you know if your door was slightly ajar?
- A. It was, it was opened way back.
- Q. About three parts open?
- A. Yes. 10
- Q. When you came back after being downstairs, did you go into your room?
- A. I did.
- Q. Do you know if Thompson followed you to the door?
- A. He did.
- Q. After you got into your room, did you see what Thompson did?
- A. No.
- Q. Did you see what he did as you left him to go into the room? 20
- A. I didn't pay any attention to him; I walked in and closed the door.
- Q. The fact is, that he followed you to your door?
- A. He didn't follow me right to the door; he followed me just about to Custer's door.
- Q. That is a few feet from your door?
- A. Yes.
- Q. And his own room is in the back of the house?
- A. Yes, sir.
- Q. When you got in your room, who was there? 30
- A. Mr. Mitchell.
- Q. Do you know where he came from?
- A. I do not.
- Q. Had you assigned any room to Mitchell that night when he came to stay?
- A. Why, no, but Mr. Custer always said he could sleep in his room when it was vacant.
- Q. Mitchell was in your room at that hour?

Mrs. Slack—Direct.

A. He was, and he knew he could sleep in Mr. Custer's room or Mr. Gano's room.

Q. What did you say to him, to Mitchell?

A. I said, "What do you think of that?" He said, "I don't know, I can't quite understand it." I said, "When did you come in here?" He said, "I didn't know what this Mr. Thompson was going to do, and I thought I would be here
 10 if he did anything to you to protect you." Then I said, "That's very funny; I shall certainly notify that man to get out;" I said, "I have been going to, but I didn't like to do it Christmas week." So then I started—no, Mr. Mitchell says, "I guess I'll get out and go to bed;" I said, "Please don't go out, I'm just frightened to death; can't you sit here and read or sew, it's just a few hours now." He said, "Well, I think everything will be all right;" I said, "I'll be better satisfied if you will stay here; I am frightfully nervous, and I can't get mother now;"
 20 finally he lay down on the foot of the bed.

Q. While he was reading what were you doing?

A. Sewing, trying to finish this buffet cover.

Q. Could you describe where you were sitting while you were sewing?

A. Alongside of the radiator, as near as I could get to it.

Q. Was that because of the fact that you were feeling cold?

A. Yes, sir.

Q. Is the radiator on the same side of the room as the
 30 bed or the opposite side?

A. The same side as the bed—then I have a lamp with a long cord that will reach to the center and hang down over the radiator.

Q. As you sewed the work you had to do, how long did you suppose it would take you to do it, on this buffet cover?

A. Well, all night, as long as I had to sew, and then I didn't know I would finish it until away on in the day.

Mrs. Slack—Direct.

Q. Did you say anything to Mitchell about staying up that night?

A. I just said that I asked him whether he wouldn't read.

BY THE COURT:

Q. You said "Read or sew."

A. I didn't mean for him to sew.

10

Q. What did you say to him?

A. I meant for him to sit and read or talk to me, whatever he would do, to be there with me.

Q. Had you said anything to Mitchell about your fear of this man before?

A. I had.

Q. How long before this?

A. The first two or three days I was suspicious of him.

Q. You had expressed your fears to him?

20

A. Yes.

Q. After you started, to sew and Mitchell lay down on the bed, will you tell me how Mitchell was dressed when he came in?

A. No, he had on Mr. Custer's bathrobe and slippers.

Q. You don't know how he was dressed underneath the bathrobe?

A. Yes, after he had read a while and fallen off to sleep, I took the end of the quilt and counterpane and threw it over him; I noticed he had on blue pants, and socks.

30

Q. Was he on top of the covers?

A. Yes, sir.

Q. And you sat there sewing?

A. I did.

Q. What was the first thing you heard, or the first thing that attracted your attention that morning?

A. The telephone rang about 7.30 or 8 o'clock; mother

Mrs. Slack—Direct.

doesn't get up much before 8 o'clock; I imagine it was half-past seven or eight o'clock.

Q. What did you do?

A. I answered the 'phone.

Q. State to us how you were dressed when you left the room to answer the telephone?

A. Just what I had on when I went upstairs that night.

10 Q. What kind of footwear did you have on, shoes, slippers or—

A. Well, along towards morning I had taken off one shoe; I have a corn, and I took off one shoe and put on a bedroom slipper on that one foot.

Q. What did the other foot have on?

A. My shoe.

Q. You walked downstairs and answered the telephone?

A. I did.

20 Q. When you went downstairs was your bedroom door open?

A. Yes, sir, it was open.

Q. What about the bedroom door after Mitchell came in the room at three in the morning?

A. I closed it.

Q. You put that extra catch on?

30 A. Yes, sir. I asked Mrs. Barnhardt to fix the door at least six months ago; the door wouldn't stay closed unless you turned the key or put the catch down, and then when anyone is in the room they naturally have their window up when they are sleeping; and I took the rug alongside of the bed and put it up alongside of the door, because there is about a two-inch space there for the air through the halls to come in.

Q. You did it to prevent the cold air coming in the room?

A. Yes, sir.

Q. Did you say anything to Mitchell before you left the bedroom in the morning?

Mrs. Slack—Direct.

A. I asked him—

Q. When the telephone call came at seven o'clock, and you left the bedroom to go down to answer it, did you say any thing to Mitchell before you left the bedroom?

A. I asked him not to let the baby get out of the crib on account of his booties were downstairs.

Q. Did the baby follow you downstairs?

A. He did later on. 10

Q. When you answered the telephone, did you go upstairs?

A. Yes.

Q. Who called you on the telephone?

A. After I showed the baby his tree and toys—

Q. Who called you on the telephone?

A. My mother.

Q. What was the purpose of the call?

A. For me to come over and spend Christmas Day.

Q. She asked you to come over and spend Christmas day? 20

A. Yes.

Q. Was anyone else besides you invited to go?

A. Mr. Mitchell.

Q. For dinner?

A. Yes, sir.

Q. When you picked up the baby and went upstairs into your bedroom, when you got in the bedroom, who was there?

A. Mr. Mitchell.

Q. Now, when you came in the door, did you close the door? 30

A. I did not.

Q. What was the next thing that happened in the room?

A. I fixed the baby up and put him over on the bed.

Q. When you picked the baby up and put him on the bed, where was Mitchell?

Mrs. Slack—Direct.

- A. On the bed; he tried to keep him in the crib.
- Q. Where were you?
- A. He had turned around from the foot of the bed, and turned towards the head of the bed; the crib is towards the head of the bed, and I put the baby on the bed and I said, "Tell Ann who sent you the pretty things."
- Q. That is the name you have for Mr. Mitchell?
- 10 A. Yes, sir.
- Q. What was said by anyone there?
- A. Then I sat on the side of the bed and asked the baby this question, and he said "Santa;" and I was just about to tell Mr. Mitchell what mother had said on the 'phone, and for him to get the baby ready and we would get the baby ready and go home, and Mr. Bowne stepped in and said, "Is this your wife?" Mr. Mitchell said "No," and he said, "Come with me."
- Q. What did you say?
- 20 A. I didn't say anything.
- Q. Didn't you say anything at all?
- A. No.
- Q. Did they both leave the room?
- A. Who?
- Q. Mitchell and Bowne?
- A. Yes.
- Q. Did Mitchell dress in that room?
- A. I didn't see him.
- Q. How was Mitchell dressed, so far as you know?
- 30 A. I can't tell, except he had Mr. Custer's bathrobe and slippers on.
- Q. Bowne said he had nothing but an undershirt on?
- A. He did.
- Q. Is that true?
- A. No.
- Q. He said you had nothing on but a nightgown?

Mrs. Slack—Direct.

A. Yes.

Q. Is that true?

A. No.

Q. Bowne has stated that you and Mitchell were in bed underneath the covers, with the child between you?

A. That is not true; I wasn't underneath the covers, I was on top of the covers and I just sat there to put the baby over on the bed. 10

Q. Bowne has said you said it was too bad to happen on Christmas morning; is that true?

A. It was, I said that.

Q. What did you mean by saying "too bad?"

A. That anything should happen like this on Christmas morning on account of my father being so seriously ill.

Q. Did Mitchell dress in your room?

A. I didn't see him, no.

Q. Were you in the room all the time Mitchell was in it?

A. I was. 20

Q. If he had dressed, would you have had an opportunity to see him?

A. Yes.

Q. Your room is a square room?

A. Yes.

Q. And you can see all points from any one point?

A. Yes.

Q. When next did you see Bowne or Thompson?

A. I didn't see any one of them; I seen Mr. Thompson go out. 30

Q. Did you have an interview with Mr. Slack, Senior?

A. I did.

Q. About a week after?

A. I did.

Q. Tell us what Mr. Slack said to you and what you said to him.

Mrs. Slack—Direct.

A. He said that I thoroughly understood what had taken place December 25, and that Le Roi had decided to get a divorce immediately, and the easiest way was the best way out of it. I said I wanted an explanation, could I talk to him.

Q. To whom?

A. To my husband, Mr. Slack.

10 Q. What did Mr. Slack say in reply to that?

A. He didn't seem to give me any definite answer.

Q. Did Mr. Slack, Senior, charge you with wrong-doing that morning?

A. Well, he said "You know what took place on the morning of the 25th."

Q. What did you say to that?

A. I said, "I know what you think took place; if you will let Mr. Slack come I can give a definite explanation;" I had found out where he was doing wrong, and I talked to him like a lady, and I said I didn't intend to get a divorce on the charge, and thought he would do better, and why couldn't I talk to my Mr. Slack; but he didn't give me any definite answer.

20

Q. You say that you said to Mr. Slack, Senior, "I know what you think?"

A. Yes.

Q. Where did you say that? You said to Mr. Slack, Senior, "I know what you think happened?"

A. Yes, sir.

30 Q. Had you received any information from any source that indicated to you that you were charged with having relations with Mitchell?

A. From my Mr. Slack; he wrote me a letter and told me such was the case.

Q. And indicated to you that you were charged with these relations with Mitchell?

Mrs. Slack—Direct.

A. Yes.

Q. And it was after you received that letter that Mr. Slack, Senior, has been to see you, wasn't it?

A. Yes, sir.

Q. It was after you received that?

A. Yes.

Q. And having that letter is what led you to make the statement, "I know what you think happened?" 10

A. Yes.

Q. Did you see Mr. Slack again?

A. Yes.

Q. How long after that?

A. I can't just tell, a few days afterwards.

Q. What conversation did you have with him?

A. He told me that the easiest way out was the best. I said, "I don't know why he wants a divorce; why he can't come and talk to me."

Q. Did you talk with your husband at all? 20

A. No; I couldn't get an interview with him.

Q. When was the last time you had a personal interview with your husband?

A. A year ago this coming June; I couldn't get an interview with him except through the mail, then he said to address his mail to his own home.

Q. The last interview was in June?

A. Yes.

Q. And you have not had a personal interview with him since that? 30

A. No.

Q. Do I understand you that mail you sent to him went to his father's home?

A. Yes.

Mrs. Slack—Direct.

Q. And it was through his father's home that his mail came to you?

A. After December 25th.

Q. How long have you known Mitchell, Andrew Mitchell, named here?

A. Twelve or fifteen years.

Q. Before you were married you knew Mitchell?

10 A. Yes.

Q. At your home in Fallsington?

A. Yes, sir.

Q. What kind of work had he done around your home in Fallsington?

A. I can't say that he did any work around Fallsington.

Q. At your home in Fallsington before you were married?

A. He came out as a personal friend. I was in this home there, Mrs. O'Connor—

20 Q. Did he do any work for your mother?

A. Not before I was married.

Q. Since you were married?

A. Yes, sir.

Q. What kind of services has he been doing for your mother?

A. Anything she asked him to do.

Q. And what were the things she asked him to do?

A. I don't know; you would have to ask mother that.

Q. Did your mother pay him?

30 A. Yes, sir.

Q. Did he come to your home—

A. One thing I know he done for mother—she has a concrete place, and when she has an order he makes the blocks.

Q. Did Mitchell go to Norway Avenue?

A. Yes, sir.

Mrs. Slack—Direct.

Q. What kind of services did he render?

A. Not any at all until after Mr. Slack left; he come to visit Mr. Hannon, who studied vocal, he come from Philadelphia; then after Mr. Slack left I had nobody to help me break up and pack up, so he wasn't busy, so he come out and helped take down the awning; that is about the only thing I know he helped out with, and he helped pack some furniture.

Q. How long had he been coming to your home on 10 Stuyvesant Avenue?

A. Ever since I have been there.

Q. What kind of work did he do there?

A. Anything you would ask him to do.

Q. Did he go there at your request or your mother's?

A. Both mother's request and my request.

Q. Did he have a key of your home?

A. He did.

Q. Can you explain how he came to have that key?

A. In the summer time, he is a mason, and when he had 20 work he would start out early in the morning, or if mother wanted him to make up blocks or fill an order, he would go over there early in the morning, or to fix the heater fire; and it wasn't the proper thing for me to have to get up and let him in,—and sometimes he would come in when I stayed out all night with mamma, and he had to have a key to fix the heater fire.

Q. Now, has he put up at night often in your home?

A. On several occasions besides this. Once he came over at the house he had a very bad foot, and father was over 30 there for about twelve weeks, and one morning he came over and said, "Why don't you have a doctor," and my father—

Q. You say he was there with a sore foot?

A. Yes.

Q. And that was the time Mr. Gano was there?

A. Yes.

Mrs. Slack—Direct.

Q. Now, do you know what bedroom Mitchell was in that evening or Christmas morning?

A. I don't; he could either go into Mr. Gano's or Mr. Custer's; I only knew where he was when I went upstairs; he had come in my room then after I come up from the fire.

10 Q. When you came in after the alarm of fire, when you came back into your bedroom at three in the morning, did you and he speak together in a voice just as you would talk to him as you are talking now, in an ordinary conversational voice?

A. Not quite this loud; I would wake the baby.

Q. Do you think from the way your house is built, that the conversation you had with him about the alarm of fire, could that be heard in the hall, your bedroom hall?

A. Well, I don't know; I wasn't on the outside.

20 Q. From your knowledge of the room, do you think it could be; in other words, could a person in your bedroom hall, hear you and Mitchell conversing?

A. Well, I wouldn't like to say "Yes" to that, unless I was out and heard somebody talking.

Q. With your door closed, could anyone hear you?

A. I don't think anyone could.

Q. Do you know if Mitchell had on any shoes?

A. He had on Mr. Custer's slippers.

Q. You remember when you went down to the telephone at seven o'clock and came up again?

A. Yes.

30 Q. Can you tell us approximately how much time it took for you to go and talk over the telephone to your mother and come upstairs again?

A. Fifteen or twenty minutes or a half hour; I wasted a little time showing the baby his tree.

Q. You talked to your mother and showed the baby the tree?

Mrs. Slack—Direct.

- A. Yes, sir.
- Q. And you think you spent fifteen minutes at least?
- A. Yes, sir.
- Q. And then you went upstairs?
- A. Yes.
- Q. Was your bedroom door open all that time?
- A. Yes.
- Q. Now, how long after you got in the bedroom—can you tell us approximately how much time it was before Bowne came in and asked Mitchell was he your husband? 10
- A. He walked in immediately.
- Q. After you got in the bedroom?
- A. After I put the baby on the bed I sat down and asked that one question, and he said "Santa."
- Q. The pretty things you refer to were the things the baby had brought from the Christmas tree?
- A. No, he hadn't brought any; he didn't bring any up with him; they were large toys, such as a sulky, such as were too heavy to carry upstairs. 20
- Q. Describe the furniture in Custer's room.
- A. Bird's eye maple bed and dressing table, and—
- Q. That is the room next to your bedroom?
- A. Yes, sir.
- Q. Then comes what?
- A. Mr. Gano's room.
- Q. And the bathroom?
- A. Between Custer's room and Gano's room. 30
- Q. And then how is Gano's bedroom furnished?
- A. With white enamel bed and bird's eye maple chiffonier and table.
- Q. Then comes the back room that Thompson was in?
- A. Yes, sir.
- Q. How is that furnished?
- A. It has an oak bedroom suit in it.

Mrs. Slack—Direct.

Q. Is there a brass bed in your house at all?

A. No.

Q. Your bedroom is the front, Custer's second, with a bay window?

A. Yes.

Q. Then the bath?

A. Yes.

10 Q. Then Gano's room?

A. Yes.

Q. Then Thompson's room?

A. Yes, sir.

Q. State if you ever on the night of the 24th or 25th of December, or any other time, had sexual intercourse with Ann Mitchell?

A. I did not.

Q. Did you that night or any other time, permit him or have any familiarity with him of any kind whatever?

20 A. I did not, or I would order him from the house; in fact, he is too much of a gentleman to suggest anything like that to me.

Q. You had informed your husband by letters of Mitchell's coming around your house at various times, hadn't you?

A. I did.

MR. DEVLIN: I offer in evidence the seven letters.

30 Said letters, heretofore offered for identification, are marked "Exhibits D 1" to "D 7," respectively.

Q. And your husband was well acquainted with his entire relationship in your family; is that right?

A. Yes, sir.

Mrs. Slack—Direct.

Q. How old is your child?

A. He will be three years old the 28th of August.

Q. This coming August?

A. Yes.

Q. Then at that time it was about two years and three months or four months old?

A. Just about that, on the 28th of October.

Q. Could your child at that time speak? 10

A. No, because after he had a spell of sickness, after he was four months old, he was put back in his talk. Mrs. Turner spoke to me on several occasions how slow he was in talking.

Q. Could he speak in December of last year?

A. Not well, no, some small words he would say.

BY THE COURT:

Q. Just prattle?

A. Yes, sir. 20

Q. You answered the court about what reply you made to Mr. Slack, Senior, when Mr. Slack, Senior, accused you or spoke to you of this matter; that happened December 24th or 26th; will you explain what you meant when you said in that answer to the court, that you had given your husband a chance; what did you mean?

A. I mean that while my baby was sick and about four months old, I found a mysterious letter, and I put a detective on him and found he was taking a woman to lobster dinners and theatres, and I went to him like a lady, and I said, "Now—" I showed him the proof, I read the letter, and I asked him what he meant; he smile; he said it was nothing; I said, "I think it is; and another thing is this, I will not make anything of it; the only thing I will do I will tell Leila, your sister, and I won't make any trouble on 30

Mrs. Slack—Direct.

account of our little baby." He said to me that night, he said, "Well, you done some very dirty work on me, and I'll get you, and when I get you I'll get you dirty;" that's the word he said to me. I told him I could get a divorce, and I wouldn't have a divorce, but the thing to do was to do what is right for the baby's sake.

- Q. When did you get the first intimation of that?
- 10 A. The letter come to the house when the baby was sick.
- Q. When did you receive the first intimation from your husband that there was any estrangement between you?
- A. I don't quite understand the question.
- Q. Any letters about this present suit?
- A. Not until I got the letter written by him after the 25th, that's the first time I knew it.
- Q. That is January 30; is that right?
- A. No, he wrote me immediately after December 25th; that wasn't it, January 30th.
- 20 Q. Was it after what happened on December 24th and 25th?
- A. It was.
- Q. The first intimation you ever received that your husband had any suspicions, or was in any way estranged towards you?
- A. It was.
- Q. You say your husband sent you \$20.00 a week?
- A. Yes, sir; well, no, I got a letter once where he had lost his position; that's the reason I took roomers; you couldn't depend on him.
- 30 Q. You have been living in that house for some time?
- A. Yes.
- Q. And you have been married to your husband since 1910?
- A. Yes, sir.

*Mrs. Slack—Cross.**Cross Examination by Mr. Scammell:*

Q. Before the receipt of the letter of January 30, 1917, Mr. Slack's father had been up to see you and had this talk with you, had he not?

A. Yes, sir.

Q. And during that interview he told you that they had caught Andrew Mitchell in your bed with you? 10

A. No, he didn't, he didn't tell me just that way.

Q. But the substance of what he said to you was to that effect?

A. Yes.

Q. Didn't he tell you that Andrew Mitchell said to him that it was the first time that he had been in your bed all night?

A. You mean Mr. Slack, Senior, said that?

Q. Yes.

A. He did not. 20

Q. Or words to that effect?

A. I don't remember anything like that.

Q. Do you recall Mr. Slack, Senior, saying to you, "Grace, Andrew Mitchell was at my house Christmas morning and admitted that he was in bed with you when Mr. Bowne came into your room?"

A. No; I remember him saying to me that?

Q. Yes.

A. He said to me that Andrew Mitchell told him that he had been in my room that night, but not in my bed. 30

Q. Will you say that Mr. Slack didn't tell you at the time of his visit to you, "Grace, Andrew Mitchell was at my house Christmas morning, and admitted that he was in bed with you when Mr. Bowne came in your room?"

A. I don't remember that remark.

Q. Will you say that he didn't say that?

Mrs. Slack—Cross.

A. I say I don't remember that remark.

Q. Do you mean—

THE COURT: It is simply a denial of recollection.

10 Q. A statement of that kind during this interview was a very serious statement to be made to you, was it not?

A. It was

Q. And you have a very distinct recollection of all that took place in that interview, have you not?

A. With Mr. Slack, Senior?

Q. Yes.

A. Well, I can't say as I do; my mind being upset, I wouldn't remember every little word he would say.

Q. That was not a little word or a casual statement to make, was it?

20

THE COURT: The witness didn't say that.

Q. I mean, the effect of that statement. Didn't Mr. Slack— I want to have your statement clearly upon the record. Didn't Mr. Slack state to you, in substance, that Mr. Mitchell, Andrew Mitchell, was in bed with you that morning?

A. Why do I have to state that?

30

THE COURT: Answer the question.

A. No; the statement was made that he was in my room; he didn't say the one particular word "bed" to me—in my room that night.

Q. Then you mean to say that Mr. Slack said nothing

Mrs. Slack—Cross.

to you which indicated that Andrew Mitchell had told him that he was in bed with you that morning?

A. No, he didn't say anything that indicated that; he said something that indicated he was in my room.

Q. But not in your bed with you?

A. No, he didn't say that remark, or I don't remember it; what I remember is what he said. 10

Q. And your recollection is that he didn't say that?

A. Yes, sir.

Q. The light was burning in your room, then, according to your statement, all night?

A. All night.

Q. It was burning at the time that you first went downstairs in response to the smoke alarm?

A. It was burning from the time I went upstairs.

Q. And you went upstairs about twenty minutes of two?

A. As near as I can tell. 20

Q. And you left Mr. Mitchell downstairs?

A. In the reception room.

Q. And you didn't know what he was going to do or where he was going to?

A. He said he was going to bed after he had finished looking over the paper.

Q. Was he reading the paper down there when you left him?

A. No, he had finished trimming the baby's tree.

Q. This was a small tree, was it not? 30

A. Yes.

Q. How long had you been busy trimming the baby's tree?

A. After I had finished lapping the packages.

Q. About how long did it take you?

A. I couldn't tell.

Mrs. Slack—Cross.

- Q. Twenty minutes or a half hour?
- A. At least two hours; I had to go up the third story to get the tree and fixtures and the toys.
- Q. Then you left him down there without any definite understanding as to where he was going, or when?
- A. Except he was going to stay there with me that night.
- Q. You didn't know in what room?
- 10 A. No.
- Q. The first thing you knew that there was any activity in your house was the knock upon the door?
- A. Yes.
- Q. At the time of the knock upon the door, Mr. Mitchell wasn't in your room?
- A. No.
- Q. You're certain of that?
- A. Yes.
- Q. Mr. Gano's room is immediately adjoining your
- 20 room, isn't it?
- A. No, it is not.
- Q. I mean Mr. Custer's room?
- A. Yes.
- Q. Immediately adjacent to your room?
- A. Yes.
- Q. And when you went down the first time, did Mr. Mitchell come into your room right after that first alarm?
- A. He was there when I went back upstairs.
- Q. And as I understand you, that was about three
- 30 o'clock in the morning?
- A. As near as I can tell.
- Q. The knock on the door there by Mr. Thompson and his statement to you of fire, in doing that he made a little noise, didn't he?
- A. Yes, a little—the excitement when you think your house is on fire.
- Q. You rushed downstairs?
- A. Yes.

Mrs. Slack—Cross.

Q. And you didn't say to Mitchell, "I don't see where you came from;" you didn't ask him where he came from until you went back into your own room?

A. That's right.

Q. Wasn't there a knock upon the door before the fire alarm?

A. I didn't hear it.

Q. If anyone had knocked upon your door, you would 10
have heard it?

A. I did, I answered it when I heard it; not at the time, but in a second after I collected my thoughts, then I answered it,—because it frightened me.

Q. When he knocked the first time, did he say anything?

A. He said this: "Mrs. Slack, your house is on fire, the smoke is coming upstairs."

Q. And you immediately responded?

A. Yes.

Q. You had not heard any knocking before that? 20

A. I had not.

Q. There was a light in your room?

A. There was.

Q. As I understand you, there was a sort of an opening under the door so you could see the light in the room, could you not?

A. You could.

Q. Anybody coming in the hall of your house there would be able to see the light under the door?

A. Not that particular night; I had the rug up there, it 30
was cold; Mr. Thompson had the window up, and that caused too much draft through the halls, and Mr. Gano leaves his bedroom door open.

Q. But the windows were not open in Mr. Gano's room that night?

A. No.

Mrs. Slack—Cross.

Q. And the windows were not open, so far as you knew, in Mr. Thompson's room?

A. I wouldn't say; I don't know. He said he went to bed, and naturally, he would attend to his window.

Q. He went to bed at seven o'clock?

A. So he said.

10 Q. So the only information you had that his window was open was the fact that the house was cold?

A. The house is generally cold when you fix the heater for the night.

Q. You didn't fix it until late that night, did you?

A. Yes, sir, around nine o'clock in the evening, I imagine.

Q. And yet you were busy until after two or to two o'clock in the morning, and yet no one fixed the heater to keep the house warm?

A. Well, Mr. Mitchell fixed the fire around eight o'clock or nine.

20 Q. You say that there was no carpet on the front stairs going from the first floor to the second?

A. I did.

Q. There was no carpet upon the stairs in the rear of the house from the first to the second floor?

A. There was not.

Q. Did you hear anyone come up those stairs at about three o'clock in the morning?

A. The back stairs or the front stairs or any stairs.

Q. You didn't hear it?

30 A. No.

Q. You were sitting up there alone in that very early morning, and no sounds in the house; you were sewing there, or embroidering upon this piece, and yet you didn't hear anyone moving about in your house?

A. I did not.

Mrs. Slack—Cross.

Q. You didn't hear anyone walking along the hallway from Mr. Thompson's room up to your door?

A. I did not.

Q. You didn't hear anyone go out of your house, say about twenty minutes after three in the morning?

A. I did not.

Q. Were you awake or not?

A. I was.

10

Q. Mr. Mitchell came into your room at about half-past three, wasn't it?

A. I think the alarm for fire was around three o'clock.

Q. And Mr. Mitchell came into your room at three o'clock and stayed there with you?

A. Yes, sir.

Q. And from that time or until seven o'clock or a little after that time when Mr. Bowne came into your room?

A. He did.

Q. Mr. Mitchell came in there with a bath gown on? 20

A. Mr. Custer's bath robe?

Q. And with no shoes on?

A. He had Mr. Custer's slippers on.

Q. He had nothing but an undershirt and a pair of pants and this bathrobe on?

A. I don't know what he had on under the bathrobe; I saw his pants from underneath the bottom of the bathrobe when I threw the covers over him.

Q. He did stray over and get on the foot of the bed?

A. He did.

30

Q. And how near were you sitting to him?

A. As close as from here to the bookcase; I don't think it is over three or four feet away.

Q. Did you make him comfortable on the foot of the bed?

A. No, he made himself comfortable.

Q. You didn't help him at all?

A. Certainly not.

Mrs. Slack—Cross.

- Q. You had the light burning there all this time?
 A. I did.
 Q. Mr. Mitchell didn't get under the bed clothes?
 A. Only as I picked up the quilt and counterpane and threw over him as he had gone to sleep.
 Q. You did that?
 A. I did that.
- 10 Q. Did you put a pillow under his head?
 A. He had that, he reached from the top of the bed.
 Q. He was lying across the bottom of the bed?
 A. No, he was with his feet up to the top of the bed and his head down; I had this light hanging on the radiator, so he could read by the light hanging there; I had turned the main light out in the center of the room.
 Q. You say that you fixed the light so he could read?
 A. No, so I could see to sew, but in order to do that, if he put the pillow at the foot of the bed he could also see to
- 20 read, because he couldn't put the light in the center, it would wake the baby; it was a little light.
 Q. It only threw a ray of light underneath it?
 A. Yes.
 Q. You were sewing?
 A. Yes.
 Q. And the light was on your work?
 A. Yes, partly.
 Q. So Mitchell could see to read?
 A. Yes.
- 30 Q. And yet you were not any closer to him than between three or four feet?
 A. As near as I can tell; I wasn't the distance from here to the bookcase now I think about it; I can't judge space very well; I could show you in my room better than I could explain to you here.
 Q. The feet of Mr. Mitchell were up to the head of the bed?
 A. Yes.

Mrs. Slack—Cross.

Q. And you sat there sewing, and Mr. Mitchell sat there reading?

A. I did.

Q. And you didn't hear a sound in the house, or any-one; it was perfectly quiet?

A. It was.

Q. And when did the telephone call come?

A. From mother, at half-past seven in the morning as 10
near as I can tell.

Q. Did you come out and go downstairs?

A. I went downstairs and answered the 'phone.

Q. Why did you go downstairs?

A. To answer the 'phone.

Q. Was it a ring on your own 'phone downstairs?

A. Yes, I wouldn't use Mr. Custer's 'phone; it wouldn't
be my place to use his.

Q. It wasn't connected with your 'phone?

A. No. 20

Q. The baby followed you downstairs?

A. Yes, sir.

Q. Was Mr. Mitchell still in the same position on the
bed when you went downstairs?

A. Was he in that position when I went downstairs?

Q. Yes.

A. No, he turned around to keep the baby in the crib.
I said "Don't let the baby come down; his feet will get
cold;" he come around to keep the baby in; he couldn't keep
him unless the baby cried, but the baby got down. 30

Q. When you went downstairs after the fire alarm, Mr.
Thompson went with you?

A. He did.

Q. Mr. Mitchell didn't?

Q. You went up to Custer's room?

A. I did.

Q. Was the door open?

A. I don't know that I looked in.

Mrs. Slack—Cross.

- Q. What is your recollection?
- A. I didn't notice; I walked right on ahead, thinking about the fire.
- Q. You were afraid of Mr. Thompson?
- A. I was.
- Q. Why didn't you call Mr. Mitchell?
- A. In case of a fire you don't think of anything.
- 10 Q. Mr. Mitchell heard all this alarm, did he not?
- A. Well, I don't know.
- Q. Mr. Mitchell, if he was in Mr. Custer's room, was very close to the door upon which Mr. Thompson had hammered or knocked and told you about the fire, wasn't he?
- A. I don't understand.
- Q. Well, the room door was very close to the room door of Mr. Custer's room?
- A. It was; I had to pass it to go downstairs.
- Q. Mr. Thompson knocked pretty loudly on your door,
- 20 did he not?
- A. I don't know; he just knocked, he really called.
- Q. He didn't say quietly, "Mrs. Slack, there is a fire downstairs?"
- A. No, he said excitedly, "Mrs. Slack, your house is on fire."
- Q. Quickly and in a rather loud tone?
- A. Not a terribly loud tone, just like I am talking.
- Q. And that disturbed you, and you immediately jumped off the bed?
- 30 A. I was sitting down sewing by the radiator.
- Q. You were sitting on the radiator?
- A. In a chair by the radiator, sewing.
- Q. Then you hadn't got in bed at all up to this time?
- A. I sat up and sewed all night to finish this buffet cover for mother.
- Q. Did you put your kimona on before you went to the door?

Mrs. Slack—Cross.

A. No, I went upstairs to sew, and I put the bathrobe on.

Q. This was a bathrobe?

A. Yes.

Q. Then you rushed to the door, opened the door quickly, and saw Mr. Thompson there?

A. No, he was part way down the hall when I opened the door. 10

Q. Did you follow him down the hall?

A. I did.

Q. Did you go down the back stairs?

A. No, the front stairs.

Q. The front stairs are there near Custer's door, aren't they?

A. No, it's about half-way between my room and the stairs, Mr. Custer's room; you are about half-way to the stairs—oh, not half-way.

Q. Had Mr. Thompson started down the steps? 20

A. Yes, he had; no, I won't say that, I don't know.

Q. Are the steps at about the bathroom?

A. Yes; I was excited over the fire, and I don't remember whether I went down first, or Mr. Thompson went down first, but I think I went down—no, Mr. Thompson, he went down ahead of me.

Q. You left your room door open?

A. I did.

Q. There was a light in it?

A. Yes. 30

Q. And how long were you downstairs?

A. Well, not so very long, only to go through the house and see whether it was on fire or not; that's about all.

Q. You went with Mr. Thompson?

A. Yes, sir.

Q. And went through the several rooms?

A. Yes.

Q. You couldn't see any evidence of fire?

Mrs. Slack—Cross.

A. No.

Q. Did you say anything to Mr. Thompson?

A. I did, I said "I don't understand why you called me like this in case of a fire; I don't see what would cause a fire." He said "There might be some calendars hanging around the room;" I said, "I don't generally have a lot of calendars hanging around in the kitchen." Then he said,
 10 "There might be something on the Christmas tree caught fire."

Q. You followed him around the different places, and you were downstairs all together how long?

A. Just as long as it would take to go through the house and discover whether there was any fire, and right back again.

BY THE COURT:

Q. Did you go to the cellar?

20

A. No.

Q. When you went back upstairs Mr. Thompson followed you, did he not?

A. He did.

Q. And walked up to your room door with you?

A. No, he walked up about half-way through the hall between the stairs and my room.

Q. Do you recall speaking about a mouse or something, "There goes a mouse?"

30

A. I do.

Q. Just where did that take place?

A. Well, Mr. Custer had a basket of fruit in the room, and it had some tissue paper in it, and I knew there was a mouse in the house, and I heard it rattle, and I said, "Oh there goes that mouse."

Q. Where were you?

A. Going up the hall.

Mrs. Slack—Cross.

Q. Just where were you standing in the hall when you made that remark?

A. I wasn't standing; I was walking through the hall; I imagined it was in his basket of fruit, and I said, "Oh, there goes a mouse."

Q. And you shut the door rather quickly, did you?

A. Yes, sir, ordinarily as you would close the door.

Q. And you locked the door?

10

A. Yes, sir; the door won't stay closed unless the catch is put down on it.

Q. You put the catch down and the door was locked?

A. Yes.

Q. When you went down to telephone at seven o'clock, when you came back did Mr. Mitchell ask who it was?

A. About 7.30 in the morning.

Q. Did he ask who it was?

A. What?

Q. Did he ask who it was on the telephone?

20

A. No, I don't think he did.

Q. What did you say to him?

A. I sat the baby—just as I walked in the room and sat the baby down on the bed, I said, "Tell Ann who gave you the pretty things;" he said "Santa," and just at that time Bowne walked in the room and said, "Is that your wife?" Mr. Mitchell said "No;" then he said, "Come with me."

Q. Did you say anything to Mr. Bowne about explaining why he was there?

A. I did not.

30

Q. You didn't make any explanation at all?

A. I did not.

Q. Did you call your mother up about it?

A. After they had all gone out of the house, I called up mother and told her what had happened.

Q. Didn't you call her up while Mr. Bowne and Mr. Mitchell were standing there?

A. I did not.

Mrs. Slack—Cross.

Q. Didn't you say on the telephone something about going his bail?

A. No, I told him myself if he wanted any cash money or bail, I don't know what you would call it, if he was locked up for over Christmas, to call me and I would call mother.

Q. And get the money or cash bail for him?

A. Yes, sir.

10 Q. Did Mr. Mitchell wake up, or was he asleep when the telephone rang at 7.30?

A. Yes, sir, I think he was playing with the baby.

Q. The question was, was he asleep?

A. No, he was not.

Q. How long had he been awake?

A. I don't know how long he had been awake; I know he was talking to the baby.

Q. You noticed what he was doing there while you were occupied with your sewing or whatever it was; you could see

20 him very clearly?

A. Yes, sir.

Q. Couldn't you tell whether he was asleep or awake when the telephone rang?

A. I told you he was playing with the baby.

Q. How long had he been playing with the baby?

A. A few minutes.

Q. Playing with these toys in the room?

A. There were no toys in the room.

Q. Who took the baby out of the crib?

30 A. He got out himself.

Q. And crawled over on the bed?

A. And crawled over on the bed.

Q. Did he have to get over Mr. Mitchell?

A. He did.

Q. And he got between you and Mr. Mitchell?

A. No.

Q. Weren't you on the bed at this time?

A. At what time?

Mrs. Slack—Cross.

