NEW JERSEY COURT OF ERRORS AND APPEALS

BETWEEN
ANDREW J. CARTAN,
Petitioner-Appellant,
and
SARAH CARTAN,
Defendant-Appellee,

ON APPEAL FROM CHANCERY

STATE OF THE CASE

WILSON & SMOCK,
Counsel for Petitioner.
JOHN S. APPLEGATE & SON,
Counsel for Defendant.
JACOB R. LEFFERTS AND MERRITT LANE,
Counsel for Intervening Defendant.

New Jersey State Library

BILL OF COMPLAINT

IN CHANCERY OF NEW JERSEY

Filed December, 1918.

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

The petition of ANDREW J. CARTAN, of the Borough of Matawan, in the County of Monmouth, and State of New Jersey, respectfully shows:

1. Your petitioner was lawfully joined in the bonds of matrimony to his present wife, SARAH CARTAN, the defendant in this suit, on the 14th day of January, 1892, by Rev. Mr. McKinney, a minister of the Gospel, at the city of New York, in the State of New York.

2. The defendant since her marriage to your petitioner, and on the first day of January, 1914, and on each day of each month of the said year 1914, and of the years 1915, 1916, 1917, and 1918, to the date of the verification hereof, committed adultery with Patrick J. Devlin, in the City of New York, at the Borough of Matawan aforesaid, and at various other places in the County of Monmouth and elsewhere in the State of New Jersey.

3. Petitioner and defendant were *bona fide* residents

of the State of New Jersey when this cause of action arose, and that they have ever since continued to be bona fide residents of this State down to the time of the commencement of this action, residing in the Borough of Matawan aforesaid, in the County of Monmouth, in the State of New Jersey.

4. Four children were born of the marriage aforesaid, to wit: Helen Cartan, age 25 years; Johnson Cartan, age 17 years; Jean Cartan, age 9 years, and Elizabeth Cartan, age 4 years; who are in the custody of your petitioner.

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

And your petitioner will ever pray, etc.

WILSON & SMOCK,
Solicitors of Petitioner.

Dated December 11, 1918.

STATE OF NEW JERSEY
COUNTY OF MONMOUTH ss:

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

Sworn and subscribed before me at Red Bank, Monmouth County, N. J., this 11th day of December, A. D. 1918. } ANDREW J. CARTAN

Meta A. Von Glahn,
Notary Public of New Jersey.

(L. S.)

ANSWER OF DEFENDANT

The answer of Sarah Cartan, defendant, to the petition of Andrew J. Cartan, petitioner.

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

2. Defendant denies the allegations contained in paragraph 2 of said petition. On the contrary this defendant says that she has ever faithfully observed her obligations as the wife of the petitioner.

3. Defendant admits the allegations contained in paragraph 3 of the petition.

AMENDMENT TO ANSWER OF DEFENDANT

(Filed December 17, 1920)

This defendant further says as an amendment to her answer hereinbefore filed, by leave of the Court first had and obtained:

That the petitioner condoned said supposed act of adultery in that with knowledge he did continue matrimonial cohabitation with this defendant between May 1st, 1918, and September 1st, 1918, at the home of the petitioner and defendant in the Borough of Matawan, Monmouth County, New Jersey, and that during such cohabitation and ever since, this defendant has treated this petitioner with conjugal kindness.

JOHN S. APPLEGATE & SON,
Solicitors for Defendant.

4. Defendant admits the allegations contained in paragraph 4 of the petition as to children born of said marriage, but denies that said children are in the custody of the petitioner. On the contrary defendant charges that they are in the custody of the defendant.

5. Defendant denies that petitioner is entitled to a dissolution of the marriage between petitioner and defendant.

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

JOHN S. APPLEGATE & SON,
Solicitors of Defendant.

REPLICATION

THE REPLICATION OF ANDREW J. CARTAN, PETITIONER, TO THE ANSWER OF SARAH CARTAN, DEFENDANT.

The petitioner joins issue on the answer of the defendant.

WILSON & SMOCK,
Solicitors of Petitioner.

PETITION OF INTERVENING DEFENDANT

(Filed October 6th, 1919)

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

The petition of Patrick J. Devlin, of the Borough of Matawan, County of Monmouth and State of New Jersey, respectfully shows:

1. That in a certain petition filed in this cause for divorce on the ground of adultery by Andrew J. Cartan, petitioner against Sarah Cartan, defendant your petitioner has been named co-respondent.

2. That your petitioner did not commit adultery with the defendant, Sarah Cartan, as charged in said petition or otherwise and desires to intervene and defend this cause and presents herewith his answer agreeing to go to hearing in the said cause upon the date now fixed and to be bound by all proceedings heretofore taken herein.

And your petitioner will ever pray, &c.

PATRICK J. DEVLIN,
Petitioner.
JACOB R. LEFFERTS,
Solicitor for Petitioner.

ANSWER OF INTERVENING DEFENDANT

The answer of Patrick J. Devlin, intervening defendant, in the above entitled cause respectfully shows:

1. That he is a resident of the Borough of Matawan, County of Monmouth and State of New Jersey.

2. That he is advised that the statements contained in the 1st paragraph of the petition are true.

3. He denies in toto the statements contained in the 2nd paragraph of said petition.

4. He is advised that the statements contained in the 3rd and 4th paragraphs of the petition are true, except that the children instead of being in the custody of petitioner are in the custody of defendant.

Defendant prays that the petition of the petitioner may be dismissed and that it may be adjudged that this defendant did not commit the acts alleged in said petition to have been committed by him.

PATRICK J. DEVLIN,
Intervening Defendant.

JACOB R. LEFFERTS,
Solicitor for Intervening Defendant.

ORDER ADMITTING INTERVENING DEFENDANT

This matter being opened to the court by Jacob R. Lefferts, by counsel with Patrick J. Devlin, and upon reading the petition and the proposed answer filed herein of said Patrick J. Devlin, and the said Patrick J. Devlin agreeing to proceed with the hearing of the said cause upon being made a party thereto, on the day now fixed and to be bound by the proceedings heretofore taken herein.:

It is on this 6th day of October, 1919 ORDERED that the said Patrick J. Devlin be admitted as a party defendant and that the answer presented by him at this time be filed and that the hearing proceed upon the date now fixed, and that the said Patrick Devlin be bound by the proceeding heretofore taken herein.

And it is further ORDERED that a copy of the petition of intervention, together with a copy of the answer and of this order, none of which need be certified, be served upon Andrew J. Cartan and Sarah Cartan, or their respective solicitors, within two days of the date hereof.

Respectfully advised,
JOHN E. FOSTER, V. C.

PETITION FOR BILL OF PARTICULARS BY INTERVENING DEFENDANT

(Filed October 6th, 1919.)

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

The petition of Patrick J. Devlin, of the Borough of Matawan, County of Monmouth, and State of New Jersey, respectfully shows:

1. That he is the co-respondent mentioned by the petitioner in the above entitled cause and that he has been admitted as party defendant and has filed his answer.

2. That the case is set for hearing before the Honorable John E. Foster, Vice Chancellor, for the 12th day of November, 1919, at ten o'clock in the forenoon, at Chancery Chambers, in the City of Long Branch.

3. That paragraph 2 of the petition for divorce filed in said case is as follows: "The defendant since her marriage to petitioner on the first day of January, 1914, and on each day of each month of the said year 1914, and of the years 1915, 1916, 1917 and 1918, to the date of the verification hereof committed adultery with Patrick J. Devlin, in the City of New York, at the Borough of Matawan, aforesaid, and at various places in the County of Monmouth and elsewhere in the State of New Jersey."

4. That said allegations contained in said paragraph 2 of said petition are so diffuse, general and promiscuous that this intervening defendant is prejudiced thereby in defending said suit on its merits.

5. That heretofore and on or about the 22nd day of April, 1919, the petitioner in response to a demand of the defendant, Sarah Cartan, for a Bill of Particulars, served

a Bill of Particulars containing the following, and no other:

"The defendant committed adultery with Patrick J. Devlin (as charged in the petition) on the 23rd day of November, in the year 1914, in the city of New York and State of New York. The precise place is at this time unknown to the petitioner. The defendant also committed adultery with the said Patrick J. Devlin in the Borough of Manhattan, Monmouth County, New Jersey, on two certain nights in the latter part of May or in the month of June, 1916. The precise dates are at this time unknown to the petitioner. The adultery was committed in or near an out-building located in the back yard of the premises then and now occupied for residential purposes by the petitioner."

"Also on two other occasions in early fall or the summer of 1915, and on three other occasions in spring of 1916, in or near said out-building, or other places on or near the premises owned and occupied as aforesaid by the petitioner, in said Borough of Matawan."

6. Your petitioner shows that said allegations contained in said Bill of Particulars are so general and indefinite as that this defendant is prejudiced in defending such suit on its merits, and in any event it may be claimed that said bill of particulars is not binding on said petitioner so far as your petitioner is concerned.

7. Your petitioner further shows that he is entitled in view of the indefinitedness of the allegations in the petition and of the Bill of Particulars and of the time

which has elapsed since the service of the Bill of Particulars to a specification of the times and places at and in which it is charged that your petitioner committed the offenses charged against him and the defendant, Sarah Cartan, and of the nature of the testimony to be offered in support of such charges.

Your petitioner prays that an order may be made directing the said petitioner to serve upon your petitioner a Bill of Particulars specifying distinctly and precisely the times at which and the places in which it will be sought to be proven your petitioner committed the offenses charged against him with the defendant Sarah Cartan, and of the nature of the testimony to be offered in support of such charges.

And your petitioner will ever pray, &c.

PATRICK J. DEVLIN,
Petitioner.

JACOB R. LEFFERTS,
Solicitor for Petitioner.

STATE OF NEW JERSEY
COUNTY OF MONMOUTH } ss.

PATRICK J. DEVLIN, of full age being duly sworn according to law upon his oath deposes and says:

That he is the petitioner named in the foregoing petition; that the matters and things set forth in said petition are true; that your petitioner is absolutely innocent of the charges made against him, but that owing to the indefinitedness of such charges, both as to the time, places and circumstances your petitioner will be pre-

judiced in defending said suit upon the merits. That this application is not made in any respect for the purpose of delay.

Sworn and subscribed to before me this 2nd day of October, 1919. } Patrick J. Devlin.

(L. S.) Celeste E. Wenzel, Notary Public.

ORDER TO SHOW CAUSE ON REQUEST FOR BILL OF PARTICULARS

This matter being opened to the court by Jacob R. Lefferts, of counsel with the intervening defendant, and upon reading the petition filed herein:

It is on this 6th day of October, 1919, ORDERED that the said petitioner, Andrew J. Cartan, show cause before the Chancellor, at Chancery Chambers, in the City of Newark, on Tuesday, the 14th day of October, 1919, at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, why the prayer of the petition should not be granted and why the petitioner should not be directed to serve a Bill of Particulars upon the intervening defendant specifying distinctly and precisely the times at which and the places in which it is charged that the intervening defendant committed the offenses charged against him and of the nature of the testimony to be offered in support thereof.

And it is further ORDERED that a copy of the petition and of this order, neither of which need be certi-

fied be served upon the defendant, or his solicitor, within three days of the date hereof.

Respectfully advised,
JOHN E. FOSTER, V. C.

ORDER REQUIRING BILL OF PARTICULARS BY PETITIONER

This matter being opened to the Court by Merritt Lane, of counsel with the intervening defendant Patrick J. Devlin, in the presence of James D. Cartan, of counsel with the petitioner, and the matter being considered:

It is on this 14th day of October, 1919, ORDERED that the petitioner serve upon the solicitor of intervening defendant within ten days of the date hereof a specification of the times and places, when and where the adultery charged in the petition is alleged to have taken place, as nearly and as specifically as he can, and in case of his inability to furnish times and places, then that he specify the instances and circumstances with respect to the alleged commission of the act of adultery so that the intervening defendant may be apprised of the particular occasions referred to.

Respectfully advised,
JOHN E. FOSTER, V. C.

BILL OF PARTICULARS FURNISHED INTERVENING DEFENDANT

The following is a bill of particulars furnished by the petitioner to Patrick J. Devlin, intervening defendant in the above titled cause, in compliance with the terms of an order made in said cause bearing date October 14th, 1919:

The defendant committed adultery with Patrick J. Devlin (as charged in the petition) on the 23d day of November, in the year 1914, in the city of New York and State of New York. The precise place is at this time unknown to the petitioner. The defendant also committed adultery with the said Patrick J. Devlin in the Borough of Matawan, Monmouth County, New Jersey, on two certain nights in the latter part of May or in the month of June, 1916. The precise dates are at this time unknown to the petitioner. The nights aforesaid were Saturday nights. One of these nights the petitioner, with such information as he now has, believes to have been the night of May 27th, 1916. The adultery was committed in or near an out-building located in the back yard of the premises, which said premises were then and now occupied for residential purposes by the petitioner.

Also on two other occasions in early fall or the summer of 1915, and on three other occasions in the spring of 1916, in or near said out-building, or other places on or near the premises owned and occupied as aforesaid by the petitioner, in said Borough of Matawan.

The defendant also committed adultery with the said Patrick J. Devlin in said Borough of Matawan at the residence of the petitioner, the petitioner being absent. This was an occasion when the defendant and the inter-

vening defendant were found together in the house by Mrs. Bert Cartan. The precise date, as near as your petitioner is now able to ascertain, was the fore part of March, 1916.

Respectfully,
WILSON & SMOCK,
Solicitors of Petitioner.

Dated October 22, 1919.

PETITION BY DEFENDANT FOR BILL OF PARTICULARS

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

The petition of Sarah Cartan, defendant in the above entitled cause, respectfully shows that:

1. Suit has been instituted against her by the petitioner, her husband, for dissolution of the marriage existing between said petitioner and defendant.

2. That paragraph 2 of the petition for divorce filed in said cause is as follows:

"The defendant, since her marriage to the petitioner, and on the first day of January, 1914, and on each day of each month of the said year 1914, and of the years 1915, 1916, 1917 and 1918, to the date of the verification hereof, committed adultery with Patrick J. Devlin in the City of New York, at the Borough of Manhattan, at the Borough of Matawan aforesaid, and at various other places in the County of Monmouth, and elsewhere in the State of New Jersey."

3. That said allegations contained in said paragraph

2 of said petition are so diffuse, general and promiscuous that this defendant is prejudiced thereby in answering said allegations and in defending said suit on its merits.

4. Wherefore this defendant requests that said petitioner be directed by this Honorable Court to furnish defendant with a bill of particulars as to the time or times when, and the place or places where the said defendant is alleged to have committed adultery as charged in the petition filed in the above cause, which times and places the petitioner intends to rely upon and give evidence concerning at the hearing in said cause, and at said hearing petitioner be confined to said time or times and place or places in the giving of testimony on his part.

JOHN S. APPLEGATE & SON,
Solicitors of Defendant.

BILL OF PARTICULARS FURNISHED DEFENDANT

To JOHN S. APPLEGATE & SON,
Solicitors of Defendant.

Demand having been heretofore made in the above entitled matter for Bill of Particulars to be furnished by the petitioner to the defendant as to the time or times when, and the place or places where, the said defendant committed adultery as charged in the petition, please accept the following as the most definite information in possession of the petitioner at this time in respect to such particulars.

The defendant committed adultery with Patrick J. Devlin (as charged in the petition) on the 23rd day of

November, in the year 1914, in the city of New York and State of New York. The precise place is at this time unknown to the petitioner. The defendant also committed adultery with the said Patrick J. Devlin in the Borough of Matawan, Monmouth County, New Jersey, on two certain nights in the latter part of May or in the month of June, 1916. The precise dates are at this time unknown to the petitioner. The adultery was committed in or near an out-building located in the back yard of the premises then and now occupied for residential purposes by the petitioner.

Also on two other occasions in early Fall or the summer of 1915, and on three other occasions in spring of 1916, in or near said out-building, or other places on or near the premises owned and occupied as aforesaid by the petitioner, in said Borough of Matawan.

Dated April 21st, 1919.

Respectfully,
WILSON & SMOCK,
Solicitors of Petitioner.

IN CHANCERY OF NEW JERSEY

BETWEEN

ANDREW J. CARTAN,
Petitioner,
and
SARAH CARTAN,
Defendant,

ON PETITION FOR DIVORCE
AFFIDAVIT.

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

SARAH CARTAN, of full age, being duly sworn according to law on her oath says:

1. I am the defendant in the above titled cause and I have carefully read the petition filed therein, and the allegations charging me with adultery are false.

2. Said allegations set forth in paragraph 2 of said petition are too general and indefinite to permit me to prepare my defense to the charges therein contained. I deny each and every charge, but unless I am apprised with at least some degree of certainty and exactness as to the time and place when the acts alleged are said to have taken place, I shall be greatly prejudiced in preparing my defense to the charges made and in conducting the same at the trial of the issues involved.

Sworn and subscribed to before me this 4th day of January, 1919. } Sarah Cartan

Viola E. Patterson, Commr. of Deeds of N. J.
(L. S.)

ON PETITION—ORDER OF DISMISSAL

This cause coming on to be heard in the presence of Edmund Wilson, Esquire, of counsel with Petitioner, and John S. Applegate & Son, solicitors for the Defendant, Sarah Cartan, and Jacob R. Lefferts, Esquire, of counsel with the intervening Defendant, Patrick J. Devlin, on petition, answer and oral proofs taken in open court; whereupon, and upon duly considering the said pleadings and proofs, and considering the arguments of counsel, and it appearing to the court that the Petitioner has not sustained the truth of the allegations in his petition, and is not entitled to the relief therein prayed.

It is thereupon on this 25th day of February, 1921, ordered, adjudged and decreed that the Petitioner's petition be and the same is hereby dismissed.

Respectfully advised,
JOHN E. FOSTER, V. C.

NOTICE OF APPEAL

(Service acknowledged by Solicitors of Defendant, March 10, 1921, and by Solicitors of Intervening Defendant, March 22nd, 1921.)

ANDREW J. CARTAN, the petitioner, hereby appeals from the final decree filed in this cause and dated February 25, 1921, which decrees that the petition be dismissed, to the Court of Errors and Appeals in the last resort in all causes.

WILSON & SMOCK,
Solicitors for and of counsel with Petitioner.

Dated March 8, 1921.

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

EDMUND WILSON,
Of Counsel.

ON APPEAL—PETITION

(Service acknowledged by Solicitors of Defendant, March 18, 1921, and by Solicitors of Intervening Defendant, March 22nd, 1921.)

TO THE HONORABLE THE COURT OF ERRORS AND APPEALS IN THE LAST RESORT IN ALL CAUSES:

The petition of ANDREW J. CARTAN, appellant, respectfully shows,that your petitioner finds himself aggrieved by a decree final made in the Court of Chancery by the Honorable Edwin Robert Walker, Chancellor of the State of New Jersey, on the 25th day of February, A. D. nineteen hundred and twenty-one, in that the said decree recites and adjudges that your petitioner has not sustained the allegations of his petition, and is not entitled to the relief therein prayed; and doth decree that your petitioner's said petition be dismissed. And your petitioner appeals from the said decree, and from every part thereof, on the ground that the same is erroneous, and that the Chancellor should have found and adjudged the several allegations of your petitioner's petition to have been proved, and the defendant to have been guilty of adultery, and should have ordered, adjudged and decreed that your petitioner be divorced from the bonds of matrimony with the defendant for the cause aforesaid, and that your petitioner should have the other relief prayed in and by his said petition.

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

WILSON & SMOCK,
Solicitors for and of Counsel with Petitioner.

ANSWER OF DEFENDANT TO PETITION OF APPEAL

The respondent admits it to be true that a certain decree (final) was, on February 25th, 1921, 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 said decree is agreeable to law and equity, and she prays that the same may be affirmed with costs to be adjudged to this respondent.

JOHN S. APPLEGATE & SON,
Solicitor and of Counsel with Respondent.

ANSWER OF INTERVENING DEFENDANT TO PETITION OF APPEAL

This respondent, not acknowledging all or any of the matters which in the said petition of appeal are contained, to be true, for answer thereto, nevertheless, says and admits, that a decree was on the 25th day of February, 1921, made and entered in the Court of Chancery in the cause for that purpose mentioned in the said petition, as therein stated; but as to the substance and form thereof, this respondent prays to refer thereto when the same shall be produced, and this respondent is advised and believes, that the said decree is agreeable to equity, and he prays that the same may be affirmed, with costs to be adjudged to this respondent.

JACOB R. LEFFERTS,
Solicitor respondent, Patrick J. Devlin.
MERRITT LANE,
Of Counsel.

IN CHANCERY OF NEW JERSEY

BETWEEN

ANDREW J. CARTAN,
Petitioner,
and
SARAH CARTAN,
Defendant.

Transcript of testimony taken in the above entitled cause before Hon. John E. Foster, Vice Chancellor, at the Chancery Chambers, Newark, New Jersey, on Monday, October 4, 1920, at 10 A. M.

RICHARD HEUSER, Sworn for petitioner.

DIRECT EXAMINATION BY MR. WILSON:

Q. You reside in Matawan?
A. Yes.
Q. You are a civil engineer?
A. Yes.
Q. Were you asked to make a survey showing the location of the A. J. Cartan house and its surroundings in Matawan Borough?
A. Yes, sir.
Q. By whom were you asked to do this work?
A. By Mr. Cartan.
Q. Mr. A. J. Cartan?
A. Yes.
Q. When did you do it?
A. I don't recollect.

Q. About when?
A. In the spring of this year.
Q. And did you embody your survey in a map?
A. Yes.
Q. I show you this paper and ask you if this is the map?
A. Yes, it is.
Q. And by the legend it seems to have been in April, 1920?
A. Yes, sir.
Q. Do you identify that as the date when you did the work?
A. Yes, sir.

MR. WILSON: I offer this map in evidence.

COURT: Does it correctly represent the situation there at the premises as they were at that time?

WITNESS: Yes.

MR. WILSON: We will show that the conditions were the same when he made the survey as at the time of the occurrences.

COURT: Let it be marked.

(Map marked Exhibit P 1.)

Q. Did you make another map?
A. I did.
Q. Smaller in scale than this?
A. Yes.

Q. What is the scale of this map?

A. Thirty to the inch.

Q. Have you now produced the second map that you made, which you say is a smaller scale?

A. Yes.

Q. Made from the survey?

A. Yes.

Q. And correctly represents the measurements and conditions as you observed them at the time you made the survey?

A. Yes.

MR. WILSON: I offer this in evidence for more convenient use.

(Marked Exhibit P 2.)

COURT: It is the same thing?

MR. WILSON: It is the same thing.

Q. What is the scale of that?

A. Sixty to the inch.

Q. You are familiar with the localities in that neighborhood?

A. Yes.

Q. Won't you indicate upon the map the residence of A. J. Cartan?

A. It is the structure marked "Dwelling" on the second plot, from the bottom of the map, which is also the south.

Q. Is the A. J. Cartan residential property shown upon the map?

A. Yes, sir.

Q. And how much of a frontage has it on Main street?

A. 81.5 feet.

Q. Is there a vacant lot owned by Cartan next to that?

A. Yes, sir.

COURT: To the north?

WITNESS: To the northeast of it.

Q. What is the size of the other lot?

A. 40 feet front.

Q. What is the next residential property beyond it?

A. Rens Cartan.

Q. Is that the property occupied by the brother of Mr. A. J. Cartan?

A. Yes, sir.

Q. Occupied as a home?

A. Yes, sir.

Q. What is the dwelling immediately south or southwest of the A. J. Cartan residence; is that shown upon the map?

A. Yes, sir.

Q. Whose dwelling?

A. A. H. Hopkins Estate.

Q. Is there a lane immediately south or southwest of that dwelling?

A. Yes.

Q. Known as what?

A. Ervin's Lane.

Q. Is that shown?

A. Yes.

Q. How wide is it?

A. 11 feet.

Q. Have you shown upon that map the lot occupied for residential purposes by Norman Tice?

A. Yes.

Q. And indicated upon the map?

A. Yes, right there (indicating).

Q. Is it numbered?

A. It is lettered with his name "N. Tice".

Q. Do you know as a matter of fact how long Tice and R. Cartan and A. J. Cartan have lived on these same properties that you have indicated here on this map; generally about how long?

A. As long as I can remember; for ten years or more.

COURT: That covers your period?

MR. WILSON: Yes.

Q. Directing your attention to a lane which you have indicated as Linzmeier's Lane, about how far is Linzmeier's Lane distant from the Norman Tice property?

A. About 150 feet.

Q. How wide are those lots above the Tice residence?

A. Some are 40 and one is 78.

Q. They are all 40 except the one next to the lane, which is 78?

A. Yes.

Q. Directing your attention to the A. J. Cartan property, is there a grape arbor behind the A. J. Cartan

house?

A. Yes, sir.

Q. Have you shown that upon the map?

A. Yes, sir.

Q. With a legend "grape arbor"?

A. Yes.

Q. Have you shown its location there?

A. Yes.

Q. And approximately its dimensions?

A. Exactly.

Q. How have you shown it?

A. I have shown it in dotted lines and shaded.

COURT: And are the dimensions stated on the map?

WITNESS: No, they are not stated.

Q. What are they?

A. The length of it?

Q. Yes.

A. I can tell by scale. (After measuring same) 50 feet long.

Q. About how wide?

A. 14 feet.

Q. And its narrowest part?

A. 5 feet.

Q. And is the narrowest part of it on the extreme easterly end of it?

A. Yes

Q. You have shown a square immediately beyond the easterly end of the grape arbor upon the map, what is that?

A. That is an outbuilding.

Q. What sort of an outbuilding? What was it apparently used for?

A. Toilet.

Q. You have shown another structure immediately south or southeast of that, what is that structure?

A. An outbuilding.

Q. And have you so marked it on the diagram?

A. Yes.

Q. You seem to have divided it into two compartments; why did you do that?

A. There was a partition.

Q. There was a partition on the end of the structure?

A. Yes.

Q. About how wide is that structure and how long, the whole of it? The whole structure which you designate as an outbuilding.

A. About 30 feet.

Q. Long; how wide, about?

A. About 6 feet.

Q. And what are the dimensions of the smaller structure standing between the building which you marked outbuilding, and the end of the arbor; about what is the size of that?

A. About 5 by 5.

Q. Is there an enclosure around that outbuilding of any kind, fence?

A. A fence joins up with it, yes.

Q. And have you indicated the fence upon the map?

A. Yes.

Q. And by legend indicated that it was a fence?

A. Yes.

Q. And will you show his Honor where the fence is

located?

A. Shown by the dotted line.

Q. Is there a hedge running across there somewhere beside the grape arbor and about parallel to the street line, to the R. Carton lot?

A. Yes.

Q. What kind of a hedge?

A. A privet hedge.

COURT: How high is it?

WITNESS: It is so high that you couldn't see over it.

COURT: Over six feet?

WITNESS: I think it is; I didn't measure it.

COURT: You couldn't see over it, you mean?

WITNESS: No.

Q. I direct your attention to the topography immediately in the rear of these lots which you have been describing, was there a lane at the rear of these lots?

A. Yes.

Q. Have you indicated it upon your map?

A. Yes.

Q. With what legend?

A. "Lane leading to Broad Street".

Q. And that is at the back of all the lots that you have described, is it?

A. Yes.

Q. I notice that opposite the A. J. Cartan property,

the lane is not of the same uniform width as before that point is reached coming from the north; does your map correctly show the conditions there?

A. Yes.

Q. Some of the lots run out into the lane?

A. Yes.

Q. Have you shown on your map the door which serves as an entrance to the outhouse or outbuilding?

A. Yes, sir.

Q. Right there (indicating), and you have described it by what?

A. By a line.

Q. Drawn at an angle?

A. At an angle.

Q. That is intended to indicate the door?

A. Yes, sir.

COURT: You point to an opening in the partition of the outbuilding?

WITNESS: The door in the fence, I have indicated that also, and also one in the building.

Q. And indicated them both by a line drawn at an angle?

A. Yes.

Q. There is a door coming in from the fenced enclosure that is in front of the outbuilding?

A. Yes, sir.

Q. On the south or southeasterly side of this outbuilding as you observed it was there any glass?

A. Southwesterly side, yes, sir.

COURT: Enclosed in glass?

WITNESS: Yes.

Q. How much of the side was covered by this glass?

A. A little over half.

Q. And how large was the glass constructions, how long and how wide was it, about?

A. About 20 feet long, and my recollection is that it extended to the height of the building.

Q. From the ground?

A. Yes.

Q. And about how much would that be?

A. About 7 or 8 feet.

Q. Was there anything about the permanent structure inside the outbuilding which would prevent one from standing outside of this glass construction and seeing inside?

A. No, sir.

Q. No partitions or anything of that sort?

A. No, sir.

Q. Have you indicated upon this map the property occupied by one Eskensen?

A. Yes.

Q. Indicate it.

A. The property on the westerly side of Main street, opposite Ervin's Alley.

Q. Have you indicated the Cartan store on that map?

A. Yes, sir.

Q. Point it out.

(Witness does so.)

It is described by that legend, "Cartan's Store"?

A. Yes.

Q. And that is the property known as the Cartan-Devlin Store?

A. No.

Q. Cartan's Store; whose store is that?

A. A. J. Cartan's.

Q. The petitioner in this proceeding?

A. Yes.

Q. Have you indicated the property occupied by Cartan and Devlin?

A. Yes, sir.

Q. And is it the property immediately north of the Cartan store?

A. Yes, sir.

COURT: There seems to be two plots so designated.

WITNESS: Yes.

Q. Having a frontage each of about how much?

A. One is 47 feet 9 inches, and the other 44 feet.

COURT: Partly covered by buildings?

WITNESS: Yes.

Q. What sort of buildings are upon them?

A. Cartan-Devlin Store and coal and lumber yard.

Q. Upon which one of those lots is located the store building proper?

A. On the southerly end.

Q. The one nearest the lot upon which you have

marked "Cartan's Store"?

A. Yes.

Q. And how near is that store to the street, approximately, the front of it, the Cartan-Devlin Store?

A. Right on the street line practically.

Q. What sort of windows, if any, did it have in front?

A. Quite large windows.

Q. Covering the entire front?

A. I wouldn't want to say.

COURT: Where is the entrance; in the center, and windows on both sides?

WITNESS: There are two entrances, one in the front and center and windows on both sides, and then a side entrance.

COURT: Which side?

WITNESS: The southerly side.

Q. Between the property which you have indicated on the map as B. F. S. Brown and Cartan's Store, you have indicated a lane; is there in fact a lane there?

A. Yes.

Q. And have you indicated the course of that lane?

A. Yes, sir.

Q. It turns at right angles back of the Cartan store and proceeds in the rear of the lots shown there?

A. Yes.

Q. And may I ask you whether these dwellings and the lane were in the same condition when you made this

survey as they were during the last ten years? So far as you know?

A. So far as I know.

COURT: You are more or less familiar with the territory there?

WITNESS: Yes.

COURT: You live there?

WITNESS: Yes.

COURT: And have lived there for years?

WITNESS: Yes.

COURT: Do you know of any change in the location there in any of the items which Mr. Wilson has mentioned?

WITNESS: No, sir.

COURT: Have you shown Ervin's Lane on this map?

WITNESS: Yes.

COURT: And you are now pointing to it?

WITNESS: Yes.

COURT: And does that extend from Main street to the lane which you have indicated as "lane leading to Broad

street"?

WITNESS: Yes, sir.

COURT: And you correctly show where and how it enters that lane, do you, on the map?

WITNESS: Yes, sir.

COURT: Did you locate the electric lights in the street and lane near the A. J. Cartan property?

WITNESS: I did.

COURT: Are they indicated in any way upon the map?

WITNESS: Yes, sir.

COURT: By what?

WITNESS: By a dot.

Q. You mean the round black spot?
A. Yes.
Q. Are you pointing to one now?
A. Yes.
Q. Generally describe its location in respect to the property of R. Cartan.
A. It is westerly from the dwelling or right in front of the lot of Ren Cartan.
Q. And in the public street, is it?
A. Yes, sir.
Q. And you have written upon the map what legend?

A. "Electric light pole".

Q. There was an electric light there when you made this survey?

A. I think there was.

Q. Do you know whether there was?

A. Well, there was, yes.

Q. Did you locate any electric light in the lane leading to Broad street?

A. Yes, sir, right there (indicating).

Q. You are pointing to it, are you?

A. Yes.

Q. Designated by a black spot and the legend?

A. "Electric light pole".

Q. That is in the northeasterly corner of the Ren Cartan lot?

A. In the street right at the northeast corner.

Q. Did you locate still another electric light in Main street, opposite the property of Eskensen?

A. Yes.

Q. Is that the correct location?

A. Yes.

Q. Is it indicated by that black dot?

A. Yes.

Q. You have placed no legend upon it?

A. No, sir.

Q. Is it approximately in the center of the Eskensen lot?

A. Yes.

Q. And almost opposite Ervin's Lane?

A. Yes.

Q. And on the easterly side of Main street?

A. Westerly side?

MR. LANE: No cross-examination.