Q. When the baby crawled over Mr. Mitchell and got on the bed?

A. I was sitting on the bed when the baby—

Q. I am speaking before you went down to the telephone?

A. I wasn't on the bed, I was sitting by the radiator sewing.

Q. Mr. Mitchell was playing with the baby at the time 10 the telephone rang?

A. Yes.

Q. When the baby got on the bed, you were—

A. He got on the bed when I started down stairs.

Q. You were at the telephone, weren't you?

A. When I started downstairs.

Q. Then the baby didn't crawl over Mr. Mitchell while you were there?

A. No, not while I was there.

Q. Then you didn't see the baby get on the bed, did you? 20

A. No.

Q. When the telephone rang, where was Mr. Mitchell?

A. On the bed.

Q. Lying on the bed as you have described, crosswise on the bed?

A. Yes.

Q. Where were you sitting?

A. By the radiator, sewing.

Q. Not on the bed?

A. No.

30

Q. How could he be playing with the baby at that time?

A. Mr. Mitchell was on the foot of the bed with his head towards the footboard and his feet towards the headboard; then he raised up to the crib, and right along the bed it reaches the whole length of the bed. I have to push my bed up to the crib to keep the baby from falling out.

Mrs. Slack—Cross.

BY THE COURT:

Q. The crib is as long as the bed?

A. Nearly.

Q. And Mitchell was lying lengthwise with the crib?

A. Yes, sir.

Q. So he could play with the baby?

10

A. Yes, sir.

Q. In other words, Mitchell was between your side of the bed and the crib?

A. Yes.

Q. Mrs. Slack, will you please describe the objects in the room as they appeared looking from the door going into the room?

A. As you go in the room, on the right is my bureau, and in this corner (indicating) is my sewing machine.

20

Q. On the right, to the rear of the room?

A. Yes, sir, and over in that corner is the radiator.

Q. Immediately in the front to the left?

A. Yes, sir; in the center of the room is the sewing table, and that has a small electrolier, and over in this corner is the baby's crib (indicating).

Q. On the further side of the room to the left?

A. Yes, sir.

Q. Then up next to that crib is my bed, the same way as the baby's crib.

30

Q. The head of the bed is immediately to your left as you go in the room?

A. Yes, sir.

Q. And the head is out in the room, to the front of the room?

A. Yes, it doesn't come to the front.

Q. In going into the room your bed is immediately to the left of the door?

A. Yes, sir.

Mrs. Slack—Cross.

BY THE COURT:

Q. And the door swings towards your bed?

A. Towards the right.

Q. The lock on the door or the catch on the door is right near the head of your bed?

A. No, between that space, between that door you go into is a closet door. 10

Q. To the left?

A. Yes.

Q. And next to the bed, between the bed and the partition wall is the baby's crib?

A. Yes.

Q. And Mr. Mitchell was on the side nearest the crib?

A. Yes.

Q. Where is the radiator located in that room?

A. Over in the left-hand corner, off to the side, the side of the room, at the foot of the baby's crib. 20

Q. Between the crib and the front of the house?

A. Yes.

Q. And the partition wall side?

A. Yes.

Q. And where was this chair that you sat on?

A. Where was that located?

Q. Yes.

A. Between the radiator and the baby's crib.

Q. Where was the lamp which was used by you to give the light? 30

A. It hung on the end of the radiator; it has a long cord, I should say seven yards long.

Q. How far would that have to reflect to give reading light over to where Mitchell was?

A. Why, you could touch it; the foot of the bed was at the radiator.

Q. The crib was between the bed and the radiator; it was at least the width of the crib away?

Mrs. Slack—Cross.

- A. No.
- Q. Wasn't the crib moved down to the bottom of the bed? The crib was how near to your chair where you sat?
- A. I could touch it.
- Q. About how far?
- A. About like that (indicating two or three feet).
- Q. Your chair was in there?
- 10 A. Yes, sir.
- Q. And the light was on the radiator to your left?
- A. Yes.
- Q. You sat then between the light and where Mr. Mitchell was lying on the bed?
- A. No, I didn't, because the foot of the bed comes down to the radiator, which is a different position altogether.
- Q. The foot of the bed was at least—
- A. The radiator stands like that in the room (indicating), and the baby's crib comes down that way (still indicating), and the foot of the other bed comes this way, and the radiator—
- 20 Q. I understood you to say that the crib of the baby ran alongside and parallel with the bed, didn't it?
- A. You mean the same as my bed?
- Q. Yes.
- A. Yes, it does.
- Q. And it extended down with the bed?
- A. About three-quarters of the way down, as near as I can tell, of my bed.
- 30 Q. Then the head of the bed and the head of the baby's crib were right near the radiator?
- A. No, they were up towards the wall, up towards the door as you go in.
- Q. Do you mean that the radiator was up near the door as you came in, or the—
- A. I mean the crib and the bed was as you come in the door.
- Q. Right near the door?

Mrs. Slack—Cross.

- A. The space of a closet between.
- Q. Then the bed and the crib, and then followed the wall?
- A. Yes.
- Q. Alongside of the wall was the radiator at the foot of the crib?
- A. Yes.
- Q. You sat about two feet from the foot of the crib? 10
- A. As near as I can tell; my chair sat right up towards the head of the radiator.
- Q. About two feet from the end of that crib, and the light was on the radiator?
- A. Yes, sir.

BY THE COURT:

- Q. The light would reflect across you to where Mr. Mitchell was lying?
- A. To where he was reading. 20
- Q. A man standing at the door jamb at the entrance to your room, could see right across the bed and into the crib, couldn't he?
- A. He would have to step inside the door; they could see the bed and the crib, but not the head.
- Q. Now, when the telephone rang, the baby was in the crib?
- A. Yes.
- Q. Are you certain of that? 30
- A. Yes, I am positive of it.
- Q. When you came upstairs, did you see the baby get out of the crib?
- A. After I answered the telephone?
- Q. Yes.
- A. He followed me downstairs, and I carried him up when I came up.

Mrs. Slack—Cross.

Q. Now, when was it that you saw Mr. Mitchell playing with the baby?

A. Before I went downstairs answering the telephone.

BY THE COURT:

Q. He had turned completely around?

10

A. Yes, sir, and played with the baby.

Q. Lying down or sitting up?

A. Sitting up resting on one arm, leaning over the crib.

Q. He would have to be lying or reclining in order to play with the baby, wouldn't he?

A. Yes, he would.

Q. Towards the headboard of the bed?

A. Yes.

Q. And the baby would have to creep over him to get out?

20

A. Yes, sir.

Q. When did you see the baby do that?

A. I didn't see that.

Q. And when Mr. Mitchell was playing with the baby, the baby was in the crib?

A. In the crib.

Q. When did he start to play with the baby with reference to the telephone call?

A. I said a few minutes before.

30

Q. Three or four minutes?

A. Well, I don't know the exact time.

Q. Well, five minutes?

A. I would say about ten or fifteen minutes.

Q. Were you talking in the room there together?

A. He was talking to the baby.

Q. He was?

A. Yes.

Q. And talking just about in the same tone of voice as I am talking to you?

Mrs. Slack—Cross.

A. Yes.

Q. The house was quiet at that time?

A. Yes, sir.

Q. And a person standing near your door might be able to overhear such a conversation?

A. I don't know; I never had the door closed and anyone in there and me in the hall; I couldn't tell.

Q. There was quite an opening under the bottom of the door, and you put a rug over that? 10

A. I did until after I went downstairs to answer the telephone, then I pushed it back.

Q. But when you went down on the fire trip, you put it back against the door again?

A. Yes.

Q. And after Mr. Mitchell came in the room you put it back again?

A. He was in there when I came back.

Q. And you shut the door, locked it, and put this rug back to the crack again? 20

A. Yes, sir.

Q. Now, when Mr. Bowne came in the room you were on the bed, were you not?

A. Yes, sir.

Q. And Mr. Mitchell was lying over in the bed near the crib?

A. Yes.

Q. With his head to the headboard of the crib?

A. Yes. 30

Q. And you were in the same position, weren't you?

A. I was sitting on the side of the bed.

Q. Sort of reclining?

A. Yes, and set the baby in the middle.

Mrs. Slack—Cross.

BY THE COURT:

Q. Reclining towards the baby?

A. Yes, sir.

Q. You two were there talking and having a pleasant time with the baby?

10 A. Not such a pleasant time, I just said "Tell Ann who gave you the pretty things;" he said "Shanta," and this detective walked in.

Q. You had slipped your shoes off, had you not, or slippers?

A. No, only this one with the sore corn.

Q. You pulled the covers over you?

A. No.

Q. You had on your regular clothing, you say?

A. I did.

Q. And Mr. Mitchell had no bed clothes over him?

20 A. No, not when he had turned around, turned towards the top of the bed.

Q. He had this bathrobe on?

A. Yes, sir.

Q. Was it light about that time?

A. Yes.

Q. It was light, and you didn't have any light in the room?

A. No.

30 Q. You could see the clothing he had on underneath?

A. Yes, sir, to a certain extent.

Q. What did he have on?

A. Mr. Custer's bathrobe, slippers, a pair of socks and a pair of blue pants.

BY THE COURT:

Q. When did you put the light out?

A. When it got light enough for me to see.

Q. What time was that?

Mrs. Slack—Cross.

A. Well, I had it out when mother called me on the 'phone.

Q. She called you at what time?

A. Half-past seven.

Q. How long before your mother called you did you turn the light out; do you remember?

A. No, I can't just remember, but I was right close there where I could turn it off; I turned it off when it was light enough to see to embroider. 10

Q. It was light enough then for you to see to embroider?

A. At half-past seven?

Q. Yes.

A. Yes, sir.

Q. You turned the light off before you went down to talk to your mother?

A. Yes, sir, and I also unattached it, because it has a long cord, and I was afraid the baby would pull the reading light over. 20

Q. You are certain, however, when you went to answer your mother's telephone call you had already turned the light out?

A. Yes, sir, positive.

Q. After Mr. Bowne walked in there, there was considerable commotion, was there not?

A. I didn't see any great amount of commotion.

Q. It didn't disturb you? 30

A. I didn't feel very pleasant over it.

Q. Did you cry?

A. No.

Q. Did you say "This is a terrible thing to happen on Christmas day?"

A. I did.

Q. What did you mean when you said "It is so terrible a thing to happen on Christmas day?"

Mrs. Slack—Cross.

A. When he said "Come with me," I didn't know whether he was going to arrest him or not.

Q. You knew why he was going to be arrested, didn't you?

A. No, I didn't know what was the trouble.

Q. Didn't you have some idea?

A. No, no idea at all.

10 Q. Did you think that Mr. Mitchell had done something besides being in your room that he was going to be arrested for?

A. I didn't know of anything that he had done.

Q. Did you ask?

A. Who?

Q. Mr. Bowne.

A. No, I didn't.

Q. You heard him ask Mr. Mitchell, "Is this your wife?"

20 A. Yes.

Q. And you had some idea then, didn't you, just what he meant?

A. Well, not just at the time I didn't.

Q. Didn't you think that he meant that here was a man in bed, or out of bed, with a woman other than his wife; didn't you have some idea of that kind?

A. The reason because he was taken out?

Q. Yes.

30 A. He told him so; he said "Is this your wife?" he said, "Come with me down to Slack's."

Q. What did you understand Mr. Bowne meant by making that remark?

A. Well, I then thought the Mr. Slack was the cause of it, and he had put a detective on me, the same as I did on him.

Q. He found you in bed with another man, other than Mr. Slack?

A. Well, if you call that in bed.

Mrs. Slack—Cross.

Q. I am asking what you thought?

A. I don't know what to say to that question; I wouldn't say I was in bed with him.

Q. Well, don't you know, Mrs. Slack, just what Mr. Bowne meant, or didn't you know?

A. No, not until after he said "Come and go with me to Slack's."

10

BY THE COURT:

Q. Do you mean to say you didn't understand what he meant when he asked Mitchell if you were Mitchell's wife?

A. No, not until he said, "Come to Slack's."

Q. Then what dawned it upon you?

A. Then, as I said before, that he had done what he intended to do, the same as I had done on him.

Q. Then it dawned upon you that he had discovered a man in bed with you; that dawned upon you, did it not? 20

A. Well, I don't know that that just did, no.

Q. Well, a thought of that kind came to your mind?

A. A thought that Mr. Slack had done something like that.

Q. Didn't you think that that was what Mr. Bowne meant when he asked Mr. Mitchell if you were his wife?

A. No, not until he asked him to go down to Mr. Slack's.

Q. Didn't Mr. Mitchell say there that that was the first night he had stayed all night with you? 30

A. He did not.

Q. Or words to that effect?

A. He didn't; I don't remember it.

Q. Do you mean you don't recall whether it was said or whether it was not said?

A. Yes, I mean I don't recall whether it was said or not, but I don't think it was said.

Mrs. Slack—Cross.

- Q. You were quite excited at the time, weren't you?
- A. I don't know that I was; of course, I was upset over it; naturally I would be.
- Q. You had heard the neighbors talking about the way Mr. Mitchell was going to your house, hadn't you?
- A. Not personally, I hadn't heard anything about it.
- 10 Q. You had had it repeated to you, had you not, that you were the subject matter of considerable criticism in having him there?
- A. No, I didn't.
- Q. You say you did not?
- A. No.
- Q. No one had mentioned the fact to you that your conduct was the subject matter of criticism in having Mr. Mitchell come to your home so much?
- A. No, except Mr. Mitchell himself.
- Q. Mr. Mitchell told you that then?
- 20 A. Yes, sir.
- Q. When?
- A. I just don't know when it was.
- Q. About when?
- A. Well, I can't even say when, because I don't remember just that time; it has been about a year that he has been coming over here, and he came over and he said his father said he had best not to come over there, as someone was complaining about it.
- 30 Q. You didn't know of your neighbors saying anything to you about it?
- A. Not to me personally, no.
- Q. Didn't Mrs. Barnhardt say anything to you about it?
- A. About Mr. Mitchell coming over to my house?
- Q. Yes.
- A. I don't recall it.
- Q. It had come to you, however, that you were being considerably talked about in having Mr. Mitchell come to your house the way he was?

Mrs. Slack—Cross.

A. No, I don't know that anyone ever said I was talked about; he just said his father said he had best not come over there. He had heard someone say he was going there too often; is that what you mean?

Q. You understood my question, didn't you?

A. Yes.

Q. You wrote to your husband in October. I show you a letter marked "Exhibit P 1;" will you please look at "Exhibit P 1," that is a letter which your husband has testified to was sent by you to him; is that your handwriting? 10

A. (After perusing letter) I wouldn't swear to this handwriting.

Q. It is, isn't it?

A. I wouldn't swear to it.

Q. Do you say you didn't send that letter to your husband?

A. I wouldn't say.

Q. Why? 20

A. Because I picked up a letter one time written by him, and I said, "Mercy, that's not my handwriting."

BY THE COURT:

Q. You look at that letter and tell me whether it is in your handwriting.

A. I couldn't tell; in this one he said "I am dangerously ill," and it was his, and I couldn't tell it from mine. 30

Q. Just examine that letter, please.

A. (After reading letter) Well, it looks like my handwriting, but I don't remember saying some of the things that are in that.

BY THE COURT:

Q. Do you remember saying any of the things

Mrs. Slack—Cross.

that are in that letter; do you remember writing any of the things that are in it?

A. (No answer).

Q. Can't you answer that question?

A. No, I can't.

Q. Can't you remember any of the things in that letter?

10

A. No.

Q. I show you "Exhibit P 2;" examine that and see whether that is in your handwriting.

A. Here is a part of this—

BY THE COURT:

Q. Answer that question.

A. No, I will not say "Yes" to that; there's a part right there that I never had education enough to write that letter, right there.

20

Q. Take "Exhibit P 3;" I ask you whether you wrote that letter?

A. Yes, this one.

BY THE COURT:

Q. "Exhibits P 1, 2 and 3," are written on the letterhead of the Magnolia Farm; whose farm is that?

30

A. My mother's farm.

MR. DEVLIN: I think she ought to have those letters off the witness stand.

THE COURT: She is perfectly cool and not excited, but she may have them later on when she retires from the witness stand.

Mrs. Slack—Cross.

A. Well, then, if that's the case say that I wrote the letters.

THE COURT: Strike that out.

Q. Did you write letters to your husband upon paper marked "Magnolia Farm, Charles Pope, Proprietor?"

A. I have.

10

Q. You have written many letters, have you not?

A. Not very many.

Q. In "Exhibit P 1" the following language appears: "Well, dear, I do not visit my neighbors, but stay at home with my baby, but the dirty bums on the corner are trying to make trouble for me;" what did you mean by that?

A. I never remember saying that expression; what I wrote to him was a letter where I understood that Mr. Mitchell came over and said that his father was saying someone had informed him he was coming over to the house too often; and I said, "Then you had best stay away;" he said "No, I am not going to stay away;" then I said "I shall write to Mr. Slack to write to Mr. Mitchell telling him he was willing for you to come over," and I did, and he said for me to forward that to Mr. Mitchell. I said I didn't think that was the proper thing,—for him to send it direct; it looked as if I had copied the letter and given it to him.

20

BY THE COURT: It would seem to me that the letters fully explain what you are attempting to bring out; I think they disclose their own history concerning whether she had heard from the neighbors.

30

Q. Mr. Mitchell knew that Mr. Custer and Mr. Gano were going to leave or be away on Christmas Eve, did he not?

A. When mother called him on the 'phone and informed him so.

Mrs. Slack—Cross.

Q. Hadn't you told him before that, that these two boarders were going to leave?

A. Not that I remember.

Q. You think the first intimation that he had come from your mother?

A. I think it was.

10 Q. Then, you didn't request him to stay that night, did you?

A. I did not.

Q. He was staying there at the request of your mother?

A. He was.

Q. And you didn't tell him anything about being nervous that evening, did you?

A. No.

Q. You said nothing about that, and the request to stay there entirely came from your mother and not from you?

A. I think it did.

20 Q. You gave Mr. Thompson, I think, a Christmas present, didn't you?

A. I did, and also gave one to Mr. Gano, and the reason I gave it to Mr. Thompson—

Q. Did you give a Christmas present to Mr. Mitchell?

A. I did not.

Q. Did your mother give him one?

A. I think my mother did.

Q. What is Mr. Mitchell's business?

A. A mason.

30 Q. Rather steadily employed?

A. Mostly, in the summer time.

Q. And quite considerably in the winter, too?

A. Not much; masons, there are not very many at work in the winter time.

Q. For whom does he work?

A. Not anyone at present; the last one he worked for was Mr. Lanning.

Mrs. Slack—Cross.

- Q. For whom was he working in December, 1916?
 A. He was not working.
 Q. Not at all?
 A. No.

BY THE COURT:

Q. He lived at his own home with his parents, didn't he? 10

A. He did.

Q. How is it he ate at your house?

• A. He was in the house and I asked him to eat, or anyone.

Q. Did he eat only by your separate invitation, that is, by your asking him each time?

A. Yes, sir.

Q. Or did he sit down as a matter of course?

A. No, each time I asked him.

Q. Did you ever have meals being served when 20
 you didn't ask him?

A. If he was there I would always ask him, or anyone else, Mrs. Barnhardt or anyone that was at my home.

Q. How old a man is Mitchell?

A. I think about 27.

Q. How old are you?

A. 29.

Q. And your husband?

A. 29. 30

Q. How much rent did you pay for this house?

A. \$45.00 a month.

Q. Your husband sent you \$20.00 a week, did he not?

A. Yes, sir.

Mrs. Slack—Cross.

BY THE COURT:

Q. Why did you have Mitchell in your room that night after this alarm of fire?

A. There was no particular reason, except he said he was going to go to bed, and I said, "Please don't; sit up here and read."

10 Q. You were afraid?

A. Yes.

Q. Why did you lock the door; he was able to protect you, wasn't he?

A. The halls were cold, and Mr. Thompson had his windows up.

Q. Why did you lock the door?

A. It wouldn't stay closed; I asked Mrs. Barnhardt to have it fixed at least six months ago.

20 Q. Didn't it impress you, that if anybody discovered this man in the room with you with the door locked, that it might subject you to scandal?

A. No, not at the time it didn't; I didn't have any evil thoughts regarding it.

Q. No, but weren't you apprehensive that if anybody discovered you with the door locked—

A. I didn't think of it.

Q. Did you ever do anything of that kind before?

A. Yes, if I had a cause to.

Q. Did you ever, at any time?

30 A. I had no cause to have anybody in there.

Q. When did you last see Thompson?

A. When he called me for the fire.

Q. And when before that?

A. When he went to bed at seven o'clock at night.

Q. Did you see him going to bed?

A. No, he said he was going.

Q. At seven o'clock?

A. Yes. I said "Why so early?" he said, "I got

Mrs. Slack—Cross—Re-Direct.

to get a night's rest," as he wanted to spend Christmas day away.

Q. I may have misunderstood the early part of your examination, but do you recall saying that you didn't recall that he had gone to bed except from what he told you?

A. That's the only way I knew it, as he said he was going up to go to bed.

10

Re-Direct Examination by Mr. Devlin:

Q. When you were called by your mother in the morning, the purpose of that call was to invite you for dinner?

A. Yes; no, I had been invited to dinner, but she called me to tell me what time the carriage would meet me.

Q. Had anybody else been invited for dinner from your house?

A. Mr. Mitchell.

20

Q. Had he been, so far as you know, invited before that telephone call?

A. He had.

Q. When you came back from the fire alarm that was brought to your room, and found Mitchell in your room, did you detail to us all the talk you had with Mitchell at that time; have you told us all the conversation, as far as you can remember, that passed between you and Mitchell after you returned from the alarm of fire back into your room at three o'clock in the morning?

30

A. I think I have.

Q. You think you have told us all?

A. Yes.

Q. Was anything said by you to Mitchell, or Mitchell to you about Thompson at that time?

A. When I went in the room he said, "I'll go down and

Mrs. Slack—Re-Direct.

put him out;" I said "No, don't lose your temper, just let him alone until to-morrow morning; he may not have meant anything for harm."

Q. At that time, will you state whether or not you ascertained or believed whether or not Thompson had raised a false alarm to get you out of the room?

A. I did believe that was his purpose.

10 Q. Did you find, on going downstairs, any evidence or suspicion of fire in your house?

A. I did not.

Q. And from that, then, you gathered that Thompson may have made a false alarm for some other purpose?

A. I did.

Q. State whether or not it was that fact that induced the fear you say you had to remain in the room alone that night?

A. It was.

20 Q. Do you know how long Mitchell remained awake on the bed?

A. I don't; he read a magazine and looked over a paper; I didn't pay much attention to him.

Q. Do you know what magazine that was?

A. I don't; he can tell you.

Q. Did you finish the work?

A. I didn't finish the work.

Q. Do you remember if you conducted any conversation with Mitchell after he lay down on the bed and read?

30 A. Well, I can't say I do, except talking about this Mr. Thompson in the back room, and he read an article or two out of the paper.

Q. Read it out loud to you?

A. Yes, sir.

Q. Do you know what thoughts or facts those articles contained, or what events they detailed?

Mrs. Slack—Direct—Re-Cross.

A. I just can't say I do; but I remember him reading a couple of articles out of the paper.

Q. Now, how long do you think he remained awake on your bed before you noticed he was asleep?

A. Well, I thought he was reading, and I went on embroidering, and after a while there was something I wanted to say to him, and I spoke to him and he didn't answer me.

Q. How long was that, do you think, after you had come up from the fire alarm? 10

A. About an hour.

Q. When you found he was asleep at that time, did you do anything?

A. I didn't do anything.

Q. You spoke about covering him up; was it then—

A. I think I wanted some different batting cotton, and I come back from the bureau from getting it, and I took a large quilt and counterpane and threw over him.

Q. How near did you get your embroidery complete that morning? 20

A. Well, it was very near all done, except a little bit about that much (indicating).

Q. And the piece of work you had you intended as a Christmas present for your mother?

A. I did.

Q. State whether or not you expected to deliver it Christmas day?

A. I did expect to.

Q. Did you get it finished? 30

A. I did not.

Re-Cross Examination by Mr. Scammell:

Q. You said Mr. Mitchell said, "I'll go down and put him out," and you said to him "Don't lose your temper."

Mrs. Slack—Re-Cross—Barnhardt (Re-Called)—Direct.

What led you to request Mr. Mitchell to go down and throw him out, or any statement that you made which would indicate to Mr. Mitchell's mind that he ought to go down and throw him out?

A. I don't understand that question.

10

MR. SCAMMELL: I will withdraw the question.

BY THE COURT:

Q. Didn't you at all appreciate the impropriety of having this man in your bedroom from three o'clock to seven o'clock, with the doors closed and locked, and he on your bed?

A. I didn't.

20

Q. Didn't you at that time realize that he could protect you just as well by being in Mr. Custer's room with both doors open, and he reading in that room, or going to bed?

A. I didn't think of that; I didn't think of any harm out of that; I didn't give it a thought.

ANN J. BARNHARDT, being recalled on behalf of the defendant, testified as follows:

Direct Examination by Mr. Brennan:

30

Q. Mrs. Barnhardt, did Mrs. Slack request you on Christmas Eve to stay at her house?

A. Yes, sir.

Q. Will you state at what hour Christmas Eve, if you can remember?

A. Well, I can't tell you the exact time, but she called me up and wanted to know if I would stay with her.

Barnhardt (Re-Called)—Direct—Cross—Re-Direct.

- Q. Did she state the reason?
 A. Yes, sir, she said she would be alone at the house.
 Q. Was that before or after the evening meal or supper hour?
 A. It was before that.
 Q. Was it between noon and that hour?
 A. Yes, sir.
 Q. Was it the early part of the afternoon or the late part of the afternoon? 10
 A. No, it was towards dinner, towards supper.
 Q. Towards the evening?
 A. Yes, sir.

Cross Examination by Mr. Scammell:

- Q. Have you a telephone, or did you have a telephone at this time?
 A. It was at the State Hospital. 20
 Q. You were working there then?
 A. Yes, sir.

Re-Direct Examination by Mr. Brennan:

- Q. Did Mrs. Slack ever complain to you about the condition of the lock on her front bedroom door?
 A. Yes, sir.
 Q. When?
 A. Often. 30
 Q. Did she say what trouble the lock caused?
 A. Yes, I seen what trouble it caused.
 Q. What?
 A. It wouldn't close; it would close and then open again; it wouldn't catch.
 Q. And to keep it closed they had to use the lock above?

Barnhardt—Re-Direct.

A. Yes.

Q. Which is a dead latch on the inside?

A. Yes.

Q. How many weeks or months had that complaint been made to you before December, 1916?

A. She has always spoke about it; she has always wanted me to have the lock fixed.

10

BY THE COURT:

Q. Would the door fasten when latched by the dead latch?

A. It would fasten then.

Q. Mrs. Barnhardt, when you went to the 'phone and she asked you to stay, did she express any fears to you before that time or at that time, of Thompson?

A. She has, repeatedly.

20

Q. What did she say?

A. She said she didn't like the man she took in last; I told her why did she take him; she said she didn't know just why.

Q. Did she express the reasons why; did she fear him?

A. Yes.

Q. She said he acted so funny, she said she never could understand him.

Q. Did she say what actions appeared to her as funny?

30

THE COURT: Well, that cannot be contradicted, can it?

Adjourned until Friday, May 25, 1917, at 9 o'clock.

Docket No. 43—56.

Dated May 25 and 29, 1917.

IN CHANCERY OF NEW JERSEY.

<i>Between</i>	}	On Petition, &c. Testimony.	10
Le Roi C. Slack,			
<i>Petitioner,</i>			
<i>and</i>			
Grace Pope Slack,	}		
<i>Defendant..</i>			

Testimony taken in the above-entitled cause, at the State House, Trenton, New Jersey, on Friday, the twenty-fifth day of May, 1917, at 9 A. M.

Before HON. JOHN H. BACKES, Vice-Chancellor.

Same appearances as before noted. 20

30

Cooper—Direct.

ETHEL COOPER, a witness produced on behalf of the defendant, being duly sworn, testified as follows:

Direct Examination by Mr. Brennan:

- 10 Q. How long have you resided in Trenton?
 A. Twelve years.
 Q. What is your occupation?
 A. Manicuring.
 Q. Do you know Mrs. Grace Pope Slack?
 A. I do.
 Q. Have you visited her at her home?
 A. I have.
 Q. How many times?
 A. I couldn't say.
 Q. Frequently?
 20 A. Very often.
 Q. Were you there at her home about December 22, 23
 or 24?
 A. I was.
 Q. Did you know a roomer there, a Mr. Custer?
 A. I did.
 Q. Were you ever in the room occupied by Mr. Custer?
 A. I was.
 Q. Do you know how that room was furnished?
 A. I do.
 30 Q. Will you kindly state?

THE COURT: Is there any dispute about that?
 MR. SCAMMELL: No.

- Q. Just describe the furniture in that room.
 A. Bird's eye maple bed, a dressing table, bird's eye

Cooper—Direct—Cross.

maple, bird's eye maple bureau, a couch, a smoking stand, a wicker chair and telephone.

Q. What kind of a room was it, a square room?

A. A square room with a bay window.

Q. Do you recall did you have any conversation with Mrs. Slack on the 24th of December?

MR. SCAMMELL: That is objected to.

10

THE COURT: Objection overruled.

A. I did.

Q. Did Mrs. Slack ask you to go and stay with her on December 24th?

A. She did.

Q. What did she say?

A. "I would like you to come and stay to-night with me if you can."

Q. Did she say why?

20

A. I said "Why?" and she said, "I would like you to;" I insisted; she said, "I have a man in the back room who has acted suspiciously since he has been here, and I don't like to stay in the house alone with him to-night?"

Q. What else did she say?

A. No, it was a busy day; I didn't talk long; I couldn't say.

Q. What else did she say?

A. That's all.

30

Cross Examination by Mr. Scammell:

Q. In December last, where did you work?

A. The Trenton House barber shop.

Q. How long have you known Mrs. Slack?

A. A couple of years or more.

Cooper—Cross.

- Q. Did you go to her home to do any work?
 A. I often helped Mrs. Slack.
 Q. Did you ever do any manicuring work there?
 A. Only on Mrs. Slack.
 Q. Were you ever in Mr. Custer's room?
 A. Yes.
 Q. How often?
 10 A. Well, I couldn't just say.
 Q. A good many times?
 A. Yes, sir.
 Q. Did you ever see Mr. Mitchell in Mrs. Slack's room?

MR. BRENNAN: That is objected to.

THE COURT: Objection sustained.

- Q. You went up to see Mr. Custer quite often, didn't
 20 you?
 A. No, I never went to see Mr. Custer.
 Q. Did you ever stay all night at Mrs. Slack's house?
 A. I did.
 Q. On how many occasions?
 A. Three or four.
 Q. Did you stay in Mrs. Slack's room?
 A. Yes.
 Q. With her?
 A. In Mrs. Slack's bed with Mrs. Slack.
 30 Q. Every time you stayed there, you stayed in Mrs. Slack's room?
 A. I did.
 Q. When did Mrs. Slack call you up?
 A. On the 24th?
 Q. Yes.

Cooper—Cross—Pope—Direct

A. Sometime in the afternoon, I couldn't say just what time.

Q. You were at the Trenton House at the time?

A. No, I was at my home.

Q. You were not working on this day?

A. It was Sunday.

ROXANNA POPE, a witness produced on behalf of the defendant, being duly affirmed, testified as follows: 10

Direct Examination by Mr. Devlin:

Q. Mrs. Pope, Mrs. Slack, the defendant, is your daughter?

A. Yes.

Q. Where do you live?

A. Near Fallsington, Bucks County. 20

Q. On the Magnolia Farm?

A. On the Magnolia Farm.

Q. With your husband?

A. Yes, sir.

Q. Do you remember on December 24th last—

A. Yes.

Q. Did you receive a telephone call from your daughter?

A. I did.

Q. What part of the day was that?

A. In the afternoon. 30

Q. What was the talk your daughter had with you over the telephone?

A. She said she guessed she would have to be there alone; she had called up Ethel Cooper and she couldn't stay with her; I said "Come over home;" she said "Mamma, I can't

Pope—Direct.

very well, because I don't like that strange man to leave him in my house all alone?"

Q. What else?

A. I said, "Well, then, I'll call up Mr. Mitchell, Andrew Mitchell, and see if I can get him to come." So I called him up, and I said "Andrew, could you go over and stay with Grace to-night, because she is going to be all alone there with that strange man, and I don't like to leave her that way;" and as Mr. Pope wasn't really fit for me to go and leave him—

10

Q. He was ill?

A. He was ill, or I would have went myself, I suppose.

Q. Was this the end of that conversation?

A. I think that's about all; there might be some other little thing.

Q. The next morning did you call her up on the 'phone?

A. I did.

20

Q. Can you tell about what hour that was?

A. Well, it was about, as near as I can tell, about five or ten minutes to eight.

Q. What is the reason you can say it was that hour?

A. Well, I mostly get up about that time, and I—

Q. What conversation did you have on the 'phone with your daughter at eight o'clock?

A. I called her to ask her what time I could meet them to bring them out to our place to dinner.

Q. Did you have to meet them with a wagon?

30

A. Yes, sir.

Q. Your place is in the country?

A. Yes.

Q. Then were you called by your daughter again that morning?

A. Yes, I was.

Pope—Direct.

Q. What conversation did your daughter have with you again?

A. She said, "Mamma, they have arrested Ann and taken him down to Mr. Slack's;" that's all; and she said, "Oh, I am so sorry, breaking up all my Christmas."

Q. Anything else said at that time?

A. Not just at that time.

Q. How long have you known Andrew Mitchell? 10

A. Well, I have known him about twelve or fifteen years.

Q. Has your daughter known him the same time?

A. I think about that long.

Q. State what his relations have been with your family consisting of yourself, your husband and your daughter.

A. Well, one thing, he has been very good to us all, and I treat him the same as a son or a brother in my home; he has been very good to me; he has proved himself a gentleman in every way, shape and form.

Q. Well, proceed and tell us your relations. 20

A. He has proved himself to be an upright, honest young man in every respect that I felt as I could trust him, he was trustworthy.

Q. Has he rendered any services at your home?

A. He certainly has.

Q. State any of these services.

MR. SCAMMELL: That is objected to.

THE COURT: The objection is overruled. You had better confine yourself to the time when the daughter was a member of that household. 30

A. Well, he has done some mason work; he has visited me frequently with even his boy friends, and I have treated his boy friends when I have been there since the marriage of my daughter—

Pope—Direct.

Q. Before the marriage?

A. Before the marriage they were all young people having a good time, and I can safely say in my heart that he is a perfect good man.

THE COURT: Strike that out. Tell me what happened around your house.

10

Q. State if he has ever in that time when your daughter was there, rendered any services around the house?

A. Yes.

Q. What kind?

A. Well, he is a mason by trade; he has fixed my chimneys and he has made some concrete work for me, and he has waited on Mr. Pope since his sickness, and he has did some business for me in concrete here in Trenton.

20 Q. Did he ever assist around the household in any manner?

A. Well, I have a servant and I didn't have to ask him except by waiting on Mr. Pope.

Q. Has he remained at your house over night?

A. Yes, sir.

Q. Many times?

A. Yes, sir.

Q. At whose invitation?

A. Mine.

30 Q. Will you state how often Mitchell came to your house and the time he spent?

A. Before the marriage of daughter?

Q. Yes.

A. Well, he would come there quite frequently, like all young people would.

Q. Would he stay at your house?

A. Yes, sir, he has stayed there all night.

Pope—Direct.

Q. How often?

A. Well, he has been there and done some work for two or three days, and then went home; and he has even been there and stayed all night one rainy night, I remember, an awful thunder shower came.

Q. Any other times he has stayed there all night?

A. It would be impossible for me to remember how many times. 10

Q. Many times?

A. Yes, sir.

Q. I mean before your daughter was married?

A. Yes.

Q. Since your daughter was married has he stayed?

A. Yes.

Q. He is still intimate in your family?

A. He certainly is, and always will be.

Q. Have you ever requested him to go and stay at your daughter's house? 20

A. I certainly have.

Q. Many times?

A. Many times.

Q. Since she began to live on Stuyvesant Avenue, have you at any time directed him or requested him to go to your daughter's home?

A. I certainly have.

Q. Many times?

A. Many times, with her all alone.

Q. What were the reasons you had? 30

A. The reason I had for that is, with her all alone at nights.

MR. SCAMMELL: That is objected to.

Pope—Direct.

Q. Do you know whether or not Mitchell had a key to your daughter's home?

A. I certainly do.

Q. Do you know who gave him that key?

A. Well, on one occasion I gave him my key that I had.

Q. You had a key to that home?

A. I had.

10 Q. Were you in your daughter's home last December?

A. I certainly was.

Q. Can you tell us about what period of that month you were in that home?

A. Well, I was there on the 23rd; first, I was there on the 20th, I think, then I was there on the 23rd, and I was there—then I wasn't there again.

Q. Do you know Mr. Custer that boarded there?

A. Yes.

Q. Do you know what room he occupied?

20 A. I certainly do.

Q. What room was that?

A. It was the room next to the bathroom, between the bathroom and daughter's room.

Q. That does not impress upon me anything. Was it or was it not next to your daughter's room?

A. Yes, sir.

THE COURT: Is it important?

30 MR. DEVLIN: I want to discredit Bowne as to

the room he was in, or the time he was in.

THE COURT: You may go ahead.

Q. What kind of furniture is in that room?

A. Bird's eye maple bed, bird's eye maple dresser, and a large couch and a bureau and chair, and a little stand at the

Pope—Direct.

head of the bed with the 'phone on, and the smoking set was setting on that, Mr. Custer used for that purpose.

Q. For the services that Mitchell rendered at your home at various times while your daughter was there, did you ever give him any money?

A. Yes, I think I did one occasion when he did some work for me, some concrete.

Q. Since then have you paid him money? 10

A. Yes, I certainly have.

Q. Many times?

A. Yes, sir.

Q. Mrs. Pope, were you present in Mrs. Slack's home any times when Mitchell was there?

A. I certainly was.

Q. Will you state what was the nature of his conduct in that home towards Mrs. Slack?

A. He was certainly a gentleman in every respect.

Q. (Stenographer repeats the question). 20

A. I don't understand the question. As far as his conduct was concerned, I found him a refined young man.

Q. How did he act towards your daughter?

A. Why, I don't know that he acted anything towards daughter more than he would towards me, just in a friendly way. I said, "Ann, I thank you very much"—

THE COURT: Strike that out.

Q. Will you state if you ever saw any familiarity practiced by him towards your daughter? 30

A. Not at all.

Q. Did you ever see any improper suggestions made by him towards your daughter?

A. Not at all; I wouldn't have allowed it.

Pope—Direct—Cross.

THE COURT: Strike out the latter part of that answer.

Q. Have you ever seen anything in his conduct suggesting anything improper towards your daughter?

A. Never.

10 Q. Have you ever seen conduct from him towards your daughter that would suggest any undue familiarity with her?

A. Not at all.

Q. Have you ever seen or heard any deed or word of his indicating or suggesting undue intimacy with your daughter?

A. Not at all.

Q. Do you mean "No"?

A. No, I mean "No."

Q. Have you ever seen your daughter take any undue familiarity with him?

20 A. No, never.

Q. Have you ever seen your daughter, or observe conduct suggesting undue intimacy with Mitchell?

A. No.

Q. In the time that you have known Mitchell and had him around your home, or Mrs. Slack's home, have you ever seen anything in your daughter's conduct towards him that would indicate or suggest undue intimacy?

A. No, never.

30 *Cross Examination by Mr. Scammell:*

Q. You were very fond of Mr. Mitchell, weren't you?

A. I am, certainly, fond of him.

Q. Is Mrs. Slack, your daughter?

A. Yes, sir.

Q. Is she?

A. Yes.

Pope—Cross.

- Q. Is she your own daughter?
 A. She is my beloved daughter at heart.

THE COURT: Strike out the answer.

- Q. Is she your daughter?
 A. Not my born daughter, but she's my daughter.
 Q. Mrs. Slack's father's name was Scott, was it not? 10
 A. Well—
 Q. Was it?
 A. It certainly was.
 Q. When did Mr. Scott die?
 A. Well, that has been so many years that I couldn't
 just tell.
 Q. You don't know?
 A. No, I don't.
 Q. What is the age of Mrs. Slack?
 A. Well, I judge her age is about—I think she was born 20
 in 1887, I won't be positive of that, without the family Bible;
 I know it was on July 8, and I think it was in 1887, but that
 I won't be right positive of.
 Q. How old was she at the time of her father's death?
 A. Three months old; she knew no mother but me, and
 I am her mother.
 Q. Mrs. Slack was married before she married Mr.
 Slack?
 A. Yes.
 Q. She married Joseph Midwood, didn't she? 30
 A. Yes.

MR. DEVLIN: I object to this line of testimony.

THE COURT: The objection is overruled.

- Q. Prior to Mr. Slack marrying Mrs. Midwood, Mr.
 Mitchell came to your home to see her, did he not?

Pope—Cross.

- A. He didn't marry Mrs. Midwood.
- Q. Well, your daughter, that you claim was your daughter, was at one time married to Mr. Midwood?
- A. Well, that's all right.
- Q. Answer the question.
- A. Well, yes.
- Q. Before she married Mr. Slack, Mr. Mitchell came
- 10 to see her at your home, did he not?
- A. Yes, sir, he visited there, he was a young man.
- Q. He was calling on her at the same time Mr. Slack was calling on her?
- A. Not particularly, all the young folks together.
- Q. He was there a good many times?
- A. Occasionally he would come, like all young fellows used to.
- Q. Did Mr. Slack come there when Mr. Mitchell was there at your home, to see your daughter?
- 20 A. I really don't know.
- Q. You don't think he did, do you?
- A. They were all young, and would come and go.
- Q. Answer the question.
- A. I don't just remember whether he was there or not, just at the same time; that's impossible for me to answer.
- Q. Did he ever bring your daughter over to your home after she was married to Mr. Slack?
- A. When?
- Q. After she was married to Mr. Slack?
- 30 A. No.
- Q. Did Mr. Mitchell ever stay at your home over night since your daughter was Mrs. Slack?
- A. He certainly has.
- Q. Did he come over to your home on Christmas day 1916, and have dinner there with you?
- A. Yes, sir.

Pope—Cross.

Q. Did he tell you that he had been over to Mr. Slack Senior's house that morning?

A. Yes, sir.

Q. Did he tell you he had been there with Mr. Bowne?

THE COURT: This is not cross-examination.

Q. Did Mr. Mitchell know that he was to come to your 10
house for Christmas dinner?

A. Yes.

Q. When did you tell him?

A. A week before I asked him to dinner.

Q. Did you ask your daughter to come to Christmas
dinner, too?

A. I certainly did.

Q. Then they knew prior to Christmas morning, that
you had invited them to your home for Christmas dinner?

A. Yes. 20

Q. Mr. Mitchell has been to your home since December
25th last?

A. Yes.

Q. And Stayed all night there?

A. Sure, yes.

Q. Now, you called up your daughter early Christmas
morning?

A. Yes.

Q. And what was your object in calling her up that
morning? 30

A. To meet them at the trolley for dinner, what time
they were coming.

Q. Did your daughter say anything to you at that time,
that Ann was in her room?

MR. DEVLIN: Objected to as not cross-examina-
tion.

THE COURT: Objection sustained.

Pope—Cross.

Q. How long were you talking to your daughter on the telephone the first time?

A. When?

Q. When you called her up?

A. Oh, not very long, very shortly.

Q. How long?

A. Only a few minutes; she said, "I'll call you again."

10

THE COURT: You may go into the subject of your former question.

Q. Now, at the first talk on the telephone, when you called your daughter, what did you say to her?

A. I said, "What time are you coming over?" I think that's the words I used.

Q. What did she say?

A. I will have to call you again.

20

Q. Did she say why she had to call you again?

A. I can't just remember that; I don't think she said anything more,—“I'll call you again.”

Q. Was that all she said?

A. That was all she said at the present time, I think.

Q. And then hung up the receiver?

A. Yes.

Q. You said nothing more than that?

A. No.

30 Q. How long after that call was it that you were called up on the telephone?

A. Well, it's almost impossible—

Q. Well, about how long?

A. Within a few minutes, or maybe a half hour, or a quarter of an hour.

Q. A quarter of an hour?

A. I would judge about that time; maybe a little longer.

Pope—Cross.

- Q. It wasn't any less than a quarter of an hour?
- A. I can't answer that question, to be honest.
- Q. What did she say to you when she called you up?
- A. She said "Mamma, Ann has been arrested and taken down to Slack's."
- Q. I said "What for?"
- Q. What did she say?
- A. Well, she says, "I don't know what for." 10
- Q. Didn't you say anything further?
- A. Well, I guess I did; I said, "Well, that beats all."
- Q. What did you say?
- A. "My gracious, that beat's all;" I think that's the words I said.
- Q. Didn't you ask any further questions?
- A. No, I don't think I did.
- Q. Did your daughter say anything more to you?
- A. She said "Good-bye, I guess I'll see you later."
- Q. "Good-bye, I'll see you later?" 20
- A. I think that's the words.
- Q. Is that all she said to you?
- A. I think so.
- Q. Was there anything said about bail?
- A. I don't just remember that; there might have been; I can't remember all those things with a sick husband.
- Q. You think there was some suggestion made about bail, don't you?
- A. There might have been.
- Q. What do you think your daughter said to you about bail? 30
- A. If she said anything, she said "Mamma, will you go his bail," or something, but I don't remember that.
- Q. You don't?
- A. No, I don't remember that at all; I think she did say something about that, but she said "Good-bye" in a hurry.

Pope—Cross.

- Q. She was quite excited?
A. I don't know, I didn't see her face.
Q. But from the way she talked on the telephone?
A. Well, just a little so.
Q. Only a little so?
A. It's just impossible to answer those questions; I had other things on my mind.
- 10 Q. Didn't she sound as if she was disturbed?
A. A little, likely.
Q. Didn't she tell you where Ann was and the reason he was arrested?
A. No.
Q. She didn't say anything about that?
A. No.
Q. You didn't make any inquiry, did you; did you ask where Ann was?
A. No, she had told me; I wouldn't ask her.
- 20 Q. At the time she talked to you over the telephone, she told you that Ann was not there at that time, but that he had gone down to Mr. Slack's?
A. I think you misunderstood me.
Q. Then just straighten that out, please; just tell me now what she said about where Ann was at the time she called you on the 'phone, the first time she called you.
A. I did repeat that.
Q. Repeat it again.
A. I repeated and told you that they had taken him down
- 30 to Slack's; if you remember, I told you that.
Q. Then she told you Mr. Mitchell was not there at the time she was talking to you on the 'phone?
A. I don't remember those little incidents; I don't remember them.
Q. And didn't she say: "The man is standing here now with Ann?"
A. No, she didn't.

Pope—Cross.

- Q. She didn't say anything of that kind?
 A. No.
- Q. Now, you say this telephone conversation, the last one, took place at about ten minutes after eight or eight o'clock?
 A. No.
- Q. What time was it?
 A. I don't know; I have never told you about the last one. 10
- Q. About when was it then?
 A. I couldn't remember at all on that; I just remember a telephone call.
- Q. You don't remember when it took place as to the hour?
 A. I couldn't tell the exact time,—I couldn't, only to tell a story.
- Q. Was it near eight o'clock?
 A. It was after eight, it must have been, because it was ten minutes of eight when I made my first call; you can reckon that up. 20
- Q. It was after eight o'clock?
 A. After eight.
- Q. Did your daughter call you up again that morning?
 A. Yes, sir.
- Q. About when?
 A. Well, that's something else I couldn't tell; she called me up to meet them.
- Q. And that was before twelve o'clock?
 A. It's impossible to answer. 30
- Q. What?
 A. It would be impossible for me to answer that question; I couldn't tell.
- Q. When did you go to meet them?
 A. In the forenoon.
- Q. Before twelve o'clock?

Pope—Cross.

- A. Before lunch time.
- Q. What time do you have lunch?
- A. Mostly twelve o'clock, sometimes on Christmas a little later.
- Q. How long had they called you up before you went to meet them?
- A. It's impossible to answer that.
- 10 Q. Your daughter said to you over the telephone, "I am so sorry about this, as it has broken up all my Christmas?"
- A. I don't remember a thing about it.
- Q. Will you say that conversation didn't take place?
- A. Not as I remember.
- Q. Then why, upon direct examination, did you say that your daughter when she called you on the 'phone, said "They have arrested Ann, and I am so sorry, it has broken up all my Christmas?"
- A. Well, that might be; it's impossible for an old lady
- 20 to remember all those incidents.
- Q. How did you recall it when you were asked by your own counsel?
- A. Did I answer it?
- Q. How do you recall?
- A. I said Andrew was arrested and taken down; I don't think I said that he was taken down to Mr. Slack's, that's all I said, but not the question you put at me last; it wasn't like that.
- Q. But at the time your daughter told you that, she was
- 30 very much excited?
- A. I don't believe she was so much.
- Q. Did you give Mr. Thompson any Christmas present?

MR. DEVLIN: Objected to as not cross-examination.

THE COURT: Objection overruled.

Pope—Cross—Slack (Re-Called)—Direct.

A. No, sir.

Q. Did you buy any Christmas present for him?

A. No, sir.

GRACE POPE SLACK, being recalled in her own behalf, testified as follows:

Direct Examination by Mr. Devlin:

10

Q. Mrs. Slack, I show you three letters, "Exhibit P 1, P 2 and P 3;" you had them before; have you examined those letters since you were on the witness stand; you had those letters when you were on the witness stand on Wednesday?

A. I did.

Q. Since then have you examined those letters?

A. Thoroughly.

Q. And refreshed your memory as to their contents?

A. I have.

20

Q. And I ask you whether or not you wrote those letters?

A. They are in my handwriting; they are my letters; I wrote those letters.

Q. I show you another letter, "P 4," a copy of a letter that you received from your husband, dated January 30; that letter that you have, "P 4," did you receive the original letter of which that is a copy?

A. I did.

Q. Did you make any answer to it?

A. I did not.

30

Q. Why?

A. On the advice of my attorney.

Q. Who?

A. Mr. Brennan.

Q. I was not in the case at that time?

A. No, You were not.

Mrs. Slack (Re-Called)—Cross.

Cross Examination by Mr. Scammell:

Q. Is that the only reason you didn't reply to that letter?

A. That's the only reason.

Q. You knew that letter contained a serious accusation against you?

10 A. I did.

Q. You knew the address of your husband?

A. On the outside of the envelope it said to address it to Rutherford Avenue.

Q. You knew you could write a letter to your husband at the general delivery in Detroit and get him there, did you not?

A. Well, I can't say that I did.

20 Q. He sent you a letter sometime between December and January 1st, with reference to the finding of Mitchell in your room on Christmas, did he not?

A. He did.

Q. You wrote him in reply to that letter?

A. I did.

Q. You knew his address then?

A. I did.

Q. You knew, when you examined that letter when you were first upon the stand, that that was in your handwriting, did you not? I mean letters "P 1, 2 and 3?"

A. No, I didn't.

30 Q. Why didn't you?

A. Well, because I found a letter that he had written to the company saying I was seriously ill, come home at once; I said "I never wrote that letter;" he said "No, that's a copy; I wrote that letter;" I said "It's just exactly like my handwriting."

Q. You examined those letters very carefully, and you knew the author of those letters?

A. Not until I read them off the stand.

Mrs. Slack (Re-Called)—Cross.

Q. You knew that the information contained in those letters came from you?

A. I wasn't paying attention to what was in the letters; I paid attention to the writing.

Q. Why, Mrs. Slack, you recall I asked you to examine the letters and asked you after examining the letters whether they were in your handwriting; do you recall that?

A. I do. 10

Q. Do you recall that you said "No," they were not in your handwriting?

A. No, I don't recall saying that.

Q. You didn't say it?

A. I think I said I couldn't tell whether it was my handwriting, I wasn't positive.

Q. But you knew you had written those letters to your husband?

A. I didn't know.

Q. You knew when you were on the witness stand, that you had written those letters to your husband? 20

A. I didn't.

Q. You knew you had written letters to your husband which contained matter which was contained in those letters to your husband; you knew when you were on the stand last and I was questioning you about the receipt of those letters, that you had written letters of the same import or containing the same information, to your husband?

A. I told you before. 30

Q. Answer the question.

A. I didn't read the letters over here; I only examined the writing.

Q. Didn't you examine the letters to see the contents of the letters?

A. I did not, I examined the writing.

Q. You just examined the writing?

Mrs. Slack (Re-Called)—Cross—Mitchell—Direct.

A. I just examined the writing.

Q. Then why did you say that some of the expressions in there were such that you couldn't have used, that you didn't have sufficient education to use those expressions; why did you say that?

A. Well, in going over the letter to examine from one letter to the other, the different letters, I noticed these large
10 words that was used.

Q. Well, they were words that you had used in your letters?

A. I didn't think I was able to use that language.

Q. But you did examine the letters to see what these words were, didn't you?

A. Well, as I say, partly I did, and when I saw these large words I didn't hardly think I was in a position to use those words.

Q. You knew, then, what the contents of those letters
20 were?

A. I did not, not all the contents of the letters.

ANDREW MITCHELL, a witness produced on behalf of the defendant, being duly sworn, testified as follows:

Direct Examination by Mr. Devlin:

30 Q. You know Mrs. Slack?

A. I do.

Q. How long have you known her?

A. A period of about twelve or fifteen years.

Q. What do you work at?

A. I am a mason by trade.

Q. Do you work steady as a mason?

A. As a rule.

Mitchell—Direct.

- Q. Winter time as well as summer?
 A. Yes, sir.
 Q. What is your age?
 A. 27.
 Q. Did you receive a telephone call from Mrs. Pope on Christmas eve?
 A. Yes.
 Q. What part of the day? **10**
 A. Towards evening.
 Q. As a result of that telephone call, what did you do?
 A. I went over to the house.
 Q. Where were you when you received the call?
 A. Home.
 Q. How far is your home from this house of Mrs. Slack?
 A. I should judge about a quarter of a mile.
 Q. You went to the home of Mrs. Slack?
 A. I did.
 Q. Do you know what time you reached the home of Mrs. Slack? **20**
 A. Between half-past seven and eight o'clock.
 Q. When you got into the home of Mrs. Slack, whom did you see there?
 A. Mrs. Slack.
 Q. Who else?
 A. The baby.
 Q. Where were they?
 A. In the reception room.
 Q. Downstairs or up? **30**
 A. Down.
 Q. Did you see anyone else in that home at that time?
 A. No.
 Q. Did you learn at that time whether anyone else was in the home?
 A. I did.

Mitchell—Direct.

- Q. Whom did you learn was in there?
 A. Mr. Thompson.
 Q. Who informed you?
 A. Mrs. Slack.
 Q. What did you do in that home that evening downstairs?
 A. I don't understand.
- 10 Q. What did you do after you got in the house?
 A. Well, I got in there, and Mrs. Slack was doing her dishes.
 Q. What did you do?
 A. So the baby was crying and wanted to go to bed; so she said, "Wait a minute, I'll put him to bed;" so I said "I'll put him to bed," so I took the baby and put him to bed.
 Q. Where did you put the baby to bed at?
 A. In his crib.
 Q. Where?
- 20 A. In Mrs. Slack's room.
 Q. What room is that?
 A. The front room.
 Q. The front bedroom?
 A. Yes.
 Q. Then what did you do?
 A. Came downstairs, and Mrs. Slack wasn't quite done with the dishes yet, so I helped her with those.
 Q. After they were done, what was done?
 A. Mrs. Slack said she had a lot of packages to wrap up.
- 30 Q. Was there anything said about whose packages they were?
 A. Yes.
 Q. Whose?
 A. She said, "Here's some of Mr. Custer's haven't been wrapped."
 Q. What did you do?

Mitchell—Direct.

A. So she wrapped the packages in the front room downstairs, so I helped her wrap the packages.

Q. After that, what did you do?

A. Well, she had mentioned about ten o'clock the trimming of the baby's tree; so then I should judge about twelve o'clock, or nearly twelve, why, we went up to get the baby's tree, and we had to go way up in the third story, and we brought down the baby's tree. 10

Q. To what room?

A. To the reception room.

Q. Downstairs?

A. Downstairs.

Q. Go ahead.

A. We trimmed the tree.

Q. Did you assist in trimming it?

A. I did.

Q. Do you know what the tree—what happened next after the tree was trimmed? 20

A. Well, then it was, I should judge, about half-past one.

Q. Then, what happened?

A. So then Mrs. Slack said she was going upstairs and sew.

Q. What did you do—did she go upstairs?

A. She did.

Q. What did you do downstairs?

A. Well, I glanced over the paper a few minutes. 30

Q. How long?

A. I should judge about fifteen or twenty minutes.

Q. Then what did you do?

A. Went upstairs.

Q. What room did you go to?

A. Custer's.

Mitchell—Direct.

- Q. Where is that room?
 A. Next to Mrs. Slack's.
- Q. How is that room furnished?
 A. With a bed, bureau, dressing table, couch, and a smoking stand.
- Q. Was that bed wood or metal?
 A. Wood.
- 10 Q. Do you know what kind of wood?
 A. Everything in the room but the smoking stand was bird's eye maple.
- Q. Before you got in the room, did you take off any of your clothes?
 A. I did.
- Q. What?
 A. My collar, vest and coat.
- Q. Where did you leave them?
 A. In the reception hall.
- 20 Q. Then you got upstairs in Mr. Custer's room, and then what did you do?
 A. Took off my shoes.
- Q. Anything else?
 A. Put on Mr. Custer's bathrobe and slippers.
- Q. What then?
 A. Lit a cigarette and lay down on Mr. Custer's couch.
- Q. Has that room a bay window?
 A. It has.
- Q. Is there any light that shows in that room from the
 30 street?
 A. Very dim.
- Q. A very dim light?
 A. Yes.
- Q. Then what happened?
 A. I lay on the couch, I should judge possibly five or ten minutes, and I fell off to sleep.

Mitchell—Direct.

Q. After sleeping, what was the first thing that happened, after you had gone to sleep, after that?

A. I heard a noise which woke me.

Q. Go ahead, what kind of a noise was it?

A. I sat up for a second, and I couldn't figure out what it was; I heard Mrs. Slack's voice; then I went to the door.

Q. Was your door open that night?

A. It was, it was open about two-thirds.

10

Q. It wasn't locked?

A. No.

Q. You went to the door, and what did you do?

A. I heard Mrs. Slack's voice.

Q. Did you hear any other voices?

A. Yes, sir, this man Thompson.

Q. What did you do then?

A. I stayed there for a second, and I heard Mrs. Slack and he coming up the stairs.

Q. Then what did you do?

20

A. Stepped into Mrs. Slack's room.

Q. Then what?

A. I stepped into the closet.

Q. Why?

A. Waiting for Mrs. Slack and this Mr. Thompson to come back.

Q. Why?

A. I didn't know what the idea of Mr. Thompson was in getting Mrs. Slack out of her room.

Q. Did you know anything about him?

30

A. She informed me, she had been afraid of this man Thompson.

Q. How long did you remain in the closet?

A. Possibly a couple of minutes, three minutes, the time they came back.

Q. Who came into the room?

Mitchell—Direct.

A. Mrs. Slack.

Q. What did you say?

A. I stepped out of the closet.

Q. What did you say to her?

A. She said to me, "What are you doing here?"

Q. What did you say to her?

A. She shut the door then, and I said "What's the idea
10 of this man Thompson, what was the trouble?" She said,
"Didn't you hear him?" I said "No;" she said "He called
fire;" I said "I heard your remark coming up the stairs, 'Mr.
Thompson, why did you give this alarm of fire to frighten
me;'" and I said "What do you suppose the idea of this man
Thompson was of getting this door open;" so then she went
over and sat down in the chair by the radiator, and I sat on
the edge of the bed.

Q. What other conversation took place?

A. Well, it dwelt mostly on this man Thompson.

20 Q. What other conversation took place about Thompson?

A. I said, "I can't understand why this man Thompson
should want to get this door open; what did he say to you
besides the fire?" she said "Nothing;" I said "I'll get him and
throw him out;" she said "No, perhaps he was right, maybe
he did smell smoke;" so I said "Well, I can't credit that he
smelled smoke if there wasn't any."

Q. What else was said?

A. So I sat there talking, and I said "Well, I think I
will go in and go to bed;" I got up, and she said, "Well,
30 now, there's only a few more hours until morning, and I
want to finish this piece, and it has got me nervous; I wish
you wouldn't leave me;" so I said "All right, as long as you
are afraid, I'll come back again;" she said "You can never
tell;" I said "All right." I got up and walked over to the
table and picked up a magazine.

Q. Do you remember what the name of it was?

Mitchell—Direct.

- A. The Cosmopolitan.
- Q. What did you do?
- A. Laid down on the bed and started to read.
- Q. You say you lay down on the bed; what part of the bed did you place your head on?
- A. The foot of the bed.
- Q. You started to read; now, did you read to yourself?
- A. Well, I looked over the Cosmopolitan; I didn't read 10
much out of the Cosmopolitan; I picked up the Ledger.
- Q. What Ledger?
- A. The Philadelphia Ledger, I was reading that.
- Q. Did you read all to yourself?
- A. No, I read a couple of small articles to Mrs. Slack.
- Q. Where was she?
- A. Sitting in the chair.
- Q. Where was the chair located?
- A. By the radiator.
- Q. Where was the light? 20
- A. On the radiator.
- Q. From the position of that light and the position you held in that bed, were you able to read?
- A. If I laid on my side.
- Q. How long did you continue lying on that bed in that position?
- A. I imagine I had laid there for a period of half an hour or three-quarters, and I fell asleep.
- Q. You remember when you woke up?
- A. Yes, sir. 30
- Q. Have you any idea what time it was when you woke up?
- A. No, but I know it was light.
- Q. When you say "light," do you mean daylight?
- A. Yes.

Mitchell—Direct.

Q. Was the electric light in the room lit when you woke up?

A. The light was out.

Q. Where was Mrs. Slack when you woke up?

A. Still sitting in the chair.

Q. Did you have anything to say to her or she to you when you woke up?

10 A. Yes, I said "I was great protection, to fall off here and go to sleep."

Q. What did she say?

A. She said "Yes, you certainly have been sleeping some."

Q. What happened next in that room?

A. The baby was awake about that time, so I was playing with the baby and showing the baby some pictures that was in the *Cosmopolitan*; he is very fond of horses.

Q. What was the next thing that happened?

A. So I played with the baby in his crib, and then the
20 'phone rang.

Q. What did Mrs. Slack do?

A. Went down to answer the 'phone, and Mrs. Slack said, "Don't let the baby out of the crib, because it's cold; the floor is cold and he'll catch cold;" so I rolled over and laid the baby in the bed, and he insisted upon getting out, and was going to cry. I said "If you want to go, go on;" and I set him out on the floor.

Q. Did the baby go downstairs?

A. I don't know; the baby went out of the room.

30 Q. Will you describe what clothes you had on while in that bedroom that night; tell us what clothes you had on.

A. Shirt, pants and slippers and bathrobe.

Q. How about underwear?

A. I had on underwear.

Q. What kind?

A. I wear nothing but union suits.

Mitchell—Direct.

Q. That is—

A. B. V. D.'s.

Q. At that time, or any time before, had you ever worn underwear in separate pieces?

A. I always wore the same winter and summer.

Q. Union suits?

A. Yes, sir.

Q. (Stenographer repeats the question, as follows): **10**
At that time, or any time before, had you ever worn underwear in separate pieces?

A. I haven't worn separate underwear in two years.

Q. Hadn't worn underwear in separate pieces?

A. No, sir.

Q. So far as you saw, how was Mrs. Slack dressed?

A. She had on a bathrobe.

Q. Do you know if she had shoes on?

A. I don't know, I didn't take notice.

Q. Now, when she left the room and the baby left the **20**
room were you there when she came back to the room?

A. I was.

Q. Before the baby left the room, you say you were playing with the baby; what position did you have in the bed?

A. I had turned around in the bed.

Q. When you say "turned around," state whether or not, you mean you reversed your position?

A. I reversed.

Q. When Mrs. Slack and the baby came back, what was **30**
said or done by you or Mrs. Slack in the room?

A. Brought the baby back and set the baby on the bed.

Q. Whereabouts?

A. Right in the middle of the bed.

Q. What did she say?

A. "Tell Ann who brought you the pretty things."

Mitchell—Direct.

Q. Where did she sit?

A. On the edge of the bed.

Q. What did Bowne say, and what did you say, when Bowne came into the room?

A. Mr. Bowne said to me, "Is this woman your wife, Mr. Mitchell?" I said "No;" then he said "Get up and come with me?"

10 Q. What else was said by Mrs. Slack or anyone; what was said in the room at that time?

A. He said "Come with me;" I said "Where?" he said "To Mr. Slack's." Mrs. Slack said, "What Mr. Slack's?" He said, "Down to old Mr. Slack's home."

Q. What else was said, if you remember?

A. So I said to Mr. Bowne, "Do you want me to come right away with you?" he said "Yes, get ready to go with me."

Q. What did you do?

20 A. I walked into Mr. Custer's room.

Q. What did you do in there?

A. Put on my shoes.

Q. Did you take off any clothes?

A. I took the bathrobe.

Q. What else?

A. I walked downstairs and got my vest and my coat and collar.

Q. What did you do with them?

A. Brought them up to Mr. Custer's room and put my

30 coat and collar on.

Q. What else?

A. I went down and put on my overcoat, and Mr. Bowne was with me.

Q. You went down to Mr. Slack's?

A. I went down to Mr. Slack's.

Mitchell—Direct.

Q. Were you at any time that night under the bed-clothes with Mrs. Slack?

A. No.

Q. Were you at any time that night dressed while in her room different from what you have told us?

A. No.

Q. Did you in that room stand up with nothing on but an undershirt? 10

A. No.

Q. Did you in that room that morning dress yourself?

A. No.

Q. Were you in the presence of Bowne in that room in bed underneath the covers?

A. No.

Q. Did you, in the presence of Bowne, stand up in that room dressed with but an undershirt on, and begin to dress yourself?

A. No. 20

Q. Were you in the presence of Bowne dressed different from what you have already expressed, in that room?

A. No.

Q. Were you in the presence of Bowne under the covers with Mrs. Slack in that room?

A. No.

Q. Was Mrs. Slack in that room in the presence of Bowne and you dressed in a nightgown?

A. I couldn't say.

Q. Was Mrs. Slack and you in that room in the presence of Bowne, with Mrs. Slack dressed in a nightgown only? 30

A. I don't know; she had a bathrobe on.

Q. Did you see Mrs. Slack at any time in the presence of Bowne with nothing on but a nightgown?

A. No.

Mitchell—Direct.

Q. How was Mrs. Slack, so far as you saw, dressed, while Bowne was in that room?

A. All I saw was a kimona, a bathrobe.

Q. Do you make any difference between a kimona and a bathrobe?

A. A big bathrobe, some call them kimonas.

10 Q. When you went to Mrs. Slack's place, where did you go?

A. When I went?

Q. When you went to Mr. Slack's home with Bowne, where did you go after that?

A. I came back.

Q. To Mrs.—

A. Slack's.

Q. How long did you remain there?

A. About an hour.

Q. Where did you go after that?

20 A. To Mrs. Pope's.

Q. And had dinner?

A. Yes.

Q. When you went out of your room into the room of Mrs. Slack, will you tell us how far the door of Mrs. Slack's room was open?

A. About two-thirds open.

Q. Was there any light burning in that room?

A. No.

30 Q. I mean at three o'clock in the morning was there any light burning in the room?

A. No.

Q. Not at three o'clock in the morning?

A. No.

Q. At three o'clock in the morning?

A. No.

Mitchell—Direct.

Q. At three o'clock in the morning was there a light burning in your room?

A. No.

Q. Was there any light in Mrs. Slack's room?

A. No.

Q. At that time?

A. No.

Q. How long have you known Mrs. Slack? 10

A. About twelve or fifteen years.

Q. You knew her when she lived at her home in Morrisville, on the Magnolia Farm?

A. Yes.

Q. Did you call at that place very often?

A. I did.

Q. How often do you think you called at the Magnolia Farm?

A. I used to run out there occasionally, perhaps, maybe every—once a week, maybe; sometimes I wouldn't go for 20 twice a month.

Q. Have you been on intimate terms with the family?

A. I have.

Q. Have you done any work for her mother while she was there?

A. Yes.

Q. Have you ever stayed in her mother's home while she was there, all night?

A. Yes.

Q. Many times? 30

A. Yes, sir.

Q. When Mrs. Slack got married, have you visited her home after she was married?

A. Her mother's home?

Q. No, her home; have you visited Mrs. Slack's home after Mrs. Slack got married?

Mitchell—Direct.

- A. Do you mean in Trenton or Morrisville?
 Q. Both places.
 A. Yes, sir.
 Q. Often?
 A. Yes, sir.
 Q. Do you know her husband?
 A. Yes.
- 10 Q. Were you and him on good terms?
 A. Yes.
 Q. Have you any difference with her husband of any kind?
 A. None whatever.
 Q. Did they, while married, live together on Magnolia Farm in Morrisville, Mrs. Slack and her husband?
 A. Yes.
 Q. Have you visited that place there?
 A. I did two or three times, but Mrs. Slack wasn't home.
- 20 Q. Was Mr. Slack home?
 A. No.
 Q. Do you remember when they left Norway Avenue this city?
 A. Yes.
 Q. Had you visited them often there?
 A. I was out there on two or three occasions.
 Q. When she went to live on Stuyvesant Avenue, is that near your home?
 A. It is.
- 30 Q. Had you visited her mother while she was living on Stuyvesant Avenue?
 A. Yes, sir.
 Q. Had you visited Mrs. Slack?
 A. Yes.
 Q. Often, while she was on Stuyvesant Avenue?
 A. Why, I used to run in and out there occasionally.
 Q. What did you do in running in and out?
 A. I used to go over there and help her out.

Mitchell—Direct.

Q. What do you mean by helping her out?

A. Well, I have attended the furnace and cut the grass, trimmed the hedge and done other work around the place.

Q. Did you do that often?

A. Yes; I attended to the heater all winter.

Q. Did you stay there many nights or any nights?

A. Yes, sir.

Q. At whose request?

10

A. The mother's.

Q. What was the reason for your being there at night sometimes; did she state the reason?

A. Well, I was there the time the baby was sick; it was operated on; I was there three nights then; I had been there on other occasions when Gano had gone away, or Mr. Custer would go away.

Q. Did you know Gano?

A. Yes, sir.

Q. Can you say whether or not Gano was a friend of the family of long standing?

20

A. Yes.

Q. And do you know Mr. Freeman that testified here; do you know him?

A. Yes.

Q. Were there ever any times in that house when you all pitched in and helped together and cleaned house?

A. Yes, sir; I went in nights to fix the fire and I have gone down town and asked Mr. Freeman if he would put coal on the fire and shut it up for the night.

30

Q. Did you have a key to that house?

A. I did.

Q. Who gave you that key?

A. Mrs. Pope.

Q. What was the purpose of your receiving that key?

A. Attending to the furnace; I would go there in the

Mitchell—Direct.

morning some mornings, and I would go in evenings, and sometimes it was before I would go to work. She would go away sometimes and I would go in the afternoon and attend to the fire and sieve the ashes and take them out; there wouldn't be anybody home at all.

Q. What other things have you done around that house?

10 A. I have done most everything Mrs. Slack has asked me to do. I have went in there,—sometimes I would go in there in the morning or afternoon there while the baby was sick, I went in there and Mrs. Slack has been all up and down with work, and I would remark to her about it, and I would say "I'll help you out," and I would help her out. I have went in there and Mrs. Slack would be attaching the vacuum cleaner which she had, and I would attach it for her and run it around for her.

Q. Have you ever had any dish washing?

A. I have helped her.

20 Q. Have you ever worked on the floors?

A. Mopped up the kitchen floor, yes.

Q. Did you ever assist her with the baby?

A. Yes.

Q. Since she has been on Stuyvesant Avenue do you know how many roomers or boarders she had?

A. Four.

Q. Can you name them?

A. Mr. Freeman, Mr. Gano, Mr. Custer and Miss Packer.

30 Q. Do you remember Thompson's being there?

A. Yes, sir.

Q. Do you know when he came?

A. Yes, sir.

Q. Did Mrs. Slack ever speak to you about Thompson?

A. Yes, sir.

Mitchell—Direct.

Q. How soon after he came there did she speak to you about it?

A. I should judge about two or three days afterwards, she mentioned about asking this Mr. Thompson to bring his trunk in; "I think it's very strange this man doesn't bring his trunk, and he acts very sneaky to me; he is out early in the morning, and comes in nights, and doesn't hold any conversation with anyone in the house, but just goes to his room. 10

Q. In speaking of Thompson, state whether or not Mrs. Slack ever expressed any fears about him?

A. She did.

Q. How many times did she express those fears?

A. Well, I couldn't exactly say how many times.

Q. More than once?

A. Yes, I have heard her express them more than once.

Q. Mr. Mitchell did you, on December 24 or 25, commit adultery with Mrs. Slack?

A. I never did. 20

Q. Did you on that particular morning or day commit adultery.

A. No.

Q. Did you ever at any time commit adultery with Mrs. Slack?

A. No.

Q. Have you ever made an indecent proposal to Mrs. Slack in your life?

A. No.

Q. Has Mrs. Slack ever made any indescnt proposal or advance to you? 30

A. No.

Q. Have you or Mrs. Slack ever caressed or kissed each other in your life?

A. No.

Mitchell—Direct—Cross.