CROSS EXAMINATION BY MR. APPLEGATE:

Q. You made this map in April, 1920?
A. Yes.
Q. The map portrays the conditions as of that time?
A. Yes.
Q. You know nothing as to the conditions existing prior to that time?
A. Well, I know something of the conditions.
Q. I mean just generally as a passerby?
A. Yes.
Q. You never had any occasion to make an investigation of the rear of these premises before you made this map?
A. No, sir.
Q. So that all you have testified to in regard to the hedge and outhouses and outbuildings and electric lights, &c., are as you observed them at the time you made your map?
A. Yes.
Q. And that is all?
A. That is all.

REDIRECT EXAMINATION BY MR. WILSON:

Q. You knew the location of those lanes, the Ervin lane and the Linzmeier lane and the lane running into Broad street; you knew of the location of those lanes for years, haven't you?
A. Yes, I made an assessment map of the borough some years ago, and I knew of those lanes and streets.

Q. You knew in a general way of the location of those electric light poles, too, didn't you?

A. In a general way, yes, but that is all.

Q. Never measured nor fixed their location by measurement until you made this survey?

A. No.

REN CARTAN, Sworn for petitioner.

DIRECT EXAMINATION BY MR. WILSON:

Q. Where do you live?

A. In Matawan.

Q. And you are a brother of the petitioner, A. J. Cartan?

A. Yes.

Q. Are you associated in business with Patrick Devlin?

A. Yes.

Q. The intervening defendant?

A. Yes.

Q. How long have you been associated in business with him?

A. Fifteen or sixteen years; I have been there myself fifteen years.

Q. And what interest in that business do you represent?

A. I represent one-half interest in it.

Q. Are you a partner?

A. I represent my father's interest, who was a partner.

Q. Your father and Cartan and Devlin were formerly in business?

A. Yes.

Q. Your father died?

A. Yes.

Q. Seized of a half interest in the business?

A. That is right.

Q. Since that time you have been the representative of your father's estate, is that the fact?

A. Yes.

Q. I direct your attention to Exhibit P 1, a map which hangs back of you, and ask you whether the location of the Cartan store as shown upon the map, the R. Cartan property, the A. J. Cartan property, the Hopkins property, and the lane leading into Main street, and Linzmeier's Lane and Ervin's Lane, and the lane running on the southerly part, along the southerly line of Cartan's Store as indicated upon the map—how long the location and conditions as shown there have existed, to your knowledge?

A. A long time.

Q. Fifteen or twenty years?

A. Yes, I should say fifteen years.

Q. There are three electric light poles shown here, one opposite the southerly portion of the R. Cartan lot, one opposite the Eskensen lot, and one in the lane leading into Main street; how long have those electric lights been there, to your knowledge?

A. Six or seven years.

Q. In that same location?

A. Yes, sir, I think so. It is quite a long while, anyway.

Q. Have you observed in the past the conduct toward

each other and the relation between your brother's wife and Patrick Devlin; answer Yes or No, have you observed it?

A. Yes, sir.

Q. What, first, directed your attention to the matter?

A. I noticed always that there was a fondness between them whenever one was where the other was; I cannot recall when I first became suspicious, but I do know that I was very suspicious after I overheard Mrs. Cartan tell my wife that Devlin kissed her in a telephone booth in New York City the night before, when they had been on a theatre party.

Q. When did you hear that remark; about how long ago was that?

A. Seven or eight years ago, I should think.

Q. You heard what?

A. I overheard Mrs. Cartan tell my wife that Devlin kissed her in a telephone booth the night before when they were on a theatre party in New York City, and she added, "Wouldn't Mame be mad as the devil if she knew that?"

Q. Referring to whom?

A. To Devlin's wife.

Q. You say that made you suspicious; what after that did you observe; tell us in your own way.

A. A short time after that I saw Devlin feel of her leg in my brother's automobile coming home from Princeton.

Q. What was the occasion and circumstance?

A. We had been on an automobile party and had dinner at the Princeton Inn.

Q. You say "we"; who?

A. My brother and his wife.

Q. You have another brother; which brother do you mean?

A. A. J. and his wife and Devlin and his wife and my wife and myself. The car only seated five people, that made it necessary to put an extra seat in the center of the car; I occupied that seat and Devlin sat on the right-hand side in the front; my brother A. J. Cartan was driving. Doll Cartan sat directly behind Devlin in the back.

Q. In your family relationship who was Doll Cartan?

A. J. Cartan's wife.

Q. Go on.

A. She sat directly behind Devlin in the rear seat; my wife sat along side of her and Mrs. Devlin on the far side in the other corner and my attention was directed to it, because Devlin, after we had driven five or six miles out of Princeton, he swung his hand over the back of the seat this way (indicating)—

Q. You are throwing your arm behind the seat?

A. Yes; he swung his arm behind the seat this way, and I noticed also that she sat very low in the car, like that (indicating).

Q. Did her position of sitting low in the car tend to bring her limbs near him?

A. Yes; and after we had driven five or six miles, he changed this position, and of course I being suspicious I watched him, and after he had gone a little ways, I felt the blanket raised around my feet, because it was in the fall of the year, and I turned around like that (indicating) and he pulled his hand out from under the blanket.

Q. You spoke of some sort of wrap or robe you had in the car?

A. Yes, the robe that covered the people in the hind

seat, and was wrapped around my feet on account of the position I was in.

Q. Will you proceed?

A. After he pulled his hand out from under the blanket—I don't know whether he saw that I was watching him or not, but I made up my mind if that went on a little further, he kept the thing up, I would grab his hand, but we went on a little bit further and just then my brother stopped and said he had lost his way and someone would have to get out and read the sign post; Devlin, who was in the front seat, he didn't make any move toward getting out, so I got out of the seat I was in and went out to the sign post, and as I went out to the sign post, he whipped around in the front seat and got in the seat that I occupied, and I then got in the front seat.

Q. And when you returned to the car you occupied the front seat?

A. Yes.

Q. And you observed nothing else that night?

A. Yes, sir.

Q. What else? What else did you observe in respect to their association?

A. We had many parties and they were nearly always among ourselves.

Q. How frequently would you have these family parties?

A. I should say once a week and they were among ourselves, because there were seven of us Cartans and two Devlins, and Norman Tice and his wife made eleven people.

Q. How is Norman Tice related to you?

A. My brother's wife is his sister.

Q. Which brother?

A. Bert.

Q. Bert married his sister?

A. Yes.

Q. How frequently did you say you had these family parties?

A. I should say once a week.

Q. Did you average that?

A. As often as that.

Q. For a number of years?

A. Yes.

Q. What was the character of the parties?

A. It would be a dancing party, card party, theatre party, automobile party, dinner party.

Q. Go on and describe now what further you have to say as to what you observed at these parties.

A. I recall that one day we were at New Brunswick, at Kline's Hotel, for dinner, and on that occasion—

COURT: When was it, about when?

WITNESS: Seven or eight years ago. Seven or eight years ago, anyway, and I recall that on that occasion Doll Cartan, she was complaining a whole lot about how hard she worked and how hard it was to get money, and Devlin said—he said, "Doll, you never ought to work; you never ought to wash; you ought to have everything in the world that you wanted, and if I had all the money that your husband has got, I would give it to you, too."

COURT: You said Doll Cartan, the defendant?

WITNESS: Yes.

COURT: Her name is Sarah, but you refer to her as Doll?

WITNESS: Yes.

Q. Go ahead; what else was said or done?

A. A conversation kept up in that strain, and a little later on, Devlin threw a twenty dollar bill over to his wife, and when we came to go home that evening, I remember very distinctly that I expected to ride in the front seat along with Devlin, because it was cold weather, and he had no windshield on his car, and his top was down, and when I come out to get in Doll Cartan was in the front seat alongside of him; that forced me in the back with the other two, and on our way home she kept up a conversation with him all the way, and she was close up to him and talking to him.

Q. Go on, speaking generally as to what you observed at these various parties in respect to their association and companionship.

A. It always seemed strange to me—

COURT: What did you observe, if anything, in their conduct, is the inquiry.

A. She never tired of dancing with him, and that seemed—

COURT: We don't want that. What did you observe? Did she continually dance with him?

WITNESS: No, she was a beautiful dancer, while he, on the other hand, was a very poor one, although they

danced together a great deal, and the fact that he being a poor dancer, very often resulted in a quarrel between he and his wife, because she refused to dance with him.

COURT: Mrs. Devlin refused to dance with him?

WITNESS: Yes.

Q. Because he was a poor dancer?

A. Yes, she refused to dance with him, anyway, and very often it terminated this way, that they wouldn't speak to one another all the rest of the evening, and Doll Cartan was always ready and did dance with him, and did dance long dances with him; one night in particular we were in Pleasure Bay and he was dancing with her, and I happened to be on the floor at the same time, and when they were farthest away from the table at which our party was sitting, he squeezed her right up to him and then they looked at one another and smiled, and just then he happened to see me looking at him, and his face turned all colored red and sobered up.

I also recall a time when they had a party on Labor Day—

COURT: Fix the year.

A. (Continuing) Six or seven years ago; we had a party one Labor Day and we went to the Coleman House for dinner, and they were especially attentive to one another on this occasion, in this way, that they directed their conversation to one another, so much so that Mrs. Devlin said two or three times, "I am here."

Q. Addressing whom?

A. Towards Mr. Devlin and Doll Cartan, and when we broke up at the Coleman and went out of there after dinner, some of the people went in the swimming pool while others went on the board walk, and we met at six o'clock and came back to Ridgewater Inn.

Q. Where was that?

A. At Pleasure Bay, and while there Devlin and Doll Cartan sat alongside of one another, as they always did at all the parties, whether dinner, cards or anything; they always managed to get alongside of one another, and this time they were sitting alongside of each other. She was between Devlin and her husband, but she turned her back to her husband and talked with Devlin this way, with her head resting on her hand and her elbow on the table; she did that all evening; it was so pronounced—

COURT: Strike that out.

A. (Continuing) It was so pronounced that I was disgusted and got up from the place, and going home they lingered behind, they wasn't through their conversation, and she was pinning his coat collar across his throat.

Q. Across his chest or throat?

A. Yes, and I noticed whenever she was going away to New York or any other place—

Q. Before you pass on to that, speaking generally of this practice of dancing at your parties, did she dance more frequently or less frequently with him than with anyone else?

A. More frequently with him.

Q. Go ahead.

A. Then I noticed that whenever she was going anywhere, the window at my desk faces her front stoop, and

I was in a position to see her, a lot of times when she was going away; she never went down to the depot on the trolley, or seldom did, and I could see when she got close to our store—after being suspicious of course I would pick up a paper so it wouldn't be noticeable—and when she got up close to our window she was always doing this (indicating), and sometimes she would get way down past and would have to turn to get his eye, and she gave him a very sweet salute.

COURT: What do you mean by a sweet salute? Was it sweet by sound or gesture?

WITNESS: It was a very familiar salute.

Q. How did she do that?

A. Like that (indicating).

Q. And are you illustrating by moving your hand up and down at the side of your face at right angles to your ear or neck?

A. Yes, sir. One morning in November, 1914—

COURT: Can you specify the time of the time?

A. (Continuing) November, 1914, I saw her come off of her front porch in the same way as she had been in the habit of doing.

Q. What was that?

A. She was dressed up and looked as though she was going somewhere, and she come on down to the store and she—

MR. APPLEGATE: What time of the day was this?

WITNESS: Around nine o'clock in the morning—it might have been a few minutes later, but around that time, and when she come on down by the store I watched her, as I had been in the habit of doing, and she looked for him, and after a while she caught his eye and went on down the street and saluted him at that time the same as the other times, only it seemed to me a little more familiar like. Devlin hadn't been in more than fifteen or twenty minutes when she come along, and she hadn't gone down the street very long before he went out the back door; I knew he didn't have any customer to go out there with. I stepped on the front stoop and watched him; a little later he came out of Linzmeier's Lane.

Q. I direct your attention to Exhibit P 1; your store isn't shown upon this map, but is located on this lot marked Cartan-Devlin?

A. The one farthest from Cartan's store. It is on the adjoining lot to the lot on which the Cartan's store is marked.

Q. You saw him go out the back of the store?

A. Yes.

Q. And go into what lane; is it shown there?

A. Yes.

Q. And when next did you see him?

A. I saw him when he come out down here, two or three lots below the Thorne place; he came out to Main street here (indicating).

Q. Is there a lane somewhere below the Thorne place as shown on the map?

A. Yes.

Q. That goes from the lane that goes behind your store and out into Main street?

A. Yes.

Q. You saw him come out into Main street?
A. Yes.

COURT: You said you saw him come out of Linzmeier's Lane?

WITNESS: No, Lambertson's Lane; he came out onto Main street and went on around the corner, then I couldn't see him any more, but a little later on, he came running hurriedly up—

Q. Has Mrs. A. J. Cartan gone down Main street in the direction of where that lane came out into Main street?
A. Yes.
Q. And that was her natural journey to the depot?
A. Yes.
Q. Go on and tell what else you saw.
A. He went around the corner and I learned that he met her—

MR. APPLEGATE: I object.

COURT: Strike it out.

Q. Did you see him again that morning on the street?
A. Yes, a little later he came back up the street.
Q. He came up Main street when he came back?
A. Yes.
Q. And came in the store?
A. Yes.
Q. What conversation, if any, passed between you?

MR. APPLEGATE: We object as to Mrs. Cartan.

COURT: I will receive it for the present; if it is not connected, it will not be binding upon her.

A. He was in the store a little while and then he said to me, "You are awful busy this morning, but I have got to go to New York, I have got to buy some clothes."

Q. His buying the clothes was an excuse—

MR. APPLEGATE: Objected to.

COURT: Strike that out.

Q. What did he say? Tell us everything that was said between you. What passed between you when he came back?

A. He said, "I have got to go to New York to buy some clothes," and he said, "I don't like to leave you this morning because we are very busy." I said, "That is all right, we have things in pretty good shape, that will be all right." A little later on, in time for the train, he ran up to his house.

Q. Did he come back to the store again?

A. He didn't come back to the store until night.

Q. Did you see him pass the store?

A. Yes, I saw him go down on the trolley.

Q. To the depot?

A. Yes; I went over to my house and asked if she saw anything of the affair—

COURT: Strike it out.

Q. Did you see him again at your house?

A. I did not; no, sir, that was the last I saw him,

when he went away.

Q. Was there a train going to New York at about that time?

A. Yes.

Q. At about what time was this?

A. I think the train at that time went about twelve o'clock.

Q. What time did you talk with him and see him go down in the trolley to the station?

A. Just prior to train time, just about twelve o'clock.

Q. Had he changed his clothing between the time when you saw him at the store early in the morning and when you saw him go down in the trolley?

A. I cannot say about that.

Q. What time did he come back that day from New York?

A. About half past six.

Q. And so far as you observed, did he have any new clothes?

A. No.

Q. He didn't wear any that you saw?

A. No, sir.

Q. Go on; what else did you observe in respect to their association?

A. In the latter part of May, 1916—

Q. Speaking generally, what about their association with each other, at card parties for example?

A. While at card parties they always started their playing with one another; they always managed to get at one another's table to start playing, and they remained there as long as it was possible for them to do so; sometimes they would have to move, but they would start that way, anyway; and at dinner parties, it was the same way.

Q. What about theatre parties? Where they sat, with respect to each other, and the attention, if any, they showed to each other.

A. Yes, they attended theatre parties and it was always the same way, they always sat alongside of one another and did their talking to each other; you would have to speak two or three times to Doll Cartan to get her attention; she would be so interested in what she was saying to him that you couldn't even get her attention.

Q. You were about to refer to something that occurred in May, 1916?

A. Yes.

Q. Before speaking of that, do you recall a night when there was a party at Perth Amboy?

A. Yes, sir.

Q. And an attempt was made to find Mr. Devlin after he returned?

A. Yes, I was working that night and he was out on the party—

Q. Tell us what there was about that; fix the time, about how long ago was it?

A. I should say that was five or six or seven years ago.

Q. Tell us what you know.

A. I was working that night and I noticed them come home about nine o'clock.

Q. Where were you working, at the store?

A. Yes. I noticed them come home about nine o'clock and heard the automobile down at the house below the store; I came on out and saw him go to my house and leave my wife out, and then they drove on up to their own place.

Q. Did Devlin live on Main street?

A. Yes.

Q. Which side of Main street?

A. He lived on the—

Q. On the right or left-hand side as you go up the main street from the depot?

A. On the right-hand side at that time.

Q. Go on.

A. That was the last I saw of him for a little while, and perhaps it might have been a half hour, when Mrs. Devlin came down to my house crying; she said, "something must have happened to Pat, he let me out at the front porch and then drove down to the garage and put his automobile away and he hasn't come out of the lane, and I am afraid he has met with foul play; won't you go up and see if you cannot find him? Bert is down there now looking for him, won't you go up and find him?"

Q. When she referred to Bert, who was that?

A. My brother, and I said, "Sure, I will"; so I ran right up there along with her, and both Bert and I went on back, and I guess, perhaps, my wife was along with me, too.

Q. Back where?

A. Went on back to the garage, and behind the garage, and looked all down through the grass there or any place where anybody might have knocked him over, because that was the impression that she gave when she came to me.

Q. Was she with you, too?

A. Yes.

Q. Did you have a lantern?

A. Yes.

Q. What did you do then?

A. Then we came back out of the lane and started down town, and as we got two or three lots from her place we met him coming up the street, and she said, "Pat, where have you been?" and she said, "We have been looking for you all over town, behind the garage; you never came out of the lane, because I have been watching and waiting for you, and I know you didn't come out of the lane"; he said, "Yes I did"; she said, "No, you didn't"; he said, "I have been down to the candy store getting a little piece of chewing gum."

Q. When you met him then on the street you heard him make this explanation to his wife; what was the approximate interval in time between the time when you saw him drive up Main street with his wife after the other people had gotten out of the automobile—what was the approximate time between that time and the time you met him on the street?

A. Close to an hour. That happening, when I had a little time to think about it, must have been seven or eight years ago.

Q. Not in May, 1916?

A. I haven't come to May, 1916.

MR. WILSON: I interrupted him.

COURT: This is the Perth Amboy incident?

MR. WILSON: Yes.

Q. You were about to tell us something that occurred in May, 1916?

A. Yes, in the latter part of May, 1916, I think on Saturday night, after nine o'clock, I was working behind

the desk and I saw my wife come hurriedly up the steps of the store stoop.

Q. Where was your desk located in the store?

A. Right by the front window; I knew from the way she was—

Q. She came to the store, did she?

A. Yes.

Q. And she told you something?

A. No, she hadn't told me anything yet.

Q. Whether it was in the store or out of the store, she told you something when she came up there, did she?

A. Yes.

Q. In consequence of what she told you what did you do?

A. I locked my doors and left the lights burning and went right up the street, crossed the street and went into Ervin's Lane, and then on into Hopkins' yard and secreted myself behind my brother's toilet.

Q. Will you indicate to the Court the journey that you pursued? Here was your store, you say, on this lot?

A. Yes.

Q. You came out of there and up Main street and went in Ervin's Lane?

A. Yes.

Q. And went across the Hopkins lot?

A. Yes.

Q. And secreted yourself behind some outbuilding there?

A. Yes.

Q. Indicate the outbuilding.

A. This is the outbuilding.

COURT: The one nearest the dwelling house?

WITNESS: Yes.

Q. The smaller of these two?
A. Yes.
Q. How near were you to it?
A. Right close up to it, because it is right up to Hopkins' fence line.
Q. What did you observe while you were there?
A. I crouched down on my hands and knees, waited for a few moments, and I saw Mrs. Cartan come around the corner of her house and she came right on through the grape vine that lies by the toilet.
Q. You mean by grape vine, the thing indicated as grape arbor?
A. Yes.
Q. And she went where?
A. She went right by the toilet that I was hiding behind to the gate of the fence that surrounds this outbuilding.
Q. Is that gate shown?
A. Yes; and there she met Devlin?
Q. Did you recognize Devlin?
A. Yes, and they stood there just a momont and drew back, and as they did, I slipped across the opening.
Q. The opening between the smaller outbuilding and the larger outbuilding?
A. And on my side of that outbuilding was a hot bed sash nearly opposite the door on their side.
Q. And so that led into the side of the building?
A. Yes.
Q. What did you see?
A. When they were in the building they closed the door; then it was all dark and I couldn't see any more;

then I dropped back to Ervin's Lane, because I was afraid they would see me.

Q. Did you see them both go in that building?

A. Yes.

Q. And was the door of this outbuilding and the gate of the fence in the same location then as it was when this survey was made in April?

A. Yes.

Q. How were you able to distinguish her; you saw her, you say, as she came around the house, and you saw him as he met her there; it was night time, was it?

A. Yes.

Q. Where was the light that permitted you to see them and recognize them; where did that come from?

A. The light came mostly from my brother's store and also from a light on a pole right next to my own line.

Q. Where is it, here (indicating)?

A. Yes.

Q. What about that light down there (indicating)?

A. I also got a light from that (indicating a light in the lane).

Q. At that time were there electric lights as shown upon this map—were those lights there on this night in May, 1916?

A. This light was there.

Q. The one in the lane?

A. Yes.

Q. And the one up by your house was there?

A. Yes.

Q. What about the one over here by Eskensen?

A. I don't remember whether that was there or not.

Q. Are there any trees or growth between the light on your lot and the residence of A. J. Cartan?

A. There wasn't any trees or growth between the light and where they were at that time, because there was a hedge there which was very low, it didn't amount to anything.

Q. Where did you first see her; you described yourself as being somewhere behind this smaller of the outbuildings; where did you first see her that night?

A. I first saw her when she came around.

COURT: Back of her own house?

WITNESS: Yes.

Q. Was the grape arbor dense enough to cut off your view of her approach?

A. No, sir, the under part of the grape arbor was very open.

Q. Open on both sides?

A. Yes.

Q. And the grape arbor part, was that deep?

A. Yes.

Q. Did she come through the grape arbor; did she enter the grape arbor?

A. Yes, she came through that.

Q. And came down to the little building behind which you were?

A. Yes.

Q. If you were precisely behind it, you couldn't see at all?

A. No, but I knew from the information that I had received, I knew she was—I thought she was on the porch and I expected that she would come.

MR. APPLEGATE: I object to what he expected.

COURT: Strike it out.

A. (Continuing) Anyway I watched the rear of the house.

COURT: Were you so placed behind the outbuilding that you couldn't see?

WITNESS: No, sir, I could see.

Q. How could you see?

A. Because I was watching from the corner of the toilet that faces their house, and as soon as she came on down by me, I shifted to the other hedge of the toilet—the other corner.

Q. When did you first see Devlin?

A. I only saw him when he come up to the fence, because he must have come up along—

MR. APPLEGATE: I object to what must have been done.

COURT: Objection sustained. State what you saw.

Q. You first saw him when he came up to the fence that cut off the outbuilding—that surrounds the outbuilding?

A. I first saw him when he came to the gate of the fence.

Q. Which was indicated and which you referred to on the map?

A. Yes.

Q. When he came to the gate you saw him?

A. Yes.

Q. Did you see him distinctly?

A. Yes.

Q. Did you see him meet Mrs. Cartan there?

A. Yes.

Q. And how long did they stand there together, if at all?

A. Just a second or two.

Q. Then what did they do?

A. Then they drew back, and as they drew back I slipped through the opening; there was a little opening behind the toilet and the building they went in; at the head of that building they went in there was a smaller building, but you might call it all one building.

Q. Where did you go?

A. I went on straight down; on my side of the building was a hot bed sash glassed where I could plainly see anyone who come in from the other side, because I got a light from all around.

Q. You saw them come in?

A. Yes.

Q. Was there any furniture of any kind in that building at that time?

A. The next morning after the happening—I didn't sleep very much that night, and I got up before anyone was around, and when I went in the building, I found in there a willow couch and chair.

COURT: In this outbuilding you saw them go in the night before?

WITNESS: Yes.

Q. Do you know what the building was used for?

A. I don't know whether they put it there for a chicken house or not; I suppose it was; it didn't look to me as if it had been used very much for anything.

Q. While you were observing these people that night did you know of your own knowledge where your wife was?

A. No sir.

Q. Except as she told you, you had no knowledge as to where she was?

A. No, only she told me where she was going.

COURT: Do you know how long they remained in this building?

WITNESS: I should say a big half hour, perhaps more.

COURT: Did you stay until you saw them come out?

MR. WILSON: I am coming to that.

Q. After they entered this building and shut the door, you say you were unable to see anything more inside?

A. No, sir, I couldn't see any more.

Q. Then what did you do?

A. I was afraid they might see me, so I drew back to Ervin's Lane, then I went down to the lane and took a position where I could see anybody that passed the end of this outbuilding.

Q. The end of the outbuilding nearest the lane leading into Main street?

A. No, sir.

Q. The end of the outbuilding nearest the lane, being

the lane leading into Broad street?

A. Yes.

Q. You say you came down to Ervin's place, and indicate upon the map about where it was you stood.

A. My position was in a direct line between the end of the building and the light in the lane, so that I remained there some little time; I was growing very anxious because no one come around, and I was about ready to close in.

Q. What do you mean by closing in?

A. Coming in closer to them, to where I saw them go, and I remained there quite a while, and while I was wait- for them to come around—I was growing anxious because no one appeared, and about the time I was ready to close in, I heard something, a noise that sounded like some twigs breaking and someone walking, and a moment later he appeared.

Q. Where was when he appeared?

A. He came from the corner of the fence.

Q. You saw him outside the fence; was he in front of the outbuilding?

A. Yes.

Q. Where outside the fence?

A. He come around the corner of this fence.

Q. You speak of the corner nearest to the lane leading into Broad street?

A. Yes.

Q. Did you see him distinctly?

A. Yes, I saw him distinctly. Of course, I couldn't exactly recognize him there, only I knew it was him, because I saw him go in.

Q. What path did he take; what direction did he come?

A. He took the path—it wasn't a path, he cut across a path and went down this way (indicating) before he cut across and came right at the end of this—there is a board fence, and he come around that corner.

Q. Which corner, corner of the Hopkins lot; is that the corner you mean?

A. Yes.

Q. The corner next to the Hopkins lot you mean?

A. Yes.

Q. What about the fence?

A. He came to the corner of this board fence—I think it is the Hopkins lot.

Q. It was at or near it?

A. Yes.

Q. What did he do?

A. He went on up Broad street.

Q. Did he go over the fence?

A. No, sir.

Q. He stayed on the other side of it?

A. Yes.

Q. How did he get up to Broad street?

A. There wasn't any fence there.

Q. I thought you said there was a fence there?

A. Here, but not there (indicating).

Q. You mean a fence between the Hopkins lot and the A. J. Cartan lot?

A. Yes.

Q. But no fence at the rear of the lot?

A. That is it.

Q. He passed out into the lane?

A. Yes. This fence may not all have been up there; the end was up anyway; he passed on out in the lane that leads to Broad street, and as he did I followed him, and

I had to go over the fence to follow him, and I followed him up—

Q. What fence did you go over?

A. The fence at the end of Ervin's Lane.

Q. What did you follow him for?

A. I followed him up Broad street and saw him when he went under the lights at Van Brunt's barn; I don't know if the light was on the barn or on a pole across the way.

Q. Was there an electric light in the neighborhood of the Van Brunt barn?

A. Yes.

Q. Did you see him go underneath it?

A. Yes.

Q. Did you follow him any further?

A. Instead of going out to Main street by the street at Van Brunt's barn, he went on up to the next street..

Q. (Last question repeated.)

A. Yes, sir.

Q. He didn't go out there?

A. No, he went on up to the next street that led to Main street and went across Main street and came right by the first street he could have got into John Mulshoff's barber shop.

Q. Did you tell your brother immediately what you saw that night?

A. No, sir.

Q. You have described this as having happened in the latter part of May, 1916?

A. Yes.

Q. When did you tell your brother A. J. Cartan what you had seen?

A. I never told him about it until the spring of 1918,

when he came to me four or five times; he had got some knowledge of something my sister had told him.

MR. APPLEGATE: I object to that.

COURT: Strike it out.

Q. My question was when did you tell your brother A. J. Cartan? You say in the spring of 1918?

A. Yes.

Q. What were the circumstances under which you told him?

A. He had been to see me several times about it. I told him I didn't know anything about it.

Q. What did he say to you about it?

A. He was told that I knew something.

MR. APPLEGATE: Objected to .

COURT: Objection sustained.

Q. State what your brother inquired when he spoke to you; was it about the conduct of his wife?

WITNESS: He said, "I want you to tell me about Devlin and my wife." I said, "I don't know anything to tell you", and then he came back four or five times at me.

Q. You finally told him?

A. He met me coming from my garage behind Cartan & Devlin's place, and he come up to me.

Q. Out in the lumber yard?

A. Yes. And he sort of caught me there by my car;

he said, "I have come to you for the last time; you are my kin and blood and you will tell me this thing before you get away from here; I won't let you go one step away until you tell me what you know. You know something you have got to tell me", and he went at me with hammer and tongs, and he broke down and cried and begged and I finally told him.

Q. Why didn't you tell him the next morning after you saw this?

A. Because I realized it was a big thing, and it meant the destruction of his family, it would break his heart, and I thought trouble would arise in our business, and I wanted time to think it over; I thought it over for a month, and I went down then and saw my cousin Jim Carton and I told him the whole thing.

Q. You went down and saw James Carton, your cousin; you refer to Mr. James Carton, of the firm of Durand, Ivins & Carton?

A. Yes, sir.

Q. Did you seek his advice about the propriety of telling your brother?

A. Yes.

Q. What did he advise you?

MR. APPLEGATE: Objected to.

COURT: If it is necessary for you to go into it, I will permit it. The bona fides haven't been questioned yet. There is no reason to question them yet; I cannot see but what his conduct is rather consistent with what the ordinary man might have done under the same circumstances; something may arise in the course of the case which might show it to have been inconsistent with its

truthfulness, and perhaps I will let you go into it later.

Q. You didn't tell your brother, as you have already said; in that regard did you follow or not the advice of Mr. James Carton?

A. I did follow his advie.

Q. After you told your brother, as you have said, some time in the spring of 1918, was the fact that your brother knew of this occurrence brought to the attention of Mr. Devlin, if you know? Did Mr. Devlin find out--

A. Yes, he found that out.

Q. Your answer is Yes?

A. Yes.

Q. How do you know he found out?

A. Because he came to me early in October, 19—

Q. 1918?

A. 1918, and he said to me—

MR. APPLEGATE: We object as to Mrs. Cartan.

Q. As I understand it, you told your brother in the spring of 1918, and you know that knowledge that your brother had heard about the thing came home to Devlin, because Devlin said something to you in October of that year, is that it?

A. Yes.

Q. What was it that Devlin said to you in October, 1918?

MR. APPLEGATE: Objected to on the part of Mrs. Cartan.

COURT: I will receive it subject to the same ruling;

if it is not connected affecting her, it will not be competent. If it becomes necessary to rule on it later, I will do so.

A. He said, "Ren, I am in a lot of trouble."

Q. Where did this conversation occur?

A. In our store, when he come home from his dinner; he had been to his dinner and came back to the store.

Q. About what time in October was it?

A. The first week in October, around the American Exposition time. He said, "I am in a lot of trouble and I want you to help me." He said, " I have always helped every other poor fellow in trouble, won't you help me now?" I said, "I know you are in trouble and what do you want me to do?" He said, "You know that your wife told my wife about my being intimate with Johnce's wife."

Q. Is your brother A. J. Cartan known in that community as Johnce Cartan?

A. Yes. He said, "You know that your wife told my wife about my being intimate with Johnce's wife", and he said, "I want you to go over home and see if you can't get her to retract what she said." I said,"I cannot do that, Pat; she wouldn't do it anyway; she knows the truth. You were watched in and you were watched out, and can't you see that you never had a chance on earth to get away with it?" He shook his head like that (indicating); he said, "Yes."

Q. How were you shaking your head, up and down?

A. "Yes", he said (indicating), "but I am trying to do the right thing, and I promise you that I will never have anything to do with her again. You can take my word for it." I said, "Well, Johnce has been working

on this thing for months, night and day."

MR. APPLEGATE: Who said this?

WITNESS: I said it, "and I don't think he will be satisfied with anything but a divorce." At that Devlin broke down and cried and buried his face in his hands and he said, "But, Ren, isn't there something you can do; isn't there some way you can bring them back together again; isn't there someone that can fix this thing up for us?" And he was crying all the time. In fact, sobbing and crying bitterly and begging me with all the life that was in him to try and think of some way that I could get this thing fixed. I felt sorry for him; I really didn't know just what to do at that time, but I said after we had talked the matter over quite some time, "I can only think of one way, and that is for her of her own will"—meaning Mrs. Cartan—"for her of her own will to go back to Johnce and ask him to forgive her, and he might do it; I don't know."

COURT: You say go back; had they been separated, Mr. and Mrs. Cartan, at that time?

WITNESS: No.

Q. What did you mean?
A. To go to Johnce.
Q. And do what?
A. And ask him to forgive her. I said, "I don't know", and then he said, crying all the time, "How can we get to talk to her", and he talked of getting Mrs. Worthley and also her sister Minnie, and we decided that

wouldn't do, that was bringing outsiders into it, and he said, "Won't you get your wife to talk to her?" I said, "Yes, I perhaps could get my wife to do it, but I think you can do more with her than anybody; won't you to talk to her—"

Q. You mean talk to Mrs. Cartan?

A. Yes; I asked him wouldn't he talk to her, because I felt he could do more with her than anyone, and he said "I don't want to do that at this time, but I will write her." So he talked along that line for a long while and he was broken up and he said that he didn't care about himself, because he could take a train and go away, but it was the rest of the people that had to suffer, "and if you can bring these people back together, you don't know what it means to me, and I don't even want to tell you, but I will try some day."

Q. You say that the suggestion was made about writing her; he said he would write her; was anything done in that regard?

A. Yes.

Q. When, that day?

A. No, sir, he talked about it, and of course he said that—we agreed that it would be better for Johnce to be away when she received the letter, and I was to get Johnce to go away just as soon as I could, and he would write her at the same time, and he asked me if I wouldn't get—

Q. Have him go away permanently or temporarily?

A. Temporarily; so the following Sunday I got my chance to get him away, and I did, and then I telephoned to him to come down.

COURT: You got your brother to go out of town?

New Jersey State Library

WITNESS: Yes.

Q. And you telephoned to Devlin to come down where?

A. To come down to the store, and he said, "All right, I will be right down", and he was down in a very few minutes, and then he wrote her this letter.

Q. Did he write a letter?

A. Yes.

Q. What sort of paper was it written on?

A. I think it was written on Cartan & Devlin's letter paper.

Q. And written in your presence?

A. Yes.

Q. Was the letter delivered?

A. Yes.

Q. And by whom?

A. Well—

Q. Did you take the letter from his possession?

A. You are getting ahead of the story.

Q. Did you take the letter?

A. Yes, he gave me the letter and I said to him, "Do you care if I let Edna read this letter?"—that is my wife; he said, "No, you do anything you think best, because we want to bring these people back together again", but before we got through at that conference, the first conference—no, not before we got through, but in the meantime, I went down and saw my cousin Jim and told him what had taken place and asked him if he wouldn't talk to Johnce.

Q. You mean James Carton, the lawyer?

A. Yes. I asked him if he wouldn't talk to Johnce, so as to get him in a frame of mind to receive her, if she

did what Devlin asked her to do in the letter. He said, "Sure"; he said, "I think it is the best thing to do; maybe the thing will blow over and it will be all right, and I think it is the very best thing to do", and Jim agreed with me, and the next night my brother Bert and I took Johnce down to Jim, and Jim talked to him along that line, and told him it was the only thing to do, and he must do it. He didn't know anything about the letter business, and he didn't know anything about my hand in it, but we come on back home, and then it was two days later when I sent for Devlin on a Sunday, that I had gotten him away and it would be a good thing to do it; he came down and wrote the letter.

Q. You say the letter got to your hand how?

A. He gave it to me.

Q. Devlin?

A. Yes.

Q. What arrangement, if any, did you make with him about the letter?

A. I said, "Hadn't I better get Edna to deliver it to her and get her to talk to him at the same time?" I said, "Do you care if Edna reads it?" He said, " I don't care what you do, because whatever you do will be for the best." I went home with the letter. He missed his trolley, by the way, and was very much agitated, because he said his wife was after him every minute, and I went around and got my car and put him in the car, and took him home, and then came back and took the letter in my house.

Q. Did you take it to your wife?

A. Yes, I said, "Pat said you can read it, and he wants you to talk to Doll at the same time that you deliver that letter."

Q. Did your wife undertake to deliver it?

A. Yes. I said, "I don't know how Johnce will take this, and it is pretty dangerous ground for me to travel on; if he takes it all right, it will be all right, but if he don't, it will be a bad position for me, and I think we had better take copies of it, and", I said, "you take this letter and read it to me and I will make a copy", which I did, and then I went out of the house, and a little later on she —you don't want me to tell that?

Q. About her delivering it, you don't know whether she delivered it or not?

A. No.

Q. Did you see her start for the house?

A. No.

MR. WILSON: We have asked by a formal notice for the production of that original letter, preliminary to offering the secondary evidence. Have you got the letter?

MR. LANE: We make no answer.

COURT: You haven't shown delivery. You can suspend the witness temporarily, if you wish. That may be the ground on which they decline to answer at this stage.

MR. WILSON: I will withdraw this witness for the present.

———

EDNA CARTAN, sworn for petitioner.

DIRECT EXAMINATION BY MR. WILSON:

Q. Mrs. Cartan, do you recall that your husband gave you a letter some time in October, 1918, to be delivered to Mrs. A. J. Cartan?

A. Yes, sir.

Q. And did you read the letter before you delivered it?

A. I did.

Q. And from whom and to whom was the letter?

A. The letter was from Mr. P. J. Devlin to Mrs. A. J. Cartan.

Q. And was a copy of that letter taken?

A. There was.

Q. Before delivery by you?

A. Yes, sir.

Q. And by whom was the copy made?

A. My husband wrote it and I read it off to him.

Q. And you delivered the original to Mrs. Cartan?

A. I did.

Q. Where?

A. At her home.

Q. And when?

A. This Sunday night.

Q. With respect to the date of the letter, was it on or about the date of the letter?

A. Yes.

COURT: Where was she when you delivered it?

WITNESS: At her home.

COURT: Whereabouts at her home was she?

WITNESS: Right in the front room, and my husband told me—

MR. WILSON: Never mind. That is all I wish to go into at this time.

COURT: Any questions?

MR. LANE: No questions.

MR. APPLEGATE: No questions.

REN CARTAN, recalled for further

DIRECT EXAMINATION BY MR. WILSON:

COURT: Do I understand you make the same reply to the demand for production?

MR. LANE: We make no answer.

COURT: I regard it as an equivalent to a refusal to produce, if they have it?

MR. LANE: That is what it amounts to, of course, except a refusal to produce admits, I suppose—

COURT: Its receipt?

MR. LANE: Its receipt.

COURT: The record as it stands before me shows you received it.

MR. WILSON: And when counsel makes no response at all, it leaves you to conjecture whether they did receive it or not.

Q. I show you this memorandum in writing and ask you if you know what it is?

A. Yes, sir.

Q. What is it?

A. It is a letter that Devlin wrote and had me take over to my wife to have her to deliver to Doll Cartan.

Q. Is that a letter or a copy of it?

A. A copy of it.

Q. That you have been referring to in your testimony?

A. Yes, sir.

Q. And the copy you say you made at your house under the circumstances where your wife aided and was present?

A. Yes.

Q. You made it yourself; is it in your handwriting?

A. Yes.

Q. Is it a true copy of the letter Mr. Devlin gave you?

A. Exactly.

MR. WILSON: I offer this in evidence.

MR. APPLEGATE: I object so far as Mrs. Cartan is concerned. Nothing that Devlin wrote can bind Mrs.

Cartan at this stage, even though it be true that Mrs. Cartan received it.

COURT: The objection will be noted, and for the present there will be the same ruling.

(Marked Exhibit P 3.)

MR. WILSON: (Reading).

"October 6, 1918.

Dear Doll:

For God's sake go to Johnce and ask him to forgive you for everything. Promise him you will do anything on earth that a woman can do for her husband, and that for the rest of your life you will do your utmost to make him happy and contented.

Yours very truly,
P. J. Devlin."

Q. After the delivery of this letter by you to your wife you say you undertook to deliver it to Mrs. Cartan, did you have any talk with Mrs. Cartan about the matter?

A. When I came home that Sunday night, the same Sunday, the same day that the letter was written, and came in my house, Doll Cartan was there, and she immediately said to me, "Do you know about this letter?"

Q. Was your wife present then, too?

A. Yes; she said, "Do you know about this letter?" I said, "Yes", and she said, "Do you know what is in it?" I said, "Yes."

Q. Did she have the letter in her possession at that time.

A. I don't know.

Q. I mean did she display the letter?

A. No, I asked her if she had the letter, and she said no, she destroyed it, and she said, "Do you know what was in it?" I said, "Yes, I do." I said, "You would think I knew what was in it, if you knew what a time I had with Devlin all the week, that he has been crying every day all through the week." And she said, "Well, I know how it is with Pat; that is the way it is with a man", and she said, "Anyway, they haven't anything on us, because you have got to be within ten feet to prove anything." She said, "Why didn't Johnce bring this thing up before the children got so old, for what was between Devlin and myself happened years and years ago", and then she said to my wife, in my hearing, "I will not ask Johnce to make up with me, because if I do, he will throw it up to me all the rest of my life."

Q. Was there anything else that occurred on this occasion that you recall?

A. I cannot remember.

Q. You don't recall?

A. No, I don't recall.

Q. Did you have any other conversation with her after that—speaking of Mrs. A. J. Cartan?

A. No, sir.

Q. To go back to Mr. Devlin, did Mr. Devlin prepare another letter to be sent to Mrs. A. J. Cartan?

A. Yes.

Q. What were the circumstances under which that letter was prepared?

A. Two or three mornings after she received the first letter, she came over to the scale alongside of our

store, and asked where Devlin was.

Q. Whom did she ask?

A. I think she asked Devlin's brother.

Q. Was it in your hearing?

A. Yes, and he told her that he hadn't come down from the Post Office yet, so then she started up town.

Q. Was that in the direction of the Post Office?

A. Yes, and she met him just a little ways above the store.

Q. How do you know she did?

A. Because I saw her talking to him.

Q. On the street?

A. Yes, and after she had that conversation with him, he came down and he said that what she wanted to know was who told my wife, and I said, "Did you tell her?"

MR. APPLEGATE: Objected to so far as Mrs. Cartan is concerned, as mere hearsay.

COURT: I will make the same ruling.

Q. He told you that she wanted to know who told whose wife, your wife or Devlin's wife.

A. His wife, who told Devlin's wife, and I said, "Did you tell her?" and he said "Yes." I said, "That is a very funny thing, after my wife and I had been working for you as hard as we could, to try and clear up this thing, that you must go and tell her the very first time you are asked", and he broke down and cried like he never had before.

Q. Who had in fact told Devlin's wife?

A. My wife.

Q. Go on; what else happened?

A. I said, "It is a funny thing"; I said, "You can expect no more help from us." Then he cried and broke down and begged, and fell on my shoulders, and did everything any man could do to beg me to come back and help again, and I said, "You ought to fix that thing",; I said, "You ought to tell her just how this thing—how and why it was." I said, "You know how it come that my wife told her that; you knew that she was going to get it, anyhow." He said, "Well, all right, I will try and fix it up", and he writes her the second letter.

Q. To Mrs. A. J. Cartan?

A. Yes.

Q. Was that written in the store?

A. Yes.

Q. Written in your presence?

A. Yes.

Q. Was the language used in both these letters his language or your own?

A. His language, every word of it. When he came to the store, after meeting her that morning, I forgot to state this; he said to me, "She is the queerest woman I ever saw; I cannot even make a dent in her."

Q. This second letter which was prepared, did you make a copy of it?

A. Yes, because he wanted me to take that over and show it to Edna, to show to her that he was trying to fix it up and do the best he could with it.

COURT: This second letter was a letter from Devlin addressed to Mrs. A. J. Cartan?

WITNESS: Yes.

COURT: And that letter he gave to you, and you took that over to show your wife?

WITNESS: Yes.

Q. Did you make a copy of it?
A. Yes, in the same way.
Q. At your own house?
A. Yes.
Q. What did you do with the letter after you took it over and showed it to your wife?
A. I brought it back and gave it to him and told him it was all right, and he gave it to his brother, who took it over to Mrs. Cartan. I saw him take it up the front steps of her stoop. He asked me if I wouldn't let my boy deliver it; I said he had better give it to some older person, and he gave it to his brother, who took it over.

MR. WILSON: We have asked to have the original letter produced, and we renew our request now formally.

MR. LANE: Same answer.

COURT: Do you dispute the delivery of the second letter?

MR. APPLEGATE: We don't dispute the delivery, in other words.

MR. LANE: We do dispute the delivery of a letter—

COURT: By Mr. Devlin's brother?

MR. APPLEGATE: Yes.

Q. I show you this letter or memorandum in writing and ask you if this is a copy of this second letter which you saw him write?

A. The reason I am deliberating about that letter is because there were two letters, and one was ahead of the other, and I don't know if this was the first or second.

Q. Second on the same day?

A. Yes.

COURT: Then there were three altogether?

WITNESS: Yes.

Q. I show you then another memorandum in writing and ask you if either of those memoranda are the letters which you say you made a copy of and which you described as having been taken to Mrs. A. J. Cartan's house by Devlin's brother?

A. This (indicating) is the second letter.

Q. The one you now hand me is the second letter?

A. Yes.

Q. Did you make a copy of this?

A. Yes, my wife read it to me and I made a copy, word for word.

MR. WILSON: I offer it in evidence.

(Marked Exhibit P 4.)

"October 8, 1918.

Dear Doll:

Please don't have any ill feeling toward Ren's wife for telling May. She had the best motive and did it to prepare Mame for what was coming. Please don't blame her and try to do what I wrote you a few days ago. I know you would be doing the noblest thing that any person on earth can do. Please, Doll, do this, and I am sure you will never regret it, for I know positively somebody else was going to her and tell her. Yours,

P. J. Devlin."

Q. After this letter was written and delivery was attempted as you have described, did you have any further talk with Mrs. Cartan?

A. No, sir, but I had a talk with Devlin.

Q. Did you have a talk with Devlin?

A. Yes, and he asked me not to give it up, but to keep on trying to bring her around as his first letter had asked her, and he said, "I expected she would kick up when she received the first letter, but," he said, "when she finds her support will be taken away from her, she will be entirely different."

Q. Was another letter written by him?

A. Yes, sir.

Q. Under what circumstances?

A. We found—I learned from my brother, A. J., just how she took it, and I went back and told him, so he wrote the third letter.

Q. And when was that third letter written?

A. In October, the same day that the second letter was written.

Q. Was that letter written in your presence?

A. Yes.
Q. And by him?
A. Yes.
Q. What became of it after he had written it?
A. He gave it to me, as he had done with the second letter, and told me to let Edna look at it and then deliver it. I took it over and she read it and after we read it, we concluded that from the way that she was acting, from what my brother told me, instead of doing good, it would do harm, that she wouldn't do what he wanted her to do, and this would make her more mulish, and I went back and said, "We feel this letter will be harmful rather than a good thing to do", and I gave it back to him.

MR. WILSON: We asked by notice for the production of that letter by Mr. Devlin. What response is there to that?

MR. LANE: Same response.

COURT: Same ruling.

Q. I ask you if this memorandum in writing is the other letter to which you referred?
A. Yes.

MR. WILSON: We desire to offer it in evidence.

MR. APPLEGATE: Objected to; it hasn't been proven even that she received it.

COURT: That is true, I will receive it subject to the same qualification that I have the others.

(Marked Exhibit P 5.)

MR. WILSON: (Reading).

"October 8, 1918.

Dear Doll:

I am very sorry you are offended because Edna told Mame. A good friend of mine persuaded her, very much against her will, to go to Mame, as Johnce was surely going to with her with the story, and felt that Edna would tell her in such a way that it might not be so hard. Yours,

P. J. Devlin."

Q. Did you have any more talk with either Mrs. A. J. Cartan or Mr. Devlin about this matter, about the matter of the letters?

A. I don't remember any more talk about the letters.

COURT: Or anything else connected with their relations?

WITNESS: I had a talk with Devlin later on.

Q. How much later on was it?

A. It was along during the same time; it might have been along during the middle of the month of October, 1918.

Q. What was that conversation?

A. It was a conversation following Mrs. Devlin who came down to my brother's store and we had a talk with her upstairs and she said to my wife—

MR. APPLEGATE: Who was this?

WITNESS: Mrs. Devlin.

MR. APPLEGATE: We object to that.

MR. WILSON: I don't want this.

Q. I understand that Mrs. Devlin, and your brother, A. J. Cartan, and you had a conversation in your store, or in your brother's store?

A. First we had a conversation in our store.

Q. Was that the occasion when you had some further talk with Devlin?

COURT: I understand it was after that conversation.

WITNESS: Yes, it was after both of those talks we had with Devlin, and then I talked with Mrs. Devlin, but it was on the same day. The second time he talked with Mrs. Devlin, it was on the same day that I talked with Devlin about the case.

Q. What talk did you have with Devlin; first, where was the talk you had with him?

A. Down in the nail room, or store room; nails were kept there.

Q. Where were Mrs. Devlin and A. J. Cartan at that time, if you know?

A. Upstairs in my brother's store.

Q. What was this talk you had with Devlin?

MR. APPLEGATE: Objected to for the same reason.

COURT: Same ruling.

Q. What was the talk?

A. In order to give it so you could understand it, I would have to tell about the talk up in the store first.

Q. You can do that. You will have to say what talk you had with Devlin and what he said to you and what you said to him.

A. I said, "Let us get this awful thing fixed up. You tell Mame," I said, "and Mame and I will go to Johnce and beg him off. If we cannot get it off any other way, we can do it that way, so we can get along in our business." He said, "Ren, I cannot do that. I will do anything but that; I don't care for money, but", he said, "I cannot do that; I have to deny it; my friends will expect me to deny it, and there isn't anything else left for me to do, but to deny it."

Q. You say Mame, you mean Mrs. Devlin?

A. Yes.

Q. In having that conversation with him had you been in company with A. J. Cartan and with Mrs. Devlin before you went down to the nail room?

A. Yes.

Q. After you had this conversation with Devlin that you have just described, did you leave him and go back where Mrs. Devlin was with your brother in the store?

A. Yes.

Q. Did you tell the m the result of that interview?

A. Yes.

Q. In your business relations with Mr. Devlin, did you have any custom as to which of you stayed at the store on Saturday nights?

A. Yes, we worked every other night, and that brought him on one Saturday night and me on one Saturday night.

Q. Had there been anything unpleasant in your business relationship with Mr. Devlin at all?

A. Previous to this time?

Q. Yes.

A. No, sir.

CROSS EXAMINATION BY MR. LANE:

Q. As I understand it, Mr. Cartan, you were suspicious of Devlin and your sister-in-law eight years ago?

A. Yes.

Q. And that suspicion became stronger as time went on?

A. Yes, sir.

Q. Was it about as strong in the beginning as it was in the end?

A. No, sir.

Q. It wasn't quite so strong?

A. No, sir.

Q. All of these matters which you have referred to, occurred either seven or eight years ago, excepting the one having reference to the chicken house, isn't that true?

A. Those are the ones that I recall the most; I don't say it was seven or eight years ago, but it might have been; but they strung over a number of years; that is the way I remember it, as I was telling you.

Q. You were so suspicious when you were in the automobile—

A. Yes.

Q. —that you were waiting for things to go a little bit farther and then you would have intervened?

A. I was suspicious on account of the way—

COURT: Answer the question; would you have intervened?

Q. You would have done something?

A. Yes.

Q. What would you have done; what did you have in mind?

A. I would have grabbed his hand.

Q. That would have created a commotion?

A. I don't know; I suppose it would.

Q. What?

A. I don't know.

Q. You don't know whether it would or not?

A. No.

Q. You think you could have in the automobile grabbed his hand and not creat any commotion; is that right?

A. It might have created a little commotion?

Q. And your brother was in the car, wasn't he?

A. Yes, in the front seat.

Q. And if it created a commotion, your brother would have known it?

A. I don't know that he would.

Q. You think you could have grabbed his hands without your brother knowing anything about it?

A. Yes, sir.

Q. And you wouldn't have done anything upon that occasion to arouse your brother's suspicion, would you?

A. I don't think I would.

Q. Why not?

A. For the reason I told you before.

COURT: Why not?

WITNESS: Because I would have told him at the time that I did know about it, if I wanted to create any trouble.

Q. You didn't tell him because you didn't want to create trouble?

A. I didn't want to create trouble.

Q. The conduct of Mrs. Cartan and Mr. Devlin at these parties was so that anyone could see it, wasn't it?

COURT: At these card and dinner parties and things you mentioned.

A. It was so that anyone could see it if they were suspicious.

Q. They had to have a suspicious mind to see it?

A. Yes, they could see it a good deal easier if they had a suspicious mind.

Q. What was the first thing that aroused your suspicion?

A. I said I remember of becoming very suspicious after I had overheard Mrs. Cartan tell my wife that he kissed her in the telephone booth.

Q. That was seven or eight years ago?

A. Yes, I think so.

Q. She dance more often with Devlin at every party she went to, is that right?

A. Yes.

Q. That was the topic of conversation, was it, among your—

A. I wouldn't say so; we talked it over, yes.

Q. What did you say among yourselves with respect to her dancing so much with this man Devlin?

A. We said it was strange that she danced so much

with him.

Q. Did you say it in Mrs. Cartan's presence?

A. No.

Q. Whom did you talk with about it being strange that she danced with one man?

A. Among our own folks.

Q. Who; name them.

A. My wife and myself and Burton's wife.

COURT: Any others that you talked to?

WITNESS: Mr. Tice and his wife.

Q. Who else, if there were any others?

COURT: Do you recall any others?

WITNESS: No.

Q. A. J.?

A. No, sir.

Q. You never said anything to him about it?

A. Not a word.

Q. He never was present when you talked about it?

A. No.

Q. Did you ever go out in parties larger than your little circle of eleven?

A. Once in a while we did, but not very often.

Q. How many times a year.

A. I cannot tell you; I don't know.

Q. A number of times?

A. No, I wouldn't say so; not very often.

Q. Did she dance more often at these other parties

with Devlin than she did with anybody else?

A. I think she did.

Q. Did it arouse any talk among others than your little crowd that you know of?

A. I don't know.

Q. You never heard?

A. I don't know.

COURT: You don't know whether it attracted attention at these larger parties or not or caused any talk?

WITNESS: No.

Q. How long is it since she has been going down the street past the store and making these sweet salutes to Devlin as she passed by?

A. That probably goes back eight or ten years.

COURT: The last or first salute?

WITNESS: He is talking about the first.

Q. And it continued right on down?

A. Yes.

Q. Every time she passed the store?

A. Yes.

COURT: It continues to the present time?

WITNESS: Up to the time of the trouble.

COURT: Until October, 1918?

WITNESS: Yes.

COURT: It stopped then?

WITNESS: Yes.

Q. Every time she passed the store?

A. I don't know every time, but I noticed it a good many times.

Q. You in the store every time you saw her going down the street observed that she was looking as if to catch Devlin's eye as she went by, and as she did, she made this salute with her hand?

A. I don't know as I observed it every time, but I think I did.

Q. Almost?

A. Yes.

Q. That was apparent to everyone to see it that was walking along the street?

A. Yes, but people who were not suspicious wouldn't be mindful of it.

Q. These theatre parties, she always sat with him, if I recollect correctly?

A. Any theatre party that ever I was on that they were to, they sat alongside of one another.

Q. And they were so engrossed in conversation on every theatre party that they went to, for seven or eight years, you could hardly get response from either one of them?

A. That was so most of the time.

Q. And quite apparent to you?

A. Yes.

Q. And was it apparent to anyone else, to your

knowledge?

A. It was apparent, I guess, to most of the people in the party.

Q. Everyone except A. J. Cartan?

A. No, I guess he noticed it too.

Q. Did he notice this dancing, too?

A. Yes.

Q. And did he notice this saluting business, too, that you noticed?

A. I don't know about that.

Q. How do you know he noticed it?

A. Because he told me so since that he noticed it.

Q. What did he tell you since that he noticed seven or eight years ago?

A. He said that he noticed all along that she was very fond of him and that—

Q. Tell all that he said.

A. And that he noticed that she always wanted to dance with him; he noticed that she wanted to be in his company whenever she could; he noticed that she was fond of dancing with Devlin, and that she was always talking to him.

COURT: What did he say about it?

Q. I don't want you to tell me what he noticed; I wanted you to tell me what he said to you that indicated that he noticed these things of familiarity and association that you have referred to, and use his own expression.

A. He said that he noticed that she always wanted to sit alongside of him and she always wanted to dance with him and she always wanted to be where he was, and that he also noticed that when they did dance, they danced

out in the hall or places so they could be alone by themselves.

Q. Anything else?

A. He noticed that at the card parties she always wanted to play with him and sat at his table, and he noticed also that at dinner parties she always wanted to sit alongside of him.

Q. Anything else?

COURT: When did Mr. Cartan mention all these things to you and tell you that he had observed them?

WITNESS: He told me that since the trouble.

COURT: Since October, 1918; how long since that time?

WITNESS: No, he told me that since the spring of 1918.

COURT: How often; when did he tell you, right after the spring?

WITNESS: Yes, right after he knew about the—right after he had learned to his full satisfaction about it.

Q. Did he tell you anything else that he had noticed other than these things you mentioned during the eight years?

A. He said that he noticed a fondness all along for her.

Q. That is the language he used, he noticed a fondness all along?

A. I don't know that that is the language he used.

Q. Recall as near as you can his language.

A. He had noticed these things, but he thought the easiest was the best, and maybe it would work all right.

Q. He had noticed the fondness and he thought maybe the thing would work out all right and he didn't want to do what?

A. He said he noticed this fondness all along, but he thought that the easiest way was the best, maybe the thing would work out all right.

Q. Is that the first time that you knew that he had taken any notice of this intimacy?

A. I noticed that he was very sullen and quiet at different times, and I thought he knew about it, but he kept his business to himself.

Q. He didn't say anything in your presence?

A. No.

Q. Nor did he remonstrate in your presence?

A. He never remonstrated in my presence, except one time he told me—

Q. I don't ask what he told you.

COURT: Did he remonstrate with Devlin or Mrs. Cartan?

WITNESS: No, he kept that to himself.

A. Yes.

Q. Tell me once more about this automobile affair; I couldn't get it straight as you told it before. How did that happen?

A. We were coming from Princeton after having dinner at the Princeton Inn, and after we got out of Princeton a little ways—

Q. Mrs. Devlin was present at all these parties?

COURT: This was at night?

WITNESS: Yes.

Q. About what time?
A. Nine o'clock.
Q. What time of the year?
A. In the fall of the year, I think; It was quite cool.
Q. Who occupied the rear seat and who occupied the front, and how many were in that car?
A. There were six people in the car and I occupied the extra seat and Devlin sat in the front right seat and Mrs. Cartan sat directly behind him—Mrs Doll Cartan sat directly behind him, and my wife was in the center and Devlin's wife was on the left-hand side of the back seat—the left side in the back.
Q. Directly behind him?
A. No, not directly behind him.
Q. Where were you?
A. I was in the extra seat that was placed in the center of the car.

COURT: Was it a seven passenger car?

WITNESS: No, a five passenger car, but six passengers.

COURT: And the extra seat was put in?

WITNESS: Yes.

Q. A temporary thing?

A. Yes, and as we drew out of Princeton, or after we had gone out of Princeton six or seven miles he swung back in his seat like this (indicating).

Q. Towards which side?

A. Facing me. My back was sort of—I was sitting pretty near like that (indicating).

COURT: Facing the driver?

WITNESS: Yes, and when he swung back—

Q. Did he swing around toward you or away from you?

A. Toward me.

Q. So his face was coming around toward your face?

A. Yes.

Q. If he kept on coming around he would come face to face with you?

A. I don't think so.

Q. If he kept on coming around in the direction in which his body started to, he would come face to face with you?

A. He swung up this way (indicating) and I sat right straight ahead, I was sitting straight ahead, and he probably would be that way (indicating).

COURT: You say behind him?

WITNESS: No, I was sitting straight ahead—yes, I sat a little ways behind him.

COURT: He turned around to face you more or less from the side?

WITNESS: Yes.

COURT: On the right or left side was he facing you?

WITNESS: I was on this side of him and he was sitting like this (indicating); I was on this side of him (indicating).

Q. Did he use his left hand or right hand?

A. The inside hand.

Q. Go ahead.

A. And I noticed also that she was sitting low in the seat, and after we got out of Princeton five or six miles, I felt the blanket raise around my feet, as it was around me, and I turned around like that (indicating), and I saw him pull his hand up, out from under the blanket.

Q. This blanket was around you and the women?

A. No, it wasn't around me, but around my feet; it was up over the women's lap and around my feet, and I could feel it raise.

Q. And the first you saw of it was as you turned when he pulled his hand away?

A. The first I saw of it?

Q. Yes.

A. I was mindful of it because I was made suspicious by the position he had taken; I couldn't see any reason why he would want to lean over the back of the seat and put his hand this way (indicating).

Q. Then as I understand it, you saw this performance from the time it started, from the time he started to turn his body and put his hand back there?

A. Of course I saw him put his hand back there.

Q. You saw his arms?

A. Yes.

Q. And you could see what he was doing with his hand?

A. No.

Q. Why not?

A. Because I couldn't.

Q. You had your eyes and were looking straight ahead?

A. No, I didn't have to turn my eyes to see his hand behind, but when I felt the blanket move I turned around and I saw him take his hand from the blanket.

Q. Do you mean to say that in this small car, with your sitting in the middle and looking straight ahead, that he could put his arm around that way, that if you kept your eyes straight ahead you could see everything he did with his hand?

A. I saw him put his arm over the back of the seat.

Q. Couldn't you see what he did with his hand, a little lower than his arm?

A. I didn't see what he did at first, but when the blanket raised, then of course I turned my head, and he pulled his hand out from under the blanket.

Q. The first that you knew that he was doing anything underneath the blanket was when he pulled his hand out?

A. Yes, that is the first I knew.

Q. And at that time his hand was being taken away?

A. Yes.

Q. And why did you think that he was going to take his hand away in that way?

A. Because he probably saw me when I looked around..

Q. Is that what you thought at the time?

A. Yes.

Q. But you were waiting, weren't you, for him to do something that you could see?

A. Yes.

Q. You were going to wait a little longer?

A. I thought it was strange on account of his position.

Q. (Last question repeated)—in order to catch him doing something more, and you were interrupted, because the car stopped and you had to get out and look at the sign, isn't that right?

A. Yes.

Q. Did you think it was worth while watching after he had seen you turn around and look at his hand and then pull his hand away?

A. I wasn't sure that he saw me looking, but I only thought so.

Q. You were in doubt as to whether he had seen you or not?

A. Yes.

Q. You were in some doubt as to whether he had pulled his hand away?

A. Yes.

Q. So you were actually waiting there for something else to happen?

A. Yes.

Q. And you were interrupted by the fact that you got to this sign board and had to get out and look at it?

A. Yes, and then he took my seat?

Q. When did you first consult James Carton about this matter?

A. Right after the May, 1916, happening.

Q. Right immediately after?

A. Perhaps a month or so after.

Q. When did you consult James Carton with respect to preparing A. J. Cartan to take back his wife?

A. Just previous to the time Devlin wrote the letter.

Q. Just previous means what?

A. The first week in October.

Q. A few days or a longer period; was it a few days before the letter was written?

A. Yes.

Q. It was after your conference with Devlin in which Devlin had come and sobbed and cried and suggested that you ought to help him get Mrs. Cartan to go back to A. J.?

A. Yes.

Q. And after the suggestion was made with respect to this man and that man doing it, and you finally agreed that the only man to do it was Devlin himself?

A. We were talking about the women.

Q. Or women, and it was after you finally agreed that the only thing to do was to have Devlin do it himself?

A. Yes.

Q. And it was after Devlin had stated that he didn't want to do it personally, but he would be willing to write a letter?

A. Yes.

Q. And it was then after that conference that you went to James Carton to prepare A. J. to receive this letter?

A. Prepare A. J. to get him in a frame of mind to receive her if she did what Devlin asked her to do.

Q. How long were you with James Carton in this conversation?

A. When he was talking to my brother?

COURT: When you went down to see him.

WITNESS: Maybe half or three-quarters of an hour.

Q. How long was A. J. there with him?
A. Maybe an hour and a half or two hours.
Q. You went down there for advice?
A. Yes, I went down there to Jim—
Q. To intervene?
A. To get him in a frame of mind.
Q. But you never told James Carton anything how it was going to be done?
A. What do you mean?
Q. About the letter?
A. Yes, I did.
Q. I thought you said on direct examination you didn't.

COURT: Did you tell him you intended to have Devlin write a letter if they prepared A. J. for it?

WITNESS: No, I had already told him that Devlin was going to write the letter; he knew about the letter.

COURT: Did Mr. James Carton know about the letter?

WITNESS: Yes.

Q. Then I am mistaken with respect to the direct examination.
A. I don't think that was asked.
Q. As a matter of fact, James Carton knew that Devlin was going to write these letters, is that right?