Q. Have you or Mrs. Slack ever made a suggestion of a familiar or indecent nature in your life?

A. No.

Cross Examination by Mr. Scammell:

10 Q. Didn't you, when you went over to Mr. Slack, Senior's house on the morning of the 25th, say to Mr. Slack, Senior, in the presence of Mr. Bowne, "This is the first time that I stayed all night with her?"

MR. DEVLIN: That is objected to as not cross-examination, and secondly, it was made out of her presence and cannot be used against her.

MR. SCAMMELL: Question withdrawn.

20 Q. You were in Mr. J. Cadwallader Slack's, the father of Le Roi Slack, on Christmas morning, 1916, with Mr. Bowne, in his house?

A. I was.

Q. You went there with Mr. Bowne from Mrs. Slack's home?

A. Yes.

Q. Did you see Mr. J. Cadwallader Slack there?

A. Yes.

Q. Did you have a conversation with Mr. Slack and Mr. Bowne at his home?

A. Yes, sir.

30 Q. That morning?

A. Yes.

Q. Where did you stand when you had the talk with Mr. Slack?

A. In the front room.

Q. Now, while you were in the front room with Mr. Bowne and with Mr. Slack, did you not say to Mr. Slack,

Mitchell—Cross.

or didn't Mr. Bowne say to you, in the presence of Mr. Slack, "Mr. Slack, this is Mr. Mitchell; I caught him in bed with Mrs. Slack this morning?"

MR. DEVLIN: That is objected to.

THE COURT: Objection overruled.

A. Yes, sir.

10

Q. And didn't you say to Mr. Slack, "This is the first time that I stayed all night with her?"

MR. DEVLIN: Objected to.

THE COURT: Objection overruled.

A. No.

Q. Didn't you say to Mr. Slack on this morning in that room in the presence of Mr. Bowne and Mr. Slack, "This is the first time that I slept with her all night?"

20

MR. DEVLIN: Objected to.

THE COURT: Objection overruled.

A. No.

Q. Didn't you say on that morning, in going from the Slack home on Stuyvesant Avenue to J. Cadwallader Slack's home, to Mr. Bowne: "What's the use, when they have the goods on me?"

30

MR. DEVLIN: Same objection.

THE COURT: Objection overruled.

A. No.

Q. Mr. Mitchell, didn't Mr. Slack say to you—in response to a reply to my question wherein I stated that you

Mitchell—Cross.

said you had slept with Mrs. Mitchell, that that was the first time; didn't he say to you, "What's the use of saying that, Mr. Mitchell;" and Mr. Bowne then said to you, "You went to bed with her two weeks ago to-night;" didn't you say that?

10

MR. DEVLIN: Objected to.

THE COURT: Objection overruled.

A. I don't understand that question at all.

MR. SCAMMELL: I withdraw the question; it is involved.

20

Q. Didn't you say to Mr. Slack that morning, or didn't Mr. Slack say to you that question, "What is the use of saying that, Mr. Mitchell?" and Mr. Bowne then spoke up and said to you, "You went to bed with her two weeks ago to-night:" wasn't that statement made by Mr. Slack and Mr. Bowne to you that morning?

MR. DEVLIN: Objected to.

THE COURT: Objection overruled.

A. I don't quite understand.

30

Q. Didn't you say to Mr. Slack that morning in his house, "This is the first time that I have stayed in bed with Mrs. Slack all night," or words to that effect?

A. No.

Q. Didn't Mr. Slack say, in response to that statement, this: "What's the use of saying that, Mr. Mitchell?" Did Mr. Slack say that to you?

A. I don't recall him saying it.

Q. Did he say something of similar import to that; I

Mitchell—Cross.

mean the same meaning: "What is the use of saying that, Mr. Mitchell?"

A. I don't recall.

Q. Well, will you say that it was not said, or you can't recall whether it was?

A. I say I don't recall ever hearing such a statement made.

Q. Will you say it was not made? 10

A. It was not made.

Q. Then, didn't Mr. Bowne say to you, "You went to bed with her two weeks ago to-night?"

A. Mr. Bowne made that statement?

Q. Yes.

A. I don't remember that statement ever being made in my presence.

Q. Or that meaning?

A. That meaning.

Q. Didn't Mr. Slack then say to you: "Mr. Mitchell, I 20
have known your father a long time, and have always had a great deal of respect for him; I understand your relations with Mrs. Slack have been a source of worryment to him; I hope this will be a lesson to you;" and in response to that statement of Mr. Slack, you said, "I think it will."

MR. DEVLIN: Objected to.

THE COURT: Objection overruled.

A. I never remember answering the question that way, 30
but I remember the question being put at that time.

Q. You remember Mr. Slack making that statement to you?

A. Yes.

Q. What was your answer?

Mitchell—Cross.

A. I don't know what I did answer him, but I remember the statement being made.

Q. What is your best recollection of what you said in reply?

A. Well, I don't recall.

Q. Didn't you say "I think it will?"

A. No.

10 Q. When you called at Mrs. Slack's home on the evening of the 24th of December, you say you went there about eight o'clock?

A. About half--past seven or eight.

Q. How many packages were there there to be wrapped up?

A. That I couldn't state just how many; I know there were quite a good many of them.

Q. Half a dozen?

A. Oh, more than that.

20 Q. A dozen?

A. Two dozen or more.

Q. Did you help to wrap them up?

A. I did.

Q. When was it stated by anyone there, or by Mrs. Slack, where you were to sleep; did Mrs. Slack tell you where you were going to sleep that night?

A. No.

Q. She knew that you were going to stay there that night?

A. Yes.

30 Q. She didn't tell you what room you were to sleep in?

A. No.

Q. How did you know what room you were to sleep in?

A. I was at liberty to sleep in Mr. Custer's room at any time, because Mr. Custer had told me.

Q. And Mrs. Slack, then, didn't say "You sleep in Custer's room?"

Mitchell—Cross.

- A. No.
- Q. Had you ever slept in Gano's room?
- A. No.
- Q. Custer, was he interested in the running of this house?
- A. Was he what?
- Q. He was nothing more than a boarder in this house?
- A. Only a boarder.
- Q. And yet Mrs. Slack, you say, didn't tell you where **10**
you were to sleep that night?
- A. No.
- Q. No mention was made of where you were to go and
sleep?
- A. No.
- Q. You say there was about two dozen packages which
you were to wrap up?
- A. Yes.
- Q. What time did you start to wrap these packages?
- A. I couldn't just say what time; I should judge about **20**
nine or half-past nine.
- Q. You finished about half-past twelve?
- A. No, we finished around twelve o'clock.
- Q. Now, then, you went up into the attic to get the
Christmas tree?
- A. Yes, sir.
- Q. About what height was that Christmas tree?
- A. Two feet or two feet and a half.
- Q. How long did it take you to trim that tree?
- A. Well, the time we got it and everything was, by the **30**
time we had it trimmed and placed and everything, it was
about half-past one.
- Q. Now, then, did Mrs. Slack bid you "Good-night?"
- A. She said she was going up to sew.
- Q. Did she invite you to go upstairs with her?
- A. No.

Mitchell—Cross.

- Q. What were you doing when she left?
 A. Looking over the "Times" or "Sunday-Advertiser,"
 the "Times-Advertiser."
 Q. And this was about half-past one?
 A. Yes.
 Q. Had you been at the house at all earlier in the day
 to fix the tree?
 10 A. I was there in the morning.
 Q. Early in the morning?
 A. Yes, before I went to church.
 Q. What time?
 A. I should judge about half-past nine.
 Q. Mrs. Slack didn't say anything to you about that
 time about going to spend the evening there?
 A. No.
 Q. She didn't mention it?
 A. There was nothing said.
 20 Q. Did you say anything to her about her mother asking
 you to go there?
 A. No.
 Q. You didn't tell her that you were going there that
 night?
 A. I didn't tell her that I was going there that night?
 Q. Yes.
 A. No.
 Q. She didn't know you were going?
 A. I don't know whether she knew I was going.
 30 Q. You were rather a very intimate friend of Mrs.
 Slack's were you not?
 A. I was a friend of the family.
 Q. When you say "the family," whom do you refer to?
 A. The whole family.
 Q. Does that include Mrs. Slack?
 A. That includes them all.

Mitchell—Cross.

Q. Nothing was said by you at all then that morning, that you were going to see her that night?

A. No.

Q. She didn't expect you there?

A. No.

Q. Wasn't it your custom to go there and fix the heater for the night?

A. Yes, sir.

10

Q. Then she really knew you were going to fix the heater that night?

A. There was nothing said about it.

Q. But she knew you were going?

A. I suppose she did.

Q. That was your usual custom?

A. Yes.

Q. Now, how long did you read the newspaper that night?

A. I should judge fifteen or twenty minutes.

20

Q. Then you went upstairs?

A. Yes.

Q. Was Mrs. Slack's door shut?

A. Shut.

Q. You saw that distinctly?

A. I didn't take particular notice of it; I saw the door was closed.

Q. As you went by, did you say anything about "Good-night?"

A. No.

30

Q. Not a word?

A. No.

Q. And you went in Custer's room?

A. Yes.

Q. Why didn't you get undressed?

A. I lay down and smoked.

Mitchell—Cross.

- Q. Why didn't you take all your clothes off?
 A. I don't know why; it was chilly in the house.
 Q. But it would have been warmer in bed, wouldn't it?
 A. I didn't feel that I wanted to go to bed.
 Q. Why?
 A. I wanted to smoke.
 Q. After that, what were you going to do?
 10 A. I was going to bed.
 Q. You finished the smoke?
 A. Yes.
 Q. Did you get up and go to bed?
 A. I fell asleep.
 Q. But you expected to get into bed?
 A. I did.
 Q. Why didn't you, before taking your smoke, take off
 your clothes?
 A. The house was chilly.
- 20 Q. How long had it been since you had fixed the
 heater?
 A. Early in the evening.
 Q. About what time?
 A. About nine o'clock.
 Q. What kind of heat was it?
 A. Hot water.
 Q. There was a radiator in your room?
 A. There was.
 Q. You went to sleep you say, then, about half-past two?
 30 A. I couldn't tell the time.
 Q. About when was it?
 A. Well, it was—
 Q. You smoked your cigarette?
 A. I did.
 Q. Were you reading any stories then?
 A. The room was dark.

Mitchell—Cross.

Q. And you were smoking your cigarette in the room in the dark?

A. Yes.

Q. It was about two o'clock in the morning?

A. I couldn't tell what time; it was after two, I imagine.

Q. You say you fell asleep?

A. I did.

Q. You say you intended to get into bed? 10

A. I did.

Q. Then, why didn't you leave the light on in Custer's room until you had undressed and got into bed?

A. Why didn't I?

Q. Yes.

A. Well, I don't know why I didn't; I suppose, maybe, because I just didn't, that was all.

Q. You didn't leave it on

A. No.

Q. Why? 20

A. I suppose I just didn't like it.

Q. Then you went into Custer's room in the dark?

A. I did.

Q. And you took your clothes, so much as you did take off, in the dark?

A. I took them off downstairs.

Q. You took something off in Custer's room, didn't you?

A. My shoes.

Q. Did you take them off in the dark?

A. Yes. 30

Q. And you got his bathrobe?

A. Yes.

Q. How did you know where it was?

A. It was in the closet.

Q. You went there in the dark?

A. Yes.

Mitchell—Cross.

- Q. And you got the bathrobe and put it on?
A. Yes.
- Q. And then lighted a cigarette?
A. Yes, sir.
- Q. And went to sleep on the couch?
A. Yes.
- 10 Q. Did the cigarette go out before you went to sleep?
A. I set the cigarette on the stand.
Q. You saw that in the dark?
A. It's right alongside of the couch.
Q. You also put on a pair of slippers, didn't you, in Custer's room?
A. I did.
Q. How did you know where they were?
A. They were in the closet.
Q. You went there in the dark?
A. Yes.
- 20 Q. And found the slippers?
A. Yes.
Q. And put them on?
A. Yes.
Q. You smoke the cigarette while you were lying on the couch?
A. Yes.
Q. And then put the cigarette on this stand and went to sleep?
A. Yes, sir.
- 30 Q. How long were you asleep when you heard the noise?
A. I couldn't say.
Q. How long were you awake after you finished your cigarette?
A. I went right off to sleep.
Q. And put the cigarette on the stand?
A. Yes, sir.

Mitchell—Cross.

Q. And went right to sleep?

A. Yes, sir.

BY THE COURT:

Q. Why didn't you go to bed?

A. I lay down on the couch to smoke.

Q. But you had finished your smoke, and you went in that room to go to bed; why didn't you go? 10

A. I lay down staring out of the window, just thinking.

Q. While it was dark?

A. Yes.

Q. What were you looking at?

A. I could see out of the window.

Q. Were you worried about anything?

A. Nothing in particular; I was just thinking.

Q. You had been criticised considerably for going to 20
the Slack house, hadn't you?

A. I had?

Q. Yes.

A. No.

Q. No one had ever spoken to you about going to the
Slack house?

A. Only my father.

Q. No one else?

A. No one else.

Q. You had not heard that people were talking about 30
your going to the Slack house?

A. By who?

Q. Anyone.

A. Only father.

Q. He had advised you against going there?

A. He had spoken to me about it.

Mitchell—Cross.

Q. And told you not to go?

A. He had never told me not to go.

Q. It wasn't his wish that you should go to that house?

A. He told me that people said that it wasn't right of me going there.

Q. Was this the thing that was worrying you when you when you were lying on the couch?

10 A. That worry me?

Q. Yes.

A. It never entered my mind.

BY THE COURT:

Q. What were you looking at out of the window?

A. Gazing out.

Q. You were lying on your back?

A. On my side.

20 Q. What could you see looking out of the window?

A. There's a house across the street.

Q. Could you see that?

A. Yes, sir.

Q. How high is the window above the couch?

A. The head of the couch was on a level with the window.

30 Q. What house could you see out of the window?

A. Mr. Maher's.

Q. How long did that interest you, the Maher house?

A. I couldn't say.

Q. Only a few minutes, didn't it?

A. Only a few seconds.

Q. You are certain of that?

A. Yes, sir.

Mitchell—Cross.

Q. You didn't hear any noises around the house at that time?

A. I heard a noise when I lay down to go to sleep.

Q. When you lay down did you hear a noise?

A. I did.

Q. What kind of a noise was it?

A. It was Mr. Thompson.

Q. Did you hear him go up the hall? 10

A. No, I heard him go out of his room, which I thought he was going to the bathroom, and I paid no attention to him.

Q. Did he go by your room?

A. No.

Q. Did you hear him go down the stairs?

A. No.

Q. Did Mr. Thompson go by your room at all?

A. No, not as I heard him.

Q. How long after you had lighted the cigarette was it that you heard the noise from Thompson's room? 20

A. I heard the noise, I think it was before I had lit the cigarette.

Q. How long had you been in Custer's room when you heard the noise?

A. I should judge about two or three minutes.

Q. Why didn't you get up and see where Mr. Thompson was going?

A. Why, because I thought Mr. Thompson was going to the bathroom. 30

Q. Well, you heard him walking up the hall, did you not?

A. I heard him come out of his room.

Q. Now, did you listen to hear where he was going?

A. No.

Mitchell—Cross.

Q. Well, hadn't Mrs. Slack said to you that she was suspicious of this man's actions?

A. Yes.

Q. Why didn't you go and see where he had gone?

A. I thought he was going to the bathroom.

Q. But you found out that he didn't go to the bathroom?

10 A. I didn't find out.

Q. Where did it sound as if he was going?

A. It sounded as if he was.

Q. You think he did go to the bathroom?

A. I think he did.

Q. And then went back to his room?

A. I didn't hear him go back; I heard him coming out of his room, and I drew the conclusion that he was going to the bathroom.

Q. Did you hear the door open?

20 A. I didn't hear the door open.

Q. How long were you awake listening to this?

A. I had a smoke, I wasn't listening for him in particular.

Q. You had no fears of what he was going to do?

A. No, not at that time.

Q. You were not suspicious of Thompson?

A. I was suspicious of him in a way.

Q. Of what?

30 A. He was a very peculiar man; you could never have a conversation with him; he wouldn't stand and talk with you—

Q. He didn't want to talk to you?

A. He wouldn't talk at any time; he would come in and go up to his room.

Q. He attended strictly to his own business?

A. Yes, he was just in and out.

Mitchell—Cross.

- Q. Did you hear him go back in his room?
 A. No.
 Q. Were you smoking at this time?
 A. I was.
 Q. You didn't pay any attention as to where Thompson went?
 A. No.
 Q. Then you put the cigarette on the tray and went to sleep, and you suddenly heard a noise? **10**
 A. Yes.
 Q. Where was that?
 A. On the stairs.
 Q. What did you hear?
 A. I heard Mrs. Slack speaking; I heard this noise, and I sat on the edge of the couch and I heard Mrs. Slack speak.
 Q. What did you hear her say?
 A. She said "Mr. Thompson, why should you make this alarm of fire when such a thing is not the case?" **20**
 Q. Then, from that remark, you took it that Mrs. Slack was coming back upstairs?
 A. Yes, sir.
 Q. Where were you then?
 A. Standing in the doorway.
 Q. Then you suddenly darted into Mrs. Slack's room I suppose?
 A. Yes, sir.
 Q. And you were able to get in there before Mrs. Slack or Mr. Thompson could see you? **30**
 A. It's only about two steps.
 Q. And you made a quick jump into her room?
 A. Yes.
 Q. Did Thompson go all the way up to her room?
 A. No.
 Q. He did not?
 A. No.

Mitchell—Cross.

- Q. How do you know?
A. He stopped; I heard him stop over near to Custer's door.
- Q. Do you know why he stopped there?
A. I don't know why.
- Q. Did you hear any remark of any kind?
A. No.
- 10 Q. Nothing was said there then?
A. No.
Q. Then Mrs. Slack came into the room?
A. Yes.
Q. And shut the door?
A. Yes, sir.
Q. And lock it?
A. Yes.
Q. Who turned on the light?
A. Mrs. Slack.
- 20 Q. Did she go over and turn on the light?
A. Yes.
Q. You are certain of that?
A. She went over and turned the light on.
Q. Then, you came out of the closet?
A. No, I came out before she had turned the light on.
Q. You came out of the closet quietly so she wouldn't hear you?
A. No; when she came in the door I stepped out of the closet.
- 30 Q. And the room was perfectly dark at that time?
A. It was.
Q. But she knew you were the only person that would step out of the closet; she could tell that you were the person that stepped out of the closet, couldn't she?
A. No.
Q. Did she jump?
A. She was startled.

Mitchell—Cross.

- Q. Did she make any exclamation?
 A. She could see me in the light of the window.
 Q. (Stenographer repeats the question).
 A. She did.
 Q. What did she say?
 A. What are you doing here?
 Q. She hadn't shut the door then into the hall?
 A. She had. 10
 Q. The closet is very near the door going into her room,
 isn't it?
 A. It is.
 Q. You were outside of the closet?
 A. When?
 Q. Standing in her room when she came in through her
 door?
 A. I don't quite understand.
 Q. When she entered the room, you were standing out-
 side of the closet? 20
 A. When she entered, I was standing in the doorway of
 the closet, when she entered the room.
 Q. You mean the closet door was open?
 A. The closet door was open.
 Q. Then, you had not gotten into the closet yet?
 A. I was coming out of the closet.
 Q. How long had you been in the closet?
 A. I should judge three or four minutes.
 Q. Three or four minutes?
 A. The time for them to come from downstairs up. 30
 Q. Now, when Mrs. Slack saw you there and she said,
 "What are you doing here, what did you say?"
 A. I said, "What does this man Thompson mean?"
 She said, "I don't know;" I said, "What was the idea of the
 thing?" she said "He called fire;" she said "Didn't you hear

Mitchell—Cross.

him?" I said "No;" she said, "He called fire, which brought me out."

Q. Is that all she said?

A. Then she went over and sat down in the chair.

Q. Is that all you said to her; did you say anything in response to these questions?

10 A. Yes, she went over and sat in the chair, and I sat on the side of the bed; I said, "This man Thompson is a peculiar man; I wonder what his reason was in calling 'Fire;' did you detect any fire;" she said "No"; I said "I wonder what his motive was in calling 'Fire?'" she said, "I don't know;" "Well," I said "I'll go out and throw him out if he does anything like that again." She said "Don't get excited;" she said "Perhaps he meant all right; maybe he did smell fire," she said.

Q. Why did you say, "I'll go out and throw him out;" what was the reason for making a statement of that kind?

20 A. Well, I thought his idea was of calling "Fire" so as to get Mrs. Slack's door open, perhaps to enter the room.

Q. But you were right near there with your door open; you knew that?

A. Yes.

Q. And you knew that if Mr. Thompson did anything of that kind, all Mrs. Slack had to do would be to call and you would be right there?

A. If she had the opportunity to call.

Q. She was right in the next room to you?

30 A. Yes, sir.

Q. And you could readily hear any conversation in the room in which you were; you could overhear any conversation which took place in Mrs. Slack's room in the room in which you were?

A. (No answer).

Q. Could you?

Mitchell—Cross.

- A. Yes.
- Q. You could hear that?
- A. I don't know whether it's possible.
- Q. Who invited you to sit on the bed?
- A. No one.
- Q. Why did you go over and sit on the bed?
- A. Because there was a chair in the room which she was occupying— 10
- Q. Only one chair in the room?
- A. Yes.
- Q. No other chairs in the room?
- A. No.
- Q. Wasn't there any couch in this room?
- A. No.
- Q. No window-seat?
- A. No.
- Q. Nothing to sit on but the bed?
- A. That's all. 20
- Q. Why didn't you go back to Mr. Thompson and ask him about why he gave this alarm of fire?
- A. Because Mrs. Slack wouldn't allow me to.
- Q. Did she make any statement that she wouldn't allow you to?
- A. She said perhaps it would make trouble.
- Q. Well, what kind of trouble could there be?
- A. She thought, perhaps, maybe this Mr. Thompson might think that I had no right to ask him the question, and he and I might get into an argument, and it might result into blows and cause trouble. 30

BY THE CROSS:

- Q. Is that what she said she thought?
- A. No; she said it might cause trouble.

Mitchell—Cross.

- Q. You then sat on the bed for a while and then you walked around the room to find a magazine?
- A. Yes.
- Q. The *Cosmopolitan*?
- A. Yes.
- Q. Who suggested that you lie on the bed?
- A. Who suggested that I lie on the bed?
- 10 Q. Yes.
- A. No one.
- Q. You thought that you had the privilege of lying upon that bed without anyone suggesting that you do that?
- A. Mrs. Slack had asked me not to leave her.
- Q. But you could have sat upon the bed, could you not?
- A. I was sitting there for a little while.
- Q. Why didn't you continue to sit on the bed?
- A. Well, I don't know why; I just lay over on the bed and started to read.
- 20 Q. The baby was right in the crib right near the bed?
- A. It was.
- Q. Did you take a pillow from the head of the bed?
- A. I did.
- Q. Did Mrs. Slack say anything about that when you picked the pillow up and put it at the foot of the bed; did she say anything?
- A. I didn't think Mrs. Slack took notice of it.
- Q. Who suggested that you read this story out loud?
- A. No one; I was reading the paper; it was only a short
- 30 piece.
- Q. You read the paper first and the magazine afterwards?
- A. The paper and magazine first, and the paper afterwards.
- Q. Then you didn't read aloud any stories out of the magazine?
- A. No, sir.

Mitchell—Cross.

Q. It was when you had the newspaper that you read the stories.

A. Yes, sir.

Q. How many did you read out of the newspaper?

A. I think two small copies.

Q. Did you read them aloud?

A. Not very loud, because if I read loud it would wake the baby. 10

Q. You were right near the baby's crib?

A. I was.

Q. How far away was Mrs. Slack from you?

A. I should judge about two feet.

Q. She was right close to your head?

A. She was sitting right there, and I was lying this way (indicating).

Q. Your head was right close to Mrs. Slack, about two feet away?

A. Yes, sir. 20

Q. Was she sitting with her back or the side of her body towards you?

A. The side of her body towards me.

Q. Which side?

A. Her left side.

Q. Then she was really sitting facing you, or facing the crib?

A. No, she didn't face the crib.

Q. Which way was she sitting from the crib?

A. The crib was right there and she was here (indicating). 30

Q. The crib was to her left?

A. Yes.

Q. And she sat between the crib and you on the bed?

A. No, she sat furthest away from me; I was between the crib and her.

Mitchell—Cross.

- Q. She had her back to the crib?
A. No, her side.
Q. Which side?
A. Her left side.
Q. Where was the lamp?
A. On the radiator.
Q. How far away?
10 A. Right over here (indicating), sewing.
Q. She was close to the radiator?
A. Yes.
Q. Quite close?
A. Yes.
Q. And did you talk to her while she was sitting there?
A. Yes, sir.
Q. How long did you talk to her?
A. Well, we had a talk about this man Thompson, and
20 then after I got through looking—well, we didn't talk much;
she kept sewing and I was reading the paper, and fell off to
sleep.
Q. You first of all started to read the magazine, and then
you dropped the magazine and went over and got the news-
paper?
A. Yes.
Q. You then came back to the bed and started to read
some stories out of the newspaper, and then fell asleep?
A. Yes.
Q. How long did that all take, about?
30 A. That I couldn't say.
Q. The house was quiet then, wasn't it?
A. Yes.
Q. And you could hear most any noise in the house,
could you not?
A. Well, yes.

Mitchell—Cross.

Q. At three o'clock in the morning there were no noises outside?

A. No.

Q. You didn't hear any noises?

A. No, sir.

Q. And you were talking to Mrs. Slack about as loudly as I am talking to you?

A. No, I don't think so. 10

Q. Were you whispering?

A. No.

Q. When the knock came on the door did you do any whispering to Mrs. Slack?

A. I didn't hear any knock on the door.

Q. You didn't hear it?

A. No.

Q. You went to sleep on the bed?

A. Yes.

Q. What time did you wake, about? 20

A. That I couldn't say; it was light.

Q. Pretty close to eight o'clock?

A. I imagine so.

Q. You imagine it was very close to eight o'clock?

A. Around half-past seven, or around there, I imagine.

Q. What wakened you?

A. Well, really, I don't know.

Q. What's your best recollection?

A. I don't think there was anything in particular woke me, just naturally woke up. 30

Q. Nothing disturbed you?

A. Nothing at all.

Q. No ringing of the telephone?

A. No.

Q. And you just naturally woke up?

A. Yes, sir.

Mitchell—Cross.

- Q. Where was Mrs. Slack?
 A. Sitting in the chair.
 Q. Still sitting in the chair?
 A. Yes.
 Q. Working?
 A. Yes.
 Q. Was the light still going?
 10 A. The light was out.
 Q. Where was the baby?
 A. In the crib.
 Q. Did the baby get out of the crib?
 A. At that time?
 Q. Yes.
 A. No.
 Q. Was the baby awake?
 A. The baby woke up a few minutes after I had.
 Q. Did you speak or say anything to awaken the baby?
 20 A. No.
 Q. Neither did Mrs. Slack?
 A. When I woke up, she made the remark—I said “I’m fine protection; to lie down and go to sleep;” she said “You certainly were doing some sleeping, too.”
 Q. You knew Mrs. Slack had locked the door when you came in there?
 A. Yes.
 Q. You knew the door was locked?
 A. Yes.
 30 Q. You knew that so far as anybody coming from outside of that room was concerned, they would have to break in the door?
 A. Not necessarily, unless they had a key to open it.
 Q. What kind of a lock was on that door?
 A. A Yale.

Mitchell—Cross.

Q. And you knew that unless someone had a key to that Yale lock they couldn't get into that room?

A. Yes.

Q. Now, you had been awake about how long when the telephone rang?

A. I should judge about 15 or 20 minutes.

Q. And the telephone rang; you heard that distinctly?

A. Yes.

10

Q. And Mrs. Slack got up and went downstairs?

A. Yes.

Q. When the telephone rang, was Mrs. Slack on the bed?

A. No.

Q. She hadn't got over on the bed at all?

A. No.

Q. Did you suggest to her anything about taking a rest?

A. No.

Q. You never said anything?

A. No.

20

Q. The telephone rang while she was sitting on the chair near the radiator?

A. Yes, sir.

Q. And it was light enough for her to be working there?

A. Yes.

Q. She got up, unlocked the door and went downstairs?

A. Yes, sir.

Q. How long was she downstairs?

A. Oh, possibly five or ten minutes.

Q. Did you hear any conversation—the house is quiet enough to hear any conversation over the telephone?

30

A. I don't remember any conversation; I wasn't listening.

Q. The door was open?

A. Yes.

Q. Your door was open?

A. Yes.

Mitchell—Cross.

Q. You didn't hear what Mrs. Slack said over the telephone?

A. All I remember, Mrs. Slack was saying, "Yes, we're going and I will call you later."

Q. You heard that distinctly?

A. Yes, sir.

10 Q. When she came upstairs what did you say to her, did you ask her who it was?

A. No, sir.

Q. What did you say to her?

A. When she came upstairs, she said "It was mother wanted to know"—

Q. You didn't ask her who it was on the telephone?

A. No.

Q. She said "It was mother?"

A. Yes.

Q. What did you say?

20 A. I said "What did she want?" She said, "She wanted to know what time we were going over."

Q. To dinner?

A. Yes.

Q. What did you say?

A. I don't recall saying anything.

Q. Did she ask you to fix any time when you could go over, or anything of that kind?

A. No.

30 Q. How did you know when you were to go over there?

A. How did I know?

Q. Yes, what time you were to go?

A. Well, Mrs. Slack was going to tell me, I thought.

Q. She hadn't told you up to this time?

A. No.

Q. She was back in the room there talking to you?

A. Yes.

Mitchell—Cross.

- Q. How was she dressed?
 A. She had on a bathrobe.
 Q. Did she have any slippers on?
 A. I didn't take notice.
 Q. What did you do right after she came in there, what did you do in the room?
 Q. What did I do?
 Q. Yes. 10
 A. I was playing with the baby.
 Q. When did the baby come over on you?
 A. When Mrs. Slack was going down to the telephone.
 Q. Who played with the baby while she was down at the telephone?
 A. The baby went down with her.
 Q. When did the baby come back?
 A. When she brought him back.
 Q. And put him on the bed?
 A. Yes. 20
 Q. And you started to play with him?
 A. Yes.
 Q. How long were you in the room when Mr. Bowne came in the room?
 A. From the time that they had called "Fire" in the morning?
 Q. No, from the time Mrs. Slack came down to the telephone; from the time that Mrs. Slack returned from answering the telephone, how long were you in the room before Mr. Bowne came in? 30
 A. I don't understand that.
 Q. What was the time that elapsed between when Mrs. Slack came into the room and Mr. Bowne came into the room?
 A. Two or three minutes.
 Q. She had hardly got in the room when he came in?

Mitchell—Cross.

- A. Yes.
- Q. The baby was on the bed when Mr. Bowne came in?
- A. Yes, sir.
- Q. And Mrs. Slack was on the bed?
- A. Yes.
- Q. Where was she on the bed?
- A. Sitting on the edge of the bed.
- 10 Q. Which edge?
- A. Nearest the door.
- Q. Now, you had never seen Mr. Bowne before?
- A. No.
- Q. You didn't know who he was?
- A. No.
- Q. When he walked into the room you were considerably disturbed, were you not?
- A. Yes; I sat right up just as soon as I saw Mr. Bowne.
- Q. You realized that it was rather a serious situation for
- 20 you, did you not?
- A. No.
- Q. You did not?
- A. No.
- Q. You didn't think so?
- A. No.
- Q. What did Mr. Bowne say to you?
- A. He asked me if this woman was my wife.
- Q. Did that indicate to you anything?
- A. Yes.
- 30 Q. What did it indicate?
- A. It indicated that this man Bowne had come there, and then I saw then where this man Bowne had come in the room and gave me the indication that there was somebody had planned some dirty work, or something.
- Q. In other words, they had caught you in bed with another man's wife?

Mitchell—Cross.

A. They had caught me in the room with this other man's wife.

Q. Then you realized it was a serious situation?

A. I didn't realize at that time it was serious.

Q. You did not?

A. No.

Q. Were you disturbed at all; did it make you nervous?

A. No.

10

Q. Not at all?

A. No.

Q. Did you attempt to make any explanation of how you were there?

A. No.

Q. You didn't say anything about it?

A. No.

Q. You got up and got dressed?

A. I put on my shoes and vest and coat and collar.

Q. In the room?

20

A. In Mr. Custer's room.

Q. Then you didn't go downstairs for those?

A. Yes.

Q. Did you go downstairs and get them and bring them up in Custer's room and put them on there?

A. Yes.

Q. Why didn't you do it downstairs?

A. I just did it.

Q. You were rather nervous?

A. I don't think so.

30

Q. What was the reason of your going back upstairs?

A. There was a looking glass up there to put on my collar and tie with.

Q. And there wasn't any looking glass downstairs for you to look at?

A. The only one was in the sideboard.

Mitchell—Cross.

- Q. In the dining room?
 A. Yes.
 Q. And where did you have your collars, cuffs and neck-tie?
 A. Lying on the reception hall table.
 Q. And that is quite near to the dining room?
 A. Yes.
 10 Q. It was nearer to the dining room than it was to Custer's room?
 A. It was more convenient in Custer's room than in the dining room.
 Q. It took quite a few minutes for you to get dressed?
 A. Yes.
 Q. You were not in a hurry?
 A. No.
 Q. And you took your time?
 A. I took my time.
 20 Q. Then you went back upstairs, and did you have a talk with Mr. Bowne and Mrs. Slack?
 A. There was not much said, no.
 Q. What was said?
 A. Mrs. Slack asked Mr. Bowne what the meaning of it was, and he said, "The meaning of it is, that your Mr. Slack wants a divorce."
 Q. Then Mrs. Slack knew the purpose of his visit, didn't she?
 A. She learned it then. She asked if her Mr. Slack was in town, and he said "No."
 30 Q. She then knew that the evidence of your being in the room there with her was to be used for the purpose of getting a divorce?

MR. DEVLIN: I object to that.

MR. SCAMMELL: Question withdrawn.

Mitchell—Cross.

Q. When you went back upstairs to put on your collar and other clothing, what was said by Mr. Bowne to Mrs. Slack about your being in the room with her?

A. I don't recall.

Q. Well, was there anything said there which indicated that your being in the room with her would be used for getting a divorce, or words to that effect?

A. I don't recall a thing like that said then, no.

10

Q. When was it said?

A. I recall when I was going down the avenue with Mr. Bowne he said to me, "And you know a thing like this places a man in a very bad predicament;" "Well," I said "Yes, I suppose it does in the eyes of the people;" he said, "Those who draw their conclusions is the public;" I said, "It is only friendship, and nothing else;" he said, "If you are in a room with a married woman for a few minutes, that is grounds for divorce;" that was told to me by Mr. Bowne going down Stuyvesant Avenue.

20

Q. What was said to you in the presence of Mrs. Slack about getting a divorce?

A. I don't recall anything was said in regards to that only that Mr. Bowne said, "Your Mr. Slack wants a divorce."

Q. And Mrs. Slack heard that?

A. She did.

Q. While you were there you heard Mrs. Slack call up her mother?

A. I did.

30

Q. And what did you hear her say?

A. She said, "Mother, a man here is going to take Ann down to Slack's," and she said "Suppose they arrest him;" and she said, I think the mother said—the mother had told her, I think, that she said she would go my bail, or something

Mitchell—Cross.

similar to that; I don't just remember; I didn't impress it on my mind at all.

Q. Did she tell you that her mother had said she would go your bail if necessary?

A. Yes, sir.

Q. Then you left with Mr. Bowne and went to Mr. Slack's?

10

BY THE COURT:

Q. Do you smoke a particular brand of cigarettes?

A. Sweet Caporal.

Q. Have you any with you now?

A. Yes, sir.

Q. Where do you carry them?

A. Right here (indicating his coat pocket).

Q. Is Mr. Custer a cigarette smoker, too?

A. Yes.

20

Q. Where did you get this cigarette you smoked this night?

A. I had it in my coat pocket.

Q. Where?

A. With me.

Q. Where? Your coat was downstairs?

A. I think I had them in my vest.

Q. Where?

A. I had it in my pocket there, in my pants pocket; I always carry it—

30

Q. You just said that it was in your coat pocket, and then in your vest?

A. I carry them in different places.

Q. Why did you say you carried it in your vest pocket?

A. As a rule I always generally carry them there.

Q. Were they there this night?

Mitchell—Cross—Mrs. Slack (Re-Called)—Direct.
L. C. Slack (Re-Called)—Direct.

A. I have taken them out and put them in my pants' pocket; I generally carry them in my vest pocket.

GRACE POPE SLACK, the above-named defendant, being recalled in her own behalf, testified as follows: 10

Direct Examination by Mr. Devlin:

Q. Who obtained your divorce from your former husband?

A. I did.

Q. Were the rooms upstairs in your house that evening all open?

A. They were, except my bedroom, and I couldn't close the door because it wouldn't catch. 20

DEFENDANT RESTS.