A. Yes.

Q. And knew exactly what you were going to do with respect to having the letter sent to Mrs. Cartan?

COURT: Did Mr. James Carton know that the letter was going to be sent when written?

WITNESS: He knew that it was to be sent to Mrs. Cartan; I don't know if he knew how it was to be done.

Q. Did you go into the contents of the letter with him?

A. No, because the letter had never been written.

Q. Did you go into it at all, as to what Devlin was to write or anybody to write?

A. I told him that Devlin seemed very sorry for anything that had taken place, and that didn't he think it was a good thing the way that Devlin wanted it done, and he said Yes, and that perhaps would be the best way to fix it up, and he said if I would bring Johnce down there he would talk himself to him.

Q. What did you say to him was the way that Devlin was going to fix it up or wanted to fix it up?

A. I told him that I would ask Devlin if he wouldn't talk to her, and he said no, he would write her.

COURT: Did you tell him that was the way Devlin would fix it up?

WITNESS: That is what I told him.

Q. What did you tell him was going to be in these letters; what was Devlin going to say to her that would

induce her to go back to A. J. Cartan?

A. I didn't tell him anything, because I didn't know what he was going to write.

Q. Didn't you have any idea?

A. Not the slightest.

Q. Didn't you have any idea as to what the contents of these communications were going to be?

A. I knew what he had told me, that he was going to ask her to go to Johnce, that is all I know. At the time I said that if she would go to him of her own will, that maybe he would overlook it, but I didn't know what was going to be in the letter, because when Devlin handed me the letter, I was surprised at the———of it.

Q. You were not present when it was written?

A. Yes.

Q. You didn't see the words as they came out, you didn't know anything about the letter until it was handed to you?

A. I saw him write it; I knew he came there to write it.

Q. Did he sit down and write each one of those letters without knowing what he was writing until he finished?

A. Yes.

Q. You didn't know what was in or going to be in either one of those letters until they were actually finished.

A. In the first letter I didn't know what he was going to write; the second letter was the outcome of what I said to him.

COURT: About your wife?

WITNESS: Yes.

Q. In this letter, Exhibit P 5, the words are used: "I am very sorry you are offended because Edna told Mame; a good friend of mine persuaded her very much against her will to go to Mame." Did you or did you not know who he referred to as the good friend of his?

A. No, sir.

Q. You didn't know?

A. No.

Q. You had no idea at that time?

A. No, sir, I had no idea at that time. I told him that Johnce would have told Mame anyway, which of course he knew; that is the only thing I knew, unless when he wrote that letter he might have referred to myself as the good friend; I guess that is the way he meant it to be.

Q. "A good friend of mine persuaded her very much against her will to go to Mame"; have you any idea to whom he referred as the good friend who persuaded your wife against her will to go to Mame?

A. I don't know who he meant, unless he meant me; he wrote it that way, because that was the way he thought was best.

Q. Did you persuade your wife to go to Mame and tell her?

A. No.

Q. There would be no basis for believing that you were the good friend?

A. No.

Q. You never told him that you persuaded her to go to Mame?

A. No.

Q. Did you tell him that anybody had persuaded your

wife to go to Mame?

A. No, I told him that Johnce would go to her if my wife hadn't.

Q. You didn't tell him that any particular person had persuaded your wife to go to Mame?

A. No.

Q. And then follow the words: "As Johnce was surely going to her with the story and felt that Edna would tell her in such a way that it might not be so hard." Do you know who it was that felt that Edna might tell Mame in such a way that it wouldn't be so hard?

A. I think that is the way he put it.

Q. You haven't the least idea and didn't have at the time as to what he meant?

A. I never knew that Mame was told until she had been. I wasn't there.

Q. In the other letter, Exhibit P 4, the expression is used: "for I know positively somebody else was going to her (that is Mame) and tell her"; to whom did he refer then, do you know?

A. I didn't know.

Q. Did Mr. James Carton tell you to keep copies of these letters?

A. I don't remember him doing so, I don't think he did.

Q. What?

A. I don't think he did; I don't remember.

Q. What was the reason you kept copies?

A. I kept copies of them because in case that Johnce didn't take it the way it was intended, I wanted to square myself with him.

Q. Just what do you mean by that?

A. I meant this by that, that in case he wasn't satis-

fied with her coming to him and asking him to forgive her, and found after that I knew about these letters, that he would get back at me, and I wanted to be in a position to square myself.

COURT: How would the possession of the copies help you square yourself?

WITNESS: In this way, that if he wasn't satisfied with it, I had these copies to fall back on.

Q. As a matter of fact, Mrs. Cartan did not go to A. J. and he did not take her back; how have you squared yourself by these copies?

A. I didn't know that when I took copies of the letters.

COURT: Can you state any more clearly what you had in mind when you copied these letters, and how you expected to accomplish it by making copies of Mr. Devlin's letters to Mrs. Cartan? Explain it in your own way.

WITNESS: I didn't know whether it would be satisfactory to Johnce, my taking part in this sort of thing, and that is why I took copies of the letters, so if it didn't come around the way we wanted it, so I could have copies to help him with.

Q. To help him with?

A. Yes.

COURT: What do you mean, copies of the letter to help him with?

WITNESS: Yes. He had found fault with me because I hadn't told him about this thing, and I didn't want to be in a position in—

COURT: You didn't want to give him the impression you were taking sides in this thing?

WITNESS: That is it.

COURT: And if that result wasn't accomplished by participating in this, then you would give the copies for whatever benefit they might be to him?

WITNESS: I wanted to be in a position to square myself with him.

COURT: Even if the delivery of these copies required that to square yourself?

WITNESS: Yes.

Q. How would the delivery of the copies, in your opinion at the time, square yourself with Johnce?

A. I don't know about that, but that is the way I felt about it anyway.

Q. Because the copies of the letters would help him?

A. Yes, in case he was dissatisfied with the hand I had taken in it.

Q. In case he didn't take his wife back?

A. Oh, no, not that.

Q. If he took his wife back, there wouldn't be any necessity to use the copies of the letters?

A. No.

Q. Is that right?

A. No.

Q. So that in case he didn't want his wife back or did't take his wife back, and in case he was dissatisfied with you, these letters would help him, wouldn't they, in your opinion?

A. In case it didn't work out all right, I had copies of the letters so I could square myself with him.

Q. So you could help him get his divorce, is that what you mean?

A. No, he found a lot of fault with me because I didn't tell him about the 1916 episode, and he said I was his brother and I should have told him, and I wanted to be in a position to be fair with him; I didn't know whether I was fair with him or not in entering into this thing that Devlin was trying to get me to do; I felt if he was satisfied about it, I was satisfied about it.

Q. Then as I understand it, Mr. A. J. had found fault with you before?

A. He told me that I should have told him; that is the way he found fault with me.

Q. Was he quite angry about it?

A. I wouldn't want to say he was; he was quite ruffled about it.

Q. Quite provoked, too, and was quite provoked in October about it, still provoked?

A. Provoked about what in October?

Q. About your not telling him about what took place?

A. He hadn't said anything about it for some time; he was provoked at the time.

Q. You still felt he was provoked?

A. I wouldn't want to say that, but I didn't want to get in that position again, so my own brother could come

back and say I was double-crossing him.

Q. Did you think that this might be said to be double-crossing him, the writing of these letters?

A. I didn't think of it that way at all; I thought of it that on account of the way he felt about the first thing, that I didn't want to do anything that was displeasing to him, and if the thing went through, I was satisfied; if he was satisfied, so was I, and I was satisfied to take part in it, if we could possibly bring them together. I didn't know how she was going to do it or how he was going to take it either.

Q. A few moments ago you said that you thought that the letters would help him; what did you mean by that?

A. I said the letters would help him?

Q. Copies would help him, not the letters.

A. I think I have explained that to you the best that I know how.

COURT: You cannot give any further explanation?

WITNESS: If you cannot get it from what I have said, I cannot help it.

Q. You were sincerely desirous of bringing Mr. and Mrs. Cartan together?

A. Yes.

Q. And you continued to be sincerely desirous of that purpose, didn't you, up until what time?

A. After I found out the way he felt about it, and after some remarks that had been made to me, I told Mrs. Devlin, all right, I said, "if you feel that way about it, I won't take any part in it." I took Devlin home

one noon, and on the way home we passed Mrs. Devlin, and when we got up to Devlin's house, Mrs. Devlin came right up behind us and Devlin got out of my car and got into her car; up until that time we were friendly and working together, and Mrs. Devlin jumped out of her car and began to rub it into me, and she said, "No matter what Pat has done, I am going to stick to him, and we will live it down." She said, "We have got friends and we will fight you." I said, "All right, if that is the way you feel about it, I will get out of the case; I have been trying the very best I could to help you."

Q. Mrs. Devlin said no matter what Pat had done, she was going to stick to him?

A. Yes.

Q. And that made you angry, is that right?

MR. WILSON: That wasn't all he said. I object to the question because it is not a proper resume of what the witness said.

COURT: I will overrule the objection. He may answer it.

(Last question repeated.)

COURT: When she made use of that expression?

A. No, that didn't make me angry.

Q. Then she said, "We have friends and we will live it down"?

A. Yes.

Q. Did that make you angry?

A. The whole thing. The whole thing made me

angry.

Q. What was the whole thing besides those two sentences?

A. She said that "no matter what he has done, I will stick to Pat, and we will live it down; we have friends and we will fight you until death." I said, "If that is the way you feel about it, after the way we have tried to help you, all right, I will drop right out of the case."

Q. Then she added to what she said, "We have friends and we will fight you to the death"?

A. Yes, defied us.

Q. But you were sincerely endeavoring to get Cartan and his wife to live together; there was no defying you, was there, so far as you were concerned?

A. Yes, that was defiant, and very mean in the way she said it.

RECESS

Q. Is that what took place at that time, the thing that changed your attitude toward Mr. Devlin?

A. Yes; I forgot to state that when I was taking Devlin up that day, that we met Mrs. Devlin coming up the street with my brother's daughter, and then when she saw us pass, she came right up in her own car, but the daughter didn't come with her, and this is what she said to me, what I have already told you, after she got up there.

Q. Is that what made you change your attitude to-

ward Devlin?

A. That, and after Devlin came to the store that noon, perhaps half an hour later, his attitude changed wholly, and he started in and was mean, and I said, "You have made this trouble and you are going to fix it up."

Q. How did his attitude change?

COURT: How did he show that he had changed his attitude when he came to the store?

WITNESS: I don't remember now; I cannot recall just what he said to me at that time when he came back, but his attitude was changed, and that is when we fell apart.

Q. How had it changed, in fact?

A. When I went up that noon with him, he and I were working together, hand in hand, and were trying to get the thing fixed up, and everything was all right, but when he came back, he was very mean.

Q. How; didn't he still want to get it fixed up?

A. He said something about trying in a certain way, but I said to him, "You can fix this thing up if you want to, and you are the one that ought to fix it up", and he said he wanted to do it the way we had tried to do it first; I said, "We tried it that way several times", and he said, "We will try it once more."

Q. How did you suggest it should be tried?

A. The way we had.

COURT: Writing letters and preparing your brother for it?

WITNESS: Yes. I think I said to him then at that time,

when we were getting farther apart, because Mrs. Devlin was coming down that night again, she was coming down that night again, she softened up a little at the end, when she saw I was going to pull out, she said, "You seem to be the only sober one in this crowd, and please keep your head and tell us how to fix it", and she said, "I will come down to-night and see you and your brother and see if we cannot get it fixed up."

COURT: Then you say a half hour later when he came back, he showed a change in his attitude?

WITNESS: Yes.

Q. You said a few moments ago that you said to Devlin, "You are the man that cause this trouble, you can fix it up"?

A. Yes.

Q. How did you suggest that it could be fixed up.

COURT: Did you suggest or what did you have in mind in the way of fixing it up by him?

A. I am not clear just how that come, but I remember that his attitude was changed, and that is how his attitude changed, after he seen her, after they had this talk on the street.

Q. After he had seen—

COURT: His wife, I take it you mean?

WITNESS: Yes, his wife.

COURT: After she addressed these remarks to you?

WITNESS: Yes.

Q. Before you had this talk he wanted to fix it up; he didn't want it to go any further, did he?

COURT: Before you had this talk on the street when you met him in the automobile?

WITNESS: Yes, we all wanted to fix it up.

Q. After you had the talk did he then want it to go further, or change his attitude with respect to fixing it up?

COURT: Didn't he want to fix it up, Mr. Lane means, after that?

WITNESS: He was very mean and sullen with me; I don't know what the conversation was, but he was very mean and changed his attitude altogether.

Q. Changed his attitude to the extent that he didn't want to fix it up?

A. No, he was defiant, he was mean about it; he was different altogether from the way he was before.

Q. What had you asked him to do that made him defiant?

A. I don't know that I asked him to do anything; I simply said he wasn't getting is fixed up and he ought to fix it up.

Q. He made the trouble, he ought to fix it up how?

A. I didn't tell him how; I didn't tell him how.

Q. You didn't suggest how?

A. No.

Q. What did you have in mind?

A. I had in mind it was his affair and he should fix it up himself.

Q. Fix it up how?

A. I don't know how he was going to fix it up.

Q. Have the families forget it and live together again?

A. Yes.

Q. That is what he had been trying to do?

A. Yes, that is what he had been trying to do.

Q. When was it you told him he ought to go to A. J. Cartan and tell him the truth and tell him he was guilty of adultery or something of that kind?

A. I never said at any time that he should go to A. J. Cartan and tell him.

Q. To somebody?

A. I said, "The thing to do is to tell your wife the truth."

Q. When did you tell him that?

A. I think I told him that day; I told him that twice that day, I think the same day.

Q. Before he showed this mean streak?

A. No, I told him that after he showed this mean streak; I said that he had better go to his wife, and his wife and I would go to Johnce and beg him off, and he said, "Then what?" "That would be the end of it then", I said.

Q. Was that before he had this talk in which he showed the mean streak or afterwards?

A. The same time.

Q. Or part of the same conversation?

A. It was part of the same conversation.

Q. You suggested he should go to his wife and tell his wife that he had been guilty of adultery with Mrs. Cartan is that right?

A. I suppose that is what it amounted to.

Q. Will you kindly tell me what that had to do with straightening things with A. J. Cartan?

A. I felt this way, his wife hadn't up to that time been working with us, and if he told her—I told him then, "She thinks enough of you to forgive you, and she and I will go to Johnce and beg him off."

Q. Mrs. Devlin wouldn't do anything for him so long as he insisted he was innocent?

A. I don't say that, but that is the way it suggested itself to us at that time.

Q. Who is "us"?

COURT: You and Devlin, or you and who else?

WITNESS: I should have said "to me", at that time.

Q. Did Mrs. Devlin ask you to get Devlin to confess to her?

A. Yes, she did.

Q. When did she ask you that?

A. She asked me that one day she came in the store.

Q. When was it?

A. Along during that first week, I think, in October.

Q. What did she say?

A. She said, "Ren, you are my friend", and she said, "You know I am no fool, and Pat must tell me his story himself, and you must help me get him to do it." I saw that he was worrying, and at that time we were working

together, and he was excited, and the best thing I could do was to get her out of the store, and I coaxed her over to my house—no, after she said that Pat must tell her the story himself, and wouldn't help her get him to do it, she called him, and he said no, he wouldn't tell, "You go over to Ren's house and let Edna tell you". So I coaxed her away from the store, because I knew that is what he wanted me to do, and when she got over to the house, she said, "Edna, Pat sent me over to you, and he wants you to tell me the story." Edna said, "I won't tell you the story; he has got to tell you himself." She said, "Well, I am afraid to press him, because when I press him for the story, he goes to pieces, and I am afraid he will kill himself", and she turned around to me, and said, "Ren, won't you let him come home for two or three days, so I can watch him?" I said, "No, we are pretty busy now, and I think he had better stay here, because I need him", because I knew that is what he wanted me to say, and then she said, "Will you go over to the store and watch him and promise me you will watch him every minute?" I went over to the store and I knew how he was; I felt of his hip pockets and looked iin the trousers pocket to see if there was anything around there so he might do harm to himself, and when he calmed down, I went back to the house and she said, "My, I don't see how Johnce can help going over there and putting a bullet in him, and they ought to be rode from end of the town to the other on a rail."

Q. When was this?

A. The first week in October.

COURT: Was this before or after the letters were written?

WITNESS: Oh, Mr. Devlin knew about the letters.

Q. Had he written the letters at that time?

A. I am not quite sure about that.

Q. You are not sure whether it was before the letters were written or not?

A. No, I am not quite sure about that just now.

Q. It was after your wife had told Mrs. Devlin all about it, wasn't it?

A. Yes.

Q. That was on October first when she told Mrs. Devlin all about it?

A. Yes, I think so.

Q. This conversation all took place after that?

A. Yes.

Q. You had a conversation with Mrs. Devlin a short time after the letters were written didn't you?

A. Yes, sir.

Q. You showed her the letters, didn't you, or copies of them?

A. Yes, sir; my brother read them to her.

Q. Your brother, A. J.?

A. Yes, after I went down and had a conversation with Devlin in the nail room, when she came in, and she said to my brother, "Won't you overlook this thing, like I am going to do, for the children's sake, and let the Lord punish him?" And he said, "Mame, I cannot do that. It is different with me than it is with you. She don't want to make up with me. Let me read these letters to you that were sent to her, and then you will soon see that she don't want to make up with me", and when he started in to read the letters to her, I held him off on it, I said, "Don't read these letters, Johnce, I will go down

and see Devlin"; I went down in the nail room and talked with Devlin, and you have what I said to him down there.

Q. And then the letters were read to Mrs. Devlin?

A. When I came back I said, "he didn't seem to want to do anything; read the letters."

Q. So what you went down to Devlin to get from him was a confession, is that right?

COURT: What did you say in the nail room to him?

WITNESS: I said to him what I said up in the store, "Pat, you made this trouble, you should fix it up, and if you go to Mame and tell her the truth, I will go with Mame to Johnce and beg him off."

Q. Did you tell him that your sister-in-law and Mrs. Devlin were up at your house waiting for you to come up?

A. I don't know about that, but I think he knew it.

Q. What did he say?

A. He said, "Ren, I have to deny this thing, my folks will expect me to deny it; I will do anything I can excepting that", and he said, "I don't care for money", and I guess that is about all of it.

COURT: Did you go back and detail that conversation to Mrs. Devlin or not?

WITNESS: I went back and said I had been to see Pat and he could go ahead and read the letters.

Q. Did you say anything more about his conversation with you?

A. I said I had been to see him and he could go ahead and read the letters. My brother said to her, "Mame these letters may break you up." She said, "I can stand anything after what I have been through", so after my brother read the letters to her, she said, "Then you won't overlook it?" And Johnce said, "I don't see how I can, Mame." She said, "Then there is only one thing for me to do, and that is go over and blow out the brains of all my children, and then kill myself." And when the letters were read to her, she broke down. I had to get my wife to come over and pacify her.

Q. Was this the house of your brother?

A. No, upstairs in the store.

Q. Right in the same building with Devlin?

A. No, he wasn't there at all.

Q. Where was he?

A. He was down in my brother's building.

Q. Within 100 feet?

A. Yes, upstairs in the store.

Q. About 100 feet away?

A. Yes.

COURT: The adjoining store building?

WITNESS: Yes.

Q. And A. J. Cartan declined to forgive Devlin and overlook the matter on that occasion, did he not?

A. He said that it was different with her than him, because "My wife don't want to make up with me."

COURT: What reply did your brother make to Mrs. Devlin when she said, "If that is the case, I might as well

go home and kill the children and myself"?

WITNESS: He didn't say anything.

Q. Anything said or done to dissuade her from that conduct or action?

A. I don't remember about that, but no doubt we told her it was a foolish thing to do. We didn't expect her to go home right away, because my wife was there, and I come along—she went over with me and my wife to my house, and while she was there, Mrs. Doll Cartan came down the street and was coming around to—I cannot tell that part of it.

COURT: You can tell what you saw or heard.

WITNESS: I didn't see that, after she came away from the stoop, then—

Q. After Mrs. Devlin left your porch?

A. Yes, she was there with my wife and I come around with my car and she got in my car and drove around for a ride to quiet her.

Q. Then you took her home?

A. Yes.

Q. Was it because Devlin had refused to confess that A. J. Cartan refused to forgive?

A. I don't think so.

Q. What was it that cause A. J. to refuse to forgive?

A. I think that if she had went to A. J. the way spoken of, there wouldn't be any question about his forgiving.

COURT: You think if Mrs. Cartan had?

WITNESS: Yes.

Q. But you went down to Devlin and you told Devlin that if he would go upstairs and confess and tell his wife the truth, A. J. would forgive?

A. I said that Mame and I would go over and try to get him to.

Q. Did you have in your mind any idea that he would?

A. Yes, I had in my mind, first and last and all the time, that he would try and get it fixed up.

Q. Isn't it a fact that Devlin said to you when you went down there, that he would do anything in the world, but he wouldn't confess that he was guilty of adultery, when he wasn't guilty, or words to that effect?

A. No, he didn't say so.

Q. What did you say to him when he said that he wouldn't confess?

A. I don't remember saying anything to him. Yes, I did tell him that if he didn't try and get it fixed up and do something toward doing it, that my brother would file a bill for divorce and name him as co-respondent.

Q. You told him that he had been followed and seen?

A. No, sir.

Q. Wasn't there time?

A. Yes, because I stated that.

Q. State it again; what did you say to him about that?

A. I said, "You were watched in and you were watched out."

Q. How did you come to say "you were watched in

and you were watched out"; what did he say that led to that?

A. He wanted me to go over and have my wife retract what she had said, and I said "I wouldn't do that, she wouldn't do it anyway, because she knows the truth; you were watched in and you were watched out."

Q. Is that all you said?

A. I said, "Can't you see you never had a chance on earth of getting away with it?" He said, "Yes, Ren, but I am trying to do the right thing now."

Q. Is that all you said?

A. Yes, that is all I remember now.

Q. Why didn't you say to him, "I saw you in the place"?

A. Why didn't I say that?

Q. Yes.

A. He knew enough about the story; I don't know why I didn't say that.

Q. Why didn't you say, "I saw you there, what are you talking about?"

COURT: What difference does it make whether he did or not; he wasn't obliged to.

MR. LANE: It bears upon his story, I think.

COURT: Give the answer why you didn't tell him that you had seen him go in this outhouse.

A. No, I don't suppose I went about it in that kind of a way.

Q. Did you ever tell him?

A. I don't think I ever did, no, sir; I don't think I ever told him any more about it than what I have said I did, but his whole attitude was that he knew that I knew it. That is what we worked on from the start, because he came to me, he said, "I am in a lot of trouble and I want you to help me."

Q. So far as you are concerned, there was no confession necessary further that what he had already said to you?

COURT: When he came to you and said there was a lot of trouble and wanted you to help him, did he tell you what the trouble was?

WITNESS: He said, "You know that your wife told my wife that I have been intimate with your brother's wife."

COURT: And he wanted you to help him?

WITNESS: Yes. I said, "Yes, I know", and I would do anything I could, I would go as far as I could.

Q. What time of the day was it that you started to this chicken house?

A. I think around nine o'clock.

Q. At night?

A. Yes.

Q. Where did you go first?

A. I went up the street on the store side of the street and then crossed over after I got a little ways up and went up Ervin's Lane and was in the Hopkins yard, which is next to my brother's yard.

Q. Then where?

A. Then I got opposite an outside toilet which was there.

Q. Then where?

A. Then watched the back of my brother's house and she came around the corner of the house, facing my own house.

Q. Then what happened?

A. She came on down through the grape arbor.

Q. She came down that way?

A. Yes, that led to and by the house I was hiding behind, and when she come to the gate, there Devlin met her—the gate of the fence that surrounds the outbuilding.

Q. What next happened?

A. After they were there a minute or two, they drew back and I slipped across the opening; on my side of that building was a hot bed sash which was nearly opposite the doorway on their side, and they passed in and closed the door. I drew back to Ervin's Lane and went down—

Q. What did you do after you left the rear of the toilet?

A. I slipped across the opening between the two little buildings, the toilet and the building that the outbuilding butts up against, or you might call it all one building, and on my side of that building was a hot bed sash glass that was nearly opposite the doorway on their side, and they came into the house through the doorway and closed the door.

Q. How did you see them close the door?

A. Because I could see them; as soon as the door was opened I could see, but just as soon as they closed the door and it made it dark in there and they could see me and I couldn't see them.

Q. Have you told us everything that you did from the

time you left the back of the toilet until you saw them close the door?

A. I think I have.

Q. How long did you stay where you were when you saw them close the door?

A. Just a second or two.

Q. Then where did you go?

A. I went back to Ervin's Lane and then I went down Ervin's Lane and took a position where I could see anyone pass the end of the building.

Q. How long did you stay there?

A. I was there, I guess, from half to three-quarters of an hour, and I began to think that I either lost them—I was anxious anyway—or else I would close in, but just about that time I heard a noise that sounded like twigs under someone's feet, walking, and a minute or two later he appeared—a man appeared, anyway; I couldn't tell him there that distance, just who it was, but I was satisfied it was him; then he went on up the lane that leads to Broad street, and I followed him, and when he got up to the light—

COURT: This light was in the lane, the light at the stable?

WITNESS: Yes.

Q. Is that in the lane?

A. I don't know if the light is in the lane—when you get up there you strike Broad street.

Q. At the point you saw him under the light, was that beyond Linzmeier's Lane marked on the map?

A. No, that isn't the name of it. It was the lane that

leads into Broad street.

Q. Were you going up this lane or down this way; how were you going or how was he going?

A. He was coming up this way (indicating).

Q. Coming down south?

A. Yes.

COURT: Coming south.

A. (Continuing) And when I got up to Van Brunt's barn, all I know is that there was a light there and I saw him and know positively it was him. He didn't go out to Main street by that street that led to Main, he went on up to the next street that led to Main street, and he went on and came down to John Mulshoff's barber shop, and he passed the first street that he could have gone out that went to Main.

CROSS EXAMINATION BY MR. APPLEGATE:

Q. While we are on the incident where ye just stopped, how near were you to Mrs. Cartan at the time you say you saw her coming through the grape arbor?

COURT: How many feet were you from her at the nearest point she came to you?

WITNESS: The width of the toilet, four or five feet, and maybe a couple of feet more, seven or eight.

Q. Seven or eight feet away?

A. Yes, seven or eight or nine feet away.
Q. What time of the night was it?
A. About nine o'clock.
Q. This was in October, 1918?
A. No, in May, 1916.
Q. And she continued to walk away from you, did she?
A. Yes, sir, she went to the gate there, but it isn't very far.
Q. You say you were able to identify her as Mrs. Cartan?
A. Yes.

COURT: Did either of them speak while they were within your view.

WITNESS: If they did, it was very soft.

Q. You didn't hear it?
A. No. I think they might have spoken; I think they did speak while they were at the gate.
Q. You and Devlin had been friends for a long time, hadn't you?
A. Yes.
Q. You are mutually interested in the same business?
A. Yes.

COURT: Is A. J. Cartan, the petitioner, interested in the same business also?

WITNESS: Yes.

Q. Through your father's estate?

A. Yes.

Q. Does he take any active part in its management?

A. No, sir.

Q. And of course you were greatly interested in Mr. Cartan, your brother?

A. Yes.

Q. And his affairs?

A. Yes.

Q. That was one reason why you took such special note of these circumstances which you have described that occurred during the last seven or eight years, which you ear-marked as suspicious circumstances?

A. Yes.

Q. Because you were interested in your brother?

A. Yes.

Q. You also knew that if the break came between your brother and Devlin, if there came to light the facts that now have been brought to light by reason of this suit having been brought, that your business and your brother's business would be more or less jeopardized, didn't you?

A. Yes.

Q. You know that?

A. Yes, I knew it would injure it some, a little bit; I said it might make trouble in our business.

Q. You knew also, did you not, that the probable consequence of the intimacy which you say you observed between Mrs. Cartan and Mr. Devlin, would result in just what has occurred? You were afraid of it?

A. I was afraid it would, that is why I didn't tell it.

Q. That being so, and you being so interested in your brother's business and in your own business and in Devlin's business, and knowing that it was likely to result

in injury to yourself, why didn't you go to Devlin, knowing him as well as you did, and say to him, "Look here, Devlin, if this thing goes on, if your conduct continues with relation to Mrs. Cartan, we are all going to be hurt"; why didn't you go to him and tell him to stop?

A. I couldn't do that.

Q. Why not?

A. Because I couldn't.

COURT: That doesn't give any answer.

WITNESS: I couldn't do that.

Q. What prevented you from doing it? What thought had you in mind, or what feeling had you or sentiment, that prevented you from doing it?

A. That is all right, I couldn't do that.

Q. Why didn't you go to Devlin, is my question?

A. I know, but I couldn't go and tell him then anything like that.

Q. You could watch him, couldn't you?

A. Yes.

Q. Why should you watch him if you were not going to tell someone?

A. I never had in mind to tell that to my brother at all.

Q. Why did you watch him?

COURT: I think you misunderstand Mr. Applegate's question. He is asking you why you didn't talk to Devlin about it as long as you watched him; it is not your brother; he isn't involved in his question.

WITNESS: Because I didn't think I should go to Mr. Devlin and tell him.

Q. Notwithstanding your relations with him?

A. Notwithstanding my relations with him.

Q. But notwithstanding the fact that your business might be hurt you thought that you should not go to Devlin and say anything to him about it?

A. No.

Q. Why did you watch him so closely if you were not going to tell anybody about it?

A. I cannot say that I watched him so closely. This affair happened in the way I told it.

Q. Why did you take the trouble to follow him or lay for him clear down by the so-called chicken house, if you didn't intend to tell him or anybody else?

A. Because that is what any brother would have done.

Q. But the same brother wouldn't go to the brother and tell him of the facts he had found?

A. I never intended to tell him.

Q. Then why did you watch him?

A. I cannot tell you that, but I never intended to tell him.

Q. After you got down to the chicken house or this outhouse, and you say you saw these people go in the outhouse and shut the door, having still in mind the mutual interests among yourself, Mr. Devlin and your brother, and having in mind the fact you were watching them at and having in mind the fact you were there watching them for the purpose of finding out something in relation to their alleged intimacy, why didn't you walk in this chicken house and catch them?

A. I cannot tell you that; I don't know why I didn't.

Q. Mr. Cartan, these parties of which you testified, dancing parties and card parties, and so on, Mrs. Devlin was always present?

A. Yes.

Q. Mr. Devlin was never there alone with Mrs. Cartan?

A. I think they were both together most of the time.

Q. All the husbands and wives were all together?

A. Yes.

Q. You danced with Mrs. Cartan, didn't you?

A. Very little.

Q. You all danced with one another?

A. I danced very little with Mrs. Cartan.

Q. The entire company danced with one another, did they not?

A. Yes, I guess so.

Q. And in playing cards, what game did they play?

A. They played Euchre.

Q. They played progressive Euchre?

A. Not always.

Q. Sometimes?

A. Sometimes.

Q. And when they played that game they changed partners?

A. Yes, but they first sat together when they first played, so as to make sure they would be together, and very often they would remain at the table for a long time.

Q. And was this a card club that you belonged to?

A. Not always; some part of the time there was a party.

Q. And partners were chosen how at the start of the game?

A. Partners were chosen that happened to sit down together.

Q. Anybody selected a partner whom they saw fit?

A. Sit down anywhere you wanted to.

Q. Whom did Mr. Cartan sit down with generally?

A. I don't remember.

Q. You don't remember that?

A. He sat down anywhere he had been put.

Q. That is what Devlin did, sit down anywhere?

A. I don't think so.

Q. Tell us whom Mr. Cartan sat with; you remember very well with whom Mr. Devlin sat.

A. I don't remember.

Q. With whom did you sit?

A. I sat with anybody that I happened to sit down by.

Q. You were all there together in the same room?

A. Yes.

Q. Three or four tables?

A. Yes.

Q. And you all came together and left together?

A. Yes, but very often I noticed that they would remain behind, and she would arrange the collar of his coat or fix his necktie.

Q. Did you see anything wrong about that? Did any lady ever arrange the collar of your coat other than your wife?

A. I don't remember.

Q. And when Mr. Cartan came to you in October, 1918, at which time you say he pleaded with you and cried on your shoulder and begged you to tell him things that you might know about his wife—

COURT: He said Mr. Devlin.

Q. At the time when Mr. Cartan came to you and pleaded with you and told you you were no brother of his, or words to that effect, if you didn't tell him what you knew about the alleged intimacy between his wife and Mr. Devlin, he went on and told you that he knew it anyway, didn't he, without your telling him; didn't you say that to-day?

A. No, I didn't say that.

Q. Didn't he intimate to you that he did know something about it?

A. Yes, he knew something about it, but I don't know that he intimated it right there and then.

Q. Did he tell you what he knew at that time, at the time you referred to this morning, when you had your first talk with him?