LE ROI C. SLACK being recalled in his own behalf in rebuttal, testified as follows:

Direct Examination by Mr. Scammell:

Q. Mr. Slack, I show you an envelope and letter addressed to Le Roi C. Slack, dated Trenton, January 5, 1917, and the letter addressed to you "My darling Husband," signed "Grayce;" and ask you whether you received those in due course of mail? 30

A. I did.

Q. In whose handwriting are they?

A. In the handwriting of Mrs. Slack.

L. C. Slack (Re-Called)—Direct.

Q. You received that from Mrs. Slack?

A. Yes, sir.

MR. SCAMMELL: I offer it in evidence.

Said letter and envelope are marked "Exhibit P 5."

10

Q. I show you letter upon the paper of the Magnolia Farm, "Sunday," consisting of three pages, and ask you whether that is in your wife's handwriting?

A. Yes, sir, it is in Mrs. Slack's handwriting.

Q. Do you know when you received that?

A. There is no date on it.

Q. About when?

A. About October, 1916.

20

MR. SCAMMELL: I offer it in evidence.

Said letter is marked "Exhibit P 6."

Q. What did Mrs. Slack tell you was her age?

A. Mrs. Slack told me that she was a month younger than I.

Q. What is your age?

A. 29.

30

Q. The information, Mr. Slack, that you had as to the action of the neighbors and the boarders came from whom?

A. Came from Mrs. Slack.

Q. And your replies, or the statements which you made in those letters there are from information she had given you?

A. It was.

*L. C. Slack (Re-Called)—Cross.**Cross Examination by Mr. Devlin:*

Q. Mr. Slack, I would like to ask you when did you first receive any information that caused you to doubt your wife?

A. About October, 1916.

Q. Whom did you receive that information from?

A. From Mrs. Slack.

Q. Your own wife?

10

A. Yes, sir.

Q. Did you ever receive it from anyone else?

A. No.

Q. Can you point to the particular letter, or the particular act that caused you to have suspicion?

A. Yes.

Q. What was it?

A. Mrs. Slack wrote me a letter and enclosed two other letters which she requested me to copy and mail to these neighbors who were talking or complaining.

20

D. Did you yourself employ or cause to be employed these detectives?

A. I did.

Q. Were you in Detroit, Michigan, or the Middle West?

A. Yes.

Q. Whose hands did you place the matter of employing detectives in?

A. Mr. Slack's, my father.

Q. Had your father ever written to you any information about your wife?

30

A. Not until after I had asked for his advise regarding these letters that I have just spoken of.

Q. You asked his advise in that matter?

A. Yes, sir.

Q. Did you know who had been employed?

A. Yes.

L. C. Slack (Re-Called)—Cross.

Q. Up to that time, Mr. Slack, had you and your wife always lived on good terms?

A. Not exactly what I would call good terms, but I never had suspicions of her morality.

Q. You had no suspicions of her fidelity to her marriage vows?

A. None whatever.

10 Q. You never had any suspicion of Andrew Mitchell?

A. None whatever.

Q. Nor anyone else?

A. No.

Q. You believed your wife was a virtuous woman?

A. I believed she was.

Q. And these letters were the first things—

A. Yes, and not even then until I thought it over.

Q. How do you explain the tone of your letters after that?

20 A. I didn't want to accuse her of anything until I had found out.

Q. I observe you address her affectionately as "My darling little wife," and discourage any suspicions by anyone else; you speak ill of the neighbors who dare suspect her after that?

A. I think not.

30 Q. I think that the letter of September 28; I read you an excerpt from that: "Now, dear about the letter you want me to write Mr. Mitchell. I grant you that you are not asking too much of me to do that for you, but I have thought a lot about it the past week; have read that letter I wrote you over, and it seems to me that if I should send that letter to Mr. Mitchell I would be doing you more harm than good; I would be putting you down on a level with a lot of cheap gossips, and that I don't care to do. I want you to be above

L. C. Slack (Re-Called)—Cross.

noticing or paying any attention to that sort of thing. You know what is right and what is wrong, and what a lot of cheap gossiping neighbors say ought not to be given any consideration. I don't want to put you down on the same level with Mrs. Mayer, and a letter like the one I doped out would do that very thing. You have only one life to live, and if you are going to pay any attention to gossip it will never be a happy life even if you had a million dollars. Furthermore, such a letter as you want me to send Mr. Mitchell would not stop the gossip in the slightest, and if anything, dear, it would increase it if the letter was made use of. I hope, dear, you can see it my way, for I want you to be happy and above gossip. I am enclosing your \$20.00. Address me care General Delivery. All my love and kisses for you and baby, Your loving hub, Bud." Doesn't that letter indicate that even at that time you had the most tender feelings for your wife and implicit faith in her? 10

A. Yes, sir. 20

Q. Yet this letter was written by you after she requested you to write these letters to the neighbors?

A. I say I didn't suspect her until after I had given it some thought.

Q. I observe by its language you convey the impression that you have given the letters considerable thought and decided not to write them?

A. In this letter to Mr. Mitchell—I never wrote a letter to Mrs. Maher.

Q. I am reading to you from a letter of September 28, and by its language, as I have read it to you, it indicates you have given considerable thought to the writing of the letters to these neighbors, and you even say if you wrote the letter it wouldn't stop this idle gossip? 30

A. If I said it that's the way I felt about it at that time.

L. C. Slack (Re-Called)—Cross.

Q. At that time, Mr. Slack, your letter indicates that notwithstanding the gossip you advised your wife that you did not want her to be put down on the same level with some of these neighbors, and that you had implicit faith in her and affection for her?

A. Yes.

10 Q. That is September 28; how much after that date was it that you got any substantial suspicion about your wife?

A. I hadn't any substantial suspicion until I received word from my father December 26.

Q. Was it because of information you received from some person other than your wife that you lost faith in her?

A. It was not.

Q. You have read all these letters that were put in evidence, Nos. "Exhibits 1, 2, 3, 4, 5 and 6?"

A. No, I have not.

20 Q. And excepting your letter of January 13, 1917, every letter you have written to your wife expresses faith and affection?

A. Yes, sir.

Q. Did you ever write a letter to her, excepting the letter of January 30, did you ever write a letter to your wife expressing lack of faith in her fidelity or lack of affection?

A. December 26.

Q. Was that the first letter you ever wrote?

A. Yes.

30 Q. And yet you were asked to write a letter to these neighbors early in September, and you didn't write a communication to your wife expressing this belief in her until you had received information of what happened on Christmas Eve?

A. No.

Q. Can you explain why you didn't do that?

L. C. Slack (Re-Called)—Cross.

A. Because I didn't feel justified that I was accusing her of anything unless I had received such information.

Q. Had you been receiving information from any person other than your wife, stating things that would cause you to lose faith in her?

A. I had not.

Q. How did you come then to direct your father to employ detectives about two weeks before Christmas; what information had you got? 10

A. I didn't get any; I just surmised.

Q. What prompted you to hire detectives at that time?

A. These letters that I began thinking more seriously about from Mrs. Slack.

Q. The letters we have been just speaking about?

A. No, later than that. I wrote my father whether I should send these letters to the neighbors as Mrs. Slack wanted me to; he wrote back that I should not, and about the same time I received another letter from Mrs. Slack with another letter enclosed, which she asked me to copy and send to Mr. John Mitchell, and she asked me in that letter not to state the name of Mrs. Barnhardt for, I think, three reasons, one of which was she didn't want the neighbors to know where she was getting her news from. 20

Q. Can you tell us what month you got that letter in?

A. No.

Q. You can't tell?

A. Well, I am not sure, but I think possibly that was in October or November. 30

Q. Have you got that letter with you?

A. It is here; Mrs. Slack never dated her letters.

Q. After receiving this letter ("Exhibit P 6") did you then communicate with anybody else in Trenton?

A. I didn't receive any; about the same time I received word from my father not to write those letters.

L. C. Slack (Re-Called)—Cross.

Q. Then, he agreed with you on that question?

A. Yes, sir.

Q. Was it this letter only "P 6," that prompted you to request your father to get detectives?

A. It was.

Q. Will you be kind enough—

A. At least I think it was this letter; it may have been
10 another.

Q. Can you point to that letter and show where there is any thought or suggestion that inspired you in this?

A. Right here (indicating).

Q. Read it?

A. "Your letter, dear, is very good to Mr. Mitchell; the only part I had to change was the first part, as I did not want Mrs. Barnhardt's name mentioned, as we are renting her place and it might make a little trouble; and another thing, I do not want them to know just where I get my news
20 from, for if they found out, they would not let her in on it, and in that way I could not find out when they were saying nasty things about me; so, dear, please send Mr. Mitchell's letter from where you are living, or they will say I made it up, as there would be no postmark on it, and another thing, it would look better if copied over in ink; I am sure he would say that I wrote it and sent it to him, and not you. Now, dear, I hope you will send it for me, as I think it would do a lot of good, and I am sure it would do a lot of good if you should send one to her also; but I will not ask you to if
30 you do not care to, for I surely do appreciate your writing one to Mr. Mitchell."

Q. Is that all you think was sufficient to prompt you to employ detectives?

A. No, that didn't prompt me at once.

Q. What in addition to that prompted you to do it, what in addition to the things that are in this letter?

L. C. Slack (Re-Called)—Cross.

A. I thought about my father's advising me not to send such letters.

Q. Anything else that prompted you besides that?

A. No.

Q. Can you point to me any substantial difference between the thought conveyed in this letter and the thought conveyed in the first letter, "P 6," and "P 1, 2, 3, 4 and 5?"

A. She didn't want in the second letter for me to mention the name of Mrs. Barnhardt. 10

Q. She gave you a reason for not wanting you to mention Mrs. Barnhardt's name?

THE COURT: That appears by the letter.

Q. Is there anything else that prompted you besides what you have told us?

A. That's all.

Q. Didn't some person, your father, suggest to you the employment of detectives? 20

A. He did not.

Q. Did any person write you inside of the City of Trenton, suggesting you should employ detectives?

A. No.

Q. Did you want to get rid of your wife?

A. I did not.

Q. If this thing had not occurred, did you want to get rid of your wife?

A. I did not. 30

Q. If this thing had not occurred, would you be glad to be with your wife to-day?

A. I would.

Q. And your son?

A. Yes, sir.

L. G. Slack (Re-Called)—Cross.

Q. What reason do you offer for not going oftener than you did the last year or two?

A. The distance was so great that the expense was too much.

Q. You couldn't afford it?

A. No.

10 Q. Your income didn't allow it?

A. Didn't allow it, no.

BY THE COURT:

Q. Why didn't you get work nearer home so you could be with your wife and child?

A. I always liked the road, for one reason.

Q. Didn't you like your wife?

A. I did; she didn't want to be on the road.

20 Q. Didn't you realize that she was entitled to your protection as against other men?

A. Yes.

Q. How could you expect her to be on the road with you, she having the baby?

A. I never could understand why she couldn't take care of the baby on the road; I wasn't making four or five towns a day; I was in a town five or six months or more at a time.

Q. How long before Christmas did you request your father to hire detectives?

30 A. I wrote him about the first of December, if I remember right.

Q. What caused you to write him then?

A. This letter.

Q. That was written in October?

A. I didn't write my father until I fully made up my mind that I wanted to find out.

Miss Slack—Direct.

LEILA SLACK, a witness produced on behalf of the defendant, being duly sworn, testified in rebuttal as follows:

Direct Examination by Mr. Scammell:

Q. Miss Slack, you are the sister of Le Roi Slack, the petitioner in this cause? 10

A. I am.

Q. You live with your father on Rutherford Avenue in this city?

A. I do.

Q. Were you home on the morning of December 25, when Mr. Bowne and Mr. Mitchell were talking to your father in your house?

A. I was.

Q. Did you overhear a conversation which took place between Mr. Mitchell, Mr. Bowne and your father? 20

A. I did.

Q. Where were you at the time?

A. I was at the top of the front stairs, peeking down on the banister.

Q. Did you see Mr. Mitchell?

A. I did.

Q. What was his appearance?

A. Well, I didn't notice by his face that he was excited, but later on, when he was talking I could tell by his voice. 30

Q. That he was?

A. Very much excited.

Q. Did you overhear the conversation which took place between your father, Mr. Mitchell and Mr. Bowne at that time?

A. I did.

Miss Slack—Direct—Cross.

MR. DEVLIN: I object to this line of questions.

THE COURT: What is your purpose, Mr. Scammell?

MR. SCAMMELL: I offer it simply for the purpose of affecting his creditability.

THE COURT: I will admit it.

10 Q. What time was it in the morning that they came to the house?

A. It was between a quarter of eight and eight o'clock.

Q. Between a quarter of eight and eight o'clock?

A. Yes.

Q. Did you hear Mr. Bowne say to your father, in the presence of Mr. Mitchell, "Mr. Slack, this is Mr. Mitchell: I caught him in bed with your son's wife this morning;" and in response to that did you hear Mr. Mitchell say, "This is the first time that I stayed in bed with her all night;" then

20 did you hear your father say to Mr. Mitchell, "What's the use of saying that, Mr. Mitchell," and then did you hear Mr. Bowne say, "You went to bed with her two weeks ago to-night," and then your father said to Mr. Mitchell, "Mr. Mitchell, I have known your father a long time and have always had a great deal of respect for him; I understand your relations with Mrs. Slack have been a source of worry to him; I hope this will be a lesson to you;" and in response to which, Mr. Mitchell said, "I think it will."

A. I did.

30

Cross Examination by Mr. Devlin:

Q. Are you sure that the thought conveyed in that language by Mr. Scammell was expressed in detail?

A. I am.

Q. Are you willing to say whether the word "room, bed"

Miss Slack—Cross.

or "house" was used when it was said that he stayed there all night?

A. I am.

Q. Can you say which of the three was used?

A. "Bed."

Q. What is it that fastens it in your mind?

A. I had never been used to anything of this kind at all, and it impressed me greatly; and being my brother, I was very much excited over the whole affair. 10

Q. Have you discussed this thing with your brother?

A. I never have.

Q. Had you discussed this with your brother or father before you came to this trial?

A. Do you mean the conversation?

A. I had.

Q. Often?

A. Well, I don't know how often; of course, my brother came home and I told him the circumstances.

Q. I mean, did you discuss this particular conversation in preparation for the trial? 20

A. No.

Q. I mean, in preparation for this trial had you discussed with your brother and father what this conversation was that took place with Mitchell that morning?

A. I had discussed it with my brother, and also with Mr. Bowne and my father, to be sure that I overheard the conversation correctly.

Q. The first time you discussed it with them, did you have the same version of that language as you have now? 30

A. I did.

Q. There was no difference at all?

A. No difference at all.

Q. Had you written down anything?

A. I had not.

Miss Slack—Cross.

Q. You had just fixed it in your memory?

A. I certainly had.

Q. When you were in the house that morning, when Mitchell arrived there with Bowne in your father's house, what part of the home were you in?

A. In bed when the doorbell rang.

Q. Where when they arrived?

10 A. At the top of the stairs looking down to the floor hall.

Q. What room did they enter?

A. They entered the hall and went in the parlor; they came in the front door and into the hall downstairs, and that's where I saw them; and I couldn't see them when they went in the parlor.

Q. Where did the conversation take place?

A. In the parlor.

Q. You couldn't see them?

20 A. No.

Q. Was the banister where you stood directly over--

A. The banister is directly over the hall; it is an open stairway,—directly over the hall, and to the right is an archway that goes into the parlor, and no doors and no curtains except very thin ones, and they are only about this wide (indicating).

Q. And you heard the sound come up the stairway?

A. Yes.

Q. How long did the conversation last?

30 A. I should imagine it lasted about from—the whole time, that is, when papa was trying to get Mr. Scamell on the 'phone until, I should say, Mr. Mitchell was in the house between ten and fifteen minutes.

Q. Before the doorbell rang, did you know they were coming?

A. I suspected.

Miss Slack—Cross—J. C. Slack (Re-Called)—Direct.

Q. Had you received information?

A. My father was up there that night, and Mr. Bowne and Mr. Thompson told him to go home, they would close the case. I was unable to sleep the rest of the night; papa came home and told what was going on, and I couldn't get it off my mind; and as soon as the doorbell rang, I jumped out of bed, and papa was downstairs, and I peeped over the banister to see who it was, and I saw Mr. Mitchell and Mr. Bowne. 10

JACOB C. SLACK, being recalled in rebuttal,
testified as follows:

Direct Examination by Mr. Scammell:

Q. Mr. Slack, from the time that you went into the Slack house, that is, your son's house on Stuyvesant Avenue, until you left, did you see any light in Mrs. Slack's room? 20

A. No, sir.

Q. While you were in the house did you overhear any reading or talking or conversation going on in the front room?

A. No, sir.

Q. About how far is the rear room or Thompson's room, which I believe you testified you were in, from the front room?

A. About 30 feet.

Q. When you left the house, did you observe the front room? 30

A. I did.

Q. To see whether there was any light there?

A. I did.

Q. Was there any light there?

A. I couldn't see any.

J. C. Slack (Re-Called)—Direct.

Q. Were you in a position to see whether there was any light there?

A. I think I was.

Q. Was it in darkness?

A. Absolutely in complete darkness.

Q. Did you examine the front room in the Slack residence this morning?

10 A. I did.

Q. Was there a radiator on the left of the room?

A. Yes, sir.

Q. What height?

A. 3 feet 4 inches about.

Q. What was the distance from the radiator to the end of the bed there at that time?

A. About 3 feet 6 inches.

Q. Mr. Slack, on the morning of Christmas, the 25th of December, 1916, when Mr. Mitchell was in your home, in your presence and in the presence of Mr. Bowne, did Mr. Bowne say to you, "Mr. Slack, this is Mr. Mitchell; I caught him in bed with your son's wife this morning;" and did he, Mitchell, in response to that say, "This is the first time I have stayed in bed with Mrs. Slack all night;" and did you, in response to that say, "What's the use of saying that, Mr. Mitchell?" and did Mr. Bowne say to him, "You went to bed with her two weeks ago to-night;" and did you then say to Mr. Mitchell, "Mr. Mitchell, I have known your father a long time and have always had a great deal of respect for him; I understand your relations with Mrs. Slack have been a source of worryment to him, and I hope this will be a lesson to you;" and did Mr. Mitchell reply, "I think it will?"

30

A. Yes, sir.

*J. C. Slack (Re-Called)—Cross.**Cross Examination by Mr. Devlin:*

Q. Mr. Devlin, as you left the house that morning it was around three o'clock, wasn't it?

A. Yes.

Q. What observation did you make to see if any light was in that room?

A. I went across in the park and stood in Maple Avenue 10 and looked up at the windows.

Q. How do you know whether the shades were up or down?

A. I don't.

Q. Did you see a lamp there this morning when you were in there this morning?

A. On the table.

Q. Well, if there was a shaded lamp used, would you be able, do you think, to see the light?

A. I think I could through the side of the curtain. 20

Q. You think so?

A. Yes.

Q. Did you make any effort to observe from the door of the room before you left the house that morning, if a light was to be seen?

A. I merely looked as I went out, out the front way, whether there was a light in that room.

Q. You looked at the front door?

A. Yes, sir.

Q. What steps did you go down, the back or front? 30

A. The back stairs.

Q. Could you, from where you stood at, the head of the back stairs, see this front bedroom door?

A. Yes.

Q. There's a slight offset?

A. Yes.

J. C. Slack (Re-Called)—Cross.

Q. Then you would see only part of the front door?

A. No, I could see it all.

Q. In regard to this conversation you had at your home that morning, Christmas morning, have you talked about this conversation with any person since it occurred?

A. I certainly have.

10 Q. Have you compared your recollection of that conversation with the recollection of your daughter and Mr. Bowne?

A. My daughter and I talked it over to see if our recollections tallied, and they did.

Q. Did you compare it with Mr. Bowne's version of it?

A. No, sir.

Q. How many times do you think you have compared that conversation?

A. Not more than once, or maybe twice.

Q. Neither did you make any written notes of it?

20 A. Not between ourselves, I have made notes for my counsel.

Q. You didn't make written notes any time, did you?

A. Yes.

Q. And since then you have depended entirely on your memory?

A. Yes.

Q. How many times do you think your daughter has compared your recollections?

A. We have talked it over several times.

30 Q. For what purpose?

A. To see if we agreed in our statements.

Q. Did you disagree?

A. I don't recall we did essentially; our understanding was exactly the same.

Q. Did you disagree as to any particular part of the thought expressed that day?

*J. C. Slack (Re-Called)—Cross.
Bowne (Re-Called)—Direct.*

- A. No, sir.
- Q. Did you disagree as to what words were used?
- A. We didn't attach any great importance to the exact words that were used?
- A. You did not?
- A. No.
- Q. Do you know whether your daughter did? 10
- A. I don't think so.
- Q. Was there any distinction between the word "room" and "bed?"
- A. I know the word "bed" was used.
- Q. Do you know whether there was any distinction made between the word "room" and "bed?"
- A. I would make a distinction.
- Q. Did you and your daughter make any distinction in comparison; did you differ?
- A. Absolutely not. 20

ROLAND C. BOWNE, JR., being recalled in buttal, testified as follows:

Direct Examination by Mr. Scammell:

Q. Mr. Bowne, at the time that you went with Mr. Mitchell down to Mr. Slack's residence on the morning of December 25, 1916, did Mr. Mitchell say to you, "What's the use, when they got the goods on you?" 30

A. Yes, sir.

Q. When you were at Mr. Slack's home, and in the presence of Mr. Slack and in the presence of Mr. Mitchell, did you say to Mr. Slack, "Mr. Slack, this is Mr. Mitchell; I caught him in bed with your son's wife this morning;" and did Mr. Mitchell in response to that say, "This is the first

Bowne (Re-Called)—Direct—Cross.

time that I stayed in bed with her all night;" and did Mr. Slack in response to that say, "What's the use of saying that, Mr. Mitchell;" and did you say, "You went to bed with her two weeks ago to-night," addressing your statement to Mr. Mitchell; and then did Mr. Slack say, "Mr. Mitchell, I have known your father a long time and have always had a great deal of respect for him; I understand your relations with Mrs. Slack have been a source of worryment to him, and I hope this will be a lesson to you;" and in reply to that statement did Mr. Mitchell say, "I think it will."

10

A. Yes, sir.

Cross Examination by Mr. Devlin:

Q. Did you say anything more than that?

A. No, sir.

Q. Sure of that?

20

A. Yes.

Q. You testified here, I think, that Mitchell was dressed in an undershirt?

A. Yes.

Q. And that Mrs. Slack was in her nightgown?

A. I did.

Q. Why didn't you tell them that at that time?

MR. SCAMMELL: That is objected to; it's not cross-examination and is irrelevant.

30

THE COURT: Objection overruled.

A. Well, I didn't think it was necessary.

BY THE COURT:

Q. Counsel means, that if that was a fact, why didn't you tell it to the father?

Bowne (Re-Called)—Cross.

A. I thought when I caught them in bed that was sufficient.

Q. (Stenographer repeats the question).

A. I didn't think it was necessary, it didn't come to my mind.

Q. You went there to get evidence for a divorce, didn't you?

A. I was not there to catch Mitchell. 10

MR. SCAMMELL: That is objected to.

THE COURT: Objection sustained; strike out the answer.

Q. Didn't you think the way a man and woman were dressed in the bedroom was important to relate to those who employed you?

MR. SCAMMELL: That is objected to as not 20
material or relevant.

THE COURT: Objection overruled.

A. Well, I was employed through Mr. Scammell.

Q. Answer the question.

A. No, I didn't think it was at the time.

MR. SCAMMELL: We offer in evidence the marriage certificate of the marriage between the defendant and Midwood; we offer it to show 30
the age of Mrs. Slack.

THE COURT: The offer is denied.

BOTH SIDES REST.

Adjourned to May 29, 1917 at 9 o'clock A. M.

Copies of

EXHIBITS

EXHIBIT D-4.

ADAMS HOUSE,
Washington Street,
Boston.

Oct. 28, 1912.

10 My darling little wife

Your letter received tonight and it makes me feel very bad to think that mother has started in to be so nasty to you again. I wish to my dear that we had our own little home. I realize to that it is my fault that we haven't but I pray that I will soon be able to provide what we both want and what you deserve if any one ever deserved anything. I realize now many things that I didn't realize a few months ago and although I feel that it has made a different man of me I am awfully sorry that you have suffered so during the changing process though you have stood more bravely than I believe any other girl would the hardships of the last two years and I do hope that those hardships will very soon be a thing of the past.

20

Grace if I were you I would not pay another month's rent. She can not hold you good for it because she has not got any agreement in writing that you agreed to give her 30 days notice and that is absolutely necessary according to law.

30

I am sorry to that I caused you so much trouble by not bringing my overcoat with me when I left. However my sympathy in such things isn't much because it always seems to come after the damage is done.

Mr. Jackson lied to you if he said I went there more than once after we left the house. I positively only went there once and that time I told you about. You can call him up and tell him what I say or if you will give me his initials I will write him a letter myself. He evidently tried to get interest on that bill. I'm glad you showed him up.

EXHIBIT D-6.

THE SAILER HOTEL

Massillon, O., Oct. 21, 1915.

My dear little wife

Your Sunday letter received and I was glad to hear from you.

I too want and need a suit but I'm going to try to get along with what I have this winter. I had my overcoat pressed and my old gray suit cleaned and pressed after have the trousers and vest made bigger around the waist. My waste seems to be getting larger every day. 10

About the wash stand set. I have been thinking a good deal about it and I am not willing that you pay him one cent for it unless you are willing to change the baby's name at once in which case I am willing that you pay him the \$12.50. I think he has got the biggest nerve and gaul of any man I ever knew and I'm only sorry that he is not handy so that I could tell him just how contemptable and mean he is. There is one thing settled and that is that if I ever have a home of my own he shall not be allowed to step inside of it. To think that he would ask you to give the baby his common name and then show his appreciation by fussing over a wash stand set. Was he drunk or is he crazy? 20

Your letters that I have are in my trunk. I have nothing nasty or no trouble in view. I'm merely keeping them as a protection for myself. You have the same right to save my letters if you wish.

I can not write the Insurance Company about my policy as I have not the policy number. You write them giving the policy number or when your over in Trenton go up to the office and tell them about it. That cashier is not up there any longer and the one that is there now will treat you alright. You must give them the policy number when you tend to it otherwise they can't give you any information. 30

Exhibit D-6

My opinion is that it would be best for you and the baby if you kept house.

What you say about the baby is certainly interesting and I'd love to see you both. I would love to take care of the baby and especially so if I was the mother. Don't you like to take care of him?

10 In a previous letter I wrote you the conditions under which we could live happily again but you did not say anything about it except that I wrote a nasty letter. I would not think of living again under such undesirable and unhappy conditions but whenever you are ready to agree to my conditions I'm ready to do everything in my power to make you happy if I can. Let me know when your ready.

I am sure I always appreciated anything you ever done for me.

20 Yes I think it will be alright to pay my father back at the rate of \$10 a month. Will you give him \$10 the 1st of Nov.?

As I said before I'd love to see you and the baby. I'd like to have a heart talk with you and try to make you understand me. If I can get home for Thanksgiving I'll let you know or it would be more convenient if you could come out here.

30 I saw a dandy football game in Canton last Sunday between Canton and Columbus which Canton won 7 to 0. One player was taken to the hospital with an injured spine and another with a broken collar bone which were the only two accidents to marr the game.

Business has been very bad here. Will go to Youngstown, Ohio, probably Sunday. Address your next letter there care of Gen. Del.

Lots of love to you and baby,

Your loving hub,

Bud.

EXHIBIT D-2.

Gen. Del.

Columbus, O., July 26, 1916

My darling little wife

Your fine long letter of last Sunday was received and enjoyed.

I am so glad that you continue to be pleased with your new home. It surely did appeal to me and I only wish it were situated here or in Pittsburg or some other place where I could enjoy it more than is now possible. Still there is some consolation in the knowledge that you are comfortably quartered. There is no need for you to worry about keeping it dear for I'm sure that I shall be able to always send you at least \$20.00 per week. I have no intention of giving up my present position until I get another and not then unless I should get a very much better offer than I now have. I love my work and if Cambridge would only give me a square deal and a chance to make more money than I'm now making I would be satisfied for a while at least. 10

Did you get the curtain or awning post up between our porch and Mrs. Turner's porch? How do you like your neighbors? 20

Sorry to hear that you are feeling any better. We are having terribly hot and suffocating weather out here. Today's thermometer says 101 in the shade and the heat from the pavement is smothering. I wish I could afford to go where it is cool at this time of year. I believe a change of Doctor for you would be a good thing. 30

Business here continues to be bad and just the other evening I wrote Mr. Lyman not to send out any more circulars to Columbus, to start sending them out to Alliance so that I could move there by Aug. 10th. It is not that Columbus is poor territory that business has been poor, but that Cambridge has not been circularizing properly. All these towns

Exhibit D-2

out here are good if properly circularized but I can't seem to make Cambridge appreciate my ideas and their mistakes and wrong ideas. I can make Mr. Lyman understand and he neither can make Cambridge realize their mistakes.

I will be in Alliance about two weeks, then Newark, O. about two and possibly three weeks and then down to Cincinnati to spend the winter and next spring will either work
 10 around Pittsburg, West Virginia or go to the Chicago office in which case I would likely be assigned to Illinois or Indiana.

I am certainly delighted that the baby continues so well. Has he returned from the country?

Yes dear I think it was proper to insure your furniture.

I'm sorry that you are obliged to take any boarders and if you intend to take another besides Harry why I'm sure I have no reason to object to your taking Ann Mitchell. He is a big improvement over Harry and since you used to be such good friends I'm sure that he would be good to you.
 20 So if you want to take him do not hesitate for I'm perfectly willing.

I will enclose the Stoddard letter. I did not tell them to send it to you. I have never had any communication with them since I quit working for them.

If you want to you can write them to go get them. Say that it is not convenient for you to do so.

Enclosed is your \$20.00.

I think there is no more news so will say good night with all my love and kisses for you and baby.

30

Your loving hub,

Bud.

P. S. Have you forgotten my box of cigars?

Bud.

EXHIBIT D-1.

"Gen. Del.
Columbus, O., Aug. 1, 1916.

My darling little wife

I received your fine long letter this A. M. and also my check from Pittsburg so that I will answer your letter at once and enclose your \$20.00 so that you can pay the rent on Thursday as you wish.

10

As to taking Ann Mitchell for a boarder dear I think it foolish to pay any heed or attention to what the neighbors might say. If you want him for a boarder take him. I would be glad if you could replace Harry Gano by him. I don't like to think all the time about Harry coming home drunk. You can't tell what a drunken fool might take a notion to do. I'm quite sure that trusting you is much better and easier for both of us. Distrust always breeds trouble and the one who is distrustful is usually to blame. So if I were you I would ask Ann Mitchell to take a room and if he will then if I were you I would serve notice on Harry Gano to leave at once. You don't want to put up with a common drunk if you don't have to,

20

I am awfully glad to learn that you have the back room rented to a decent man.

The Stoddard people will probably not write me further about the books. If they do anything it will be to write Houghton-Mifflin about it.

I am glad the Turner's have proved good neighbors. They have no doubt learned by years of experience how best to conduct themselves. Some people would not learn by too years of experience.

30

It has been scorching hot here right along until today. We had a terrific electric storm last night which seems to have broken up the hot spell and today is an extremely pleasant one.

Exhibit D-1

I am now anxiously awaiting the Alliance, O. material so that I can get away from here. I ought to be on my way by Aug. 10th.

I'm glad to know that the baby is still enjoying himself and getting fat in the country. Doesn't his being over there give you some rest?

10 Well dear I think there is no more news to tell you so will say good bye for this time. Please don't forget the box of cigars and socks next time you go down to the Post Office.

All my love and kisses for you and baby,

Your loving hub

Bud."

Also registered envelope addressed to "Mrs. L. C. Slack, 1002 Stuyvesant Ave., Trenton, N. J."

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EXHIBIT D-3.

HOTEL SHERWOOD,
Newark, Ohio.

"Sept. 6, 1916.

My darling little wife

I received your letter yesterday at noon and was awfully glad to get it.

Please excuse pencil because I have run shy of ink. 10

I am sorry dear that you pay any attention to gossiping neighbors or let anything such people say worry you. My advice is to do what is best and what is right and ignore entirely the idle gossip of others, especially that which comes from women. If your temperament won't allow you to follow such a course then there are two other courses open to you. One is to have those gossips arrested for slander and bound over to keep the peace and the other, and hardest course for one with your limited strength, is a personal fight with those gossips. 20

Of course I'm ready, glad and willing, to help you out of trouble but I don't see where writing letters to such people would help you in any way. However, if you think it will I am willing to write letters and will enclose two for your approval before mailing them.

I certainly appreciate any honorable act Ann Mitchell might willingly do to lighten your burden and I'm sure he is above taking advantage of your gratefulness and hospitality.

For the last few weeks my eyes have been giving me a great deal of trouble when ever I would go without my glasses. I dislike wearing glasses on the street and especially so during this hot weather but every time I leave them off night or day my sight becomes blurred and my head be- 30

Exhibit D-3

gins to swim and I have difficulty holding my eyes open. I suppose I'll have to become resigned to using glasses all the time. I can't imagine the cause of it. When I get to Cincinnati I think I had better let an eye specialist make an examination.

10 Business here is better so far than since I came back. I have made my expense for last week and I believe I'll do so again this week. I will no doubt finish up here in another week and then I will return to Columbus to finish up my work there."

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EXHIBIT D-7.

"Gen. Del.

Columbus, Ohio, Sept. 13, 1916.

My darling little wife

Your fine letter was received yesterday just as I was leaving Newark.

I started to answer your letter this noon dear but couldn't find your letter and have since hunted all over for it but to no avail. I read it on the train and guess I must have left it on the seat. 10

Send back the letter I sent you for Mr. Mitchell and I will copy it in ink leaving out Mrs. Barnhardt. Send the original because I had it worded just the way I wanted it.

In the meantime I will think about writing Mrs. Maher. I want to do it to please you but when I think of it I hesitate because it seems a crime to put ourselves down on a level with her. I wish dear that your temperament was such that you could disregard the idle gossip of a mischief making neighbor. It seems to me that if you paid no attention to her she'd get wise to herself and quit because she wasn't making an impression. As it is she knows she is making an impression because Mrs. Barnhardt goes to her with what you say about her lies. If when Mrs. Barnhardt comes to you with such bunk you should laugh at it and treat it all as a joke don't you think both Mrs. Barnhardt and Mrs. Maher would get tired of gossiping the way they do. There is no doubt that they gossip the same about every one they know. They always do. 20 30

I'd be so happy if you wouldn't worry about the dirt other people try to hand you. It doesn't pay to my way of thinking.

I arrived here a few days sooner then I had expected and as near as I can tell now I will be in Cincinnati about Oct. 1st and will be there most of the winter providing the Com-

Exhibit D-7

pany does the square thing by me. I wrote them that if my instructions regarding the circularizing there were not followed to the letter that I would quit without a notice for another town and they wrote back that they would follow my instructions closely. We will see.

The weather here is delightful.

10 Dear I have forgotten whether you had any questions in your letter for me to answer.

If you had write them over again for I can't find your letter.

It is bed time dear so I must close.

All my love to you and baby. All my kisses too.

Your loving hub,

Bud.

P. S. Enclosed is your \$20.00.

Bud."

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(Also an envelope addressed to Mrs. L. C. Slack, 1002 Stuyvesant Ave., Trenton, N. J.)

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EXHIBIT D-5.

"Cincinnati, Sept. 28, 1916.

My darling little wife

Your Sunday letter was received when I arrived here yesterday afternoon and as usual I was glad to hear from you dear and so sorry that my last letter caused you to worry. I did not mean it for that but on account of poor business after so much hard work I probably had the blues and wrote as I felt. Then too, my clothes make me feel depressed. I know they do not look as they should and are not good enough to work in. That gray suit which I wore when home was a very cheap suit (\$15) and having worn it so much during the hot weather it simply fell to pieces and my other suit which I had home is terribly dirty and needs to go to the dry cleaner. My blue double breasted suit has two large patches or darns on either leg at the calf where it gave out and they show. And my shoes they are all cracked and black with perspiration on the sides. My clothes in such a condition makes me feel bad and of course to a large extent it hurts my business. 10 20

Of course dear I don't want you to give up your home and you won't have to if I can help it. Just as long as I can keep up you shall have your money each and every week. But dear I feel sure that a suit and a pair of shoes would help my business here a great deal. Couldn't you let me get a pair of shoes next week and then a suit in three or four weeks after that. I need the shoes the most and they have gone up as have suits and everything else. I saw a pair of shoes here in a window last night that are just like the ones I used to get at Fuld's you know without the tip. They have gone up and are now \$5.50 instead of \$4.50. And I would try to get a suit for \$20.00 I wouldn't take it all out at once. 30

Exhibit D-5

I have not been able to leave off my glasses for one minute since I wrote you about it except to go to bed. Of course I'd like to know the meaning of such a sudden change in my eyes but that too would cost money and since my glasses apparently suit my sight and there other things I am really in immediate need of I will have to pass up an examination of them for the present.