A. He told me that he noticed his wife's fondness for Devlin.

Q. That is all he told you; he knew of no intimacy between his wife and Mr. Devlin?

A. He told me that he knew—he went on and stated how it was.

Q. What occurred? Tell exactly what he said, on this occasion you were out in the lumber wagon.

A. I don't remember his telling me there and then that he—

COURT: Tell him all he did say; Mr. Applegate wants to know.

WITNESS: He said, "Now, Ren, I have been to see you several times", and he said, "I know you know something, and you have got to tell me, and you must tell me now; I cannot wait any longer, and if you are any brother of

mine, you will tell me." He said it stronger than that, and then I told him.

Q. That was the first time you ever said anything to him about it?

A. Yes.

Q. How did he know, if you know, that you knew things about this intimacy between Mr. Devlin and Mrs. Cartan?

A. He had trouble at home and—

Q. What do you mean; with whom?

MR. WILSON: I think he should go on with his explanation.

A. He had trouble at home; she had been sort of mean to him, and he had grown tired of it, and he went out on the war path to find out what the trouble was in his home, and he appealed to my sister and asked her if she knew anything about his wife being fond of Devlin, and she told him yes, she had noticed it, and she said, "But you go to Ren, and see him; he can tell you more about it than anybody, and you go to him and ask him", and of course he come to me.

Q. It was the Cartan family that divulged to Mr. Cartan, your brother, all these facts that finally led up to this suit?

A. Yes.

Q. Of course you and your wife had talked this matter over?

A. Yes.

Q. What she knew she got from you?

A. No.

Q. This chicken house episode?
A. She knows about that, too.
Q. You told her?
A. Oh, no.
Q. Where did she learn it?
A. She was there, too.
Q. Was she there at the chicken house?
A. Yes.
Q. With you at the time?
A. No, she was on the other side.
Q. Did you know she was there?
A. Yes.
Q. Why didn't you tell that before?

COURT: He wasn't asked to, in the first place.

Q. Were there any others present beside you and Mrs. Cartan on that occasion?
A. Yes.
Q. Who else was there?
A. Norman Tice was there, too.
Q. Norman Tice, yourself and your wife?
A. Yes.
Q. Who else?
A. That is all.
Q. Did you meet there by some arrangement?
A. No, sir, we didn't meet at all.
Q. Were you stationed there, you three, by common arrangement; did you know that the other two were going to be there?
A. Yes.
Q. And they knew that you were?
A. Yes.

Q. Did the three of you know that each one was going to be there?

A. Yes.

Q. When did you meet that evening and talk this matter over to arrange going there and watching Devlin; when did you make your plans to go over in the garden?

A. We didn't make any plans at all.

COURT: When did you meet and decide that you three would be on the watch that night?

WITNESS: We were not on the watch.

COURT: What were you doing if you were not watching?

WITNESS: My wife came to the store after me and she said—

COURT: That same night?

WITNESS: Yes— and when she came up the steps of the store stoop, she came up in a great hurry, and I knew something was wrong, and I stepped out in front of the counter—in fact, the front door—and she said to me, "Ren, I think that there is something going on between Doll and Pat, because it has been dark at her house tonight and there don't seem to be anybody home but her, because when Devlin came down the street a few moments ago and came in the store here and went back up the street, Doll went way across the street and hailed him, and she said a word or two to him, and he went on up the street and she went back on the front porch and

is there now. You had better go into Dr. Ervin's Lane and Hopkins yard and see what these trips around the back way that he has been making mean." I said to her, "All right, I see Norman over on his front stoop and there is no use of my going up alone, and he would help; you go ask Norman and see if he won't come across the lots and not lose him." He was followed some time ago.

Q. Norman Tice is your brother-in-law?

A. Yes.

Q. Did she know Tice?

A. Yes, she went after him and I locked the door and left the light burning; I went my way and she went hers.

COURT: Did you go right after sending her for Tice?

WITNESS: Yes.

Q. Before that night had you talked over with your wife or with Tice any plans of watching Devlin and Mrs. Cartan?

A. Never; we talked the thing over; we all knew about these trips, of his going around the back way, and wondered why it was.

COURT: Mr. Applegate's inquiry is about watching.

WITNESS: No, we never made any plan at no time of watching him.

Q. Did you arrange with your wife that she should watch the Cartan house and see whether it was light or dark?

A. No, never.
Q. She noticed it?
A. Yes.
Q. So she must have been watching?
A. I don't think she was watching.
Q. With whom did Tice come to the garden?

COURT: If you know.

Q. Did he go alone?
A. He went himself.
Q. He didn't go with your wife?
A. No, she went back to her own house and she watched Mrs. Cartan, too.
Q. Didn't she come out in this back yard where the outhouses are?
A. She finally did, yes.
Q. Whereabouts was she; where was she stationed?
A. She went back and took a position inside of our side door, not on the stoop, but inside of our side door.
Q. In your house?
A. In my house.
Q. She watched from there, did she?
A. Yes, she watched from there.
Q. Watched this outhouse and back yard from that position?
A. There was no one gone there yet and she watched from there, and when she was there just a minute or two Mrs. Cartan came down around—
Q. I am not asking you that now; did your wife go any nearer to the outhouse than the position that she assumed on the porch?
A. Yes.

Q. Where did she go?

COURT: All you know is what she told you?

WITNESS: Yes.

Q. Did you see her in the garden?
A. No.

COURT: Did you see her in the back yard near this outhouse at any time?

WITNESS: No.

COURT: Did you see Tice there at any time while Devlin and Mrs. Cartan were there, as you say?

WITNESS: No.

Q. After these two, as you say, went in this outhouse and shut the door and you left and stationed yourself farther away, and in the lane that led into Broad street, do you know where Tice and your wife were then?
A. No.
Q. You didn't see them?
A. No, not until I come back to the house.
Q. And you met back of the house that evening and you three together went in the house and talked this matter over?
A. I went in the house and she and Norman were there when I come back.
Q. Did you talk that subject over?
A. Yes.

Q. Did you suggest at that time talking this matter over with Mr. Cartan, telling him what you had found and discovered?

A. No.

Q. You simply didn't suggest that?

A. No, sir.

Q. When Mrs. Cartan talked with you after this first letter had been delivered, she was pretty angry, you said?

A. She was pretty angry until she found out that I knew what was inside of the letter, and then she wasn't very angry.

Q. How did she find out that you knew; did you tell her?

A. She asked me if I knew what was inside of the letter; I said Yes; I said, "You would think I knew something about it, if you knew the time I have had with Devlin all this week", and then she said, "I know how it is with Pat; that is the way it is with a man."

Q. That you related this morning?

A. Yes.

Q. And at that same time didn't you tell her the circumstances under which these letters were written or that letter?

A. No, sir.

Q. And didn't you tell her at that time that you had told Devlin what to put in those letters, and that he had written down at your dictation?

A. No.

Q. You say you did not?

A. No, of course not.

Q. And this letter you are referring to is the letter that you caused to be delivered to your wife and which

she took to Mrs. Cartan?

COURT: Didn't you suggest to Devlin that you would take it and give it to Edna and have her take it over to Mrs. Cartan?

MR. APPLEGATE: That is what you said to-day.

WITNESS: I said Devlin and I were talking about what was the best way to get it to Doll, and he asked me if I wouldn't get my Edna to talk to her.

COURT: Mr. Applegate's question is did you suggest it to be given to your wife for delivery to Mrs. Cartan?

WITNESS: I asked if he cared if my wife read the letter.

COURT: Did you suggest to Devlin that you have your wife deliver it?

WITNESS: I think I did.

Q. And you took the letter to your wife?
A. Yes.
Q. And was that after you had been to see Mr. James Carton, the lawyer?
A. Yes, sir.
Q. Just one other question in regard to the automobile incident; you said you were sitting on a stool?
A. Yes—I don't know whether it was a stool.
Q. An improvised seat?
A. Yes.

Q. The car was a five-passenger?
A. Yes.
Q. And there were six of you?
A. Yes.
Q. Which necessitated an additional seat?
A. Yes.
Q. You were in the rear of the tonneau?
A. Yes.
Q. In front of the seat upon which three other persons were seated?
A. Yes.
Q. And upon that rear seat were seated Mrs. Cartan at the end?
A. Yes.
Q. And which end?
A. The right side.
Q. Facing the driver?
A. Yes.
Q. And next came who?
A. My wife.
Q. And next to your wife who?
A. Mrs. Devlin.
Q. And did you sit in the middle in front of the person in the middle of the rear seat?
A. I think I was pretty much in the middle.
Q. What kind of a car was this you were in?
A. National Car.
Q. Straight back front seat?
A. I presume; I think so.
Q. And of course there was sufficient room between the rear seat and the back of the front seat to permit you to sit there comfortably on a stool or something that corresponded to a stool?

A. I was sitting there; of course I wouldn't say that I was comfortable.

Q. You had sufficient room, under the circumstances?

A. Yes.

Q. And sat on which side, facing the driver?

A. Sat on the right side of the driver.

Q. This was a lefthand drive car?

A. Yes.

Q. And A. J. Cartan was driving?

A. Yes.

Q. And the robe which you have spoken of, I don't understand how it was over your feet if this robe was also over the laps of the three ladies on the rear seat. Will you explain that?

A. You sit close up to the seat; you sit with your feet back this way (indicating).

COURT: Witness indicates his feet on each side of the chair.

Q. You mean you felt the robe move with your heel?

A. Yes.

COURT: Or some part of the side of your foot?

WITNESS: Yes.

Q. If a person with his feet under a robe moved their legs or feet the robe, would move, of course?

A. Yes.

COURT: We can all say that from common experience.

Q. Whom did you see jerk the rug or the robe, as you described today; did you see anyone jerk it?

A. No.

Q. You simply felt the rug move?

A. Yes, and when I turned my head I saw Devlin pull his hand out from under the blanket.

Q. Devlin was on the front seat and you were between the ladies on the back seat and Devlin, and yet you say, do you, that you saw Devlin's hand from the front seat clear back into the back part of the car underneath this so-called robe, do you?

A. It wasn't way back in the back part of the car; it was only a little ways from the back of the seat.

Q. Would you have to reach across your knee to get to that robe?

A. No, his hand didn't touch me.

Q. If I have the position of the parties right, Mr. A. J. Cartan was driving?

A Yes.

Q. And in the tonneau back of him was his wife?

A. Yes.

Q. And in the middle of the rear seat was Mrs. Cartan, your wife?

A. Yes.

Q. And on the righthand side, back of Mr. Devlin, was Mrs. Devlin?

A. No.

Q. Who was back of Mr. Devlin?

A. Mrs. A. J. Cartan.

Q. Then if that is the case, instead of facing you he had to turn his back on you and put his hand down?

A. No, he was sitting this way (indicating) when he was riding in a natural position.

Q. How could he get his hand next to anyone's feet or legs under the robe; will you illustrate it?

A. This would be the natural position of the car in which he sat; he swung back this way (indicating).

COURT: To the left?

WITNESS: Yes, and she sat directly behind him, and it was no trouble for him to do what he did do.

Q. She was on his right, on the righthand side of the car?

A. No, right behind him.

Q. But on the righthand side of the car, facing the driver?

A. Yes.

Q. So when he turned to his left he was turning away from her, away from the right side?

COURT: But in order to put his hand down to the blanket, he had to put his hand by your legs?

WITNESS: No, he went right by me. I was sitting this way (indicating) and he went right up this way (indicating); I was sitting here like this (indicating) once I was mindful of it.

COURT: I understand it now.

Q. You saw his arm reach over, didn't you?

A. He had his arm down there a good while.

Q. (Last question repeated.)

A. No, I saw him when he pulled his arm out.

Q. You saw his arm hanging down there?

A. Yes.

Q. You were in a position where you couldn't help but see it, right in your plain view?

A. No.

Q. Did you have any difficulty in seeing it?

A. If I hadn't been mindful of it and turned my head a little bit—

Q. You saw his arm?

A. Yes.

Q. It was right in your plain view all the time?

A. Yes.

MR. WILSON: We would like to renew our request for the production of these letters referred to in the notices, being the same letters to which your Honor's attention was directed this morning. As the matter stands, one counsel answered apparently for both defendants.

COURT: I take it they answered for both; unless I am corrected, it will stand that way.

MR. APPLEGATE: I answered for Mrs. Cartan.

MR. WILSON: The answer was made that they were making no response.

COURT: I didn't take it so; they made no answer, and I considered that as a refusal to produce, and that stands in that way.

MR. WILSON: If your Honor please, this is important.

COURT: They have not corrected me, but in fact they agree with me that that was the result of their announcement.

MR. WILSON: These letters, if they are in existence, by the testimony now presented to the Court, are in the handwriting of Mr. Devlin, and if those letters are in the possession of these defendants or either of them, in the emergency here presented, the production is asked for. They are a part of the substantive proof in this case, and it seems to me we are entitled to have them produced and are not to be forestalled by an answer of that kind.

COURT: I presume they haven't the papers to produce and therefore have permitted you to offer copies of them in evidence.

MR. WILSON: I don't understand that that is the present status of the record; if the gentlemen say they haven't got them—

MR. APPLEGATE: The evidence is that Mrs. Cartan destroyed the first one.

MR. WILSON: And it is also in evidence that the last one was returned to Mr. Devlin.

COURT: We have no evidence as to the destruction of the second one.

MR. WILSON: If these letters or either of them are in the possession of the defendant, it is substantive proof and they should be produced.

COURT: And the failure to produce them is not questioned and it is a significant circumstance in my mind.

MR. LANE: There is no question with respect to what significance may be attached to it. On a notice to produce, under the rules, it gives counsel on the other side the opportunity to offer secondary proof, and that is all. If he wants the original papers, there is a method provided by law for getting them.

COURT: But if I thought you were suppressing the evidence, it will be a very significant circumstance.

ANDREW J. CARTAN, petitioner, sworn.

DIRECT EXAMINATION BY MR. WILSON:

Q. You are the petitioner in this case?
A. Yes.
Q. And you reside in Matawan?
A. Yes.
Q. How old are you?
A. Fifty-five.
Q. And lived in Matawan all your life?
A. Yes.
Q. When were you married?
A. 1892.
Q. And that was your marriage to your present wife?
A. Yes.

COURT: The answer admits the marriage.

Q. How many children were born of the marriage?
A. Four.
Q. And who are they and what are their ages now?
A. Helen, she is now twenty-seven.
Q. What is the next child in point of age?
A. Johnson.
Q. How old is he?
A. I think nineteen.
Q. What is the next?
A. Jean, she is ten years old.
Q. And the next?
A. Elizabeth, six years old.
Q. You have given their present ages?
A. Yes.
Q. You resided with your wife in Matawan ever since your mariage?
A. Yes.
Q. Are you engaged in business there?
A. Yes.
Q. What is the character of it?
A. General store.
Q. Where is it located?
A. On Main street.
Q. And is its location shown on that map, Exhibit P 1?

COURT: I suggest you use the small map.

Q. It is in evidence that these are duplicates. I show you Exhibit P 2; you store is shown on P 2?
A. Yes, right here, a shaded spot.
Q. Your store has been there a number of years?
A. Yes.

Q. How many years?

A. Over twenty years.

Q. Does this correctly show the location of your store, of Ren's house, of your house, and outbuildings and your two lots?

A. Yes.

Q. Does it also correctly show the position of the Hopkins house and lot?

A. Yes.

Q. And the location of the Ervin's Lane?

A. Yes.

Q. And Cartan Lane?

A. Yes.

Q. And the Linzmeier's Lane?

A. Yse.

Q. And the location of N. Tice's house?

A. That is his lot, his house isn't there.

Q. And the location of the lane running parallel in part and partly divergent from Main street and to the east of Main street?

A. Yes, sir.

Q. Back of Main street?

A. Yes—east of Main is right.

Q. Was your attention ever directed to the asociation between your wife and Patrick Devlin?

A. Yes.

Q. And when was your attention first directed to it?

A. At my sister's wedding reception.

Q. How long ago was that?

A. Thirteen years ago.

Q. What occurred on that occasion which arrested your attention?

A. She was very attentive to him that night; she

seemed to want to be close to him all the time; I remember they were sitting on a settee together just as close up to one another as they could get, and while on the settee she laid over against him and kept that up and she was picking at his coat collar with her fingers and arranging his necktie. I remember she put both hands around his arm and pulled him up close to her, jerked him up close to her, and she walked around the room there with him, with her hands around his arm, and looking up into his eyes, and they all seemed to be smiles and very tickled over there together, carrying on what appeared to be a convrsation of their own.

Q. Was that the first thing in their association that attracted your attention especially to them?

A. Yes, that was the first.

Q. Go on from that time and tell us what else you noticed, which threw any light upon their associations.

A. The Cartans and Devlins held a great many parties.

Q. What kind of parties?

A. Card parties, a sort of a mixed up party; card party, dancing party, dinner party, theatre party.

Q. And go off in automobiles?

A. Yes, automobile parties.

Q. How frequently, going back seven or eight years, did your families get together in that way?

A. Every week; there was a party almost every week at some one of the houses, and at these parties my wife would always make a point to play at Devlin's card table, at the table he was playing at, and she seemed to be attracted at his one particular table; she didn't want to play at any other table but his, and she went on with these actions this way at these card parties.

Q. Take this card incident the last seven or eight years, how frequently did it occur that she sought out companionship with him at the cardtable?

A. All of the card parties.

Q. What about their dancing on these occasions? Did you notice anything about that?

A. Yes, when they danced together at these card parties, they didn't dance in the room where the other people did, that were there; they would start dancing in this room first, but they would waltz or two-step on out in to the hall; they seemed to want to get out there by themselves, separate and apart from the rest of the people who were there. These things went on this way for quite a while.

Q. What next?

A. These fond actions that she showed—

Q. What fond actions; describe what she did; tell us what you saw.

A. She wanted to dance with him all the time.

Q. You told us that; you told us about the card parties. Were they ever together at any other kind of meetings?

A. Yes, we held a great many—we attended a great many dinner parties together.

Q. Where were they held?

A. Sometimes in—generally we went out to dinner.

Q. Where would you go?

A. We went down to Price's and several other places; no particular place, Perth Amboy. At these dinner parties there was generally dancing going on.

Q. And at these parties how would they sit; how would they be arranged at the table?

A. She always made a point to get in a seat along-

side of him.

MR. APPLEGATE: We object to it.

COURT: Strike it out.

Q. If she did anything by which she maneuvered to get a seat alongside of him, you may state it.

COURT: If she merely sat there, you can state that.

A. She would make an effort—

COURT: What would she do; state the effort she would make.

WITNESS: She would take hold of the chair next to him and sit down on that chair alongside of him, and at these dinner parties, in talking, she always addressed her conversation to him, and at a great many of these dinner parties there was dancing going on; I would ask my wife to dance with me; we would make a turn or two around the room, and my wife would say, "I am all tired out, I cannot go any longer, I will have to stop." We returned to our table, and we wouldn't be there no time at all before my wife would be ready to dance with him. I would start with Mrs. Devlin; almost immediately my wife would start with Devlin. This arrangement seemed to please her.

Q. How frequently did that happen in the last seven or eight years?

A. A great many times.

Q. Did she dance like that with the other men in the

party, or select Devlin to dance with him?

A. She would go to him and take him.

Q. Didn't she dance with others?

A. Very seldom, sometimes.

Q. What about his quality as a dancer, was he artistic or otherwise? Can you say which is the better dancer, you or Mr. Devlin?

A. I don't know about that.

COURT: Was there any difference between you?

WITNESS: I used to think I was a little better than he was.

Q. Did she ever make any complaint as to whether Devlin could dance good or bad?

A. Yes, I have heard her say that he was hard to dance with, that she had to drag him through, but she would go right on and finish a long dance with him and wasn't at all tired like she was with me when she would stop.

COURT: Was that the fault of your dancing?

WITNESS: I don't know; no, I don't think so.

Q. Go on and tell us in your own way, you told us some of the things that you observed which you think threw light upon their associations; do you think of anything else in a general way at this time which you want to mention?

A. We attended the theatre together a number of times and I noticed that at the theatre she would manage

it to get in the seat alongside of him.

COURT: On every occasion practically?

WITNESS: Yes, every occasion. And along during the play I would make some comment on what was going on on the stage, and my wife hardly ever heard me. I would often repeat what I had to say two or three times, and even then she didn't hear me. The fact was she was so wrapped up in her conversation and fondness for Devlin she forgot that I or anybody else was there but him.

COURT: Are you and the Devlins or your families related in any way?

WITNESS: No.

Q. Had your father and Devlin's father been engaged in business?

A. Yes.

Q. And the members of your family have known each other for a great many years?

A. Yes.

Q. When you observed these details of association to which you have directed attention—

A. I can recall another party.

Q. All right, tell us about that.

A. I recall a dinner party down at the Coleman House, at Asbury Park; there were some two automobile loads of us in that party, and while sitting at the dinner table, Devlin and my wife were sitting next to one another, and she was very attentive to him, to see that he had plenty to eat and everything on the table was passed

to him. She fixed his salad and she saw that he had an extra amount of dessert, so much to that Mrs. Devlin, who was sitting on the opposite side of the table, hollered across to say, "I am here."

Q. Addressing herself to whom?

A. To her husband and my wife.

Q. What else occurred at that dinner, if anything, that you recall?

A. On the way home that night from this party, on the stoop of the Bridgewater Inn at Pleasure Bay, we secured seats there after a while at a table, my wife sitting between myself and Devlin; she turned her back to me, with her face on her hands and arm on the table, and started in with a conversation with Devlin, which they didn't seem to want to let anyone else hear; I remember interrupting them to ask her to dance with me, but she refused, and I remember that night that he didn't dance with anybody else there but her, and she didn't dance with anybody else but him.

Q. Was she the hostess in the party on this night?

A. No, we were all in one party, no particular hostess.

Q. A kind of a Dutch treat?

A. Yes. That night when the rest of the party started to leave this place, most of them had passed out to the car—we had two cars, Devlin and my wife held back; this was the usual thing with them, and I saw them do this on similar occasions before; it seems as if they hadn't finished their conversation, and I glanced back before they started to come out, and I remember seeing my wife —it was getting a little cool, and I remember seeing her fix or pin his coat collar over across his chest so he wouldn't get cold.

COURT: Did she pay any such similar attention to you on a similar occasion?

WITNESS: Never.

Q. The fact that you had observed these details of their association did you ever bring home to the attention of your wife, ever tell her about what you had seen?

A. Yes.

Q. When did you have your first talk with her about these details of association with Devlin?

A. I spoke to her first about eight or ten years ago about it, a year or two after my sister's wedding reception; I told her that I was afraid people would see these little fondnesses she showed Devlin—I didn't know what it might lead up to, and I spoke to her about it, and told her I wanted her to stop it. She got mad and was going to leave home, or threatened to leave home.

COURT: What did she say about it; did she say they had or had not taken place?

WITNESS: I don't remember what she did say. I don't remember just what she did say, but she didn't like it, she got mad.

COURT: Did she deny that she had shown any special attention to Devlin or affection or fondness for him?

WITNESS: Yes.

Q. What next happened in your association with her, either as to your talk with her or what you observed?

A. After the party down at Pleasure Bay I told my wife a number of times when several years passed, there is something wrong here; your relations with me are not right, and I don't understand it"; I said to her also a number of times down through those years that "your love for me has gone; it is blanked out."

Q. What did she say;

A. I think she said that was so.

Q. Go on.

COURT: Was that before the two children—two younger children were born, that you had these troubles?

WITNESS: No, after the two older children were born.

Q. And before the two younger were born?

A. Yes.

COURT: Was that before Jean, the ten year old child, was born, that she had no affection for you?

WITNESS: No, it was later on.

COURT: It was after Elizabeth was born?

WITNESS: Between the time Jean was born and the time Elizabeth was born.

Q. Was that said in anger, or did she indicate by her treatment and conduct of you that she had lost her affection and love for you?

A. She did.

Q. From that time on?

A. Yes. I tried to find out from her just where her mind was wandering to, but I got no satisfaction.

Q. You mean on more than one occasion?

A. Yes, several occasions, and I asked her why all this fondness for Devlin, at all times, at the theatre parties and automobile rides, and I got no satisfactory reply from her.

COURT: What reply did you get in substance from her?

WITNESS: She acted as if it was a sort of an admission on her part.

MR. APPLEGATE: Objected to.

COURT: Strike it out.

Q. Tell what she said or did.

A. She said on several occasions—she admitted it was really so.

MR. APPLEGATE: We object to it.

COURT: Strike it out.

Q. What did she say, as fully as you recall it?

WITNESS: I remember her saying "that is so."

Q. When you had said what?

A. When I said that her love for me was gone, blanked out.

Q. Did she say it in a tone as if she meant it, or was she angry at the time she said it?

A. No, she was angry at me.

Q. She was angry at you?

A. Yes.

Q. And what was she angry at you about?

A. Because she had lost all her feeling for me.

Q. But at that particular time why was she angry; what had you said or done that caused her to be angry at that particular moment?

A. I don't know anything that I said at that particular moment.

Q. Did these details of association with Devlin, to which you directed attention, do you say they began a number of years ago; how long did they continue; down to what time did they continue?

A. Down to the spring of 1918.

Q. Did these details of association in respect to dancing and card playing and automobile and theatre parties and dinner parties, did that continue, grow better or worse?

A. It grew worse.

Q. And during that period of time, seven or eight years, down to the spring of 1918, you say you spoke to her on one occasion about her association with Devlin and you said what passed between you; did you ever speak to her more than once about it?

A. I spoke to her several times about it.

Q. What did you say to her on those occasions?

A. I asked her why all this fondness for Devlin and I couldn't get any satisfaction from her.

MR. APPLEGATE: I object to that.

COURT: Strike it out, "I couldn't get any satisfaction from her". What did she say, is the question.

WITNESS: She admitted it.

COURT: Strike it out.

Q. When you would have these talks with her would you call her attention to these details that you have mentioned here about the way she sat with him at dinner and played cards and the way they danced together and the way they kept together in the automobile, did you call her attention to those particular things which you have mentioned here today?

A. I did, yes, sir.

Q. And complained about them?

A. Yes, I did.

Q. And did you do that more than once?

A. I did that a number of times.

Q. And what was the last time nearest to the spring of 1918 when you spoke to her about these things?

A. Very shortly before that.

Q. Shortly before the spring of 1918?

A. Yes.

COURT: When you would speak about them, did you speak in an angry tone and upbraid her or not, or merely demand an explanation?

WITNESS: I demanded an explanation.

Q. When you called her attention—directing your attention now to the last time, shortly before the spring

of 1918, when you directed her attention to these particular details of her conduct, dancing, card playing parties and what-not, what did she say about it; did she admit that what you said about her conduct was true, or did she deny it?

MR. APPLEGATE: Objected to.

COURT: Let me hear the answer; tell us what she said.

WITNESS: Put that to me again.

(Last question repeated.)

A. Yes, she admitted it was so.

MR. APPLEGATE: Objected to.

COURT: Strike it out. You can tell us what she said.

Q. What did she say when you told her; did she get mad?

A. Yes, she got mad. She got mad early in the game; she got mad and was going to leave home, threatened to leave home, I know that.

Q. Did she claim there was no impropriety in the relation between herself and Devlin at that time?

A. She claimed so.

Q. And she denied that she had shown this preference for him such as you have indicated here, did she deny that?

A. I think she denied it, yes. It is easily to be seen that she had a preference for him all right.

COURT: The denial didn't satisfy you?

WITNESS: No, sir.

COURT: Did you think at that time when you spoke to her on these occasions, that she had been unfaithful to you?

WITNESS: I didn't hardly know at that time, no.

COURT: Did you ever charge her with that fact in these conversations you had?

WITNESS: Not in those conversations, no, sir.

Q. Did you frequently ride out with her in automobiles during this period?
A. Yes.
Q. What was the habit as to arranging the passengers then?

MR. APPLEGATE: Objected to. What she did is proper.

COURT: How was the seating arranged?

WITNESS: We would often start away from her home—

Q. When you say "we", whom do you mean?
A. I mean my wife and children—and we would go up town as a rule towards Devlin's house, and when nearing Devlin's she would say "Let us stop and take

Pat and Mame"; this was the usual thing for her to say. She never asked to take anyone else but Pat and Mame; she never wanted to go alone in the car. She always wanted company. I would often want to take along some of my own people, but this wasn't satisfactory, I would ask her to go alone with me in the car, but this didn't please her. Then I said, "Who do you want to go?" and her answer would be "Devlins", it was always the Devlins.

Q. Was she intimate at the time with Mrs. Devlin?

A. Yes. And she would always say "The Devlins"; I asked who she wanted to go, and she would say "The Devlins"; we would drive up towards Devlin's house and we would drive up there and stop in front of the house and my wife would arrange the seating in the car; she would place Devlin on the rear seat between herself and Mrs. Devlin, which put me alongside of my son on the front seat.

Q. How often did that happen?

A. A number of times.

Q. How many times during the six or seven years?

A. Hundred times.

COURT: Did your son do the driving?

WITNESS: After my son got old enough to drive the car, she never wanted me then to drive it any more, because when I drove the boy stayed home, and Devlin out of courtesy sat in front alongside of me.

MR. APPLEGATE: I object and ask that that be stricken out as a mere conclusion.

COURT: "Out of courtesy" will come out.

WITNESS: The reason she wanted the boy to drive was because —

MR. APPLEGATE: Unless she told you this, I object.

COURT: Did she say why she wanted the boy to drive?

WITNESS: She never stated that.

Q. When the boy did drive where did you sit?
A. I sat in front alongside of the boy.
Q. Who designated, if anybody, the place where you should sit in the automobile?
A. My wife.
Q. And when the boy didn't drive, who did drive?
A. I drove.
Q. Who sat in front with you on those occasions?
A. Devlin.
Q. You say you remonstrated with your wife a number of times about these details in her association; tell the Court, if you can, what passed between you and what you said and what she said, the very last time you talked with her about it, which you say was shortly before the spring of 1918; tell the Court upon that occasion everything that passed between you, what you said to her and what she said to you; why did you go and talk with her?
A. Because I noticed this fondness that she displayed for Devlin at all these parties and automobile rides— theatre parties, automobile rides and dinner parties.
Q. Was there anything that happened in the spring of 1918 that caused you to bring the matter again to her at-

tention at that time?

A. Yes.

Q. What happened?

A. One evening in the spring of 1918, she sent word to me, to the store, by my son Johnson, saying, "If you and Johnson want to go to a show at Perth Amboy—

MR. APPLEGATE: I object to that.

COURT: I will let it stand and see if it is connected; if not, it will go out.

A. (Continuing) "If you want to go to a show tonight at Perth Amboy, you and Johnson can go ahead, I will stay home with the children." This was an unusual thing for her to do. I told Johnson I didn't care to go. I went home that night from the store to my home about half past eight; on my way home I saw that—the two little children, Jean and Betty, down the street; Johnson had gone up town, and Helen, our daughter, was away from home and had been away for two or three days; this left no one in our family but my wife: I went into the hall of our home and it was very quiet in there, so quiet in there you could hear a pin drop; it didn't seem as if anyone was at home at all; I stopped in front of a door that leads from the parlor to the hall, and in two or three minutes my wife appeared in this door; she passed by me and out onto the front stoop in a fluttered state of mind.

Q. Was there a light in the parlor?

A. No.

MR. APPLEGATE: I ask to strike out "fluttered state

of mind".

COURT: I will hear the story.

Q. What else did you see or hear?

A. She passed by me, and went out on the front stoop. I went in the parlor through this same door and I was astonished to find Sam Van Marter in there; I went upstairs after this and came down again in some three or four minutes; Van Marter had worked his way out of the house in the meantime.

MR. APPLEGATE: I object to that.

Q. He had gone out of the house in the meantime?

A. Yes, he had gone out of the house; as I said, I went upstairs and came down again and found my wife in the front sitting room, and I said to her, "Now, I know the reason why you wanted me to go to a show tonight; I am ashamed of you; you are a darn sight more stuck on Sam than Helen is."

Q. Who was Helen, your daughter?

A. Yes.

Q. Was the young man paying attention to your daughter at that time?

A. Yes.

Q. This young man, Van Marter?

A. Yes.

Q. Go on.

Q. Her answer to this was, "Oh, that is nothing, he is only a boy." After this I made up my mind to find out what was wrong in my house.

Q. Did you suspect her at that time of having had

some improper relation with Van Marter there?

A. I didn't know what had happened.

Q. When you say she went out in a fluttered state of mind, you mean she was excited?

A. Yes.

COURT: Strike ou the other expression, and let that stand.

Q. Did she see you as she passed through the hall?

A. Yes.

Q. And didn't speak to you?

A. No, sir.

Q. You have still left unanswered my inquiry, what did you say to her and what did she say to you the last time before the spring of 1918, when you talked with her in a general way about her association with Mr. Devlin; what passed between you on that occasion, what happened on this last occasion; what did you tell her and what did she say to you?