10 In this part of the country we have had only a few real cool days.

When I received my last letter from home my father inquired if I thought you would like a ticket to the fair this year and I told him I thought you would so he will most likely call you up about soon if he has not already done so.

As yet I have not received any reply cards for Cincinnati and don't expect any for a week or two. I had to leave Columbus sooner than I expected I would went I sent in the Cincinnati Directory for circularizing. Then last week it became plain that after Saturday of last week I would have no further work in Columbus so I sent out to the Columbus members notices that the meeting would be held in the Y. M. C. A. at 8 o'clock of last Friday evening. Well when Friday evening came it began to pour rain and hail and it thundered and so of course spoiled the meeting. Only eight were present and would not have been there themselves if they had not started early before it began to storm. None of those present would hold office and persuaded me to remain over until Tuesday night of this week to organize. I of course had to consent to prevent cancellations. I immediately sent a second notice of the meeting to be held Tuesday evening and had 38 present. I secured one of the well informed members a Mrs. Lovell to give a talk which she did. She spoke on bird life and nature in general and we really had a very nice meeting. I left Columbus yesterday morn-

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Exhibit D-5

ing and this being such a large city I am having my troubles to find a nice room centrally located.

Mr. Lyman suggested that I work Covington, Ky. while waiting for the Cincinnati replies. I was over there this morning to interview a couple nature lovers and ask them what they thought about my prospects would be there. They both said they thought my prospects would be good and they seemed to be earnest. Therefore I started looking for a room over there but couldn't find a thing that I could put up with. And besides it started to rain and I got soaking wet. However I can work it from Cincinnati as Kentucky is just across the Ohio river and only about 5 minutes ride from the business section of Cincinnati. 10

Now dear about the letter you want me to write Mr. Mitchell. I grant you that you are not asking to much of me to do that for you but I have thought a lot about it the past week, have read that letter I wrote you over and it seems to me that if I should send that letter to Mr. Mitchell I would doing you more harm than good. I would be putting you down on a level with a lot of cheap gossips and that I don't care to do. I want you to be above noticing or paying any attention to that sort of thing. You know what is right and what is wrong and what a lot of cheap gossiping neighbors say ought not to be given any consideration. I don't want to put you down on the same level with Mrs. Mayer and a letter like the one I doped out would do that very thing. You have only one life to live and if you are going to pay any attention to gossip it will never be a happy life even if you had a million dollars. Further more such a letter as you want me to send Mr. Mitchell would not stop the gossip in the slightest and if anything dear it would increase it if the letter was made use 20 30

Exhibit D-5

of. I hope dear you can see it my way for I want you to be happy and above gossip.

I am enclosing your \$20.00.

Address me care of Gen. Del.

All my love and kisses for you and baby.

Your loving hub,

Bud."

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(Also registered envelope addressed to "Mrs. L. C. Slack,
1002 Stuyvesant Ave., Trenton, N. J.")

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EXHIBIT P-5.

"My darling husband

Your last letter came duly to hand and will state just as soon as I can find a few minutes time will return policy to you.

We had a most delightful Christmas. Myself and baby surely received some beautiful gifts also very useful ones. Sincerely hope you also had a very enjoyable Christmas.

The last check you so graciously sent was stopped payment 10
on, do you intend to support myself and our baby?

Just before Christmas I had the babys pictures taken they are not finished as yet Would you care to have one?

Bud I am very much afraid you have done the wrong thing by me and I am sure you will learn this for yourself in the near future no matter what you have done against me I still love you and always will. I have worked hard from 6.30 in the morning untill 1 and 2 the next morning in order to keep our home. All the hard work I ever did never interested you so why explain 20

Hoping to hear from you soon I remain

Lovingly

Grayce."

(Also envelope addressed to

"Mr. Le Roi C. Slack

Care of General Delivery

Detroit

Mich." 30

And postmarked "Trenton, N. J., Jan. 5, 3.30 P. M. 1917.")

EXHIBIT P-4.

"Detroit, Mich.

Jan. 30, 1917.

Dear Madam:—

10 I received your letter mailed on Jan 5th and was astounded to have you write me that you spent a delightful Christmas, especially after what happened. Usually I would have been glad to receive such a message, but in view of what I know took place in your bedroom Christmas morning and you know that I know it, I cannot understand how you would dare write me that you spent a delightful Christmas day.

I now see why you wrote asking me to write those letters to Mr. Mitchell and Mrs. Maher, which I did not do.

You ask me if I intend to support you. How can you ask such a question? You have deliberately broken your marriage vows and are no longer entitled to support from me.

20 In trying to keep up your allowance before the holidays, I further overdrew my account with the Co until I am now owing them in the neighborhood of \$5.00 due to poor business conditions. In order to reimburse themselves the Co have reduced my drawing account until my account has been squared. Even if they were willing to allow me to still further overdraw my account to give support to you, I would not be justified in accepting their money their money to forward to one so unfaithful.

It is my intention to file a petition for an absolute divorce.

30

LeRoi C. Slack."

EXHIBIT P-1.

"MAGNOLIA FARM

Morrisville, Pa. Sunday 191

My Darling Husband

My pen is very bad dear so I am compelled to write with pencil.

Received your letter and money which I thank you for and can say my rent is now paid up to Oct. 1st which I am very thankful for. 10

Well dear I do not visit my neighbors but stay at home with my baby but the dirty bums on the corner are trying to make trouble for me, now dear I ask no one to help me out of my troubles but you now will you write to Mr. John Mitchell in the park also Mrs. John Haher Corner of Maple and Stuyvesant Ave and send me a duplicate of the letters you send them. Now my trouble is this I heard from Mrs. Barnhardt a few things she had to say about you and your family also about you not living with me, as she did not see you that is before you came home so I just refused to speak to her so she got mad, now I have heard a lot of things about her. 1—She went with Dr. Mitchell. 2—She put Mr. M. in the New Jersey State Hospital and tried to get \$700.00 he had in bank but before he went to the State Hospital he gave Lawyer Backes a check for the \$700.00 so she could not get it. 20

3. That a big man of this town had his car in front of the house near all the time so I am quite sure she has no right to talk about other people. Well Ann when ever he is not working comes over and does things for me Now last Thursday he cleaned the heater for me in the cellar and it had not been cleaned for nine years and he got two boxes of dirt he said it surely was a wonder that I did not have a fire And Barnhardt's to save coal burned wood and that made so much more soot and such a mess and all I gave him 30

Exhibit P-1

was a good dinner And one afternoon about 3 weeks ago he came over and cleaned that front cellar and you know that was terrible, and he has been cutting the hedge for me and each time I got it done it cost me 1.50 and to look nice it should be done every two or three weeks so it was looking terrible and I said I did not feel like paying 1.50 each time I had it done so he said I will come over and do it for you

10 which he does about every three weeks. I also bought a hose but I can not fix it in the cellar as it should be fixed to keep the water from running where the hose attaches to the faucet as I have not got the strength to do it so he comes over every Saturday afternoon and fixes it for me so I can clean the porch. So Mrs. Maher told Mrs. Barnhardt that she would fix me she said you did not speak to her when you were home and I did not speak to her so she would fix me. She said she would show me who she was and just what she could do with Mr. Mitchell, the old man Mitchell can't

20 pass the house unless she calls him and talks to him now dear will you please write to Mr. Mitchell and Mrs. Maher and tell them what I say for you to write to them only you may be able to compose the letter better than I am able to do, she also said you were going to get a divorce from me and Mr. Mitchell did not want Ann coming over to my place as he would be in it. So Mr. Mitchell told Ann that Mrs. Maher was telling him that he was going over to 1002 Stuyvesant and doing more work then he did home and he told him if he did not stay away he would put him in the State Hospital

30 and he would stay there until after the old man died and Ann just told me a few days ago that every night before he went down town this winter he would come over and fix the heater which would take a lot of heavy work off of me. I offer to pay him for what he does but he will take nothing and a colored man asked me 3.00 to clean that heater, and he told me any time I had trouble with Harry as I had once

Exhibit P-1

(the time he was drunk and called me names) to call him on the phone and he would come over and put him out if I said so and he knows I have not got you here to help me in a case like that so I appreciate that don't you dear. Well dear I hope you will do that for me and I will appreciate it very much as I go to no one but you when I have trouble. Mrs. M will get paid for trying to make trouble for me. She tells Mr. Mitchell you do not know he comes over here and I tell you everything. **10**

Will close with all my love and kisses and don't forget I love you and wish you were with us to night and no one could talk then.

Your loving wife and Baby"

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EXHIBIT P-2.

"MAGNOLIA FARM

Morrisville, Pa

191

Mr. John Mitchell,
 Cadwallader Park
 Trenton, N. J.

10

My Dear Mr. Mitchell

My wife has been greatly upset by reports coming to her frequently through friends of yours Mrs. Maher has made slanderous regarding to domestic affairs of Mrs. Slack and myself. She (Mrs. Maher) also stated that my intentions were to divorce Mrs. Slack, and that you did not want Ann your Son to visit at my home because in that way get himself into divorce proceedings also that Ann was doing more work around my house than his own and that I did not know of

20 Ann's visits to my home.

I have the pleasure of being personally acquainted with three of your boys would believe that the father of such boys would be a man of intelligence to which such statements as have come from Mrs. Maher would appear as pure idle gossip of feminine Manufacture.

30

However just as a friendly assurance to you I will say that domestic relations between me and my wife are of the happiest order and always have been, and knowing Ann to be a gentleman Mrs. Slack and I welcome him to our home at all times.

Trusting that you may overlook the apparent lack of necessity for this letter I remain

Respectfully yours,

L. C. S."

EXHIBIT P-3.

MAGNOLIA FARM

Mr. John Mitchell's letter.

Morrisville, Pa.,

191

Mr. John Mitchell I write you to inform you that your son Andrew Mitchell is welcome to go over to my house at 1002 Stuyvesant Ave as often as he so desires and will say that my wife and myself have never had any trouble between us and we are not as near getting a divorce as your friends have been that are quite anxious to keep telling you all news they can find regarding Ann going at my home and if such friends would mind their own business as well as my wife there would be no trouble as she and myself know a lot of nasty things we could say about them, but that is not our principle.

Yours L. C. Slack 10 20

 Mrs. Miers

Mrs. M I write this to inform you to please do not worry about a divorce between us for we are a very happy couple and more so than you were a few years ago when you put Mr. M in the State Hospital for my wife is too much of a lady to do a thing like that, And I want you to understand Mr. Andrew Mitchell is welcome at my home 1002 Stuyvesant Ave as often as he sees fit to go and it is none of your business how often he goes or how long he stays or what work he does.

Yours L. C. S." 30

EXHIBIT P-6.

"MAGNOLIA FARM

Morrisville, Pa., Sunday 191

My Darling Husband

I want to thank you dear for your money also your letter to me it seems to me dear your letters to me are so different I surely do enjoy them. Your letter dear is very good to Mr. Mitchell the only part I had to change was the first part is I did not want Mrs. Barnhardts name mentioned as we are renting her place and it might make a little trouble and another thing I do not want them to know just where I get my news from for if they found out they would not let her in on it and in that way I could not find out when they were saying nasty things about me, so dear please send Mr. Mitchells letter from where you are living or they will say I made it up as there would be no postmark on it and another thing it would look better if copied over in ink. I am sure he would say that I wrote it and sent it to him, and not you. Now dear I hope you will send it for me as I think it would do a lot of good and I am sure it would do a lot of good if you should send one to her also but I will not ask you to if you do not care to for I surely do appreciate you writing to one to Mr. Mitchell I am so glad dear to hear you say you are making out a little better with your work, well dear our baby made out very well for his birthday I am quite sure my father and mother spent \$25.00 on him, father Slack gave him \$2.00, Ann Mitchell gave him \$2.00 Mrs. Turner a pair of silk stockings and two bibs for when he is at the table, my father and mother to-geather \$5.00 in money such a cute tent for him to play in, express wagon, they also bought him a 2 bu bag of nice white sand to play in they bought him a little shovel, rake, hoe. Also an American flag to put on the top of his tent, and such a pretty picture

Exhibit P-6

book I know that cost 1.25 a bucket to put his sand in, a big yellow gas ball, two small rubber balls, a red wheelbarrow, a little horse and wagon his tent is 5 ft. by 5 ft. It will try and spend ,30 on my camera and take his picture by his tent, they also gave him a pair of lines to drive him with they have 4 little bells on front, dear will you please send me your old cloths I can sell them and get some spending money and I can give your old shoes to Royland and George when they do some thing for me and I can wear your old shirts *will you please do that?* 10

I am very sorry dear about your eyes and I hope you will have someone trat them for you at once and not wait *will you do that dear?*

Will close for this time All our love and kisses for you dear.

Your loving wife and baby

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30

IN CHANCERY OF NEW JERSEY

<i>Between</i>			
	LeRoi C. Slack,	} CONCLUSIONS.	}
<i>and</i>			
	Grace Pope Slack,		
			} <i>Petitioner,</i>
			} <i>Defendant.</i>

10

Conclusions in the above entitled cause, delivered on Tuesday, the 29th day of May 1917, at 9 o'clock A. M., at the State House, Trenton, N. J.

APPEARANCES as hertofore noted.

THE COURT: (After Argument):

20 I will decide the case without further consideration. The petitioner charges his wife with having committed adultery on the morning of December 25, 1916, at her residence on Stuyvesant Avenue in Trenton.

30 These facts are undisputed in the case. The Correspondent Mitchell was invited to the house to stay over night, on the afternoon or evening of December 24. He went there about 7.30 or eight o'clock, and remained all night. Thompson, a boarder, but in fact a detective, on that night, was the only other occupant of the house up until about three o'clock in the morning. He then brought to the house the petitioner's father and Bowne, also a detective of Trenton. Shortly afterwards, in response to a call by Thompson, Mrs. Slack came from her room and went downstairs with him to look for the source of a supposed fire, Thompson having stated to her when he called her that her house was on fire. From the time that she got back to her room—a little after three o'clock—until half-past seven in the morn-

Conclusions.

ing, the defendant and the co-respondent were in that room together; and at half-past seven in the morning, after Mrs. Slack returned from downstairs, after a telephone call, Bowne, the detective, walked in upon them, and found them both on the bed, the baby, a child of the Slacks, between them.

These circumstances raise a very strong presumption of guilt. And why do the inferences raise this strong presumption? Here was a robust, healthy, fullblooded, virile young fellow, with all the passions of youth and all of its weaknesses, and a mature woman of about his own age, apart from her husband for a long spell, occupying the same bedroom. What naturally took place, are we to suppose? The presumption is, of course, rebuttable, but it requires evidence of a most plausible and persuasive kind, to satisfy one that the crime was not committed, and to this end the defense bent all effort—that is, to show that the relations of this man and woman in that room were entirely innocent and explainable. In fact, when the defendant was first charged with the offense, she declared the appearances capable of explanation, and all she desired was an opportunity to explain the matter to her husband. Some women can explain anything to some husbands, I have no doubt, but when they come into a court we must view their unconventionalities according to established standards, to which appeals and considerations in the domestic forum bear no relation. 10 20

This man Mitchell, about twenty-seven years old, had been on friendly terms with Mrs. Slack's mother and Mrs. Slack, before she was married, and afterwards with Mrs. Slack and probably Mr. Slack at their home. He had a key to their house. He was a sort of a "cot-biddy," minding the baby, attending the fires, and washing the dishes; some of the other boarders helped too. He had free access to the house at all times day and night. There is no evidence to show that before December 25, 1916, there was any undue 30

Conclusions.

- familiarity or intimacy which would lead one to seriously suspect anything wrong between the two up to that time. Whether there was in fact, I surely do not know; but it is not shown in the record that there was between them any such acts of familiarity, or other conduct, as would indicate a desire on the part of either to have sexual intercourse. But, on the night, or rather in the morning in question, they were
- 10 certainly found in a most compromising situation, and yet this woman said in response to questions of mine on the witness-stand, that she was not conscious of violating the proprieties; that she did not realize that to have this man in her bed-room from three o'clock in the morning until seven, was, under the circumstances, an improper thing or would subject her to scandal, if found out. She made that statement with apparent candor. She was very naive, and sought to impress me that she did not see anything wrong or improper, or anything that anybody could find fault with.
- 20 That taxed my credulity considerably.

To overcome, or to neutralize the presumption of guilt, her explanations must be probable; they must have the ring of truth; they must be supported. I do not say supported by the testimony of others, but by the surrounding circumstances, at least, to lend probability. It is true, as her counsel argued, that we cannot conjecture, we cannot speculate, as to crimes of this kind having been committed, and that we must have proof clear and convincing, but when we have the proof in the form of admitted circumstances of a decidedly incriminating nature, unsatisfactorily explained, we are driven to neither in arriving at a verdict, which we must declare, regardless of the consequences. Now, after eight or half-past eight in the evening, so her story goes, and on towards ten or eleven o'clock, they (she and Mitchell) began trimming the Christmas tree, and having finished about half-past one in the morning, Mrs. Slack says she retired to her room to finish a piece

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Conclusions.

of embroidery—a present she intended for her mother's Christmas. When the telephone bell rang about half-past seven in the morning, that piece of embroidery had not been finished. She went up to work on it, so she says, and if in fact she did, she necessarily must have worked with the light burning, which is all important to her testimony, as we shall see later. She was afraid of Thompson, the detective, according to her story, and on the day before, had solicited her mother and two or three of her friends to come to her house and stay over night, expressing to them her fears of Thompson. When the fire alarm came at three in the morning, she went downstairs with Thompson. She was not afraid. It may be that in the excitement she forgot her fear; that one fear drove away the other. But, why not call Mitchell, who was there to guard? After searching downstairs she returned, Thompson coming to the door with her, or near to it; and when she got in the room, she says she found Mitchell there; that she asked Mitchell to stay to protect her against Thompson. The place to protect her against Thompson would have been, it seems to me, in the adjoining room of the boarder Custer, who was then away, wide awake and watching. This was the more suitable place and the proper place, and if her conduct had been innocent it is most likely that she would have said to Mitchell, "I wish you would stay there and awake; I am afraid." But no, she told him to stay with her in her bed-room. She, so she says, went on with her work, with Mitchell lying on the bed with his head on the footboard, or towards it, reading; that after awhile Mitchell fell asleep, and that she pulled the covers over him; that in the morning when the telephone bell rang, she went out and returned, and it was then that Bowne, the detective, walked in on them. She further says that when she left to attend to the telephone, Mitchell reversed his position, lying with his head towards the head-board, reclining on the bed,

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playing with the baby in the crib, to the left; that she told Mitchell to keep the baby in his crib, but that the baby climbed over Mitchell and went downstairs after her; that when they returned she told the baby to tell Ann about what Santa had brought; and it was then that Bowne walked in.

10 It does not strike me at all as the natural thing a pure, innocent and unsophisticated woman would do. As free and intimate as people are in their households—as these people were—they do not have strangers of the opposite sex stay with them in their bed-room and with the doors locked, merely for protection. But that is not all. Her story is flatly contradicted, and in a vital part, by Mitchell, the co-respondent; and his testimony in turn is impeached by most reliable witnesses. His explanation is absolutely shattered, and in his fabrication of the affair he destroyed whatever merit there otherwise might have been in the story told by Mrs. Slack.

20 Mitchell's version is as disingenuous as that of Mrs. Slack. He says that after Mrs. Slack had gone upstairs after trimming the tree, and he was in the house to protect her from Thompson, he took off his coat and vest, collar and necktie and left them down on the hall hatrack, and went up into Custer's room. Mrs. Slack occupied the front room, Custer's room was next, but not communicating. Now, at half-past one in the morning, after trimming the Christmas tree, and all know, who have children, what a tiresome and wearing job that is, he put on Custer's bathrobe and slippers, and
 30 lay down on the lounge and smoked a cigarette before going to bed, I think he said he didn't feel sleepy. Well, it doesn't appear that Custer had any cigarettes in his room, and here is the first break. He was asked where he usually carried his cigarettes, and replied, indicating, in his vest-pocket. Now then, if on the night in question he left his vest and coat downstairs, which I do not believe, how did he happen to

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have a cigarette upstairs? He followed this slip up quickly enough by saying that he had this one in his pants pocket. I know it is not the practice to carry cigars in pants' pockets, and I doubt that cigarette smokers do. And then he says he fell asleep. Mind, he was there especially to protect this woman. He was awakened by a noise on the stairs, and heard Mrs. Slack in a fairly loud tone expostulating with Thompson for fetching her downstairs. What would a man ordinarily have done, under the circumstances? Would he not, to protect his charge, have rushed downstairs and demanded of this stranger in the house, his business with this woman at that early hour; but Mitchell, so he says, stepped instead into her room and hid in the closet. He says the room was in darkness. Now, if that was so, Mrs. Slack had not been embroidering, for it does not appear that she turned out the light when the alarm of fire came and then relighted it after the commotion. In that respect, he contradicts the crucial part of her story. If she had not been embroidering, as she said she was, and, of course, she could not have been in the dark, then her recital must go down with that falsehood. In that one and very material matter, their testimony is in hopeless conflict. This could hardly be due to a misconception of things, or forgetfulness on the part of Mrs. Slack or Mitchell. Mitchell certainly knew whether the light was on or off; Mrs. Slack must have known. Now, one or the other has told what was not the truth. I am inclined to think that Mitchell and the defendant were in her bedroom, with the light out, and when the fire alarm came he hid in the closet; that the defendant knew it, and consequently was not startled upon her return when Mitchell spoke to her in the dark. Furthermore, Mr. Slack Sr., left the house shortly after, and he says he saw no light in his daughter-in-law's room. There is a dispute between Mitchell and Mrs. Slack on the one side, and Bowne, the detective, on the other, as to how the two were dressed in the morning when Bowne

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Conclusions.

entered the bed-room. Bowne's story is that they were both in the bed under the covers, Mrs. Slack in her night-gown and Mitchell with nothing on but an undershirt. That under orders Mitchell got up and dressed, and was taken under arrest to Mr. Cadwallader Slack's house nearby. Mitchell says he was fully dressed, with the exception of the articles he left down on the hall rack, having in their place the bathrobe and slippers of Custer. The defendant says she was fully dressed. Detectives' testimony is competent, but it is scrutinized carefully before given credence. While it is competent and may be admitted, we do not rely upon it unless it is corroborated; and the reason for that is obvious. There are some honest detectives, but very few, and the few must suffer for the misconduct of the many. But, in the main, in this case, the detective is corroborated, and I have no reason whatever to doubt him.

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Now, what was the attitude of the pair when they were discovered? Mrs. Slack apparently took the situation very coolly. She was not greatly embarrassed. Bowne asked Mitchell if she was his wife, and Mitchell said "No." She seemed not unduly excited by that. She telephoned her mother about bail, and still she protested on the witness-stand she was not conscious of any wrong having been done. It seems to me that he conduct on that morning is susceptible of an interpretation differing very much from that which she simulated, or that which counsel attempted to ascribed to it. In her letter of January 5th, she wrote her husband of the delightful Christmas she had spent, in the hope, perhaps, that he had not heard of her escapade. What duplicity!

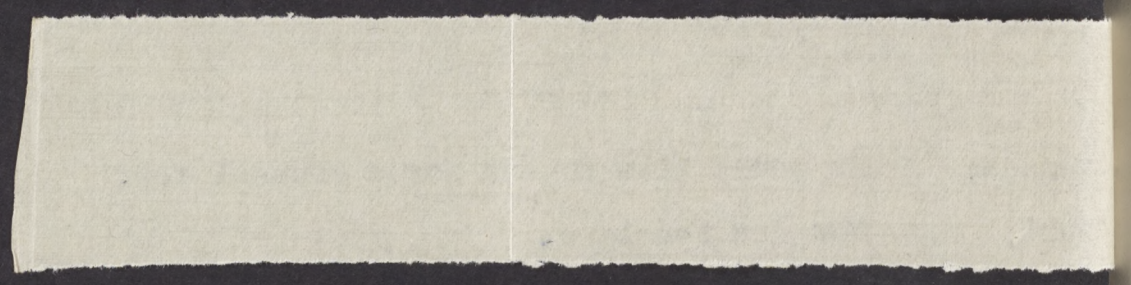
Now, let us look at Mitchell's story of what occurred later on, and what he said to Detective Bowne on their way to the home of Mr. Slack Sr., and what he said there in the presence of Mr. Slack Sr., Bowne and Miss Slack, by way of admitting his guilt. It is not evidence, of course, to support the charge, but is evidence in the case going to discredit the

Mr. Brennan;

We would like to ask for a counsel fee.

The Court;

You are too late.



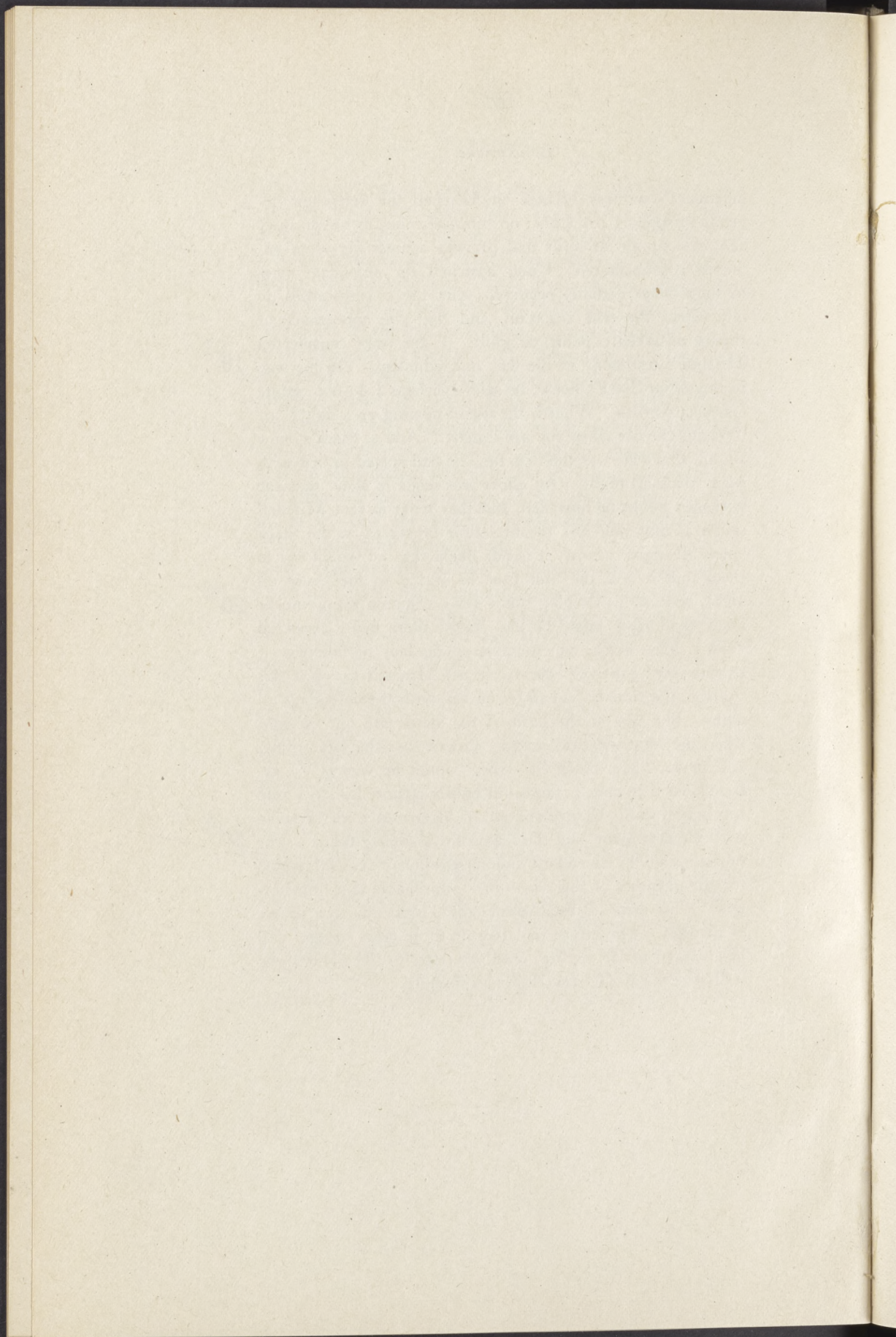
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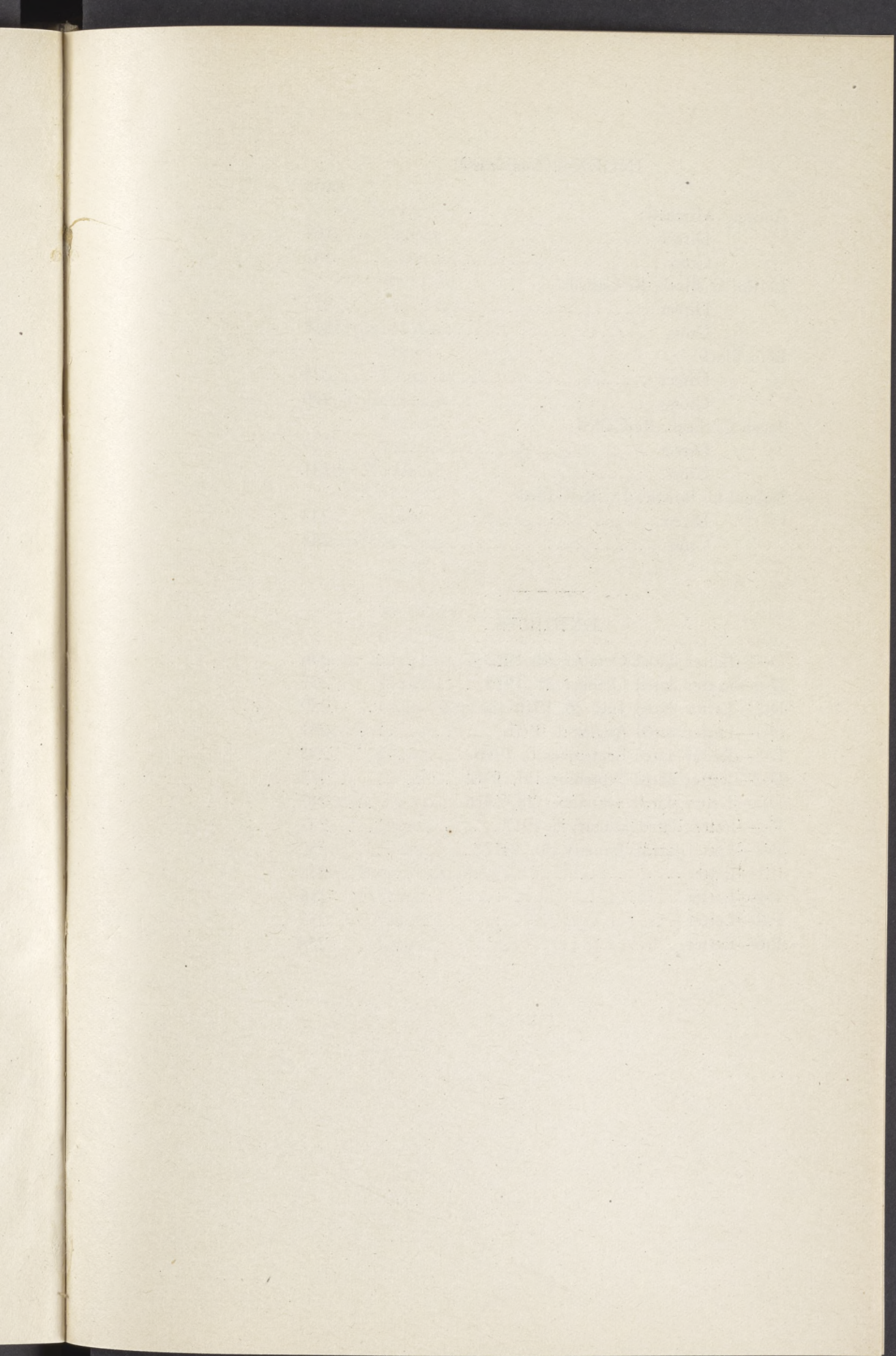
defendant's witness, because on Mitchell the defendant depends to support her story; on him she relies to brush away the presumption of guilt that prevails against her from admitted circumstances. Upon Mitchell the defendant rests to show what actually occurred; that the circumstances do not reflect the true situation, and that the appearance of things mistakenly point to guilt. I am only considering Mitchell's testimony in the way of credibility. On his way to the senior Slack's house, he said—perhaps I do not restate his exact words—"What is the use of putting up a fight?" or "What's the use when you are caught?" And as Slack's home he said that that was the first time he had stayed in bed with Mrs. Slack all night. An effort was made to show that the witnesses might be mistaken, and that what in fact Mitchell said was that that was the first time he stayed in the Slack house all night. Now, it is not likely that he would say to them that it was the first time he stayed in the house all night, because his sleeping there was a common thing and he knew that Slack knew he had stayed there many times all night. Miss Slack, an estimable young lady of nineteen or twenty, says positively she overheard Mitchell say that this was the first time he had stayed in bed with the defendant all night. She was at the head of the stairs and out of sight when the statement was made. Bowne says the same thing, and so does Mr. Slack Sr.—they cannot be wrong. I believe he said it, and it stands out boldly against his story told here under oath; his explanation of his presence in the room with the defendant, and the reason for his being there. The testimony of the defendant and co-respondent was fabricated for the purposes of this case—it is improbable and unbelievable. The crime is established, and I will advise a decree of divorce. The infant son, two or three years of age, will be awarded to the mother, with privileges to the father, who will have to pay \$10 a week for his support.

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New Jersey Court of Errors and Appeals

BETWEEN

LEROI G. SLACK,

Complainant,

AND

GRACE P. SLACK,

Defendant.

} On Appeal from a
Decree in Chancery
Granting a Divorce.

FACTS.

The complainant filed a bill against his wife, the defendant, for divorce, charging her with, and alleged as the cause, adultery. The case was tried and the complainant obtained a decree on the eighth day of June, 1917.

LeRoi Slack and his wife have one child, about three years old. The husband and wife, after marriage, and before and after the birth of the child, lived apart for a good deal of the time, due to the husband's occupation. For a long period preceding Christmas Day of 1916 the husband and wife had been apart, due to the fact that the husband was pursuing his calling of book agent in Detroit, Michigan.

The wife maintained a home on Stuyvesant Avenue, Trenton, New Jersey, and with the consent of the husband, rented the vacant rooms to roomers. Exhibit D-1, page 241.

The husband had furnished the wife some support,

the amount of which he claimed the extent of his financial capacity.

The husband and wife corresponded and were apparently on the best of terms. (See the correspondence, Exhibits page 236, 251, 259.)

In the meantime the father of the complainant had been corresponding with the complainant directing suspicion towards the defendant, the wife of his son. (Page 217.)

The father, with the consent of the complainant, employed detectives to procure evidence against the defendant. Unknown to the defendant, a detective by the name of Thompson, under the pretense of being an insurance agent, secured a room in the house several weeks preceding Christmas (page 81). On Christmas eve all the roomers except Thompson left for their respective homes to spend Christmas, leaving no one in the house but the detective and the defendant and her child. The defendant, having a fear of Thompson, due to his furtive methods and mysterious ways, was afraid to stay in the house over Christmas eve alone with the child (page 81). She made efforts to get a Miss Cooper and a Mrs. Barnhart to come and stay, and in each case failed (pages 82 and 138). She called upon her mother, who was also unable to come, but her mother said she would send Andrew Mitchell over. (Referred to in the testimony as "Ann" Mitchell.) (Page 146). On the evening in question, Thompson came into the home and retired at seven o'clock in the evening. Mitchell arrived at eight o'clock. He assisted the defendant in trimming the Christmas tree for the child up until two in the morning. The defendant retired (page 84). Later Mitchell went upstairs and took one of the unoccupied rooms.

From this point the proofs by the complainant show that Thompson, the detective, believing that Andrew Mitchell was in the same room with Mrs. Slack, went downstairs, left the house and telephoned to Bowne, another detective, and to the father-in-law of the defendant, to come to the house (page 84). They arrived at 3:30 in the morning, all parties going upstairs, Slack and Bowne remaining in the back room, while Thompson

tip-toed up to the front room, where the defendant and Mitchell were supposed to be. Thompson returned from the front room, and made an arrangement between Bowne and Mr. Slack that he should go to the front room, knock on the door, and raise an alarm of fire, in the hope that Mitchell would come out. The plan was followed (pages 37, 38, 39). Thompson knocked on the door and told Mrs. Slack he believed the house was on fire somewhere, and Mrs. Slack opened the door, dressed in slippers and kimono, and he led the way downstairs. The front door was open. After some discussion as to why the front door was open, an examination was made of the lower portion of the house and no fire was discovered. Mrs. Slack then returned upstairs, Thompson following her up to within a foot of her bedroom door. She walked into the bedroom and closed the door (page 39).