A. After this occasion of the incident I just related—

Q. On the same night?

A. No, after this.

Q. How soon after that night?

A. Shortly after, probably a night or two after that.

Q. Was this in the spring of 1918?

A. Yes.

Q. What passed between you then?

A. I said, "There is something wrong here. Your relations with me are not right and I don't understand it; you have admitted to me that your love for me is gone, it is blanked out, a number of times; the forepart of this year you left my room and went into another room to

sleep, another move I cannot understand."

Q. That was true in point of fact?

A. Yes. "The forepart of this year, 1918, another move I didn't understand." I said to her, "There is nothing at all, nothing in the world congenial between us. You went right on with your fond and familiar actions with Devlin for a number of years past at card parties, automobile rides, theatre parties and so forth, without a particle of interruption; even though I warned you a number of years ago, you haven't stopped it at all. I want to know just what the matter is with you; if you don't tell me I will go elsewhere to find out, because I am going to find out what there is wrong here, and why all this fondness for Devlin." I got no reply, no satisfaction.

Q. You mean she was silent and said nothing?

A. She didn't say anything to speak of.

Q. What did she say, if she made any reply at all?

A. She didn't make any reply.

Q. She was absolutely silent?

A. She didn't seem to be a bit sorry.

COURT: You are characterizing it; we want to know as fully as we can what happened in that room when you had that conversation; you have stated what you said; she is entitled to have us know what she said to you; you told us what you said to her; what reply, if any, did she make?

WITNESS: She didn't make any reply at all; I didn't get any satisfactory answer.

Q. Do you recall anything she said to you by way of

reply?

A. She tried to deny it.

COURT: Strike it out.

Q. Did she deny it?

A. No, she didn't.

COURT: Strike it out.

Q. How did she try to deny it; what did she say?

A. She said it wasn't so.

Q. What you said to her wasn't so?

A. What I said to her wasn't so.

Q. Do you recall anything else she said to you?

A. Nothing else that I remember at that time.

Q. Was that the end of what passed between you?

A. That terminated that interview, yes, at that time.

EXAMINATION BY THE COURT:

Q. At that time did you make any reference to Van Marter's presence in your house or not a night or two before?

A. Yes, I called her attention to that.

Q. What did you say about it?

A. I told her that wasn't right, I didn't like that.

Q. What did you see wrong in the presence of this young man, who was attentive to your daughter?

A. I didn't seen anything wrong, but I didn't think she should be in the front room there with him.

Q. Why not?

A. Towards night in the dark, about dark.

Q. In the spring it was?

A. Yes.

Q. Was there any impropriety in your wife entertaining this young man who was paying attention your daughter?

A. I didn't think it was hardly right, I think, she should be in there with him at all.

Adjourned to October 5, 1920, 1920 at 10 A. M.

BETWEEN

ANDREW J. CARTAN,
Petitioner,
and
SARAH CARTAN,
Defendant.

Continuation of testimony in the above entitled cause before Hon. John E. Foster, Vice Chancellor, at the Chancery Chambers, Newark, New Jersey, on Tuesday, October 5, 1920, at 10 A. M.

Present: Counsel as before stated.

ANDREW J. CARTAN, resumes the stand for

FURTHER DIRECT EXAMINATION BY MR. WILSON:

Q. At the hour of adjournment you were telling us of a conversation that you had with your wife in the

spring of 1918, in which you charged her with having been intimate with Mr. Devlin; you told us what you said to her. You said you didn't recall what she said by way of response. Do you now recall any thing that she said by way of response?

A. Yes, I do, she admitted to me—

MR. APPLEGATE: Objected to.

COURT: Strike it out. What did she say? You are talking about a conversation you had with your own wife; what did she say in reply to the various things you charged her with being guilty of on that occasion?

WITNESS: She said that this fondness for Devlin that I spoke about, at these parties, &c., was so, but she denied that there was anything to it.

COURTS Was that her expression, that there was anything to it, or is that yours?

WITNESS: She denied that there was any wrong to it.

COURT: After you had this interview with her, what happened next?

WITNESS: I told her "I know better than that, Doll, that your relations with me are not right, a ndhaven't been right for a long time; you act to me more like a stranger than you do a wife. You treat me cool, you have lost all your love for me, and there is a reason for all this, and I am going to find out very soon just what this reason is." I told her I was going to find out just what this rea-

son was, and I wasn't going to wait very long either; that she wouldn't go out in the car with me alone, she wouldn't have anything to do with me, really her love for me had gone completely.

Q. You said that there came a time when she left your room; was that before this interview; at the time you had this talk with her, had she already left your room, as you described yesterday?

A. Yes.

Q. After you had this conversation with her, what happened next?

A. I went to my sister.

Q. What was her name?

A. Mrs. Wilson.

Q. What did you go to your sister for; what was your purpose in going to her?

A. To ask her if she knew what the trouble was in my home, if she saw any of these actions with Devlin, and she said Yes.

MR. APPLEGATE: Objected to.

COURT: Strike it out.

Q. After you had talked with your sister, in consequence of anything she said to you, did you go to anybody else?

A. I went to my brother.

Q. And why did you go to your brother after you had been to your sister?

A. Because my sister told me my brother—

MR. APPLEGATE: Objected to.

COURT: Because of something your sister told you?

WITNESS: Yes.

MR. WILSON: Would not his statement to the extent of showing, if it is true, that he went to his brother, because his sister made that suggestion, wouldn't that be receivable?

COURT: Yes. At the suggestion of your sister did you go?

WITNESS: Yes.

COURT: I will receive it in that form.

Q. Then you went to your brother and by that you mean you went to Ren?

A. Yes.

Q. And did you ask him for information about the matter?

A. Yes, sir.

Q. More than once?

A. Yes, sir, five or six times.

Q. Did you get any information from him at first?

A. No, sir.

Q. When finally did you receive some information?

A. After I had seen him six or seven times, down in the lumber yard of Cartan & Devlin.

Q. About when was that?

A. That was in the spring of 1918.

MR. WILSON: I propose to ask the witness what his brother told him.

Q. What did your brother tell you upon that occasion?

MR. APPLEGATE: Objected to.

MR. WILSON: It is explanatory of his conduct from the moment when the husband first had definite knowledge.

COURT: I will receive it on that ground; it doesn't establish anything that the brother may have told him; it may account for his conduct or action.

MR. APPLEGATE: The very obvious purpose, notwithstanding the statement that it is offered wholly for the purpose, is to corroborate Mr. Ren Cartan, who has testified along the same line.

COURT: But it will not have that effect; I will admit it for the purpose for which counsel states he offers it.

Q. Tell us what your brother told you on that occasion.

A. I had a hard time to get my brother—

MR. APPLEGATE: Objected to.

COURT: What did your brother tell you, is the question. Strike out the answer.

WITNESS: He told me about the intimate relations—

COURT: What did he say?

WITNESS: He said that my wife had intimate relations with Pat Devlin down in the back yard of my home in an outhouse down there.

Q. Did he give you the details of it; what did he say?
A. Yes, he did.

COURT: Have you fixed the time when you had this conversation?

MR. WILSON: In the spring of 1918.

Q. Had you any definite knowledge from any person or from any source up to that time,—up to the time your brother told you what he saw, had you any definite knowledge from any source up to that time, that your wife had in fact been guilty of immoral conduct with Devlin?
A. I did not.
Q. After your brother gave you this information—

COURT: I understood you to say he told you in detail what he saw that night?

WITNESS: Yes.

Q. What did you do; what next happened, so far as you are concerned?
A. I broke intimate relations with my wife at once.
Q. You mean you ceased to cohabit with her?
A. I did.

COURT: From the day he told you this?

WITNESS: Yes.

COURT: Can you fix the date definitely?

WITNESS: Spring of 1918.

Q. That is very general; can't you be more specific?
A. Early spring.
Q. What month?
A. 1918, I should say.
Q. What month in 1918?
A. I think in the month of May.
Q. Have you cohabited with her since that time?
A. No,sir.
Q. After you had this talk with your brother did you have a talk with your wife about this matter?
A. Yes, sir.
Q. How soon after your brother had told you this story, an hour, week or day or month?
A. It was not until the following October that I—

COURT: Spoke to her about the intimate relations?

WITNESS: Yes.

Q. Did you speak to her at any time between May and October?
A. No.
Q. It was not until October that you told her what you had learned?
A. Yes, sir.

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COURT: When you ceased cohabitation on the day your brother gave you this information, did you tell her why you were going to do it; you didn't occupy the same bed and room with her from that time on?

WITNESS: No.

COURT: You didn't tell her, or gave her no explanation?

WITNESS: No.

COURT: Did she demand any explanation?

WITNESS: No.

MR. WILSON: She had left his room in January and cohabitation in fact had ceased.

COURT: Is that so?

WITNESS: Yes.

Q. Why didn't you go at once to your wife and tell her what you had learned?

MR. APPLEGATE: Objected to.

COURT: I will receive it. I have the question in mind why didn't he; I think it is very important to learn. It seems to me that he should have acted promptly on the information. I don't think October is prompt action. Now I will have his explanation as to why he didn't act

promptly.

Q. Why didn't you go and tell her what you had heard, immediately?

A. A day or two after I heard, my brother made known this fact to me, I went down to Asbury Park to advise with my cousin Jim Carton about the matter, and I told him—

MR. APPLEGATE: We object.

COURT: You gave him the information you had received?

WITNESS: Yes.

COURT: What happened?

WITNESS: And he advised me—

MR. APPLEGATE: Objected to.

COURT: I cannot have that. Mr. Carton is not counsel in the cause; he is the same as any other individual, and whatever he may have said I don't see how it is competent; if he claimed he were acting under the advice of counsel, I might receive it.

MR. WILSON: It is only offered for the purpose of explaining the conduct of this petitioner.

COURT: He is undertaking to tell me what Mr. Carton told him to do.

MR. WILSON: Suppose Mr. Carton advised him to pursue such and such a course, and let us assume that your Honor should hold that he should have pursued some other course.

COURT: I will let you state in a general way what Mr. Carton did or did not tell him to do in the matter, but I don't care for the detail of that advice.

Q. Mr. Carton was your cousin?
A. Yes.
Q. And a member of the bar?
A. Yes.
Q. And a man who has advised you generally about your legal affairs?
A. Yes.
Q. Did he advise you about what he thought you ought to do in that emergency?
A. Yes, he did.
Q. Did you follow that advice?
A. Yes.
Q. Did you follow his advice in that respect?
A. I did.

COURT: Did you and your wife and children continue to occupy the same home between May and October?

WITNESS: Yes, sir.

Q. Did you support her and them during that period?
A. I did.
Q. Did you after your brother told you of this incident which happened in May, 1916, have any talk with

your wife about her association or relation with him?

COURT: Prior to October?

MR. WILSON: Prior to October.

MR. APPLEGATE: He said he didn't.

Q. Did you have any talk with her about her relation with Mr. Devlin during that period between spring and October, 1918?

A. Not about the intimate relations, no.

COURT: Whether they were intimate or otherwise, did you have any talk with her about her relations with Devlin, is Mr. Wilson's inquiry.

WITNESS: I would call her attention all the time to her fondness for Devlin.

COURT: Between May and October, you mean?

WITNESS: Let me see; no, I didn't say anything to her.

COURT: Then that subject was not mentioned in any way between May and October between you and Mrs. Cartan?

WITNESS: No, sir.

Q. Going back, Mr. Cartan, to the first of January, 1918, when you say she voluntarily and without explanation left your room, down to October, 1918, when these

letters were written, during that period of time what was the relation between you and your wife and your household, was it a cordial one or otherwise?

A. No, not very cordial.

COURT: Mr. Wilson in his question has assumed, and I am not entirely clear but what his assumption may be right, that you have stated that Mrs. Cartan left your room and ceased to cohabit with you from January.

MR. WILSON: He didn't add the latter; he said that she had left his room before.

COURT: In January, 1918, under what circumstances did she leave, and what caused her to leave the room?

WITNESS: I never could tell what caused it.

Q. What did she say about it?

A. She never gave any reason.

Q. What did you ask her about it, if anything?

A. I told her I couldn't understand why it was she left my room.

Q. What did she say?

A. My recollection was that she didn't want to sleep with me any more.

MR. APPLEGATE: Objected to unless that is what she said.

COURT: Is that your recollection now; can't you recall what she said in answer to your inquiry, as to why she left? State it as nearly as you do recall it.

WITNESS: My recollection is that she wanted to—

COURT: That isn't the inquiry.

Q. What is your present recollection as to what she said?

A. She said she wanted to sleep in another room; she didn't think she would sleep with me any longer.

COURT: Was that the result of any controversy that you and she had over your discussion of her relations with Devlin?

WITNESS: I don't know about that.

COURT: Was she angry at the time she left as the result of anything you said about her relations with Devlin?

WITNESS: Not that I know of.

COURT: She didn't manifest it, at least?

WITNESS: No.

Q. I understood your story, you had a talk with her in the spring about her relations with Devlin, and one of the things that you recounted that you said to her on that occasion was, that she had left your room; was that true?

A. Yes.

Q. And the explanation for leaving the room is the one that you now give that she gave you?

MR. APPLEGATE: I object.

COURT: He swore to it; I will allow it; it may be a repetition. Is that so, the explanation you have now given is what she told you?

WITNESS: Yes.

Q. Beginning with the occurrences about October, 1918, tell us in your own way what occurred between you and your wife and Mr. Devlin?

A. After the Sunday following October first my brother Ren come to me and called my attention—

MR. APPLEGATE: Objected to.

COURT: You cannot tell what your brother said to you.

Q. But as a result of something that your brother said, what did you do or say, if you did anything?

A. I went to Asbury Park.

Q. On that particular Sunday did you ?

A. Yes.

Q. Your going to Asbury Park had nothing to do with your trouble with your wife and Devlin?

A. No, sir.

Q. It was a matter of business?

A. Yes, a matter that he and I were interested in.

Q. What next after that happened?

Q. You mean on this trip to Asbury Park?

Q. After you came back from the trip to Asbury Park.

A. On my way home that night I went into my

brother's house to tell him—

MR. APPLEGATE: I object.

A. (Continuing) I went into my brother's house.

Q. Did you go into his house for the purpose of talking about your marital troubles?

A. No, I went in to tell him about what I had done in Asbury Park.

Q. What happened there?

A. I didn't stay in there only a minute, because it looked to me as if—

MR. APPLEGATE: Objected to.

COURT: Objection sustained.

Q. Did anything in your brother's house occur which had any relation to this trouble?

A. No, nothing that I saw.

Q. Go on.

A. After I came out of my brother's I went on up to my own house, and after some thirty or forty minutes my wife came in, and she said to me, "I want to know from you who told Mrs. Devlin about my intimate relations with Pat."

Q. Go on.

A. I never told her.

Q. You didn't tell her?

A. No, sir.

Q. Did you know at that time who had told Mrs. Devlin?

A. No, I didn't.

Q. What did you say to her and what did she say to you when she asked you; this is the same Sunday night in the first of October when you had been to Asbury Park?

A. I did know at that time who told Mrs. Devlin.

Q. When your wife asked you for that information what did you say to her?

A. I said to her that I wouldn't tell her; "I am not going to tell you who it was that told Mrs. Devlin." She kept at me and told me that she wasn't going to leave the house until I told her; she kept after me for a long time; she kept right after the question continually, and after a while she admitted to me—

MR. APPLEGATE: Objected to.

Q. What she said to you; substitute for the word "admitted" the word "said".

A. She said to me that she had had intimate relations with Pat Devlin. I asked her when this thing happened; she said it was some time ago, but it happened. I asked her again, "Did you have any thought for our children when you committed that act?" She answered "Yes, but that is one of the foolish things that women do sometimes." I asked her again, "Have you any thought for Devlin now?" She said, "Yes, I care a lot for Devlin and I know he cares a lot for me." After that we talked about the disgrace that she had brought upon her family. I told her that she brought disgrace upon her family, upon her children, and talked along with her along that line for a long time; never once during that conversation did she deny her guilt.

MR. APPLEGATE: Objected to.

COURT: Strike it out.

MR. WILSON: I think that is substantive fact.

COURT: I won't have it in that form. I will have to conclude from what she said whether she denied her guilt or not. I may differ with you when I hear all the conversation. I don't care to have his assertion as part of the record.

Q. Did she in that conversation say to you that she had not been intimate at any time with Devlin?

MR. APPLEGATE: Objected to.

COURT: Objection sustained.

The direct inquiry is what did she say at that time, and all that she said at that time.

Q. Have you told us all that she said at that time, so far as you can recall? If you can recall anything else, recount it.

A. Nothing that I can remember.

Q. Did this interview last a considerable length of time?

A. Quite some time.

Q. And it occurred in your house, you say?

A. Yes.

Q. Whereabouts in your house?

A. My recollection is it was in the kitchen.

Q. And you and she alone?

A. Yes, sir.

Q. Doors open or closed?

A. Closed.

Q. And what happened after that; you say this was on the night when you came back from Asbury Park, which you fixed as a Sunday early in October; what happened after that?

A. A day or two after this I was on my way from my store to my home one morning, a little way up the street from the store I saw my wife talking with Devlin; I went on home, after a while my wife came in; I asked her what the conversation with Devlin was about; she said "I wanted to find out from him who it was that told the story to Mrs. Devlin. He told me that Mrs. Ren Cartan told Mrs. Devlin." She also said to me, "He wanted me to make up with you, even though it be for a short while, for a month or so." I asked her if that was all he said; she said, "That is all he told me."

Q. Then what?

A. A little later that day I went to see my brother Ren and I told him about—

MR. APPLEGATE: Objected to.

COURT: Let me hear the answer.

You told him about what?

WITNESS: I told him about the conversation that my wife had with Devlin, what she told me, and I said to Ren—

MR. APPLEGATE: Objected to.

COURT: Strike it out.

Q. Then after that what did you do?
A. I told Ren—

MR. APPLEGATE: Objected to.

COURT: You cannot tell that unless the other parties were present, but you told him in effect what Mrs Cartan had told you?

WITNESS: Yes.

Q. When you had told him what she had said, did he make any suggestions to you about what to do?
A. Who, Ren?
Q. Yes.
A. I don't think he did.
Q. What next occurred?
A. A day or two later I told my wife I was going to start suit for divorce and name Devlin; she said, "What do you want to bring up an old affair that happened years and years ago at this late day; why did you leave it be until the children got so old?"
Q. What else did she say?

COURT: Or did you say to her in that conversation?

A. I didn't say anything else to her at that time.

COURT: Did she say anything else?

Q. Was that all that passed between you?

A. Yes.

Q. Did you have any further talk with her about this matter or about her conduct, between that time and the time when the suit was actually brought? The petition appears to have been filed in December, 1918. You had this talk, you say, in October, 1918; between that time, October, 1918, and the time when the petition was filed, did you have any further talk with your wife?

A. Only that she was after me almost every day to start my suit for divorce.

COURT: What do you mean by that?

Q. What did she say to you?

A. She said, "Why don't you start your divorce? I am not going to defend it, I want a divorce."

Q. When she said that she was not going to defend, what did you say to her, if anything?

A. I didn't say anything.

Q. You say she was at you most every day; is that the expression you used?

A. Yes.

Q. About the divorce; can't you give me more in detail what she said to you on those occasions or what you said to her?

A. I don't remember or call just exactly.

Q. Did she say anything about her willingness to live with you or unwillingness to live with you longer?

A. She seemed to want the divorce.

MR. APPLEGATE: Objected to.

COURT: Objection sustained.

Q. What she said.
A. She said, "I want to have a divorce."
Q. Anything said about the support of herself and the children in the event of a divorce, in any of those conversations?
A. No, any more than she—I assume—

COURT: No, was anything said; that is addressed to you all the time.

WITNESS: I told her that I was going to support the children, I always said that, while this divorce was pending.

Q. Was her trip to Florida or was a trip to Florida in contemplation by her at that time?

MR. APPLEGATE: Objected to.

COURT: I will be inclined to receive it.

A. Yes, sir, a trip to Florida was in contemplation.
Q. When was that first discussed or considered?
A. She asked me during the month of November.
Q. Are you speaking of October or November?
A. In November.
Q. She began to talk to you about this Florida business?
A. Yes.
Q. What did she say?
A. She asked me if I would pay the way for herself

and children to Florida for the winter.

Q. What else did she want you to do in that connection, if anything?

A. Nothing that I know of.

Q. What about the rent of the house there?

A. She wanted me to pay the rent of the house at home.

Q. Oh, no, in Florida.

A. She wanted me to pay her way to Florida and also pay the rent of this house.

Q. What house?

COURT: In Florida?

WITNESS: Yes.

COURT: That she and the children intended to occupy?

WITNESS: Yes.

Q. Was this idea about going to Florida—did it originate with you or did it originate with her?

A. With her; I had nothing to do with it.

Q. What did you say to her suggestion that she and the children should go to Florida and you pay the expenses; did you agree to it or not?

A. I was inconsultation with my counsel.

COURT: What did you agree about it?

WITNESS: I agreed to pay it.

Q. Before reaching that conclusion and announcing

that conclusion to her, did you talk with your counsel about it?

A. Yes, sir.

Q. Who, Mr. Carton?

A. Yes.

Q. Did she go to Florida?

A. Yes.

Q. And when?

A. It was in December, towards the middle of December.

Q. Before or after the papers were served upon her in this divorce case?

A. After.

Q. How long after?

A. I thing it was a day or two; a day after, I think.

Q. Did you carry out your undertaking of providing for her and the children on the trip?

A. I did.

Q. How much money did you pay for that purpose?

A. $1,000. Started with a thousand dollars.

Q. You paid more money afterward?

A. Yes.

Q. How much money?

A. I don't recall, but three or four hundred possibly.

Q. How long did she stay there?

A. She stayed down there about—she stayed all winter, in fact, but she came back after being down there two or three weeks.

Q. She came back after being there two or three weeks; how long did she stay in Matawan then?

A. About a month.

Q. Then did she go back again?

A. Yes.

Q. And does the initial thousand dollars and the three or four additional of which you spoke , does that represent all that you gave her and the family while in Florida?

A. No, there was an allowance fixed for her after that.

Q. While she was in Florida?

A. Yes.

Q. Which she received in addition?

A. Yes.

Q. How much was that?

A. $40 a week.

Q. Was that for herself or her and the children?

A. For herself and the children.

Q. In addition to what you had given her?

A. Yes.

COURT: Was she living in your house the day she was served with papers in this suit?

WITNESS: Yes.

Q. This Sunday night when you told her what your brother Ren told you about her conduct in this outbuilding, had you then in mind the bringing of a suit against her for divorce for adultery?

A. Yes, sir.

Q. Did you consult with counsel about that?

A. Yes, sir.

Q. It was not until December following that the petition was actually filed in this case; had you during that period turned over to your counsel the duty of preparing the papers and starting the suit?

A. Not right then; I had a talk with my cousin Jim Carton about it right after I learned of the incident.

Q. When you had first asked Mr. Carton, if you ever did, to arrange about bringing an action for divorce; how soon after this Sunday night when you had this talk with him?

A. A day or two after.

Q. Did you entrust the matter to him?

A. Yes.

Q. Did you instruct him to begin suit?

A. He held me off.

Q. I am asking you what you did; did you instruct him to begin suit?

A. I told him that I wanted to start suit.

Q. What did he say?

A. He told me—

MR. APPLEGATE: Objected to.

COURT: I will receive it, as explanatory of the delay.

Q. You told him you wanted to begin suit, and what did he say?

A. He told me to "hold on, Johnce, for the sake of the children up there, and my advice to you is to hold on; this thing may work out itself some way, and I want you to go back home and wait a while."

Q. Did you act upon that advice?

A. I did, yes, sir.

Q. Was this suit finally brought after you had insisted that it should be brought?

A. Yes, sir.

Q. Did you according to your present recollection

have any conversation with your wife about her trouble with Devlin and her trouble with you between this Sunday night in October and the time when this case was started in December, except such conversation as you have already described?

A. No, sir.

COURT: How long did Mrs. Cartan remain in Florida with the children?

WITNESS: After she went back the second time?

COURT: Yes.

WITNESS: She stayed until the first of May.

COURT: And did she and the children leave there and return to Matawan?

WITNESS: Yes.

COURT: And returned to your house?

WITNESS: Yes.

COURT: Where have they been living since?

WITNESS: In that same house.

COURT: She lives in the same house with you?

WITNESS: No.

Q. How many children did she take?
A. She took three children with her.
Q. Who were they?
A. Jean, Johnson and Elizabeth.
Q. And who remained?
A. Helen.
Q. Is Helen the eldest?
A. Yes.
Q. Twenty-seven years old?
A. Yes.
Q. While your wife was in Florida where did you continue to live?
A. I lived in the house at home while she was away and took my meals out.
Q. Where did your daughter live?
A. She lived in the same home; she resided there but took her meals at Fury's Hotel.
Q. Did she take her meals at the same place you did?
A. No, sir.
Q. After your wife came back she lived there in the homestead with all the children?
A. Yes.
Q. You provided for them, you say, ever since?
A. Yes.

COURT: By what weekly payment?

WITNESS: $50 and the house rent.

COURT: You own your own home?

WITNESS: I own it.

COURT: So there was no house rent?

WITNESS: No .

COURT: You mean independent of the house?

WITNESS: Yes.

COURT: How long did Mrs. Cartan continue to live there?

WITNESS: She is living there yet.

COURT: Do you live there also?

WITNESS: No, sir.

COURT: When did you move?

WITNESS: Since I filed my bill.

COURT: And you live where since then?

WITNESS: I reside at the old homestead, my father's home.

COURT: In Matawan?

WITNESS: Yes.

Q. Are you living there now?
A. Yes.

COURT: When was the answer filed on behalf of Mrs. Cartan?

MR. WILSON: By consent the time was extended. The original bill was filed on the eleventh or twelfth of December.

MR. APPLEGATE: I think I should make a statement as to why the answer wasn't filed.

MR. WILSON: It was filed by consent endorsed upon it reading "Filing of the answer within time." I am willing that Mr. Applegate should make any explanation, so it may appear upon the record, as to the matter of the delay in the filing of the answer.

COURT: I will receive it now.

MR. APPLEGATE: The reason was that there was some effort being made on the part of all parties—I might say counsel, at least—to see if there could not be effected a reconciliation of the parties; Mrs. Cartan, however, constantly denying any impropriety. I made several calls at Mr. Wilson's office and talked the matter over occasionally with Mr. Cartan, and with that idea in mind it was agreed among us that no answer should be filed, in order to see whether or not such a reconciliation could not be effected.

COURT: And the answer was not filed until that was found to be hopeless?

MR. APPLEGATE: That is it.

COURT: And some little time elapsed, I presume?

MR. APPLEGATE: Yes, some little time.

MR. WILSON: I think that is the correct explanation for the delay.

CROSS EXAMINATION BY MR. APPLEGATE:

Q. You and your wife lived happily together until when?

A. For the last ten or twelve years there hasn't been —up to ten or twelve years ago.

Q. Then commencing some ten or twelve years ago you and she did not live happily together?

A. There was some little jarring between us.

Q. Bickerings you mean?

A. Yes.

Q. Jealousies?

A. No.

Q. You were not jealous of her, were you?

A. No, sir.

Q. The unpleasantness consisted of what you testified to here yesterday and this morning partially?

A. Yes.

Q. And commenced some twelve or thirteen years ago, this alleged fondness which you say you noticed on her part for Mr. Devlin?

A. Yes.

Q. That, you say, was the cause of all this unpleasant feeling between yourself and your wife?

A. Yes.

Q. It started ten or twelve years ago?

A. Yes.

Q. Nothing else?

A. Not that I can recall.

Q. Did you ever speak to Mr. Devlin in regard to this alleged intimacy?

A. No, sir.

Q. Why didn't you?

A. I couldn't speak to him about it.

Q. You and he had been friends for years, had you not?

A. Quite a while, yes, sir.

Q. You were intimate in business, partners really?

A. Yes, sir.

Q. You were associated politically together?

A. Yes, sir.

Q. And had been for a long time?

A. Yes, sir.

Q. To a certain extent his interests were your interests, and your interests were his, isn't that true?

A. To a certain extent.

Q. And notwithstanding that condition existed, you did not at any time approach Mr. Devlin in regard to this alleged fondness of your wife for him?

A. I did not.

Q. Can you give us any reason why you didn't?

A. No, sir.

Q. In relation to your automobile rides that you spoke of, when you stated that Mrs. Cartan would endeavor to have your son stay at home so that you would have to drive, and in that way have Mr. Devlin seated upon the back seat with her, you didn't have to sit upon

the back seat if you didn't want to, did you?

A. I never sat on the back seat.

Q. You didn't have to drive if you didn't want to, did you?

A. I had to drive because there was no one else to drive.

COURT: You didn't have to drive if you didn't want to?

WITNESS: No.

Q. You didn't have to ride out in automobiles with Devlin and your wife if you didn't want to, did you?

A. No.

Q. If you knew of this fondness as you have described it, of your wife for Mr. Devlin, and these automobile incidents, why did you continue to take Devlin with you?

A. Because my wife wanted the Devlins to go.

Q. Was that the only reason for taking them or taking him?

A. I don't know of any other reason.

Q. You knew of the fondness of your wife for Devlin?

A. Yes.

Q. You didn't want to break it up?

A. I did, but I took another course to do it.

Q. And the course you took was to remain absolutely silent so far as Devlin was concerned, and also so far as your wife was concerned, until October, 1918, wasn't it?

MR. WILSON: That isn't his testimony.

A. Only so far as Devlin was concerned.

Q. So far as your wife was concerned, the course you took was to talk with her about her fondness for Devlin?

A. Yes, sir.

Q. That is all you did, wasn't it?

A. I told her—

Q. Is that all you did?

A. Yes.

Q. You took no steps to separate her and Devlin?

A. No.

Q. You permitted them to be in each other's company just as much as ever, didn't you?

A. I don't know as I permitted it; they were in each other's company.

Q. You didn't stop it?

A. No.

Q. You went to card parties and automobile rides just the same as you had before that time?

A. We did, but I wasn't satisfied.

Q. You went but you were not satisfied?

A. Yes.

Q. Not being satisfied and being in that frame of mind as you have spoken of, why didn't you stop it?

A. I thought the proper way was to tell my wife about it; I did try to stop it through my wife.

Q. And after you told your wife and, as you say, it didn't stop, then why didn't you try some other course?

A. She wouldn't stop and kept it up.

COURT: Why didn't you try some other course; when you found that your talk with her was unavailing, why didn't you do something else?

WITNESS: I always tried to work those things out myself.

Q. Did you work that out to your satisfaction?
A. I did not.
Q. So you think now the course you took wasn't the proper one?

COURT: Does it make any difference what he thinks now? Whatever he did is an accomplished fact.

Q. You continued to cohabit with your wife during all this time, at least up until October, 1918?
A. Not after that, no, sir.
Q. Up to October, 1918, you did?
A. Yes, sir.

COURT: I don't want any confusion. Did you understand the question he put to you?

WITNESS: I refused to cohabit with her after the time that my brother told me about the incident in the back yard.

COURT: That isn't the question. Read the questions and answers, Mr. Bindseil.

(Last two questions and answers read to the witness.)

WITNESS: I don't quite catch that.

COURT: Read them again.

(Last two questions and answers again read.)

WITNESS: I didn't cohabit with her after the time that my brother told me about the incident.

Q. When do you fix that time?
A. That was in the spring of 1918, in May.
Q. Why did you say a moment ago you cohabited with her up until October, 1918?
A. I didn't catch the run of the question.

COURT: Don't attempt to frame your answer to a question, but listen to the question and then take your time to answer according to the fact. I don't want any confusion; I don't want you confused; I want the exact facts as they are. Wait until counsel has finished his question and then answer it responsively, and don't attempt to answer it before.

Q. When do you say she left your room and ceased to sleep with you?
A. In January, 1918.
Q. And had you and she had any words at that time as the result of which she withdrew from your room?
A. None that I recall.
Q. You would recall, of course, if you had had any, wouldn't you?
A. Any more than she didn't want to stay in the room with me; she wanted to go in some other room.
Q. Did you have any words with her or any quarrel as the result of which she said in anger, "I am not going to sleep in your room any longer", or something to that effect?

A. No.

Q. She just quietly withdrew, did she?

A. Yes.

Q. Did you protest?

A. I remember asking her why she left my room; she gave no reason.

Q. You cohabited with her after that, didn't you?

A. I don't remember; I don't think so.

COURT: I understood you to say you did up to the spring of 1918?

WITNESS: Up to the spring of 1918.

Q. You did cohabit with her after January, and after she had left your room?

A. Yes.

Q. Did you go to her room or did she come to your room?

A. I think she come to my room; I think I went to her room.

Q. Which?

A. I think I went to her room.

Q. Why did you say she came to your room, first?

A. I will answer it by saying that I think that she—I went to her room.

Q. Why did you first say that she came to your room?

A. I answered a little too quick, excuse me.

COURT: It is not a fact then?

WITNESS: No.

Q. You knew at that time, of course, of this fondness she had for Mr. Devlin?

A. Yes, sir.

Q. And nevertheless you continued to seek cohabitation with her and she permitted it?

A. Yes.

Q. During the time that you say that this alleged fondness existed between Devlin and Mrs. Cartan, there were two children born to you and Mrs. Cartan, were there not?

A. Yes, sir.

Q. Jean and Elizabeth?

A. Yes, sir.

Q. And Jean is now seven years old?

A. Ten.

Q. And Elizabeth is seven?

A. Six years, in her seventh.

Q. When you had your talk with your brother Ren in the lumber yard in May, as I recall, 1918, did he tell you of the time when he and others observed, as he says, the alleged intimacy between your wife and Mr. Devlin; did he tell you when that occurred, this incident in the back yard in the chicken house?

A. He told me it was in May.

Q. Did he tell you in what year?

A. 1916.

Q. And this was May that you had this conversation with him?

COURT: He had a conversation in May and October both, with his brother.

Q. The first conversation in the lumber yard, when

he told you of this incident, was in May, 1918?

A. Yes, sir.

MR. WILSON: He said in the spring of 1918.

COURT: He said in answer to your question—he said May finally; that is correct?

WITNESS: Yes.

Q. So you knew at that time that this incident had occurred at least two years before?

A. Yes.

Q. You neverthless knowing that continued to keep silent about it, and kept it silent so far as your wife was concerned, until October, 1918?

A. I told my cousin about it.

Q. (Last question repeated.)

A. Yes.

Q. Were you very much enraged with Mr. Ren Cartan, your brother, told you about this?

A. I didn't like it very much.

Q. Why didn't you go right home and tell your wife about it; can you give me any reason?

A. No reason.

Q. You continued to live in the same house with her and the children?

A. Yes, sir.

Q. And there you remained until she went to Florida in December, 1918?

A. Yes.

Q. And you continued there even after that, did you not; you were there when she returned from Florida?

A. Yes, I was there until she returned from Florida.

Q. You finally left when you started the divorce?

COURT: He didn't leave until the following spring when she returned, in May.

Q. When do you say you left the house finally?
A. In May, I think the first of May, 1919.
Q. You took your meals in the house and slept there?
A. No, sir, I did not.
Q. Up to that time?
A. Yes, up to that time.

COURT: I understood while Mrs. Cartan was absent in Florida.

WITNESS: My daughter and I took our meals out.

COURT: You both slept there and lived there?

WITNESS: Yes.

Miss Helen while your wife was in Florida lived at home with you?
A. Except that she took her meals at thte hotel, yes.
Q. You and she did not take your meals together?
A. No, sir.
Q. Why not?
A. No particular reason for this; no particular reason for it at all.
Q. You were paying for her board?
A. Yes.
Q. You and she on friendly terms at that time?
A. Yes, sir.

Q. But you didn't care to have your meals with her?

A. She didn't want to cook for me there; I wanted her to stay there in the house and cook for me while her mother was away, but she refused to do it.

Q. So you both took your meals out?

A. Yes.

Q. Why didn't you take your meals together?

A. Because I took my meals nearer my store and she wanted to go to Fury's; I didn't object to it.

Q. Did you talk with her at any time in regard to this alleged intimacy between Devlin and Mrs. Cartan—talk with Helen?

A. Not that I recollect.

Q. Didn't you go to Helen with a letter to show it to her?

A. Yes.

Q. You did talk with her, then?

A. Yes.

Q. It is one of the letters which have been offered in evidence in this suit?

A. I showed her a copy of it.

Q. What did she say to you?

A. She said, "I don't—

MR. WILSON: I don't see how that is competent.

COURT: I don't see myself how it is competent or material what she said; why is it? It indicates some conduct inconsistent with his story, you claim?

MR. APPLEGATE: That is it. I will withdraw the question for the present.

Q. What did you say to your daughter when you handed her the copy of the letter you referred to?

A. I don't recollect just what I did say to her.

Q. Why did you take it to her at all?

A. I don't know.

Q. Were you trying to turn her against her mother?

A. No, sir.

Q. Then why did you take the note to her, or show it to her? You don't know, you say?

A. No, I don't know.

Q. She read it, did she?

A. Yes, sir.

Q. What did she say?

MR. WILSON: I object.

COURT: I will receive it for the purpose already stated.

A. I don't remember just what she did say.

Q. What did she do with the letter or the copy?

A. Tore it up.

Q. What did you say then?

A. I have no recollection.

COURT: Which letter was this that was torn up?

WITNESS: A copy of one of these letters offered in evidence.

Q. These letters offered in evidence are copies.

A. This is another copy.

Q. Who made that?

A. I did.

Q. And didn't you say to her at that time, "There is no use of tearing up this letter, I have got plenty other copies of them", or words to that effect?

A. No, I don't remember that.

Q. You don't say you didn't say it then?

A. I don't remember saying it.

Q. What occurred then after she tore the letter up? You say that you cannot remember that you said anything or what was said; what did you say?

A. Nothing that I know of, that I can recall.

Q. You didn't stand right there, did you, remain there?

A. I think I went out of the house after that.

Q. Do you remember going out of the house?

A. I don't know as I did; I don't remember what happened after that; I have no recollection.

Q. You were sober, weren't you?

A. Yes, sir.

Q. Why can't you remember?

A. I don't remember what was said.

Q. How is it you can remember all these details that you testified to concerning you and your wife and Mr. Devlin and your brothers and sisters and the whole Cartan family, but you cannot remember this little incident?

A. I don't know.

Q. Didn't it make any impression upon your mind as to you daughter's attitude in the matter?

A. No, sir.

Q. No impression whatever?

A. No, sir.

Q. Did you at any other time talk the matter over, or any of its phases, with your daughter?

A. Not that I recall.

Q. Did you talk it over with your son?

A. No, sir, not that I remember.

Q. Of course, you didn't with the other two children, they being considerably younger?

A. No, sir.

Q. You had the talk with your wife in October, you say, when you accused her of infidelity towards you?

A. Yes, sir.

Q. Was it at that time, or the time of that conversation that the Florida trip was discussed?

A. No, sir.

Q. How long after?

A. I think it was in November.

Q. That is one month, then, following?

A. Yes, sir.

Q. And you say in this talk that occurred in October between you and your wife, that she said she had been guilty of intimate relations with Mr. Devlin?

A. She denied it that day.

Q. When was it that you say that she said that she had intimate relations with Mr. Devlin?

A. That was the following Sunday.

Q. In October?

A. Yes.

Q. Whereabouts in your house, in the kitchen?

A. I don't remember where she admitted that; I think it was in the kitchen.

Q. You said on direct examination it was in the kitchen?

A. I think I did.

Q. There isn't any doubt about it in your mind, is there, where it occurred?

A. It was in that side of the house; I don't just re-

member now.

Q. You said on direct examination it was in the kitchen and all the doors were closed and nobody was there?

A. Yes, sir.

Q. That is true, then?

A. Yes.

Q. Why do you hesitate about it now?

A. No reason.

Q. And when she said that she had been guilty of this alleged impropriety with Mr. Devlin, did you get angry?

A. I didn't like it very much.

Q. Did you get angry?

A. I didn't like it.

Q. Did you get angry?

A. I didn't get real angry, but I was angry.

Q. How long did you remain in the kitchen?

COURT: What do you understand the difference between being angry and real angry to be?

WITNESS: Well, you could be real mad and not real mad; there is quite a difference.

Q. How long did you remain in the kitchen upon that occasion?

A. I think we were in there quite a while, two or three hours.

Q. Sitting or standing?

A. I don't remember about that; sitting and standing both, I guess.

Q. Talking all the time?

A. Quite some of the time.

Q. Who did most of the talking?

A. Both; it might be that I did.

Q. And when she said that she had been guilty of improprieties with Mr. Devlin, what else did you say in relation to that, or what did you say in relation to that?

A. I asked her when did this happen, and she said, "Some time ago, but it happened."

Q. You knew when it happened, or supposed you knew, didn't you?

A. I did at that time, because my brother told me.

Q. Your brother already told you; you knew it?

A. Yes.

Q. You told her at that time that you knew it?

A. No, sir; when I asked her when it happened?

Q. Did you tell her that you already knew all about this.

A. Sure I did.

Q. What did she say about that?

A. At that time?

COURT: Yes, while you were talking in the kitchen on this Sunday, did you tell her at that time that you knew all about it, is the inquiry.

WITNESS: Yes, I did.

Q. Did you tell her before she told you of her intimate conduct or afterwards? Why do you take so long to answer these questions?

A. She told me after I had been talking with her about it.

COURT: Had you told her that you knew all about it, and was that when she told you that she had been guilty?

WITNESS: Yes, sir.

COURT: Or before that?

WITNESS: Yes, I told her.

COURT: And then she told you that she had been guilty?

WITNESS: Yes.

Q. What was there that required you to stay some two or three hours in the kitchen upon that occasion?

A. I was telling her about the disgrace she brought upon her family.

Q. You told her about that; what else did you tell her; did you tell her at that time you were going to divorce her?

A. I don't think I did at that time.

Q. You had been down to see Mr. Carton at that time?

A. Yes.

Q. And talked divorce with him?

A. Yes.

Q. You had in mind bringing a divorce at the time of this conversation in the kitchen, did you?

A. I don't think I did.

Q. You had already talked with Mr. Carton about bringing a divorce action, hadn't you?

A. Yes, sir.

Q. Then you had in mind bringing a divorce?
A. Yes.
Q. At the time of the conversation in the kitchen?
A. Yes, sir.
Q. You said nothing to her about, though, at that time?
A. No.

COURT: Did you have it in mind about forgiving her, even if she had been guilty?

WITNESS: No, sir.

Q. You had made up your mind that you wouldn't forgive her even though guilty? Is that what you mean to say?
A. I don't know as I made up my mind exactly.
Q. During the time between May, 1918, and October, when you and the children lived in the same house, you spoke with her and talked with her, did you not, upon your return home from business and carried on conversation with her?
A. Some, not much.
Q. You did, did you not?
A. Some.
Q. And you sat at the same table and talked with her?
A. Some, yes, sir.
Q. You sat in your reading room in the evening after your return from business and conversed with her about matters not connected with Devlin, did you not?
A. Yes, but not much.
Q. And also you talked with her about matters not pertaining to this suit between October and the time she

went to Florida, did you not?

A. Yes.

Q. When did you first know that the papers were being prepared preparatory to actually starting this divorce suit?

A. Quite a few days before they were served.

Q. And when Mrs. Cartan obtained your consent that she go to Florida, had the suit actually been started or the papers drawn at that time?

A. I suppose they had.

Q. Had there been any agreement between you and your wife that you should get a divorce?

A. No, sir.

Q. So that when you gave your consent to her going to Florida, with the children, you knew that the suit was actually in progress?

A. Yes.

Q. You didn't tell her so, did you?

A. She knew the papers were being—

Q. You didn't tell her so, did you?

A. I told her the suit was going to be filed, yes.

Q. You didn't tell her that the suit was actually being started?

A. Yes.

Q. When did you tell her that?

A. I think about the time I knew the papers were being fixed for service.

Q. How long before her departure for Florida?

A. Quite a few days.

Q. You knew the time she was actually leaving?

A. Yes.

Q. These papers were served the night before she left for Florida?

A. The day before she left, I think.

COURT: Had the date of her departure been fixed for some time?

WITNESS: Not very long; she had her reservations.

COURT: How long had they been obtained before she actually left?

WITNESS: I think two or three days.

COURT: How did it happen that the papers in this suit were served on her the very day of the departure?

WITNESS: I don't know how that happened.

COURT: Was that the result of any agreement or understanding between you and your wife?

WITNESS: No, sir.

Q. Nevertheless you knew the papers were going to be served?

A. Yes.

Q. And you didn't tell Mrs. Cartan that it would be much easier for you to get your divorce if she went to Florida and stayed there until it was over?

A. I didn't.

Q. And weren't you very angry when she returned home two weeks later and asked her what she meant by returning and breaking your agreement with her?

A. I said no such thing.

Q. And wasn't your daughter Helen present at the time you said it?

A. Said what?

Q. What I have just said.

A. No, sir.

Q. You were angry, however?

A. No, sir.

Q. You were very much surprised to see her?

A. I didn't know she was coming back.

Q. Were you very much surprised when you did see her?

A. Yes, I was surprised.

Q. And why were you surprised?

A. I didn't know that she was going to make a trip back so quick.

Q. You didn't expect her back so quick?

A. I didn't know anything about it.

Q. You knew that if she went to Florida under the circumstances, having been served with papers in a divorce suit the night before, that she would have no opportunity of conferring with New Jersey lawyers and prepare answer, did you not?

A. She knew we were going to file the suit because I talked with her about it.

Q. (Last question repeated.)

A. I did not.

Q. You knew that was the inevitable result, did you, of her departing from the city?

A. I did not, no, sir.

Q. Do you say now that you didn't thing anything about that?

A. No.

Q. It never entered your head?

A. No, sir.

COURT: You were at home the night your wife was served with the papers in this suit?

WITNESS: Yes, sir.

COURT: What did she say after the papers were served upon her, if anything?

WITNESS: I don't remember anything. I don't recall what she said; I wasn't there when the papers were served.

COURT: You just told me you were; were you or were you not there?

WITNESS: I wasn't in the house at the time the papers were served.

COURT: Did you come in shortly after they were served?

WITNESS: Yes.

COURTS Did she make any reference to the fact that she had been served?

WITNESS: I think she told me that she had been served with the papers.

COURT: What did she do with the papers that were served upon her?

WITNESS: I don't know.

COURT: Did she take the paper to Florida or leave it in the home?

WITNESS: I don't know.

COURT: Did you see it after her departure?

WITNESS: No, sir.

Q. Did you have any conversation with Miss Helen, your daughter, after her mother's return from Florida the first time, and ask her if she had requested her mother to return, or had written her a letter relative to her return?

A. I don't remember any such conversation.

Q. Did you have any conversation with your daughter Helen relative to her mother's return?

A. Not that I remember.

Q. Did you complain to your daughter Helen about your wife's return from Florida, saying that you had not expected her to return, and thought she was going to stay in Florida until you had obtained your divorce?

A. No.

COURT: Had you ever sent the family to Florida in any previous winter?

WITNESS: No.

COURT: Or incurred any such expense for their care during the winter?

WITNESS: No, sir.

COURT: Was there any special reason why that expense should be incurred this year and why they should take this trip at this particular time?

WITNESS: No, sir.

Q. Your wife had often requested you to send her to Florida previous winters?

A. Yes.

Q. After your conversation with your brother Ren in May, 1918, you had another conference with your brother Ren, his wife and James Carton, did you not?

A. Yes.

Q. And the purpose and basis of this conference were a divorce suit?

A. Yes, so far as I know.

Q. You talked over your evidence, did you not, with them?

A. No, not all of it.

Q. I didn't say all of it, but you talked over with them your evidence that you had?

A. Yes, sir.

Q. And you tried to get further evidence, did you?

A. No, sir.

Q. You made no effort to get any further evidence?

A. No.

Q. Did you authorize anybody to?

A. No, sir.

Q. Did you confer with any other person in Matawan or any other place, other than the persons of whom you have spoken, concerning the difficulty that you were in,

or your wife was in?

A. In what way?

Q. Seeking advice; did you seek the advice of any person other than your own family?

A. Not that I know of.

Q. You went to no other person in Matawan?

A. Not seeking advice, no, sir.

Q. Did you go to any other person in Matawan with the idea of ascertaining whether they had seen any improper conduct between your wife and Mr. Devlin?

MR. WILSON: If that is designed for the purpose of contradiction, it seems to me that the witness is entitled to have his attention directed to the purpose.

COURT: Yes. I don't know yet what the purpose of it is. What is it?

MR. APPLEGATE: The sole purpose is to show that this man has relied absolutely upon the statements made to him by his immediate relatives, the Cartans, and has made no individual effort on his own part to ascertain whether those stories that were told to him were true.

MR. WILSON: The purpose is not then for the purpose of contradiction?

COURT: He may answer it.

A. No, sir.

Q. So that you have relied, and still do rely, for the purposes of this suit, upon the stories that were related to you by your brother and sister-in-law?

A. There is one other.

COURT: Name him.

WITNESS: Mr. Tice.

Q. He is more or less in the family, too, isn't he?
A. Yes.
Q. Any others in the family that you wish to name?
A. No.
Q. Or out of the family, for that matter; if there are any, you may name them.
A. No, sir.

CROSS EXAMINATION BY MR. LANE:

Q. Mr. Cartan, what difference was there between your conduct so far as your wife was concerned, preceding May, 1918, and succeeding May, 1918, up until October, 1918?

COURT: Was there any?

WITNESS: No particular, no, sir.

Q. No particular difference? You don't mean that quite, do you, because there was a cessation of sexual intercourse, wasn't there?

COURT: Between May and October?

A. No.

Q. There was not or there was?

A. Between May and October I did not have intercourse.

Q. Then there was a cessation of sexual intercourse?

A. Yes.

Q. Then there was that change in your relations, wasn't there?

A. Yes.

Q. There was no other change in your relations that you can now put your finger on, is that right?

A. No, sir.

COURT: It is right then; you mean yes, it is right?

WITNESS: What is that now?

COURT: You say no, sir; that doesn't answer the question, because he asked you if that was the only change in your relations between yourself and Mrs. Cartan during that period. He asked you if that is right, you say No, sir; isn't it right; and if it is not, why is it not right?

WITNESS: I didn't have any intercourse with her after the spring of 1918.

COURT: Was there any other change, he asks you, in your relation, except that, with your wife, up to October, 1918?

WITNESS: Not that I know of.

Q. Between the time your wife left your room in

January and the time Ren told you about this episode in the chicken house, about how many times did you have sexual intercourse with your wife; can you remember?

A. I cannot answer; not many.

Q. Was it at regular intervals or just as it so happened?

A. As it so happened.

Q. Three or four times a month?

A. No, sir.

Q. Once or twice a month?

A. I don't think so.

Q. At least more than once between that period?

A. I don't think so.

Q. You don't think so?

A. No, sir.

COURT: What are you talking about: I don't understand this line of testimony; first he said he did, and then he don't think he did.

WITNESS: I don't think there was over once.

COURT: Between the time when Ren told you about this and the time when you and he had this talk?

WITNESS: About once a month he said; about once a month is what he asked me.

COURT: Is that what you mean your answer to be?

WITNESS: Yes, not over that.

Q. That is between January and May?

A. Yes.

Q. January, February, March and April, is that right?

A. Yes.

Q. And each time you went to your wife's room, is that right?

A. I think so.

Q. Was anything said either by you or your wife after May as to your ceasing these visits to your wife?

A. No, sir.

Q. You said nothing and your wife said nothing; it just passed as a matter of course?

A. That is it, yes, sir.

Q. What change was there, if any, in your conduct after May, 1918, with respect to Mr. Devlin?

COURT: That is, how did he treat Devlin; differently, if at all?

Q. Yes, the relations between you and Devlin, if there was any change, and if so, what change was there?

A. I didn't feel very pleasant toward him.

Q. How did you act toward him?

A. After I learned of it I didn't even speak to him.

Q. What?

A. No, sir.

Q. Do you mean that?

A. Yes, sir.

Q. Do you mean that you did not speak to Mr. Devlin after May, 1918?

A. After learning of the incident.

Q. You learned of the incident in May, 1918; do you mean you didn't speak to him between May, 1918, and

October, 1918?

A. I might have spoken to him once or twice.

Q. At any rate, it was entirely different from the way you treated him before?

A. Yes.

Q. And that continued?

A. Yes.

Q. Did he say anything about that?

A. No.

Q. Change in your conduct? 10

A. No.

Q. Not a word?

A. No.

Q. Then, as I understand you, commencing in May, 1918, you spoke to him only once or twice in an entirely different way from the way you treated him before that?

A. Yes, sir.

Q. But nothing was said either by Devlin or by you as to the reason for it, is that right?

A. Yes. 20

Q. Did you go out riding with him after May, 1918?

A. No, I didn't.

Q. Did you go out to any card parties with him after May, 1918?

A. No, sir.

Q. Did you go out to dances with him after May, 1918?

A. No, sir.

Q. Was there any occasion that you and your wife, Devlin and Mrs. Devlin were together after May, 1918? 30

A. No, sir.

Q. You had been going out together up until May, 1918?

A. Yes.

Q. So that with respect to your going out, there was a complete change in May, 1918, wasn't there?

A. Yes, after I hear of it.

A. A complete change?

A. Yes.

Q. Nothing was said by Devlin about that?

A. No, sir.

Q. Nothing was said by Mrs. Devlin about that?

A. No.

Q. Nothing was said by your wife about that?

A. Not that I know of.

Q. To you I mean.

A. No.

Q. And you never said anything about it?

A. No.

Q. What happened in October, 1918, to cause you to move towards actually obtaining a divorce?

COURT: Why did you get busy at that time?

WITNESS: I couldn't wait any longer.

Q. What were you waiting for?

A. I advised with my counsel and he told me to hold off.

Q. Was there anything happened or was it a mere lapse of time; did anything happen, any incident happen that caused you, as the Court put it, to get busy in October?

A. No particular happening, any more than I couldn't stand it any longer.

COURT: What were you expecting to happen by waiting, or your counsel?

WITNESS: He said that for the sake of the children I better hold off, and kept putting me off, and in October, 1918, I couldn't stand it any longer.

Q. So that it was a mere lapse of time?

A. Yes.

Q. When did you know that Mrs. Ren Cartan had told Mrs. Devlin?

A. That was on October 1, the day I accused my wife of intimate relations with Devlin.

Q. Then you knew it the day that Mrs. Devlin was told?

A. Yes.

Q. What?

A. My brother told me about it.

Q. I am now talking about October, 1918; you knew or you know now that Mrs. Ren Cartan had told Mrs. Devlin of these intimate relations between Devlin and Mrs. Cartan?

A. Yes.

Q. How soon after Mrs. Devlin was told did you know it; did you know the fact that she was told the same day?

A. The same day.

Q. Weren't you in Ren's house when she was told?

A. No, sir.

Q. How soon, how many minutes or hours was it after she was told, that you knew it?

A. A short time.

Q. How many?

A. Inside of an hour, in a few minutes, probably fifteen or twenty minutes or half an hour.

Q. Where were you?

A. In my store.

Q. Who told you?

A. Mrs. Cartan told me.

Q. Then you first heard of it from Mrs. Cartan?

A. Mrs. Ren Cartan.

Q. Mrs. Ren Cartan told you?

A. Yes.

Q. She came over to your store and told you?

A. I don't remember how I got it from her, but she told me at that time.

COURT: Did you know that she was going to tell it to Mrs. Devlin?

WITNESS: Yes.

COURT: What was the purpose of telling her?

WITNESS: No purpose, but I couldn't hold up any longer.

COURT: How was it going to make you hold up any longer by disclosing it to her?

WITNESS: I thought she should know it.

COURT: How would it help you?

WITNESS: I don't know.

Q. When had it been arranged that Mrs. Ren Cartan was going to tell Mrs. Devlin?

A. Shortly after I had accused my wife of her relations with Devlin.

Q. That Sunday night?

A. No, on October 1, just before that Sunday night, a few days before.

COURT: Then it was sometime in September?

WITNESS: No, October.

COURT: That was the first of October?

WITNESS: Yes.

Q. It was on October 1 that Mrs. Ren Cartan told Mrs. Devlin?

A. Yes.

Q. Mrs. Ren Cartan told Mrs. Devlin as the result of an agreement, didn't she? It was agreed that she should do the telling, that is right?

A. Yes.

Q. When was that agreement reached, and who were the parties to it?

A. I was going to tell Mrs. Devlin myself.

Q. When?

A. On October first.

Q. The same day?

A. Yes.

Q. Where?

A. She said that she would tell Mrs. Devlin; she saw that I was very angry about it and I told her I was going

to tell Mrs. Devlin, and tell her right away, and wasn't going to wait a minute, and she tried to hold me back, she said, "Hold on, Johnce, let me tell her; if she has got to be told, let me tell her; maybe I can tell her better than you can." I said, "If you are going to tell her, all right, I will go over to the store and phone for her to come down", which I did, and I understand she told her a little later, probably half an hour.

Q. Will you answer my question; was anyone present at the place except you and Mrs. Ren Cartan at the time of the agreement?

A. No.

Q. What time of the day was it?

A. In the afternoon.

Q. Where? In Mrs. Ren Cartan's house?

A. No.

Q. No one else was there?

A. No.

Q. Mrs. Bert Cartan was not there?

A. No.

Q. Who started the conversation with respect to it?

A. I did.

Q. You went to the house for the purpose of seeing Mrs.—

A. I saw her alongside of the house on the way down from my house.

Q. Was it an accidental meeting?

A. Yes.

Q. With Mrs. Ren Cartan?

A. Yes.

Q. But the first thing you said was that you were going to tell Mrs. Devlin and tell her right away that you were so mad you couldn't wait another minute, or

words to that effect?

A. Yes.

Q. That is the impression you gave?

A. Yes.

Q. Well, when did you so suddenly get so mad?

A. I didn't get so mad; I was getting mad all the time.

Q. You were at that time what you call real mad?

A. Yes.

Q. Up to that time you hadn't been real mad?

A. Not until that time.

Q. It was then that you got real mad?

A. Yes.

Q. Was there anything particular that made you real mad at that particular moment?

A. I just left telling my wife about it up in the house; I didn't feel very pleasant.

Q. Then you told your wife about this thing before Mrs. Ren Cartan told Mrs. Devlin, is that right?

A. Yes.

Q. You went directly from your wife to Mrs. Ren Cartan?

A. I didn't go directly; I come down the street and happened to see her alongside of her house.

Q. It was directly, but not by premeditation?

A. No.

Q. Tell us what you told your wife that day.

A. "You have been intimate with Pat Devlin down in the back yard in the out house." Down in our back yard, in an outhouse down there, I accused her.

Q. What did she say?

A. She denied it.

Q. What did she say?

A. She said no; I don't remember her words, but it was equivalent "no, I havent."

Q. Can't you remember some of her words?

A. Not exactly.

Q. Do you remember your words; were those the words you used, " You have been intimate with Pat Devlin"?

A. I accused her with intimacy with Pat Devlin.

Q. What led up to your saying this?

A. I couldn't wait any longer; I held off and had been held off by my cousin as counsel and I couldn't stand it any longer, so I went to my wife and I accused her the house, in her own home.

Q. This was the first of October?

A. Yes.

Q. And she denied it?

A. Yes.

Q. When she denied it, what did you say?

A. I told her it was so, I knew it was.

COURT: Did you tell her how you knew it was so?

WITNESS: I didn't tell her how I knew, no, sir.

COURT: What else did you say?

WITNESS: I don't remember anything else; I just accused her of improper relations with Devlin.

Q. Did she ask you how you knew it?

A. No, sir.

Q. What did she say?

A. She denied it.

Q. Did she ask you how you knew it, or anything about it?

A. No, not at that time.

Q. Did she get mad?

A. Yes.

Q. How did she express her anger?

A. She was very mad about it.

Q. What did she say that indicated she was mad; was she indignant?

A. Yes.

Q. Can you tell what she said that indicated her indignation and her anger?

A. I don't remember just what she said.

Q. Did she call you any names?

A. She denied it and told me it wasn't so, there was no truth in it.

Q. Did she call you any names?

A. I don't think so.

Q. Have you any recollection whether she did or didn't?

A. No.

Q. How long did this conversation take place?

A. A few minutes—five or ten minutes.

Q. What?

A. Five or ten minutes.

Q. What, five or ten minutes?

A. It might have been ten minutes.

Q. All you can recall—you told us now all you can recall as to what was said at that talk, is that right?

A. Yes.

Q. And when was it that thte idea rose in your mind "I am going to tell Mrs. Devlin about this"?

A. That idea arose in my mind all the time; after

my brother told me about it, I wasn't satisfied, never.

Q. It had been in your mind, then, to tell Mrs. Devlin, from May, 1918?

A. To tell Mrs. Devlin?

COURT: Then when did you first have it in your mind to tell Mrs. Devlin?

WITNESS: Not to tell Mrs. Devlin.

Q. That is what I am talking about; when did you first get the idea you wanted to tell Mrs. Devlin?

A. A few days before.

COURT: A few days before accusing your wife?

WITNESS: Yes.

Q. Did you talk to anybody about telling Mrs. Devlin before you talked to your wife?

A. No.

Q. Can you tell me why it was that idea came to your mind two or three days before you talked to your wife?

A. No particular reason; I thought she ought to know it. I couldn't hold myself any longer and I wanted to tell some one.

Q. Well, the way to tell somebody was to file a suit for divorce, wasn't it?

A. Not when you are pretty mad about a thing,—not right away.

Q. So that your telling Mrs. Devlin was the result of this anger which had been growing for the past three or four months?

A. Yes.

Q. And that is the reason why you wanted to tell Mrs. Devlin, because you were angry?

A. No.

Q. What was it?

A. I thought she should know it.

Q. After you knew that Mrs. Devlin had been told, how long was it after you knew that Mrs. Devlin had been told, that you next talked with your wife?

A. The following Sunday.

Q. October first of that year came on Tuesday, did it not?

A. I don't remember what day it come on.

Q. That is subject to correction; that is what I am informed the calendar shows. It was the following Sunday that you had your talk with Mrs. Cartan?

A. Yes.

Q. She sought that conversation, not you; didn't she?

A. She come up from her brother's house—

Q. She sought that conversation and not you, that is right, isn't it?

A. Yes.

Q. And the first thing she said to you, if I recollect your testimony correctly, was, "Who told Mrs. Devlin about my intimate relations with Devlin?"

A. Yes.

Q. Those are the words she used?

A. Yes.

Q. I want to be perfectly clear; is that your impression of the words she used, or is your recollection clear that those are the words she used substantially?

A. Substantially.

Q. She used the words "my intimate relations with

Devlin"?

A. With "Pat" I think she said.

Q. You considered that, of course, an admission that she had been intimate with Mr. Devlin, or with Pat?

A. Yes.

Q. Did she offer any explanation as to her change from indignation and anger to confession?

A. I don't remember.

Q. Didn't it rather astonish you that the last time being indignant and angry, the next time she saw you she would confess it immediately?

A. I cannot say that it did.

Q. If it didn't, why didn't it?

A. I don't know.

Q. You are sure she used the word "intimate"?

A. "Intimate relations".

Q. "Intimate" was the word she used?

A. Yes.

Q. No doubt in your mind about that, is there?

A. I understood her to use the words "intimate relations".

COURT: You understood that to mean improper relations?

WITNESS: Yes.

Q. What did you say when she said that?

A. I asked her when that happened; she said "Some time ago, but it happened." I asked her again, "Didn't you have any thought for your children when you committed that act?" She said, "Yes, but that is one of the foolish things that women do sometimes." I asked her

again, "Have you any thought for Devlin now?" She said "Yes, I think a lot of Devlin and I know he cares a lot for me."

Q. I asked you when she said to you, "Who told Mrs. Devlin about my intimate relations with Pat" what you next said; is it a fact that you then said, "When did it happen?" immediately in reply to that?

A. Yes, sir.

Q. That is a fact, is it?

A. Put that question again.

COURT: What did you say, was the question, when she told you—asked you who told Mrs. Devlin of her intimate relations with Pat, what did you say?

WITNESS: That was another night.

COURT: What did she say, is the inquiry.

Q. What did you say, after she asked you this question on this Sunday night, when you say she came in and opened the conversation with this question; what did you say to her when she asked the question?

A. I told her I wouldn't tell her who told me; she asked me who told me about it.

COURT: You said you wouldn't tell her?

WITNESS: Yes.

Q. She asked who told Mrs. Devlin or who told you?

A. Who told Mrs. Devlin.

Q. You said you wouldn't tell her?

A. Yes.

Q. Then what next happened?

A. We talked along there after that—I didn't tell her, and I have never told her from that day to this.

MR. WILSON: Told her what?

COURT: Who had told Mrs. Devlin, is that what you mean?

WITNESS: Yes.

COURT: The question is what else did you talk about in that conversation or interview you had?

WITNESS: We talked along there that night about the disgrace she had brought upon her family. She kept at me all the time and she wanted to know who it was that "told Mrs. Devlin about my intimate relations with Pat", and I didn't tell her, and I wouldn't tell her, and I have never told her from that day to this.

Q. Have you prepared a written statement of the facts in this case?

A. No, sir.

Q. Never?

A. A written statement of the facts?

Q. Yes, of what you knew.

A. I kept a little diary.

Q. Where is that diary?

A. Home.

Q. Did you ever sit down and write out what you knew about this case?

A. I think I have made notes about it.

Q. When did you make those notes? Recently or before you started your suit?

A. Before I started my suit.

Q. When?

A. I made notes along at different times after my brother told me about this intimacy.

Q. Did your brother make a memorandum, too, do you know?

A. I don't know; I think he did.

Q. Have you seen him?

A. No, I never had access much to his statements, no, sir.

COURT: Whether much or little, did you see them?