While Mrs. Slack and Thompson were downstairs, Mr. Slack, the father-in-law, and Bowne did not go into the bedroom to make a search to find out whether Mitchell was there (page 38).

When Thompson returned, after some conference, and for some unexplained reason, Mr. Slack went home. Bowne and Thompson remained in the house until the morning. About seven o'clock in the morning, or seven-thirty, the telephone rang. Mrs. Slack went downstairs and answered the telephone and found her mother was speaking; she had some conversation with her mother in regard to what time she and Mitchell would be over to the home of the mother in Fallsington for Christmas dinner. While she was downstairs, the child, her baby, got out of the room and went downstairs. She got the baby and brought the baby into the bedroom with her. Then it was heard that the baby was saying, "Look, Ann," and Mitchell was heard talking. Then Bowne opened the door and walked in, and says he found Mitchell and the defendant in bed beneath the covers, both disrobed, and the baby between the two. Then he said to Mitchell, "Is this your wife?" and Mitchell said "No." He then asked him what he was doing in bed with her, and told Mitchell to put on his clothes. He put his clothes on and Mrs. Slack put on her kimono and said she would

telephone her mother to go his bail. They then took Mitchell, the co-respondent, to the home of Mr. Slack's father (pages 40, 41, 42).

The answer Mrs. Slack makes to this charge is that she admits Mitchell's being in the room, but denies any wrong-doing. Andrew Mitchell, the alleged co-respondent, had been a friend of her family for a period of almost fifteen years, before she was married, and after she was married (pages 22, 23.) Mitchell had been in the habit of doing work at the home of her mother at various times, for which he was paid. He had also done many jobs at the home of the complainant and defendant, both at their home on Norway Avenue and on Stuyvesant Avenue. Mitchell was on good terms with the husband and wife (pages 28, 67, 70). Correspondence between them shows that the husband viewed Mitchell as a protector of his wife, and when gossip seemed to connect their names together he told his wife to go right ahead, in fact, he expressed every confidence in his wife. (Exhibit D-1, page 241.) Roomers in the house testified that Mitchell frequently came in the house when they were there. He used to wash the dishes at times, put the baby to sleep, tend the heater and cut the grass. Other roomers testified they did the latter, and that they did it because the wife was oppressed with more work than she could comfortably do (pages 29, 70). Mrs. Slack says that from the time Thompson entered the house as a roomer his actions and manner were such as to put her in fear.

The other roomers in the house, excepting Thompson, left for Christmas. She made effort to secure other people to stay, and, as a last resort, her mother sent Andrew Mitchell to remain in the house (page 146). Mitchell says he went upstairs and occupied the room of Custer, which was next to the bedroom of Mrs. Slack. Mrs. Slack had informed her mother and others, and also Mitchell, of her fears for Thompson. When Thompson knocked on Mrs. Slack's door at three o'clock in the morning and Mrs. Slack came out and went downstairs Mitchell was sleeping on the couch, and the noise of their ascending the stairs woke him up. He, fearing Thomp-

son was going to do some harm stepped across from his room into Mrs. Slack's, expecting Thompson to follow into the room. However, Thompson did not. As Mrs. Slack came into the room she asked Mitchell what he was doing, and Mitchell explained his presence in the room. He was then going to leave the room. Mrs. Slack requested him not to, saying she was afraid of Thompson, and asked him to remain in the room all night and read, talk to her, or sleep on the bed, as he chose, as she had to finish some embroidery work on a Christmas present she intended to give to her mother, and the work would take her up until the next morning (page 88). She then sat down and worked on this embroidery the entire night. Mitchell lay on the bed, not undressed, as is claimed, until the next morning at seven o'clock, when the telephone bell rang (pages 88, 89). Mrs. Slack went downstairs, requesting Mitchell to look out for the baby. The baby got away from Mitchell, and, after answering the telephone, Mrs. Slack brought the baby back to the bedroom, and the baby was telling Mitchell what Santa had brought him in the line of presents when the door was opened and Bowne came into the room. She says she was sitting on one side of the bed, fully dressed, talking to the baby, and Mitchell was lying on the other side of the bed, fully dressed, and the baby was between the two of them. The baby was admiring and telling Mitchell of the presents Santa had brought him (page 92).

These constitute the salient facts of the case upon which the decree of divorce was granted.

ARGUMENT.

The complainant's case rests upon the evidence procured by a detective. For two weeks preceding the 24th of December, 1916, there had been a detective, by the name of Thompson, stationed in the house of the defendant. From 7 P. M. of the night of the 24th until 3 A. M. of the morning of the 25th, the detective was in the house with the defendant and the co-respondent, Mitchell. Thompson at that time thought that the de-

defendant and the co-respondent were occupying the same room, and he sent for Bowne, another detective, and J. Cadwalader Slack, the father of the petitioner. They secreted themselves in the house and an alarm of fire was sounded by Thompson with the expectation that Mitchell would come out of the room. Mrs. Slack came out of the room and accompanied Thompson downstairs to search for the supposed fire. Bowne, the other detective, and Mr. Slack, the father of the petitioner, were asked on examination why they did not enter the room and find Mitchell, when Mrs. Slack went downstairs. No answer or explanation was offered by either to account for their failure to search the room, and the question remaining unanswered tends to discredit the testimony of both parties. If Mitchell was not in the room they would not have betrayed their presence. If he was in the room, their mission was accomplished. (See evidence of Bowne, page 213.) In the absence of any explanation for their failure to search, we believe and insist that they did search the room and that Mitchell was not there, but was where he said he was, in Custer's room, next door. Bowne testified that he, Bowne, was occupying Custer's room. In this, Bowne is mistaken, because he gives a description of the furniture in that room, which disagrees with the description of the room and furniture by all persons familiar with the room and the furniture. Reference to the testimony of Bowne and Mr. J. C. Slack, shows that they disagree as to the room occupied by them. (See testimony of Bowne, pages 34, 37, 39, and compare with testimony of J. C. Slack, page 58.) Previous to the night in question, there is no pretense of any evidence of wrong-doing upon the part of this defendant. Not until 3 A. M. of the morning of the 25th are there any facts in the evidence that would justify the existence of even a suspicion regarding the conduct of Mrs. Slack. After this hour the facts as related by Mrs. Slack are that Thompson's attitude since being a roomer in the house was such as to put her in fear. She was to be alone on that night. She sought various persons and endeavored to induce them to remain with her over night. In this she was not successful, due some-

what to the fact that it was Christmas eve, and those requested had made other arrangements. The co-respondent was the last one asked and he consented to come and stay, at the request of Mrs. Pope, the mother of Mrs. Slack. Mitchell was a man on friendly terms, not only with the family of Mrs. Slack, but also with the family of Mrs. Pope, the mother of Mrs. Slack. The false alarm of fire was given about 3 A. M. It is not disputed by the evidence in the case that Mitchell was awakened by the noise of Thompson coming up the stairs with Mrs. Slack. Mitchell says that he stepped into Mrs. Slack's room to see what action Thompson contemplated. When Mrs. Slack came into the room he asked her as to the meaning of Thompson's actions and suggested to her that he put Thompson out of the house. Mrs. Slack was unwilling to have him pursue this course. When Mitchell was about to return to his room, Mrs. Slack requested him not to do so, but to remain with her, until daybreak. She intended to stay up to finish a piece of embroidery that she was working on, and which she intended to present to her mother as a Christmas present. Mitchell lay upon the bed with his clothes on, while Mrs. Slack sat on a rocking chair near the radiator. About 7 A. M. her mother, Mrs. Pope, called her on the telephone to see what time she would arrive at the home of Mrs. Pope, for the Christmas dinner. Mrs. Slack, upon going downstairs requested Mitchell to see that the child did not follow her downstairs. The child, however, did follow Mrs. Slack downstairs, and when she had finished on the telephone, she picked it up and carried it up to her room and placed it on the bed with Mitchell. She sat on one side of the bed, and Mitchell on the other side, with the child between them. The detective Bowne entered the room and found them with the child between them. According to the evidence of Bowne, Mitchell was dressed only in his undershirt. Mitchell says that he was fully dressed, with the exception of his shoes and vest. That instead of having his shoes on he wore a pair of bedroom slippers belonging to Mr. Custer, as well as the latter's bath robe. In this respect Mitchell's testimony is supplemented by that of

Mrs. Slack. From these facts the court inferred the guilt of the defendant. Thompson, the detective, was not present at the trial, and no satisfactory explanation was furnished as to his absence.

The guilt of the defendant is based wholly upon the evidence of the detective. It may be urged that the testimony of Mitchell is biased, but that objection can be made as equally strong against the testimony of Mr. J. Cadwalader Slack. The testimony of Bowne, the detective, is subject to the same objection, because he was hired and paid for discovering the very things he testified to as having seen. Thompson, who was employed by Bowne, brought Bowne and Mr. J. C. Clack to the house at 3 A. M., at which time they failed to discover any evidence against Mrs. Slack. Then Bowne remained in the house, and we contend that, disgruntled by his previous failure at 3 A. M., he was determined to discover some evidence against Mrs. Slack before he left.

We call attention to the fact that in Bowne's report of his finding of the two in the room at 7 A. M., to Mr. J. C. Slack, he failed to state how he found them dressed. On the witness stand, however, he stated a condition of dress, both of Mrs. Slack and Mitchell, that was not consistent with their innocence. He gave no explanation for his failure to detail the condition of the dress of the parties to his employer. He testified that he was an experienced detective, in search for evidence sufficient to convict of adultery. The dress of these parties and the condition in which they were found was an important factor in determining their guilt or innocence. His failure to mention it to Mr. Slack in his report to him, casts a doubt upon his testimony and raises the suspicion that it was but an after-thought, brought into bolster up a weak case (page 234).

With respect to this testimony of Bowne, we call the attention of the court to the testimony of Mitchell, in which he not only denied that he was dressed merely in an undershirt at that time, but he further testified that at that time and for the two years preceding that date, he wore one-piece underwear, known as "union suits."

THE EVIDENCE POINTS TO TWO OPPOSING CONCLUSIONS.

The testimony offered by the petitioner taken most strongly against the defendant points to her guilt. The evidence offered in explanation of the testimony of the petitioner points to her innocence. Taking the entire facts of the case, the most that can be said in favor of the petitioner's case, is that the facts are susceptible of two inferences, one of guilt, and one of innocence. When the facts of the case are thus, the judgment of the court must be in favor of the innocence of the party charged.

"The facts proven must be such as cannot be reconciled with probability and the innocence of the parties."

"Mere imprudence, indiscretion, or folly, is not conclusive evidence of guilt. The mind of the court must be satisfied, that there was an intimacy between the parties entirely inconsistent with the duty which a virtuous wife owes to herself and to her husband."

"When the conduct of a party admits of two interpretations equally consistent with probability, the one involving guilt and the other consistent with innocence, the rules of evidence as well as the dictates of justice require that the interpretation should be favorable to innocence." *Berchmans v. Berchmans*, 16 N. J. E. 122.

"If the circumstances in proof, taken singly and together, admit of two interpretations, that which favors innocence should be adopted." *Hurtzig v. Hurtzig*, 44 N. J. E. 329.

THE EVIDENCE IN THIS CASE DOES NOT DISCLOSE BOTH OPPORTUNITY AND INCLINATION.

It is evidence in this case that Andrew Mitchell, the co-respondent, had been a friend of the family of the defendant, and the defendant's mother for more than

twelve years. He knew the complainant before he was married, and after the marriage of the complainant to the defendant he was a frequent visitor at their home; he had helped in the house of the mother-in-law in various capacities, and had done all kinds of work for both the complainant and the defendant. The letters of the complainant and his testimony show that he had the utmost faith in Mitchell. Throughout the evidence in this case there is not a single word or deed to indicate any inclination on the part of this defendant or the co-respondent to commit adultery. We submit that this decree should be reversed for the reason that neither opportunity or inclination can be inferred, but both must be proved. These two elements must be present and must be proved in every case where adultery is the basis for the decree sought and where the offense is sought to be proved by circumstantial evidence. There is no case among the adjudications of the courts of this State where the presence of one only of these elements has been held to be sufficient.

“To prove adultery by circumstantial evidence, two points are to be established; the opportunity for the crime and the will to commit it. Where both of these are established, the court will infer the guilt. *Berckmans v. Berckmans*, 16 N. J. E. 122.

“In cases depending upon circumstantial evidence for support, the will to commit the adulterous act, as well as the opportunity for its commission, must be established.” *Brown v. Brown*, 63 N. J. E. 348.

In the case of *McKenna v. McKenna*, 84 N. J. E. 190, the Court of Errors and Appeals, affirmed the decree of the Court of Chancery dismissing the husband's petition. In the opinion rendered in the Court of Chancery, Advisory Master Rosenberg quoted with approval the opinion of Chancellor McGill, in the case of *Hurtzig v. Hurtzig*, 44 N. J. E. 329, as follows:

“The crime is almost always clandestine, and committed only when every precaution is taken to preclude the possibility of discovery. Familiar indicia are: The loss of affection that is due to and

was bestowed upon its legitimate object, and the bestowal of the affection upon an unlawful object; stolen interviews; private correspondence; amorous and passionate utterances; personal freedom; indecent familiarity; compromising situations; and the like. There may be also slight, delicate and indefinable circumstances, proximate to adultery and peculiar to a given case, that, though less prominent as indicia, are, nevertheless, powerful factors in producing the conviction of guilt."

In the same case the following language of Justice Garrison, speaking for the Court of Errors and Appeals, in *Osborn v. Osborn*, 44 N. J. E. 257, was quoted and approved:

"Adultery is not shown, nor are the elements of lust, lewdness, depravity or secrecy, the invariable concomitants of criminal conversation, to be found in the proofs. If we give the testimony the construction most unfavorable to the defendant, a decree based upon adultery must rest upon one of two grounds: either that opportunity is tantamount to guilt or that a decree may rest upon a crime half proven, even though the half it rests upon is the half that is not proven."

"To prove adultery by circumstances, a criminal desire and an opportunity to gratify it must be shown. Where these are both present guilt is presumed." *Black v. Black*, 30 N. J. E. 228.

In the case of *Summerbell v. Summerbell*, Ct. of E. & A., 37 N. J. Eq. 615, the husband sued the wife for divorce on the ground of adultery. The evidence consisted of the confessions made by the wife to her husband and of circumstantial evidence. In viewing the circumstantial evidence and regarding its weight as evidence the court said:

"As to the alleged act of adultery at Toledo, it appears that while the defendant, together with Mrs. Reed, was staying at the house of her brother at Kokomo, in the latter part of Novem-

ber, 1877, she received a letter from the complainant, which caused her many tears and much nervous agitation, and that she said she must go home at once to her husband, then living at Milford, in this State; that her brother furnished her with money for her journey home; that he was unable to leave his home, but sent word to Mr. Reed, at Peru, to accompany the defendant on her journey homeward, as far as Toledo; that Mrs. Reed accompanied the defendant to her own home at Peru, and requested Mr. Reed to accompany the defendant as far as Toledo; that the defendant desired to start from Peru immediately; that Mr. Reed was unable to leave Peru then, but was willing to go with her if she would wait until the next day, which she concluded to do; that the defendant was nervous that night that she slept with her sister, Mrs. Reed, the husband going to another room; that her condition was such, and she expressed such distaste for stopping at a hotel in Toledo, that Mrs. Reed requested Mr. Reed to procure a room as nearly as possible adjoining the defendant's room; that Mr. Reed proceeded to Toledo with the defendant, Toledo appears to have been a necessary halting place, and arrived in the "Boody House" in Toledo, after ten o'clock in the evening; that Mr. Reed applied to the clerk of the Hotel for rooms adjoining each other, or communicating with each other, and entered on the registry of the hotel either "G. L. Reed and sister," or "G. I. Reed and sister, Mrs. Summerbell;" that they were assigned to two rooms, designated as 124, consisting of an outer room with an entrance from the hall, and containing a bed and the usual bedroom furniture, and of an adjoining smaller room, and also containing a bed and the usual bedroom furniture; that Mr. Reed and the defendant were conducted to these rooms and occupied them during the night of November 28th, 1877; that on the next day after dinner the defendant proceeded

on her journey home, via the Pennsylvania Railroad train which left Toledo at two o'clock P. M., and that Mr. Reed returned home. The complainant contends that the occupying of these rooms by Mr. Reed and the defendant is strong corroborative proof of the fact of adultery."

"In determining the weight of this evidence, it is to be noted that there is no proof of any antecedent illicit affection, undue intimacy or undue familiarity between these parties; that the journey was not contrived between the parties; that Mr. Reed did not volunteer to escort the defendant, but was requested to do so by a message from her brother and a further request from the defendant's sister, his own wife, and that he declined to accompany her unless she postponed her departure until the next day; that the defendant was in a nervous condition, and that Mrs. Reed had requested Mr. Reed to procure a room as nearly adjoining that of the defendant as he could. Under these circumstances, I do not think that the occupancy of these rooms by Mr. Reed and the defendant raises more than the slightest suspicion of adulterous intercourse between them."

"All that can be said is, that if they had been inclined to commit adultery, the opportunity for the act had been afforded them."

"But this is not sufficient; not only the opportunity for the crime, but also the will to commit, must be established. *Berckmans v. Berckmans*, 17 N. J. Eq. 122; *Black v. Black*, 30 N. J. Eq. 228."

This opinion was written by Advisory Master Barker Gummere, and approved and adopted by the Court of Errors and Appeals. The facts in this case by which it was sought to prove the crime of adultery, are much similar to the facts in the case at bar. In the same case, on page 610, the Court said:

"I take the rule to be that, if the proofs in the cause, irrespective of the confession of the criminated part, well nigh demonstrate the fact of the

adultery charged, but do not entirely satisfy the conscience of the court, the confession may then (if free from suspicion of collusion or duress, or improper influence, or of having been prepared to furnish evidence) be permitted to decide the otherwise doubtful judgment of the court."

To the same effect as the Summerbell case, *supra*, is the case of *Waer v. Waer*, 90 Atl. 1039, decided by Backes, V. C. In this case the Vice-Chancellor found abundant evidence of an inclination to commit the crime charged, but failed to satisfy his mind as to the sufficiency of the evidence to prove the opportunity to gratify their desires. In speaking of this phase of the case, he said:

"The testimony falls short of this requirement, and upon this feature my mind is not satisfied. The evidence as a whole is calculated to excite suspicion. The crime may have been committed, but upon a charge so serious as this one, suspicion is not proof, and speculation and conjecture is out of place."

In the case of *O'Brien v. O'Brien*, 30 Atl. 875, Green, V. C., in dismissing the petition of the husband, said:

"The parties to this suit formerly lived in Passaic, in this State. The husband having left his wife on September 4, 1891, she brought suit in this court, under the twentieth section of the divorce act, and a decree was entered therein in her favor April 20, 1892, awarding her \$80 a month with the house and furniture belonging to the husband, of which she was then in possession, or \$115 a month if he refused to permit her to continue therein. On the 2d day of September, A. D. 1892, the husband filed his petition in this case, for a divorce, in which he charges his wife with adultery, at her home in Passaic, on various days from January to July, 1892, with Oakley Wood, Michael J. Hickey and Joseph Sullivan, and August, 1892, at the Mountain House, Delaware Water Gap, with the said Wood. These charges are denied in the answer, and by

the defendant and Wood, Hickey and Sullivan, respectively, under oath. The rule as to the quantity and character of the evidence should be such that the court is convinced of guilt. The judge is not justified in finding a defendant guilty because he cannot say from the evidence, that he believes the accused one innocent, but only when he can say from the evidence he is satisfied of guilt. As stated in the Berckmans case, 16 N. J. Eq. 122, to establish adultery the circumstances must be such as to lead the guarded discretion of a reasonable and just man to the conclusion of guilt. The judgment must not be rash and intemperate, moving upon appearances that are equally capable of two interpretations; and this conviction must be produced by testimony which, according to the well-established rules, is worthy of belief. It is said in the Fuller's case, 41 N. J. Eq. 461, a judge in such case must not allow himself to be duped or misled. He must look at the evidence as other men of discernment would view it, giving credit to what seems to him in the exercise of a cautious judgment, to be true, and rejecting what seems to him to be improbable and false. The court is never obliged to adjudge that adultery is proved merely because a witness swears to it, or swears to facts from which it may be inferred. To justify such an adjudication, the court must be satisfied that the witnesses who swore to the circumstances showing guilt are honest, that they are not mistaken, and that their testimony is true: In Clare's case, 19 N. J. Eq. 37, the Chancellor, at 39, says: 'When divorce courts require adultery to be clearly proved before a divorce will be decreed for that cause, they do not merely mean that it must be clearly and directly sworn to, but the proof must be entitled to and command belief.' In McGrail's case, 49 N. J. Eq. 348, the Court of Errors and Appeals reversed the decree of this Court, based on positive evidence of

the wife's guilt, unimpeached except by the testimony of the wife and the alleged paramour. No opinion was filed, but the reversal must have been on the ground that the testimony showing adultery was not to be credited, because of its improbability."

ADMISSIONS OF A PARAMOUR OR A PAR-
TICEPS CRIMINIS MADE IN THE AB-
SENCE OF THE DEFENDANT ARE
NOT EVIDENCE AGAINST
THE DEFENDANT.

There is evidence in the case offered by J. Cadwalader Slack, Miss Slack, his daughter, and Bowne, the detective, to the effect that Mitchell made admissions on the morning of his arrest, that would imply his guilt. These admissions, if they were made, were made out of the presence of the defendant. Mitchell appeared as a witness in behalf of the defendant. On his direct examination he was not asked anything regarding these alleged confessions. On the cross-examination he was asked about them by the counsel for the complainant. Counsel for the defendant objected to the questions, but the objections were overruled and Mitchell was required to answer them. He denied making them. The court then permitted the counsel for the complainant to put on witnesses to contradict Mitchell's denials. We submit that the complainant was bound by the answers of Mitchell denying that he ever made the alleged admissions, and that they could not contradict him.

In the case of *Matercka v. Erie Railroad Company*, 88 N. J. L. 372, one Campbell, a police officer was called as a witness by the Railroad Company, examined and cross-examined, and then recalled by the plaintiff for further cross-examination, and was asked if he had made certain statements to the daughters of the deceased. The witness denied making them. The plaintiff then called the daughters for the purpose of contradicting the police-

man, and they were permitted to testify over the objection of the Railroad Company.

"The admission of this testimony was prejudicial and harmful to the appellant. The statement admitted, in effect, made the alleged statement of Campbell substantive testimony in the case against the appellant, and was palpably an indirect method of introducing hearsay testimony and to seemingly clothe it with probative force. The law is firmly settled that where a party has the right of impairing the credit of a witness as to collateral matters, but having asked and obtained answers, he must abide by the answers given; other witnesses could not be called to prove such answers untrue. *Stokes v. People*, 53 N. Y. 164; 13 *Am. Rep.* 492; *Bullock v. State*, 65 N. J. L. 575; *State v. Mar*, 85 *Ib.* 562."

The admissions of Mitchell were illegally admitted for the further reason that: Assuming them to be true, they were not made in the presence of the defendant, and under no rule of evidence could they be made evidence against her.

"Parol evidence of the declarations of the particeps criminis, even though he has confessed his guilt, is not competent evidence against the party charged with adultery." *Berckmans v. Berckmans*, 16 N. J. E. 122.

"The evidence of a husband in a divorce suit is not competent to prove his wife's adultery, nor to prove her handwriting on an intercepted letter to her alleged paramour, made in the defendant's absence, competent." *Doughty v. Doughty*, 32 N. J. E. 32.

The confessions of the wife and the confessions of the paramour made out of the presence of the wife, are not receivable in evidence against the wife.

"1. In a suit for divorce founded on adultery, the signed confessions of the paramour written by the petitioner and witnessed, but made in the absence of the defendant, are not evidence."

"2. The defendant's confession of guilt made

to his wife and sister are not such evidence as, under the law of this State, will support a decree." *Howard v. Howard*, 77 N. J. E. 186.

"That the co-respondent named in the petition for divorce on the ground of adultery in his deposition refused to answer the question whether he had ever committed adultery with the defendant on the ground that it might incriminate him, did not justify an inference of guilt from the claim of privilege." *Waer v. Waer*, 90 Atl. 1039.

In the case of *Robinson v. Robinson*, 1 Sw. & Tr. 362, the husband brought suit for the dissolution of the marriage on account of the adultery of the wife with one Dr. Lane. Diaries written by Mrs. Robinson were put in evidence to prove the alleged offense. This was the only evidence offered that was possessed of any probative value. In this case the Court, through Cockburn, C. J., held that though the diary would be good evidence against the wife, it could not be used to establish the criminality of the co-respondent, Dr. Lane.

The case of *Pomero v. Pomero et al.*, as reported in the London Times of December 20, 1884, Mr. Justice Buti, in charging the jury in a proceeding for divorce, said (what is not preserved elsewhere), that "there was a curious feature in this case to which he directed their attention. As the respondent had filed no answer to the petition, it was for the Court and not for the jury to decide whether she had committed adultery with the co-respondent, and his decision was that she had. But as the co-respondent had filed an answer denying the adultery with the respondent, it was for the jury to find whether he had committed it or not. Now it was open to the jury to find that the co-respondent had not committed adultery with the respondent, while the Court found that the respondent had committed adultery with the co-respondent. Two such findings would appear to be in complete contradiction; but the contradiction would be more apparent than real. * * * Courts and juries must base their findings on evidence, and what might be in law conclusive

evidence against one of the parties charged, might be none whatever against the other."

EVIDENCE MUST BE CONVINCING AND BEYOND A REASONABLE DOUBT.

The amount of evidence required in a divorce case where adultery is the basis upon which the decree is sought must be the same as that required in a criminal case. Adultery is a crime and the evidence to establish it must be such as to prove it beyond a reasonable doubt. It is not enough that the evidence shall preponderate. Preponderance of evidence is applicable to civil cases only. What is a preponderance of evidence has been judicially defined.

"The word 'preponderance' means superiority in weight, influence or force. The evidence may preponderate, and yet leave the mind in doubt as to the very truth. In such cases the evidence does not fairly set at rest, but merely preponderates in favor of the side whereon the doubts have less weight." *Ball v. Marquis* (Iowa), 92 N. W. 691-692.

In civil cases this is the rule, but in criminal the mind must be convinced. The word convinced has been defined in the case of *Evans v. Rugu*, 57 Wis. 623-626.

"When one is convinced he cannot be more convinced. If evidence is convincing it is sufficient in any case, and to say it ought to be more convincing in one case than in another, is giving the word degrees of comparison when the word itself is superlative."

"In *French v. Dey*, 89 Me. 441, it was held that a charge that the burden of proof was on the defendant to make out a case by a clear preponderance of evidence, and by convincing proof, was erroneous when mere preponderance was required; and that the force of the word 'convince' is strikingly shown in the explanation so often given to juries on the subject of finding the defendant guilty beyond a reasonable doubt; that

they must have an abiding 'conviction' of the defendant's guilt." *State v. Mangano*, 77 N. J. L. 544.

Our Court of Errors and Appeals in the Berckmans Case, 17 N. J. E. 453, in discussing the burden of proof and the difference between "convince" and "preponderance," said:

"The charge made by the complainant, if true, is known to our law as a crime; consequently this prosecution partakes strongly of the nature of a criminal proceeding, so much so as to place the complainant under the necessity, not only of placing a decided preponderance of testimony in favor of the charge, but of proving it to the satisfaction of this court, beyond a reasonable doubt. I do not mean to say that it must be done by such an amount of overwhelming and unmistakable evidence as to render it impossible to be otherwise, but the evidence must be such as to satisfy the human mind, and leave the careful and guarded judgment of the court, free from any conscientious and perplexing doubts as to whether the charge be proved or not. If, after careful examination of all the competent testimony, such doubts remain immovable, it is clearly our duty to give the defendant the benefit of such doubts, and to refuse the prayer of the complainant."

"Upon a bill for divorce on the ground of adultery, the complainant must not only show a decided preponderance of evidence in support of the charge, but must prove it to the satisfaction of the court, beyond a reasonable doubt."

The Berckmans Case on this point has been approved in the case of *O'Brien v. O'Brien*, 30 Atl. 1039.

"The rule as to the quantity and character of the evidence should be such that the court is convinced of guilt." 30 Atl. 1039, *O'Brien v. O'Brien*.

And again, in the case of *Luderitz v. Luderitz*, 102 Atl. 661—"The testimony in this case was first concluded June 7, 1917. I then stated to

counsel that my views were, that, while the petitioner had clearly sustained the burden of proof, I was unable to reach the conclusion that defendant's guilt could be said to have been established beyond a reasonable doubt. In these circumstances I thought it my duty to call for additional evidence. Counsel then agreed to submit such additional proofs as could be procured, and the case was subsequently re-opened, and additional evidence offered in behalf of the respective parties. I have since ordered a transcript of all the testimony and given it careful study."

"The difficulty which confronted me was the fact that adultery is a crime. From that circumstance the view has long been entertained that to justify a decree for adultery the evidence must establish the charge with practically that degree of certainty which is required to justify conviction in a criminal case. This view was given expression by Justice VanDyke, in behalf of our Court of Errors and Appeals, in the following language:

"The charge made by the complainant, if true, is known to our law as a crime; consequently, this prosecution partakes strongly of the nature of a criminal proceeding, so much so as to place the complainant under the necessity, not only of placing a decided preponderance of testimony in favor of the charge, but of proving it to the court beyond a reasonable doubt. I do not mean to say that it must be done by such an amount of overwhelming and unmistakable evidence as to render it impossible to be otherwise, but the evidence must be such as to satisfy the human mind, and leave the careful and guarded judgment of the court, free from any conscientious and perplexing doubts as to whether the charge be proved or not. If, after a careful examination of all the competent testimony, such doubts remain immovable, it is clearly our duty to give the defendant the benefit of such doubts, and to refuse the

prayer of the complainant.' *Berckmans v. Berckmans*, 17 N. J. E. 453.

"The test as phrased in *Culver v. Culver*, 38 N. J. E. 163, 165, is:

"The circumstances must be such as will lead the guarded discretion of a reasonable and just mind to the conviction that the crime has been committed."

"That requirement, expressed in almost the exact words last above quoted, appears to have been first adopted by the English ecclesiastical courts (*Lovedon v. Lovedon*, 2 Haggerty's Consistory Reports, I, at page 3), and to have since received sanction in repeated decisions in this and other States." *Luderitz v. Luderitz*, 102 Atl. 661.

We invite the attention of the court to the following cases: *Berckmans v. Berckmans*, 17 N. J. E. 454; *Cane v. Cane* 39 N. J. E. 148; *Summerbell v. Summerbell*, 37 N. J. E. 615; *O'Brien v. O'Brien*, 30 Atl. 875; *Cooper v. Cooper*, 82 N. J. E. 581; *Waer v. Waer*, 90 Atl. 1039.

The evidence in this case shows that the petitioner absented himself from his wife for long periods during his married life. The reasons that he assigned to excuse his absence are not consistent with a reasonable performance of the duties that he owed to his wife. In this aspect the case at bar presents facts somewhat analagous to the case of *Derby v. Derby*, 21 N. J. E. 36, in which case the court held:

"The party who has negatively violated the marriage contract in its two most vital points, to love and to cherish, and has only performed it in the last and least, to support, comes into a court of equity with an ill grace to complain of a positive breach by the party whom he first injured."

Further on in the above-cited case the court said:

"The neglect of a husband to perform his duties to his wife, although it may be a natural and the real cause of her infidelity, will not justify or excuse it; it will hardly palliate the crime. But a party who has negatively violated a

solemn contract in its two most vital parts, to love and cherish, and has only performed it in the last and least, to support, comes into a court of equity with an ill grace to complain of a positive breach by the party whom he first injured. His hands are not unclean in the sense which would apply if he had committed the same crime, but they are so weakened, blanched, and attenuated by wilful non-performance, that they take but a feeble hold on the horns of the altar of justice. Such a complainant cannot expect any favorable leaning of the court, but must present a case free from any reasonable doubt."

The facts in all these cases are much stronger than in the case at bar, and yet in all these cases the court refused to grant a divorce.

SUMMARY.

The Vice-Chancellor, in his conclusions, after detailing the facts, says (State of Case, page 261, line 8):

"These circumstances raise a very strong presumption of guilt. Here was a robust, healthy, full-blooded, virile young fellow, with all the passions of youth, and all its weaknesses, and a mature woman of about his own age, apart from her husband for a long spell, occupying the same bedroom. What naturally took place, are we to suppose?"

A presumption of fact in the last analysis is but an average of probabilities. What a robust, healthy man will do under some circumstances depends on the point of view of the person who is judging the facts. This point of view may be one of innocence or one of guilt, just as the judge is inclined. In a case of this kind the law demands more than a presumption of probabilities. The fact that a man is robust and healthy and a youth, without other facts, does not determine what his conduct was or will be. The law insists that coupled with this presumption there shall be some further facts to show the inclination that this probability may happen, and it is for

this reason that the law demands that there be some evidence of secret interviews, familiarities of an indecent nature, or other facts indicative of an adulterous inclination on the part of either party. When these are present there is a ground upon which to base a presumption as to what would happen under the given circumstances. Without these indicia, the existence of an adulterous inclination cannot be inferred or speculated upon.

This case contains not a single fact indicative of an adulterous inclination on the part of either party, and in every case adjudicated by the courts of this State, wherein it was sought to prove adultery by circumstantial evidence, it was urged and insisted that inclination could not be inferred, but must be proved by facts which indicate the existence of the inclination, beyond a reasonable doubt.

At page 266, line 17, the Vice-Chancellor says:

“But, in the main, in this case, the detective is corroborated, and I have no reason whatever to doubt him.”

The detective Bowne's testimony as to what occurred at 3 A. M. in the morning could be corroborated only by the testimony of the other detective Thompson, and Thompson did not appear as a witness in the case.

As to what took place at 7 A. M., and this is the only vital testimony given by Bowne against the defendant, the detective not only was not corroborated by other witnesses, but he was flatly contradicted by this defendant and by Mitchell.

“The testimony of a professional detective, in a divorce case, is to be subjected to close scrutiny, and received with great caution; but if corroborated by other witnesses or by circumstances, and it is consistent, and not grossly improbable, it should be accorded due weight.” *McGrail v. McGrail*, 48 N. J. E. 532.

Mr. Slack, the father-in-law of this defendant, could have remained in the house until the next morning for the purpose of corroborating the testimony of the detective, and he did not do so. In the case of *Cane v. Cane*, 39 N. J. E. 148, the husband of the defendant had the op-

portunity to accompany the detective so as to corroborate his story, and he did not do so. For this reason the court dismissed the case and refused to believe the testimony of the detective standing alone.

The Court, in the case at bar, based his judgment as to the guilt of the defendant on the events transpiring after 3 A. M. of the morning of the 25th.

We submit that the court sits as a jury on questions of fact, nevertheless it cannot base its judgment on any part of the facts, but must base it on the entire relevant facts of the case, and the remaining facts of this case reach out after and preceding what happened at 3 A. M. on the morning of the 25th, and these facts were such as to constitute an extremely important, if not a conclusive factor, in determining the guilt or innocence of this defendant.

The Vice-Chancellor, further in his conclusions, page 261, line 35, to page 262, lines 1 to 10, admits that there is no evidence to indicate the existence of an adulterous inclination on the part of either the defendant or the co-respondent. This being true, the Vice-Chancellor could only find the defendant guilty of adultery by concluding that the inclination and the opportunity occurred at one and the same time. Both the defendant and the alleged co-respondent make explanations that resist any evidence of inclination on the part of either party.

Further on in his conclusions, the Vice-Chancellor goes into the personal equation of the defendant while testifying, and from this seemed to gather evidence of her guilt. We submit that this was straining the facts to find a conclusion, and in doing that the Court entered the realm of speculation.

In the case of *Cooper v. Cooper*, 82 N. J. E. 581, the facts in that case show evidence of inclination and opportunity. The same Vice-Chancellor denied the divorce on the denial of the defendant, supported by her personal equation.

On page 261, line 21, the Vice-Chancellor says:

"To overcome, or to neutralize the presumption of guilt, her explanations must be probable; they must have the ring of truth; they must be supported. I do not mean by the testimony of

others, but by the surrounding circumstances, at least, to lend probability.”

By circumstances the Court, no doubt, means circumstantial evidence. We submit that circumstantial evidence that is capable of two opposite inferences or conclusions, is worthless in any case. The only circumstantial evidence that possesses any value as evidence is that which is capable of but one conclusion, and on which reasonable men cannot differ. We insist that the circumstances in this case are such as will support the opposing inferences of guilt and innocence, and for this reason they are valueless as evidence.

Again on pages 262, line 30, and 263, lines 1 to 20, the Court takes up the question of the light in the room, the place where Mitchell stationed himself to protect the defendant, and the manner in which the Court thought Mitchell should have protected the defendant.

We submit that in this matter the court is reasoning from particulars to generalities. Persons do not always act in the same way, or do the same thing under the same circumstances. Nor do they in detailing them in a court agree in the details of what occurred. In those cases where, in giving evidence, the testimony of the parties agrees in the details, it is usually viewed with suspicion. An earmark of honest testimony is invariably when witnesses fail to agree in the details of their testimony.

The Vice-Chancellor, then goes on to state his reasons for refusing to believe Mitchell's testimony. Among those reasons assigned, is because of the testimony given by Mitchell with reference to the cigarettes that he had in his possession on that night. We submit that whether a man carries his cigarettes in his pants pocket or in the pocket of his vest depends on the circumstances surrounding him at the time.

Further in his conclusions, the Vice-Chancellor says:

“I am inclined to think that Mitchell and the defendant were in her bedroom with the light out, and when the fire alarm came he hid in her closet; that the defendant knew it, and consequently was not startled upon her return when Mitchell spoke to her in the dark.”

We submit that if at 3 A. M. Mitchell was in the room, Mr. Slack and Bowne, the detective, had time and every opportunity to go into the room and search for him. They had every reason to go in and none to stay out. In the face of their failure to go into the room, and Mitchell's denial that he was in there at that time, we are unable to see how the Court could incline to such a conclusion, unless by a process of speculation.

We insist that taking the evidence at its worst against the defendant, it still stands capable of two conclusions, on which honest and reasonable men may differ. When these conclusions are guilt and innocence, the decision of the Court must be in favor of innocence, and the decree should be denied.

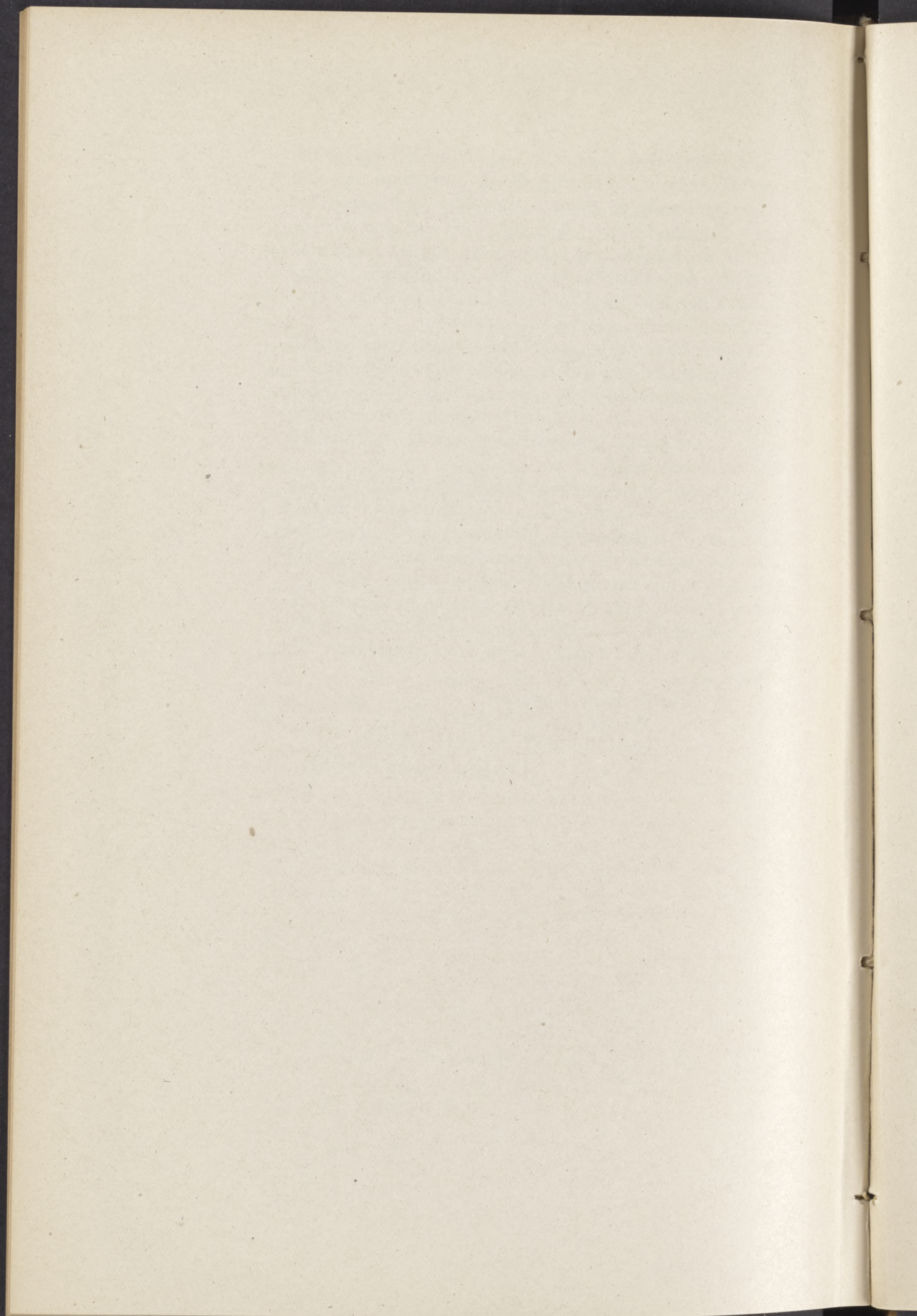
In this case there are four parties, the State, the husband, the wife, and the child. We submit and insist that the bonds of matrimony should not be dissolved and the wife cast out with this stain upon her name on any such evidence as this case exhibits, and we further insist that this child should not be subjected to the humiliating example of which this decree convicts his mother, by evidence that gathers its chief force from speculation and conjecture.

Respectfully submitted,

MARTIN P. DEVLIN,

ANTHONY S. BRENNAN,

Attorneys for the Plaintiff.



NEW JERSEY COURT OF ERRORS AND APPEALS

BETWEEN
LE ROI SLACK,
Petitioner-Respondent,
AND
GRACE POPE SLACK,
Defendant-Appellant.

} On Appeal from
Decree of the
Court of Chancery.

BRIEF OF PETITIONER-RESPONDENT.

This is an appeal from the decree of divorce, advised by Vice-Chancellor Backes, on the ground of adultery, alleged and found to have been committed by the defendant, the wife, with one Andrew Mitchell, in the early morning of Christmas Day, 1916, at the defendant's residence on Stuyvesant Avenue, in Trenton.

The Vice-Chancellor's opinion will be found on page 260 of the Case.

The facts on which the decree was advised, and which were proved at the hearing, are as follows:

FACTS.

The petitioner and defendant were married on July 13, 1910 (Case page 14), and have one child, born August 28, 1914 (Case page 15). The petitioner was engaged as a book salesman for the last several years of their married life, and in the conduct of his business, was compelled to spend much of his time on the road. The defendant, although in receipt of an allowance of \$20.00 per week from the petitioner, set up a rooming house (with petitioner's consent), at the Stuyvesant Avenue address, sometime prior to the alleged act of adultery.

The co-respondent, Andrew Mitchell, had been a friend of the defendant and her family for many years. He was frequently at her house during her husband's absence, and was in possession of a key to the front door (Case page 97). He was in the habit of helping the defendant with the care of the baby and her various household duties (Case page 76), and his frequent visits to her house during the summer of 1916 seemed to have occasioned considerable comment in the neighborhood, for about August 1, 1916, the matter of the defendant taking Mitchell as a boarder was discussed between the petitioner and the defendant in their correspondence, and the comment of the neighborhood discussed. (Exhibit D-2, Case p. 239, Exhibit D-1, Case p. 241.) Later the defendant sent to the petitioner two forms of letter (Exhibit P-3, Case p. 257), for the purpose of having him mail them to Mitchell's father, and a neighbor, with the idea of quieting these rumors. These letters were not mailed by the petitioner, but as a result of the discussion between him and the defendant, he became suspicious of the relations between Mitchell and the defendant, and shortly thereafter the petitioner's father, J. Cadwallader Slack, engaged the detective Bowne to investigate their relations.

Petitioner's proofs as to the occurrence on the night of December 24, 1916, and the early morning of December 25, 1916, are as follows:

One Thompson, a detective in the employ of Bowne, went to defendant's house and obtained lodging as a roomer. He was assigned to a back room on the second floor of the house. There were four rooms on the second floor, besides a bath room, Thompson's room being the back room, next was a room occupied by one Gano, then the bath room and forward of that a room occupied by one Custer, in front of which was the room occupied by the defendant. The defendant's room extended across the entire width of the house and opened in a hallway which ran along the westerly wall of the house to the rear; the other rooms, including the bath room, opening off of this hall. The doorway into the room called Custer's room, was within a few feet of the doorway into the defendant's room, and at right angles to it. This door swung away from the front of the house so that when ajar

it was possible to look through the opening into the doorway of defendant's room, if it were open.

About 3:30 o'clock on the morning of December 25, 1916, the detective Bowne, and J. Cadwallader Slack, father of the petitioner, came to the house at the summons of Thompson (Case pp. 56, 33). They gained admittance and went to Thompson's room in the rear (Case p. 56). Shortly thereafter, at Bowne's instance, Thompson went to the front of the house and knocked two or three times on defendant's bedroom door, calling "Mrs. Slack" several times, in a voice plainly audible to J. Cadwallader Slack, who was then in Thompson's room at the other end of the house, a distance of approximately thirty feet (Case pp. 56, 57). Receiving no answer, he returned to his own room, and again at Bowne's instance, went to Mrs. Slack's door, knocked and called to her that the house was on fire and that the smoke was coming up the stairs (Case p. 58). The defendant then opened her bedroom door, came out attired in a nightgown and kimona, and went with Thompson down stairs, through the house to investigate the alleged fire (Case p. 38). Finding no fire, they returned to the second floor and as the defendant was entering her room, she called Thompson's attention to a mouse in Custer's room, and having distracted his attention for the moment, was able to slip into her door and lock it (Case pp. 39, 57).

Immediately thereafter, the witness J. Cadwallader Slack, left the house by the back stairs, and by the front door (Case p. 57). Before leaving the neighborhood, however, he walked across the street and looked at the house to ascertain if there was any light in Mrs. Slack's room, and testifies that there was no light discernible at that time (Case p. 229).

Immediately after J. Cadwallader Slack left, the witness Bowne moved his station of observation to Custer's room, and with Thompson remained in that room for the rest of the night (Case pp. 37, 39). He testifies that he was listening at the partition between Custer's room and the defendant's room, and heard the defendant in conversation with Mitchell, as well as Mitchell's voice in reply in the defendant's room (Case p. 44).

About 7:30 o'clock the telephone down stairs was heard to ring, and the defendant, dressed as before, went

down to answer it, followed by the child. She returned in a few minutes and re-entered her room but did not lock the door (Case p. 33). Within a few minutes after her return, Bowne and Thompson hearing the child call Mitchell by name, went to defendant's bedroom door, opened it and walked into the room, and there found the defendant and Mitchell in the bed under the covers, with the child between them. At Bowne's command Mitchell got out of bed and dressed. He was wearing nothing but an undershirt, and the defendant, who also got out of bed, had on nothing but a nightgown (Case pp. 33, 41). The defendant then went to the telephone, called up her mother in Pennsylvania, and asked her to go Mitchell's bail, in case he should be arrested (Case pp. 33, 34), after which, Mitchell, at Bowne's command, accompanied Bowne to the residence of J. Cadwallader Slack. There in the presence of Mr. Slack and Mitchell, with Miss Slack, petitioner's sister, upstairs listening over the banisters, Bowne said to Mr. Slack: "Mr. Slack, this is Mr. Mitchell; I caught him in bed with your son's wife this morning." To which Mitchell replied, "This is the first time I stayed in bed with her all night," to which Slack replied, "What's the use to say that, Mr. Mitchell?" Then Bowne said, "You went to bed with her two weeks ago tonight." Slack then said, "Mr. Mitchell, I have known your father a long time, and I have always had a great deal of respect for him. I understand your relations with Mrs. Slack have been a source of worry to him and I hope this will be a lesson to you," to which Mitchell replied "I think it will." (Testimony of Miss Slack, Case p. 226; testimony of J. Cadwallader Slack, Case p. 230; testimony of Bowne, Case p. 233.) Bowne testifies further that on the way to Mr. Slack's house, Mitchell said to him, "What's the use when they got the goods on you" (Case p. 233).

After this occurrence, J. Cadwallader Slack went to the Stuyvesant Avenue house and saw the defendant and said to her, "I suppose you know what called me here tonight, that after what has taken place, Le Roi will petition for a divorce." Mrs. Slack at first insisted that the occurrence could be explained and declared that Mitchell's admission was a lie, but afterwards broke down and cried, and said, "What about the baby? I

couldn't give up my baby. I would go to Europe before I would give up the child." (Case p. 53.)

About January 5, 1917, however, the defendant wrote to her husband (Exhibit P-5, Case p. 251). Her letter contains no explanation of the events of Christmas morning except to say "We had a most delightful Christmas."

Her husband replies (Exhibit P-4, Case p. 252), charging her with wrongdoing but she does not answer his letter "on advice of her counsel." (Case p. 161.)

Defendant's explanation of the occurrences of the morning of December 25, 1916, are founded upon her story and that of the co-respondent Mitchell, which, while they agree in the main details, differ in many important particulars. They both say that Mitchell came to the house about 7:30 or 8:00 o'clock the previous evening, in response to a request made by defendant's mother, that Mitchell remain in the house over night for defendant's protection. All of the roomers, except Thompson, had gone away over Christmas and defendant was suspicious of Thompson and afraid of him because of his peculiar actions. After coming to the house, Mitchell and the defendant spent some hours wrapping up Christmas presents, which they finished about midnight. Mitchell fixed the heater for the night about 9:00 o'clock, and after the presents were wrapped, they proceeded to trim the baby's Christmas tree. All of this occurred in the reception room on the first floor of the house. After the tree was trimmed, the defendant said that she was going upstairs to finish a Christmas present, a piece of embroidery, which she was making for her mother, and without any instructions to Mitchell as to where he should sleep, and without even bidding him good-night, she went to her room and went to work there.

Mitchell remained in the reception room for some time, reading the newspaper and then, after taking off his coat, vest and collar, went upstairs to Custer's room, and lay down on a couch to smoke a cigarette, without lighting the light. Having finished his cigarette, he lay gazing out of the window into the night until he fell asleep, and was not awakened by Thompson's raps on Mrs. Slack's door (although the door of the room in which he was was open, and within a few feet of Mrs. Slack's door), nor by the knock and alarm of fire, but woke up only

when he heard Mrs. Slack and Thompson coming up the stairs together. He then darted into Mrs. Slack's room and hid in the closet, the room being dark, for the purpose of protecting Mrs. Slack in case Thompson's actions required it. When Mrs. Slack entered the room and shut the door, he was standing in the doorway of the closet. She turned on the light, asked him what he was doing there, and some discussion followed as to Thompson's motives in raising a false alarm of fire, after which Mrs. Slack sat down by the radiator by which she had a light, and continued to sew, while Mitchell, who remained in the room for her protection and at her request, lay upon the bed with his head to the foot and read. During all of this time he was clothed in his underclothes, trousers, shirt, bathrobe and slippers, while Mrs. Slack was clothed in a sweater, slippers and bathrobe. After awhile he fell asleep and was awakened by the telephone call at 7:30 in the morning. Mrs. Slack was still working on her piece of fancy work and the light was out, it being daylight. He turned around in the bed and started to play with the child, who was in a crib beside the bed. When Mrs. Slack went downstairs to answer the telephone call, however, the child cried to be allowed to follow her, and he let the child go, and when Mrs. Slack came back, she sat on the edge of the bed, and in this position, with the child between them, they were discovered by Bowne.

Mrs. Slack says that after she went upstairs and left Mitchell in the reception room, she placed her light on the radiator and drew a chair up to it, because the room was cold, and worked on her fancy work during the entire night; that she did not hear Thompson's first calls, but did hear the alarm of fire, and went with Thompson downstairs. When she returned, the light was burning and Mitchell was in her room. They discussed Thompson's false fire alarm and Mitchell was about to withdraw from the room when she persuaded him to stay to quiet her alarms; she agrees with Mitchell in the description in the positions they assumed, and says that when Mitchell fell asleep with his head to the footboard of the bed, she threw some covers over him, as the house was very cold. She continued to work all night long, with the light burn-

ing and her description of the position in which Bowne discovered them tallies with that of Mitchell.

ARGUMENT ON THE FACTS.

It is argued that petitioner's case depends upon the uncorroborated testimony of Bowne the detective. So far as the actual situation in which the defendant and correspondent were found, this is so. It was impossible to produce Thompson at the time the hearing was held, but Bowne's story is given in straightforward language and was thoroughly tested in cross-examination, both by defendant's counsel and the court (Case pp. 35, 47). It is supported by numerous corroborating circumstances, as well as by the improbability of the defendant's story and her attitude toward the whole occurrence.

Mitchell's story is thoroughly discredited by his admission of guilt made in the presence of three persons, and while we agree that these admissions cannot be used as proof of the defendant's guilt, they are, we submit, perfectly competent to discredit Mitchell. If therefore, Mitchell's story be false, and false in its recitation of the main facts, how can the defendant's story be true, at least so far as it agrees with Mitchell's?

The defendant and Mitchell would have us believe that they parted for the night, as they thought, without comment as to where Mitchell would sleep, or without even a good-night, and this, when Mitchell was present for the express purpose of protecting the defendant from the boarder Thompson. He says that he had been in the habit of sleeping in Custer's room, by Custer's permission, but it is testified also that he sometimes slept in another room (Case p. 88). If his presence was for the purpose of protection, was it not important to the defendant to know where he could be found in case his protection was required? And moreover, what house-keeper would not make an arrangement with her guests for her or their convenience?

He says that he spent the evening wrapping up Christmas packages and trimming a Christmas tree, both tedious and tiresome occupations, and yet when he goes to Custer's room, he does not attempt to retire for the night, but proceeds to smoke a cigarette in the dark, a notoriously

unsatisfactory smoke, and to fall to sleep on a couch while gazing out of the window at an empty street. He does not hear three or four rapid knocks on a door but a few feet away from the open door of the room in which he was sleeping, nor the calls which accompanied them, although they were heard by J. Cadwallader Slack at the other end of the house. Stranger yet, he sleeps on undisturbed by a fire alarm and all the bustle accompanying it. At the moment Mrs. Slack and Thompson were returning from the lower floor he hears them and darts into Mrs. Slack's room, eluding the detective Bowne and witness J. Cadwallader Slack, who were then on watch on the second floor, and whose sole business in the house was to detect the presence of Mitchell. In order that he might fully protect Mrs. Slack from the dangerous Thompson, he conceals himself in the closet of her room, a particularly necessary measure of precaution in view of the fact that he testifies positively that at the time there was no light in the room. After Mrs. Slack has re-entered the room and locked the door, he makes his appearance and at her earnest solicitation, remains the rest of the night, reading and sleeping and playing with the child, while she works patiently on her fancy work.

Mrs. Slack's story is no more believable. She knew she had to work the greater part of the night to finish Christmas presents, as a consequence she allowed Mitchell to bank the fire about nine o'clock. By her testimony, the house was very cold, but she made no effort to have the fire kept up, but instead she sits like an ostrich with its head in the sand, beside a cold radiator to obtain warmth. Although patiently working and wide awake, she wholly fails to hear a number of knocks on the door and calls sufficiently loud to be heard in the back room of the house. But when the fire alarm comes, she overcomes her fear of Thompson sufficiently to make a tour of the whole downstairs with him alone, entirely forgetful of the presence of her protector, Mitchell, who sleeps calmly on. She leaves the light burning and finds it burning on her return, although to Mitchell the room was in darkness. When the fire scare is over, she is so fearful of Thompson, with whom but a few minutes before she had made an inspection of the entire lower floor

alone, that she must have her protector with her for the rest of the night, behind a locked door.

The defendant's behavior on the witness stand was peculiarly significant. Under cross-examination by counsel and the court, she said that she saw nothing peculiar about being discovered behind a locked door in her bedroom with a very close male friend at seven o'clock in the morning, and that it took her quite some time to realize what Bowne's intrusion meant (Case p. 127, 134). The defendant is a woman twenty-nine years of age, who has been twice married. She knew that the neighbors had commented unfavorably upon her intimacy with Mitchell. For her to say that because she had no evil in mind, she did not consider it indiscreet nor a suspicious circumstance, to be found in the position in which she admits she was found, is submitted to show a lack of frankness and an assumption of naivete inconsistent with her years and experience, an evident purpose of brazening out an unanswerable situation. In her innocence she even goes farther and writes to her husband in a letter postmarked January 5, 1917, "We had a most delightful Christmas. Myself and baby surely received some beautiful gifts, also very useful ones. Sincerely hope you also had a very enjoyable Christmas." (Exhibit P-5, Case p. 251.) But this innocence disappears when on receipt of his reply charging her with adultery, she does not answer his letter "on advice of her counsel."

She pretends on the stand that she did not know that the neighbors were talking about her relations with Mitchell (Case p. 128), and when brought face to face with her own letters (Exhibit P-1, 2, 3, Case pp. 253, 256, 257), she attempts to evade admitting them to be hers, although she later does admit herself their author after consultation with her counsel (Case p. 161).

Although she assures ~~Mr.~~ J. Cadwallader Slack that the whole occurrence can be explained, there is no evidence of any explanation, or attempted explanation having been made, until she and her "protector" Mitchell appeared upon the witness stand to defend this action.

Mitchell's admission that this was the first occasion on which he had slept with the defendant all night brands his entire story as a falsehood. Three witnesses testified to this admission, and it is submitted that their testimony,

and especially that of Miss Slack, will bear every test of scrutiny. Particularly convincing is the language used by Miss Slack when asked how she could be sure that the word "bed" was used by Mitchell instead of "room". She says, "I had never been used to anything of this kind at all, and it impressed me greatly, and being my brother, I was very much excited over the whole affair." (Case pp. 226, 227). The difference between her mental attitude, here shown, and that of the defendant above commented on, is submitted to speak for itself. If then, Mitchell's story be false, how can Mrs. Slack's story be true? And while Mitchell's admission is admitted to be no evidence of the fact that he did sleep with the defendant all night, the falsity of his story is certainly evidence of the falsity of hers.

But aside from Mitchell's admission of his guilt, the falsity of his story is shown when, under examination by the court, he follows his cigarettes from garment to garment in order to bring them within his reach in Custer's room.

He had testified that he had left his coat, vest and collar on the first floor, but the first thing he did when he went upstairs was to smoke a cigarette. The court then examined him as follows (Case p. 214):

BY THE COURT:

Q. Do you smoke a particular brand of cigarettes?

A. Sweet Caporal.

Q. Have you any with you now?

A. Yes, sir.

Q. Where do you carry them?

A. Right here (indicating his coat pocket).

Q. Is Mr. Custer a cigarette smoker, too?

A. Yes.

Q. Where did you get this cigarette you smoked this night?

A. I had it in my coat pocket.

Q. Where?

A. With me.

Q. Where? Your coat was downstairs?

A. I think I had them in my vest.

Q. Where?

A. I had it in my pocket there, in my pants pocket; I always carry it—

Q. You just said that it was in your coat pocket, and then in your vest?

A. I carry them in different places.

Q. Why did you say you carried it in your vest pocket?

A. As a rule I always generally carry them there.

Q. Were they there this night?

A. I have taken them out and put them in my pants' pocket; I generally carry them in my vest pocket.

ARGUMENT ON THE LAW.

1. Answering appellant's first point, that "The evidence points to two opposing conclusions," it is respectfully submitted that appellant's discussion of this point misconceives the rule attempted to be invoked.

The testimony offered by the petitioner was susceptible of but one construction. There can be no reasonable presumption of innocence from the finding of a married woman and a single man in the same bed, the woman clad only in her nightgown, and the man only in his undershirt, after at least four hours of association in a locked bedroom together. The defendant's answer was not an explanation of this situation, but a denial of it, and the stories are inconsistent. The court must believe one or the other, it cannot believe both, and it is respectfully submitted that merely because the defendant sets up a state of facts, which, if believed, would negative her guilt, the court is ~~not~~ precluded from believing the petitioner's evidence and disregarding hers.

It is respectfully submitted therefore, that the true rule is that if two conclusions can be reasonably drawn from the facts proved by the petitioner, one of guilt, one of innocence, the court must assume that the defendant is innocent. How far these facts are inconsistent with innocence has already been shown.

2. Answering appellant's second point, namely, "that the evidence in this case does not disclose both opportunity and inclination," it will be remembered that Bowne was in the defendant's house from about 3:30 o'clock of the morning of December 25, 1916, until 7:30 o'clock. From shortly after 3:30 o'clock a. m., he was constantly in the room next to the defendant's room. During all this time he was constantly on the second floor of the house, and on the watch. At no time did he see Mitchell go into the defendant's room, yet he found him there in bed with the defendant at 7:30 in the morning. Here certainly was proof of opportunity, and is it necessary to prove inclination by any more certain proof? For what other purpose could this single man and married woman have gone to bed, dressed for the night? It is true that there was no evidence of undue familiarity on other occasions, but that the defendant was much about the house is admitted. He performed numerous household duties for the defendant. He was possessed of a key, and that without the husband's knowledge. His relations with the defendant were talked about in the neighborhood, yet she seriously considered taking him as a boarder, and he was in and out of the house at all hours of the day and night, and on one occasion, from six until eight in the morning, and on other occasions he was seen to come out of the house early in the morning and was seen in the house late at night (Case pp. 32, 62, 67).

The defendant made no secret of her friendship for the co-respondent, and the case is submitted to be essentially different from those cases in which an act of adultery is charged with a man with whom the defendant had had no previous close relations whatever.

We submit that proof of the presence of a married woman and single man, dressed for the night in bed together, is a sufficient proof of the commission of adultery, unless satisfactorily explained. This rule is founded on human experience of the purpose for which persons of the opposite sex are in the habit of going to bed together. It is stated in 14 Cyc., p. 696,

"(2) *Occupancy of same room or bed.*" "Adultery may be established by the fact that the parties occupied

the same room at night, or the same bed in the absence of an explanation of the incriminating circumstances.”

This section is supported by two cases in New Jersey, namely, *Dunn v. Dunn*, 21 *Atl. Rep.* 466; *Leyland v. Leyland*, 16 *Atl. Rep.* 177.

In the case of *Guisto v. Guisto*, 84 *Atl. Rep.* 617; *affirmed*, 88 *Atl. Rep.* 528, the defendant, who was separated from her husband, and to whom the alleged co-respondent had shown considerable attention, removed to a distant part of the city and took two rooms alone. Shortly thereafter the co-respondent appeared there as a roomer. There was some difference in the testimony as to whether the rooms had one or two beds, but the evident falsity of the defendant's story and the untrustworthiness of her witnesses, led to the conclusion that she had taken the rooms and accepted the co-respondent as a roomer for the sole purpose of having a place where she could be alone with him, and the divorce was granted and sustained by this court.

In *Luderitz v. Luderitz*, 102 *Atl. Rep.* 661, the testimony of a detective was to the effect that the defendant had an apartment in Atlantic City, in which the co-respondent was a roomer, and that they frequently occupied the same room at night. It was admitted that she kept her clothing in a closet in his room, which she explained by the fact that there was insufficient closet room in the apartment. Upon her testimony being proven untrue in this particular, the court granted the divorce on the detective's testimony.

In the case at bar, Bowne's testimony is to the effect that he found the defendant and co-respondent in bed together on the morning of Christmas Day, 1916, and that they had been together in her bedroom with the door locked, since 3:30 of the same morning. The defendant and Mitchell denied that they were in bed together, and told an entirely different story, admitting, however, that they were in that room behind a locked door from 3:30 a. m. until 7:30 a. m., of that morning. Mitchell's story is contradicted by his own admissions, and has variance in small details from defendant's story. Defendant's story agreeing as it does in the main facts with Mitchell's must be false, if Mitchell's is false. Her behavior on the stand, her reluctance to admit her letters, her letter to her

husband written after the events of Christmas Day, 1916, and her failure to answer her husband's letter, all point to her guilt. She does not explain her position in bed with Mitchell, but denies it. Unless her testimony is believed on this point, what is there to deny Bowne's story?

3. Answering appellant's third point, that "admissions of paramour or *particeps criminus* made in the absence of the defendant are not evidence against the defendant," we must agree with this statement. Mitchell's admissions of guilt made to J. Cadwallader Slack in the presence of Bowne, and in the hearing of Miss Slack, were offered and admitted not as evidence of the defendant's guilt, but to affect this credibility and contradict his own statements.

A justification of the admission of this evidence is found in the cases of *Graham v. Graham*, 50 N. J. Eq. p. 801; *Whitenack v. Whitenack*, 36 N. J. Eq. p. 474, and *Delaney v. Delaney*, 69 N. J. Eq. p. 602.

The rule applied in *Matercka v. Erie Railway Company*, 88 N. J. L. p. 372, quoted in appellant's brief, has no application. In that case the statements alleged to have been made and the admission of which were held in the error, were collateral and irrelevant to the issue, and as to such statements the rule unquestionable is that a denial by the witness cannot be contradicted by the testimony of other witnesses.

The rule is thus stated by Greenleaf:

"The credit of a witness may also be impeached by proof that he has made statements out of court contrary to what he has testified at the trial. But it is only in such matters as are relevant to the issue, that the witness can be contradicted." (1 *Greenleaf on Evidence*, Edition of 1896, sec. 462.)

The actual effect, however, of this contradiction of Mitchell, is to discredit the defendant's testimony, for if Mitchell's story is false in the light of his admissions, so much of the defendant's story as corresponds with Mitchell's, must be false also. The admissions are to the effect that he slept with the defendant all night. So much of his story therefore, as attempts to account for his whereabouts elsewhere than sleeping with the defendant, is

false, and so much of the defendant's story as attempts to account for Mitchell elsewhere than sleeping with her on that night, is untruthful.

The result of this situation seems to be then, that a witness called to corroborate the defendant's story, becomes an instrument to contradict it, by proof of the falsity of the corroboratory story itself.

4. Answering the appellant's point that "evidence must be convincing and beyond reasonable doubt," we respectfully submit, that the rule as to the number of witnesses, the burden of proof, the character and weight of the testimony, is the same in actions for divorce for adultery as in any other civil action.

This is the view taken by Mr. Biddle in his *New Jersey Divorce Practice, Second Edition*, page 69. He says "The peculiar rule of criminal procedure that the offense of adultery must be proved "beyond a reasonable doubt," while stated to apply to suits of divorce for the cause of adultery, it certainly does not, for it is elementary law that that rule does not depend upon the facts investigated, but the proceeding in which it is investigated, and a divorce proceeding is a civil not a criminal suit," citing *State v. Sharkey*, 73 N. J. L. p. 491.

The testimony of one witness has been held sufficient to prove adultery. *Derby v. Derby*, 31 N. J. Eq. p. 36; *Moyer v. Moyer*, 75 N. J. Eq. p. 439; *Luderitz v. Luderitz*, 102 Atl. Rep. p. 661.

So careful a Vice-Chancellor as Vice-Chancellor Leaming, in the case of *Luderitz v. Luderitz*, above quoted, while adhering to the rule of proof beyond a reasonable doubt, saw fit to advise a decree in that case, on the testimony of a detective, without corroboration except as was found in a peculiar circumstance of the case, and the apparent falsity of the defendant's story.

The true rule as to the weight of testimony is aptly stated in that case (quoting from *Culver v. Culver*, 38 N. J. Eq. p. 163), thus: "The circumstances must be such as will lead the guarded discretion of a reasonable and just mind to the conviction that the crime has been committed," or such "as to satisfy the human mind and lead the careful and guarded judgment of the court free from

conscientious and perplexing doubts as to whether the charge has been proved or not." It is submitted that this rule does not take from the court the right to reject as untruthful the testimony of any one or any number of witnesses; it does not compel the court to give weight to testimony which it believes to be false, nor does it restrain the court from giving full force to the testimony of the petitioner's witnesses merely because the defendant and her witnesses tell a different story.

Appellant attempts to appeal to the line of cases in which the husband, by prolonged absence, had left his wife for long periods in circumstances dangerous to her virtue. The distinction between these cases and the present case is submitted to be apparent. Petitioner had no intimation that defendant's virtue was threatened until he became suspicious by reason of the letters he was asked to write. As Mitchell was a friend of his wife's family, there was no reason to suspect him up to that time, nor is there any evidence to show that he had any knowledge of his wife's frailty.

His explanation of his absence, made to his counsel and the court (Case p. 224), is submitted to dispose of any suspicion which appellant may have attempted to direct against him in this particular.

The explanation is as follows:

Q. What reason do you offer for not going oftener than you did the last year or two?

A. The distance was so great that the expense was too much.

Q. You couldn't afford it?

A. No.

Q. Your income didn't allow it?

A. Didn't allow it, no.

BY THE COURT:

Q. Why didn't you get work nearer home so you could be with your wife and child?

A. I always liked the road, for one reason.

Q. Didn't you like your wife?

A. I did; she didn't want to be on the road.

Q. Didn't you realize that she was entitled to your protection as against other men?

A. Yes.

Q. How could you expect her to be on the road with you, she having the baby?

A. I never could understand why she couldn't take care of the baby on the road; I wasn't making four or five towns a day; I was in a town five or six months or more at a time.

Q. How long before Christmas did you request your father to hire detectives?

A. I wrote him about the first of December, if I remember right.

Q. What caused you to write him then?

A. This letter.

Q. That was written in October?

A. I didn't write my father until I fully made up my mind that I wanted to find out.

5. That petitioner's proofs are not to be disregarded merely because the main evidence supplied is that of a detective.

The rule which has been universally applied in this State is to the effect that the testimony of a detective should be received with great care and his story carefully scrutinized, to determine its truth or falsity. Where it is supported by corroboration supplied by other witnesses, or by circumstances, or where the story is probable, and the contradictory story of the defendant's witnesses is improbable, or the credibility of defendant's witnesses is undermined, there is no reason for depriving a detective's story of full evidential force.

Luderitz v. Luderitz, supra.

Hurtzig v. Hurtzig, 44 N. J. Eq. 329.

Dilatash v. Dilatash, 98 Atl. Rep. 257.

SUMMARY.

We respectfully submit that the case stands thus: The presence of Mitchell in defendant's house on the night in question is admitted, as is his presence in her room behind a locked door from 3:30 a. m. until 7:30 a. m. Bowne's presence in the house at 7:30 a. m. is admitted. His presence there at 3:30 o'clock is corrobor-

ated by the testimony of J. Cadwallader Slack. Bowne's story that he found the defendant and co-respondent in bed and undressed, if believed, shows both opportunity and inclination to commit the crime of adultery. The frequent presence of Mitchell at defendant's house, his possession of a latch key, and his friendly relations with the defendant, are admitted. Mitchell's story as to his whereabouts in the house on that night is contradicted by his own admissions to the effect that he slept with the defendant all night, made in the presence of Bowne, J. Cadwallader Slack and Miss Slack. His story as to the occurrences before he entered Mrs. Slack's room, are improbable, because he claims to have been asleep during the time of considerable commotion within a few feet of him. He contradicts Mrs. Slack in saying that there was no light in Mrs. Slack's room when he entered it. J. Cadwallader Slack contradicts Mrs. Slack's statements that there was a light there at 3:30 a. m., and the highly improbable circumstances that Mitchell and the defendant parted for the night without any previous arrangement as to where Mitchell was to sleep, cast grave doubt on the truth of both of their stories. The behavior of the defendant on the stand, her utter refusal to admit the circumstances under which she admits she was found with Mitchell as suspicious and as likely to cause comment, and the text of her letter written to her husband shortly thereafter, brand her testimony as unreliable, and untruthful. Mitchell's admissions, coupled with the highly unlikely story that he carried his cigarettes in his trousers pocket, a palpable afterthought to bolster up his story under the searching cross-examination of the Vice-Chancellor, are submitted to be certainly enough to warrant the Vice-Chancellor in believing his testimony to be untruthful. If Mitchell's story is untruthful, the defendant's story, which agrees with it in the main particulars, must also be untruthful, and it is apparent that the entire evidence was manufactured between the defendant and the co-respondent.

Bowne was carefully cross-examined, both by defendant's counsel and the court, and in the light of this cross-examination, coupled with the apparent falsity of the story adduced by the defense and the corroboration of various details by witnesses of the character of Lelia

Slack and J. Cadwallader Slack, it is submitted that the court was justified in accepting Bowne's recital as the truth and advising a decree accordingly,

Respectfully ~~advised~~, *submitted,*

SCOTT SCAMMELL,

CHARLES DE F. BESORE,

Of Counsel with Petitioner-Respondent.