WITNESS: I saw some of them.

Q. Where did you see them?

A. He showed it to me.

COURT: He showed them to you?

WITNESS: Yes.

COURT: Where did he show you?

WITNESS: Down home.

Q. What do you mean by statements?

A. A little diary.

Q. A diary and a statement are two different things; you said "statement"; what do you mean?

A. I meant to say diary.
Q. You meant diary when you said statement?
A. Yes.

COURT: You meant your brother kept a diary as well as yourself?

WITNESS: Yes.

Q. When did you start to keep this diary?
A. I don't know when he started.
Q. When did you start to keep this diary?
A. Oh, after, when I learned of my wife's intimacy from my brother.
Q. After May?
A. Yes.
Q. How long after May, a month or two?
A. I don't know. A little while after.
Q. And you kept a diary ever since?
A. Not lately I haven't kept any memorandum.
Q. When did you stop keeping a diary?
A. Quite some time ago.
Q. When? In October, 1918; is that when you stopped?
A. I think I kept a little diary until the time the bill was filed.
Q. Up until the time of the commencement of the suit?
A. Yes.
Q. Leaving out of consideration this little diary, have you ever sat down and written out the same story of your relations with your wife that you told us here on the stand, or substantially the same, or any part of it?

A. I have made some notes; I don't remember writing the full story, partly.

Q. When did you do that?

A. Written at different times; I didn't have no particular time for it.

Q. Where are they?

A. Home.

Q. Did you give them to your lawyer?

A. I handed him some statements or some parts of the diary.

Q. I am not talking now of the diary; I am talking about these separate notes.

A. I think I showed them to my lawyer.

Q. Did you give them to your lawyer?

A. Yes.

Q. When did you get them back from your lawyer?

A. Quite some time ago.

Q. They are home now?

A. Yes.

Q. Did Ren Cartan, to your knowledge, give your lawyer also a statement in writing of that kind?

A. I think he did.

Q. Did he get that back from the lawyer?

A. I think so.

Q. Did he take them to his house and has he them there, so far as you know?

A. So far as I know.

Q. Were these statements a complete story?

A. I don't think so.

Q. What was the purpose in preparing it?

A. I wanted to keep a little diary of the suit.

Q. To refresh your recollections?

A. Yes.

Q. How long before you came on the stand was it that you last referred to these papers for the purpose of refreshing your recollection?

A. I referred to them at different times.

COURT: When did you last refer to them?

WITNESS: A few days ago.

Q. How many days ago?

A. Four or five days ago.

Q. This conversation that you had on the Sunday following October first was a comparatively pleasant conversation between your wife and yourself, was it not?

A. Not particularly pleasant, no.

Q. There was no anger?

A. Some.

Q. On whose part?

A. Both.

Q. Both angry still? What did your wife express anger about at this time? As I understand you, she opened the conversation by confessing her guilt?

A. Yes.

Q. And what was she angry about?

A. She wasn't particularly angry and she wasn't particularly pleasant either.

Q. You said a few moments ago that she was angry, and I asked you on whose part, and you said on the part of both. It couldn't be because you were accusing her of adultery, because it was there that she confessed it; why was it that her anger was expressed?

A. I don't know.

COURT: Is that recital correct? You say on that occasion he accused her of adultery and she confessed it. You are referring to the Sunday occasion or to October first?

MR. LANE: The Sunday following October first.

COURT: He didn't accuse her then and she didn't confess; she came in and asked the question "who told Mrs. Devlin of my intimate relations with Pat?"

MR. LANE: Did I use the word "adultery"? Strike out that question.

Q. Have you any recollection now as to what it was upon this occasion that caused her anger?

A. I haven't any recollection.

Q. What was it upon this occasion thtat caused your anger?

A. I was angry about it all the time.

Q. Expressing it; what was it that you expressed your anger about on this occasion, this Sunday now?

A. She kept after me all the time and wanted to know who it was that told Mrs. Devlin and kept continually after me all the time.

Q. That was the part about which there was anger expressed?

A. Yes.

Q. Otherwise your conversation was pleasant?

A. Fairly pleasant.

Q. Rather sorrowful?

A. I cannot say it was.

COURT: Neither of you sorry about this situation; is that what you want me to understand?

WITNESS: How is that?

COURT: Do you wish me to understand that neither of you were sorry about this reported account of your relations?

WITNESS: Oh, yes.

COURT: That is what Mr. Lane was asking; wasn't it a sorrowful occasion?

WITNESS: A very sorrowful occasion?

COURT: And so expressed?

WITNESS: Yes.

Q. If I got the import of your testimony on direct correctly, as between you and your wife, the first person who suggested a divorce was your wife?

A. She seemed to be anxious for a divorce.

COURT: Is she the first one who suggested it?

WITNESS: I told her I was going to get a divorce.

Q. When?

A. That was in October, 1918.

Q. At which one of these conversations; and if there was another one, when was it?

A. A little while after the Sunday you spoke of.

Q. Then what happened?

A. I told her on this occasion that I was going to start suit for divorce and name Devlin.

Q. When was it, as near as you can recollect, how long after the Sunday?

A. A few days, towards the forepart of the month.

Q. Where was it?

A. In our home.

Q. How did the talk come to come up?

A. I don't remember how that happened, just how it come up.

Q. Do you know what time of the day it was?

A. I don't remember that, no.

Q. Did you start out the conversation of saying "I am going to get a divorce from you and I am going to name Pat Devlin"?

A. Yes.

Q. Were those your first words?

A. I don't remember that, but that is what I said I was going to do, in that conversation with her.

Q. What did she say?

A. She said, "Why didn't you do this before; why didn't you do this before the—why did you want to bring up an old affair that happened a long time ago for at this late day? Why did you leave it until the children got so old?"

Q. What did you say to that?

A. I made no reply.

Q. Have you told us all of that conversation?

A. Yes.

Q. When was the next conversation that you had with your wife with respect to a divorce?

A. I don't remember.

Q. There was another one, wasn't there?

A. In October?

Q. I don't know whether it was October or some other time.

A. I don't remember whether there was or not.

Q. Did you have any other conversation than this one that you have already testified to, with your wife with respect to getting a divorce?

A. She brought it up to me two or three times.

Q. What did she say?

A. She said, "I wish you would"—she kept asking me daily, at different times during November, she said to me, "I wish you would start your suit, I want a divorce."

Q. What I want to know it, when was it that she first used the expression which you used on your direct examination, "I want a divorce"?

A. I think it was the latter part of October or along in November, that year; I don't just remember the date.

Q. Do you remember the circumstances under which that expression was used?

A. Yes, I do.

Q. Let us have it.

A. She asked me if I would pay her way to Florida, herself and the children, for the winter; I told her I didn't think she should go, she might be needed here in our suit. She said, "I wish you would start your suit; I am not going to defend it, I want to have a divorce."

Q. When was that?

A. That was in October—the latter part of October or November.

Q. Had there been any talk about going to Florida before that?

A. Yes.

Q. When was the first talk about going to Florida?

A. I think she spoke to me about it along the latter part of October.

Q. Did you tell her that you would let her go when she first spoke about it?

A. No, sir.

Q. What?

A. I told her, just as I said, I didn't think she should go.

Q. She first spoke to you about this Florida trip in the latter part of October, is that right?

A. Yes.

Q. When she first spoke to you about the Florida trip, did you agree to send her?

A. Not at that time.

Q. Did she continually keep after you to send her to Florida?

A. Yes.

Q. It wasn't until this conversation that you have testified to, in which the expression was used that she wanted a divorce, that you agreed to send her to Florida, is that right?

A. I think it was a little later than that.

Q. You didn't agree to send her at that time?

A. I think is was in November when I agreed to send her.

Q. How long after the conversation you testified to, about, was it that you agreed to send her to Florida?

A. I think in the middle or forepart of November.

Q. Was it a week or day or few days after this conversation in which she said she wanted a divorce?

A. About a week or two weeks after.

Q. A week or two after she told you that she wasn't going to defend this suit; can you give us the date you gave her the money to go to Florida?

A. I didn't give it to her all in one day; I think I gave it to her in December.

Q. Did you purchase the tickets for her?

A. No, she purchased them; I gave her the money to go to New York and get them.

Q. You think it was in the forepart of December?

A. Yes.

Q. So that within the space of a month and a half she changed from anger and indignation at the charge of intimate relations, to a statement which admitted intimate relations,—to a position where she was willing to have you get a divorce upon the ground of adultery with Pat Devlin, is that right?

A. Yes.

Q. That is what happened and that is as you understood it at the time, is that right?

A. Yes, sir.

Q. When you first saw James Carton after Ren had told you in May about what he had seen in thte chicken house, you told James, I suppose, that you contemplated getting a divorce, didn't you?

A. I told him that was the way I felt about it.

Q. And you told him that that was the ultimate thing you were going to do, unless something unforeseen happened, didn't you?

A. He put me off.

Q. You told him, I suppose, that you were going back and live in the same house with Mrs. Cartan?

A. I don't remember telling him anything like that.

Q. You didn't tell him anything to indicate that you

were not going to?

A. I think I asked him if it made any difference; he told me it didn't.

Q. And he told you that it didn't make any difference whether you went back and lived in the same house with her or not?

A. I think that was the way it was.

Q. How did this conversation come up; what was said with respect to that?

A. I think when I was in conversation one day I asked him if that made any difference.

Q. One day when, before October or after October?

A. No, it was after October.

Q. Was it after October?

A. After I had been down to see him several times.

Q. I am talking about the first time you went to see him; according to your testimony on direct, if I recollect correctly, immediately upon hearing from Ren, or almost immediately upon hearing what Ren had to say to you, you went to James Carton for advice?

A. Yes.

Q. You told James Carton what Ren had told you?

A. Yes.

Q. You told James Carton that in your opinion your wife was guilty of adultery?

A. Yes.

Q. And that you contemplated getting a divorce, that is right?

A. Yes. That is the way I felt about it.

Q. You didn't tell him anything which indicated that you were going to leave the house or anything of that kind?

A. I asked him if it made any difference.

Q. Was it at that time that you asked him whether it would make any difference or not?

A. I think I asked him two or three times, but at that time I remember I did.

Q. Do you remember whether that was the first time you asked him?

A. I think I did.

Q. And he told you that you could with safety go back there and remain in that house notwithstanding that your wife and family were in the same house; is that right?

A. I don't think that he used the words "with safety".

Q. That it wouldn't make any difference?

A. It wouldn't make any difference.

Q. Did he warn you that if you slept with your wife your case would be gone?

A. I think he said something about that.

Q. Did he warn you with respect to taking any precautions to have any one falsely say that you slept with your wife?

A. No.

Q. He didn't indicate that that might be done?

A. No.

Q. He didn't indicate that you were putting yourself in at least a dangerous position, did he?

A. No.

Q. That wasn't talked about?

A. No.

Q. Isn't it a fact, Mr. Cartan, that on the first day of October—that a few days, not more than one or two days after the first of October, you met Mr. Pat Devlin at the directors' meeting of the Farmers' and Merchants' Bank of which you and he were directors, and that you walked

down the street with him after the meeting?

A. No, sir.

Q. You remember the incident of the meeting?

A. I do.

Q. But you didn't walk down the street with him or have any intimate conversation with him?

A. No.

Q. And you didn't open the conversation with him by saying, "Pat, which way are you going?"

A. No, I didn't.

Q. Or words to that effect?

A. No.

Q. You were at the meeting of the directors?

A. Yes.

Q. Had you been there at the meeting of the directors at the same bank between May and October upon several occasions—how often do those directors meet?

A. No particular time.

Q. How often did they meet between May and October, 1918?

A. Probably a couple of times, two or three times.

Q. What other board of directors are you on with Pat Devlin?

A. No other.

COURT: Were you on any committee of the Board with him?

WITNESS: We are on the discount committee together, but it is hardly ever in session.

COURT: And on the examining committee?

WITNESS: Yes.

COURT: Did you ever meet on that?

WITNESS: Yes.

COURT: How often between May and October?

WITNESS: I don't think there was any meeting between those dates; I think we met two or three times a year, and have no particular time.

COURT: Don't you have a regular monthly meeting of the directors?

WITNESS: No.

Q. Were you on any other board of directors; where in business or politics did you come in contact with Devlin at that time?

A. We are in the Building and Loan together, but we hardly ever meet together in that; there are never over one or two directors there.

Q. Do you remember July 1, 1918, going with Mr. and Mrs. Devlin and Mrs. Cartan to Clayton's.

A. No, sir, I do not.

Q. Clayton's Hotel; do you know where Clayton's Hotel or restaurant is?

A. I don't know.

Q. Down on the shore somewhere?

A. There is a place called Bigget's down there.

Q. Do you remember a place named Clayton's?

COURT: Bigget's was formerly Clayton's.

Q. Then Bigget's, if it is the same as Clayton's; do you remember in July, 1918, going down there with Devlin and Mrs. Devlin and Mrs. Cartan?

A. I do not; I did not.

Q. You did not?

A. No, sir.

Q. Going back to this Sam Van Marter incident for a moment; what time of the night was it?

A. Half past eight or nine o'clock.

COURT: What season of the year was it?

WITNESS: Spring.

Q. Late in the spring?

A. I think in April.

Q. You walked up to the house from the store?

A. Yes.

Q. What did you observe when you first got there that called your attention to anything; what did you do?

A. I don't know anything particular that I done; I went in to the house.

Q. Which door did you go in?

A. The front door.

Q. Did you open it with a key?

COURT: Was it locked?

WITNESS: I don't think it was.

Q. You walked right in, then?

A. Yes.

Q. And then what did you do; was the room in darkness or house in darkness?

A. Yes, just about dusk.

Q. It was dusk and no lights were lit?

A. No.

Q. What room did you first enter and what did you do?

A. I went into the hall.

Q. What next?

A. I stood in front of the door that leads to the parlor.

COURT: Was the door closed?

WITNESS: Yes.

Q. You stood in front of it, just facing the door?

A. I don't just remember, no.

Q. What happened then?

A. I stood in the door and in a few minutes my wife appeared in this door.

Q. How long did you stand in this door?

A. About three or four minutes.

Q. What were you doing there?

A. Probably only two or three minutes—I wasn't there very long.

Q. What was your purpose?

A. No particular purpose; I didn't hear anything in the house, I didn't know where my people were.

Q. You walked in front of the closed door and stood there for two or three minutes?

A. Yes, I stood there.

Q. Stood there looking at a closed door for that time?

A. No.

Q. What were you doing?

A. I stood in front of the closed door.

Q. Were you waiting for anything?

A. No.

Q. Why didn't you open the door?

A. No reason.

Q. Why didn't you holler if you didn't know whether there was anyone in the house, or say something?

A. I thought someone would show up in a few minutes.

Q. You were going to wait in front of a closed door until someone showed up in your own house?

A. I wasn't there no length of time.

COURT: Were you suspicious of your wife's conduct at that time?

WITNESS: Only with Devlin.

Q. Oh, you were suspicious of her conduct at that time?

A. Yes.

Q. And was it because of that suspicion that you acted as you did when you entered your home on this occasion?

A. No, sir.

Q. You had no suspicion that Devlin was in the house, at any rate?

A. No.

Q. That didn't enter your mind?

A. No.

Q. Did you know VanMarter was in the house?

A. No, I didn't.

Q. Had he been a frequent visitor in your home, Van Marter?

A. Yes.

Q. Both day and night?

A. Yes.

Q. And sat in with you and the family party, didn't he; you were present when he was there and Mrs. Cartan was there and Helen was there?

A. Yes, sir.

Q. There was nothing strange about him being in the house?

A. I thought there was, at that time.

Q. What happened after you stood in front of the door?

A. In a little while my wife appeared in this door and came out through the door and passed by me out on the front stoop.

COURT: Did she stand in the doorway for a while?

WITNESS: No, she come right on out.

Q. She walked right out of the room?

A. Yes.

Q. Why don't you say your wife *came out* of the door, instead of saying "My wife *appeared* in the door", and then your expression was—

COURT: What did she do; open the door and walk out of the room?

WITNESS: She opened the door and came out through this door and went out on the front stoop.

COURT: And passed you without addressing you?

WITNESS: Yes.

COURT: Did you address her as she passed?

WITNESS: I don't remember.

Q. We have her now appearing in the front door and going by you without saying anything to you and going out on the front porch; what did she do next?

A. I don't remember what she did; I know what I did. I went into the parlor through this door.

Q. What did you do next after that?

A. I saw who was in there.

COURT: You saw Van Marter there?

WITNESS: Yes.

COURT: He was sitting down there?

WITNESS: Yes, I think he was.

COURT: Did you speak to him and greet him?

WITNESS: No.

COURT: Did he greet you?

WITNESS: No.

Q. Tell us what you did while you were in the room; I want a picture of you walking in the room; what did you do?

A. When I saw Van Marter in there I come out.

Q. You walked into the room through the door; how far into the room did you go?

A. I went in to the middle of the room.

Q. About six or seven feet distance?

A. Yes, and it is a double parlor; I went to the middle.

Q. The front and back parlor?

A. Yes, I walked to the line between the rooms.

Q. Van Marter was in the back parlor?

A. Yes.

Q. What part of the back parlor was he in?

A. I think on the side, to the uptown side, in a chair.

Q. Righthand side?

A. Yes, in a chair.

Q. Sitting in a chair?

A. Yes.

Q. Is that where he usually sat at night?

A. I think so; not that I know of.

Q. Is there anything unusual in his being in the back parlor?

A. Yes, at that time of the night.

Q. Was there a light in there?

A. No, sir.

Q. Was it light enough for you to see who it was?

A. Yes.

Q. You walked in until you got to the dividing line and then what did you do; stand still and look at him?

A. No, as soon as I found out who it was, I come out and went upstairs.

Q. You turned around without speaking to him and walked out?

A. Yes.

Q. And then went upstairs?

A. Yes.

Q. That ended the incident?

A. No.

Q. What next happened?

A. I come down again in a few minutes, and then my wife was in the front sitting room, and I said to her—

Q. Was Van Marter there then?

A. No, he had gone out of the house; he went right out in the meantime.

Q. Did you see him go?

A. When I was coming down from the stairs I saw him going out on the stoop.

Q. How long did you stay upstairs?

A. Three of four minutes.

Q. What did you go upstairs for?

A. No reason.

Q. And as soon as you got upstairs you stayed three or four minutes and you thought you would come down again?

A. Yes.

Q. What was your object in going up and coming down again?

A. I had nothing to keep me upstairs.

Q. As well as nothing to take you up there originally?

A. I was a little provoked at the incident.

By the Court:

Q. What was there about it to provoke you?

A. I think he ought not to be in there at that time.

Q. What was there objectionable about him being there at half past eight or nine o'clock in the room, where it was light enough apparently, from the twilight for you to recognize the man?

A. When everybody was out of the house I didn't think it was a place for him to be.

Q. This young man had been waiting on your daughter?

A. Off and on.

Q. Agreeable to you?

A. Not agreeable to me.

Q. You had objected to his attention to your daughter all along?

A. Yes.

Q. Why didn't you tell him to refrain from his visits if you objected to his coming to the home?

A. Because my wife seemed to want him to come there.

Q. Do you wish to convey the impression to me that you thought there was some improper relation between your wife and Van Marter on that occasion?

A. I don't know about that.

Q. Is that why you introduce it to me now?

A. It looked to me so, yes, sir.

Q. Had you got in that frame of mind at that time that you were suspicious of your wife's relations with any man or every man?

A. Not with every man, no, sir.

MR. LANE: Of any man except the men you mentioned, Pat Devlin and Van Marter?

WITNESS: None that I know of.

Q. Had you ever seen any intimacy or impropriety between your wife and Van Marter?

A. No.

Q. Merely from their presence in this room on this particular occasion?

A. Yes.

FURTHER EXAMINATION BY MR. LANE:

Q. Did you see anything of Van Marter afterwards?

A. No.

Q. Did he continue his visits after that upon your daughter?

A. I don't think regularly, no, sir.

Q. What did you say to your wife when you came down?

A. I said, "Now I know the reason why you wanted me to go to the show to-night; I am ashamed of you; you are a darned sight more stuck on Sam than Helen is."

Q. What else?

A. Her reply to this was, "But that is nothing, he is only a boy."

Q. That is all?

A. That is all at that time.

Q. When was this in the spring of 1918, after you had been told by Ren or before?

A. Before.

Q. It was before Ren told you?

A. Yes.

Q. Do you know how long before?

A. I don't know, not very long.

Q. Your wife was angry?

A. She didn't like the remarks I made to her.

Q. You were angry?

A. Yes.

Q. You didn't say anything about Pat Devlin about that time?

A. No.

Q. Or about anyone else except Sam Van Marter?

A. No.

Q. You said in your direct examination something about being in a fluttered condition?

A. I said something about my wife passing me very quickly; she seemed to be all fluttered up.

Q. What do you mean by that word?

A. She seemed to be in an excited state of mind.

Q. Where did you get the word "fluttered"?

A. I don't know.

Q. That came from your head some way?

A. Yes.

EXAMINATION BY THE COURT:

Q. Is it the word you meant to use?

A. Fluttered, yes, sir.

Q. That would describe her condition as you understood it?

A. Yes, sir.

Q. Would that mean excitable?

A. Yes.

Q. How did she indicate that she was excited; what was it?

A. She passed me in a hurry and paid no attention to me and I couldn't understand it.

Q. How wide is this front porch, front porch, ordinary porch in front of a house?

A. Yes.

Q. How far from the front door on the porch is this door that you saw her come out of?

A. Probably ten or fifteen feet.

Q. Why didn't you ask her what she was so fluttered about, or step out on the porch with her?

A. I don't know why I didn't.

Q. You didn't think at the time she had been unfaithful to you, did you?

A. I didn't know that she had, no; I didn't think so, no.

Q. Then why did you attach any significance to the presence in the room of this young man and your wife?

A. I suppose she is old enough to be his mother.

Q. You must have had a very suspicious mind at that time about your wife's conduct to suspect improper relations between her and this young fellow.

A. No, not a very suspicious mind.

Q. Clear up in my mind why you think there was anything wrong on that occasion.

A. Well, my daughter was away.

Q. Out or town

A. Out of town, and there was no one in the house and I couldn't understand why it was that Van Marter was there at that time.

Q. Was he the only young fellow in town that called on your family?

A. He didn't live in town, he lived out of town.

Q. Or even out of town that called on your family?

A. There might have been some others.

RECESS

FURTHER CROSS EXAMINATION BY MR. LANE:

Q. When was it that you began to ask Ren for information which finally led to his disclosing the chicken house episode?

A. In the spring of 1918.

Q. About how long before you finally secured the information?

A. Two or three days, probably three.

Q. Only two or three days?

A. Or four days.

Q. Only three or four days?

A. Yes.

Q. During the three or four days before you finally got the information, how many times did you ask him for it?

A. Six or seven times.

Q. Where?

A. In my store, A. J. Cartan's store, Cartan & Devlin's store, down in the lumber yard.

Q. Down in the lumber yard on other occasions than the one when you finally got the information?

A. Yes, I met him down in the lumber yard a couple of times.

Q. What did you say to him when you first asked him for it?

A. I said, "Ren, Kate tells me that you know something about the trouble at my home."

Q. Is that all you said to him?

A. He stood me off.

Q. Is that all you said to him?

A. I said, "I want to know what you know."

Q. What did he say?

A. "I must know what you know."

Q. What did he say?

A. He stood me off.

Q. What did he say?

A. He said, "I don't want to tell you."

Q. Is that all he said, "I don't want to tell you"?

A. "I cannot tell you; I don't want to tell you; I cannot tell you, I am not going to tell you."

Q. Anything else?

A. That is all I remember.

Q. Did he say, "I don't know anything"?

A. I don't remember him making that expression.

Q. Did he say, "I do know something, I won't tell you"?

A. I don't remember that.

Q. When he said that, what did you say?

A. I said, "I know you know something; I want to know what it is." I kept after him for five or six days.

Q. The first time, I am talking about; what did you say in response to his statement that he couldn't tell you?

A. He didn't want to tell me.

Q. Did you turn around when he said, "I won't tell you; I cannot tell you; I don't want to tell you", and walk off?

A. No, I kept right after him.

Q. What did you say?

A. I said, "You must tell me; I must know it", and that is the way I went at him every time; he seemed to stand me off and didn't want to tell me.

Q. What did you say to him the first time after you said, "You must tell me"; then what did he say again, in reply to that?

A. He didn't want to tell me; he kept me off from

telling it to me. I could see by his actions that he knew something; I also knew that our sister told me that he knew something.

Q. When did she tell you that he knew something?

A. When I went to her.

Q. When was that?

A. Previous to seeing my brother Ren.

Q. Four or five days before you saw your brother Ren?

A. Right away after that, almost that day, I think, the first time.

Q. Then you saw your brother Ren the same day your sister told you that Ren knew something?

A. Yes.

Q. What led you to go to your sister?

A. I thought that she was a proper one for me to go to at that time.

Q. What led you to go to her at that time?

A. I had to go to somebody, and I thought that I should go to my sister first.

Q. Why did you have to go to somebody at that time?

COURT: What was in your mind; what made you get in that way?

WITNESS: Because I couldn't find out anything from my wife, what the trouble was in our home, and I made up my mind I was going to find out what had happened.

Q. What had happened, Mr. Cartan; as I understand it, this trouble with your wife had been continuous for a period of seven or eight years?

A. Yes.

Q. What had happened at this this particular time?

COURT: What trouble did you have then?

Q. That led you to go to your sister for information?
A. I didn't like the fondness of my wife for Devlin, and I told my wife I was going to find out what the trouble was, and I thought the proper person for me to go to, when I couldn't get information there, was to go to my sister. I went to her first and she told me right away quick, "I know there is something." After I asked her the question, she said, "You go to see Ren; he knows something, he will tell you."

COURT: Did you go to her because you thought she knew something of the trouble?

WITNESS: I didn't know whether she did or not.

Q. Was there anything that happened at or about the time that you went to your sister, out of the ordinary, that caused you at that time to go to your sister?
A. Any more than this incident about Van Marter, and all these other incidents that worked up in my mind.
Q. Was it the Van Marter incident which caused you to go to your sister?
A. That connected with the others.

COURT: Was the trouble any more acute at that particular time in your home than it had been for some years previous?

WITNESS: No, not at that one particular time.

Q. And your sister merely told you that Ren knew something?

A. I asked her if she knew what was wrong in my home, and she said, "Yes, I know there is something wrong in your home. You go and see Ren; I would rather he would tell you."

Q. Is that all?

A. That is about all.

Q. Is that all?

A. Yes.

Q. Your sister said, as I understand it, "I know there is something wrong in your house and you go and see Ren"?

A. That was the sum and substance of what she said.

Q. I want as nearly as you recall?

A. As nearly as I recall.

Q. Is that all that was said by your sister, as nearly as you can recall?

A. Yes.

Q. Did she tell you what Ren knew?

A. No.

Q. Or give you any intimation as to what Ren knew?

A. No.

Q. Merely said that Ren knew something?

A. Yes.

Q. And you had, I suppose, no intimation as to what it was that Ren was going to tell you?

A. No, sir, I didn't have any intimation.

Q. No thought of what it was?

A. No.

COURT: Had Tice ever spoken to you on the subject before that?

WITNESS: No.

Q. Had anyone?

A. No.

Q. So the only information you had, save what you observed with your own eyes, was that your sister said, "Ren knows", or "may know something"?

A. "Ren knows something."

Q. At the time you went and spoke to Ren, did you have any idea as to what it was Ren knew?

A. I cannot tell you, no, sir.

Q. Did you have anysuspicion as to what it was Ren knew?

A. I didn't know what it was, because my wife was acting bad, and I couldn't tell just what it was.

Q. Did you have any suspicion as to what it was that Ren knew?

A. I was afraid.

Q. What were you afraid of?

A. Afraid there might be something wrong

Q. Then you were suspicions as to what Ren knew?

A. Partly suspicious, yes.

Q. And acting upon that information as to what Ren knew, that you secured from your sister, you made these repeated demands on Ren and finally forced him to tell you something; is that right?

A. I kept after him, until he told me everything, yes, sir.

Q. And after you were told you upbraided him, did you, for holding it back for so long?

A. I don't think I did.

Q. Did you find any fault with him at all for holding it back for so long?

A. No.

Q. Do you remember finding any fault with him for holding it back so long?

A. No.

Q. Did you ever find any fault with him with respect to his conduct towards you in reference to the relations between yourself and your wife?

A. No, sir.

Q. Or intimate to him that you were displeased with what he had done?

A. No, sir.

COURT: How had been the relation between Ren and his wife and Mrs. Cartan up to this time, friendly or otherwise?

WITNESS: And my wife?

COURT: Had they been on friendly terms for the past few years or not?

WITNESS: I think so; I don't know of anything.

COURT: Was Ren's wife and your wife intimate and friendly?

WITNESS: Yes, sir.

Q. Had Mrs. Edna Cartan, Ren's wife, and Mrs. Devlin been on friendly terms for the past few years?

A. Yes, sir.

Q. Very friendly terms?

A. Yes, sir, I think so.

Q. Do you know anything about it?

A. I don't think there is any doubt about it.

Q. Two or three weeks after October first you saw Mrs. Devlin at the store, didn't you?

A. Yes, sir.

Q. How did you come to see her there?

A. She come down to see us, to see my brother Ren and myself.

Q. How did she come to be there; how was the appointment made?

A. She come down.

Q. Was it accidental or what?

A. I think she wanted to come down and talk with us about it.

Q. How did you happen to be there; what were the details that led up to that conference?

A. Mrs. Devlin made the arrangements.

Q. What do you know about it yourself?

A. Mrs. Devlin made the arrangements.

Q. With you?

A. She sent word through my brother Ren that she was coming down, she wanted to have a talk with us, in Cartan & Devlin's store.

Q. You hadn't suggested that conference?

A. No.

Q. You had sent for her to go to Mrs. Ren Cartan's house?

A. Yes.

Q. But you didn't send for her to come down to the store on this occasion?

A. No, sir, I didn't.

Q. You had the letters there, didn't you, or copies of

them?

A. Not at the first conference; the first time she came down was in Cartan & Devlin's store; at that time I didn't have the letters, no, sir.

Q. I am talking about the occasion you did have the letters; how did that conference come to be held; where was it?

A. Mrs. Devlin come down and made the arrangements for that conference.

Q. How long after the other one you have been talking about was that?

A. A week or ten days, a couple of weeks thereafter.

Q. Where was that held?

A. My store.

Q. Who was there?

A. Ren Cartan, myself and Mrs. Devlin.

Q. You had the letters there then?

A. Yes.

Q. You showed her the letters?

A. I read them to her.

Q. You also said when you read them to her that you had more, didn't you?

A. No, sir.

Q. You didn't?

A. No, sir.

Q. And didn't you say to her at the time you read them, "See, there you are", or words to that effect?

A. No.

Q. What did you say when you read them?

A. I said, "You see the reason why I cannot make up with my wife, can't you?"

Q. When did you say that?

A. At this second conference, just before I read the

letters.

Q. Was that after Ren left and went to Devlin or before Ren left and went to Devlin?

A. That was before; I said, "I had those letters, and you can see the reason why"—after I read these letters—"why I cannot make up with my wife."

Q. Then as I understand it, at this conference Mrs. Devlin was endeavoring to get you to make up with your wife, is that right?

A. Yes.

Q. And that was the purpose and you knew that was the purpose that she came there?

A. Yes, she asked me at that conference if I wouldn't make up with my wife.

Q. Will you answer my question; was that the purpose that she came there, to your knowledge?

A. To my knowledge.

Q. And you and Ren and she were there and she asked you as soon as she came in or after an ordinary space of time, whether you would make up with your wife, and tried to get you to make up with your wife?

A. I will tell you how she asked the question, if you want me to.

Q. Did she try to get you to make up with your wife?

A. She begged me to become reconciled with my wife.

Q. You told her you couldn't?

A. I couldn't, and I told her the reason why.

Q. You told her you couldn't?

A. Yes, at that time, before I read the letters.

Q. And she continued to beg you to make up with your wife, didn't she?

A. I don't think she asked me over once or twice.

Q. You firmly led her to understand that you would-

n't and couldn't?

A. I couldn't because I had seen those letters.

Q. And then Ren left?

A. Ren interrupted me from reading the letters; I was going to read the letters and he interrupted me and he said, "Hold on, Johnce, wait until I go and see Pat, and I want to go and see him before you go and read those letters." He left us and went out and was gone from twenty-five or thirty minutes, and he came back and he told me then to go ahead and read the letters.

Q. Did he tell you what he had said to Devlin and what Devlin had said to him?

A. No.

Q. Why was it—did you ask any explanation as to why he should interrupt you in the middle of reading these letters to Mrs. Devlin and go see Pat?

A. No, he said he wanted to go and see Pat and talk with him before I read those letters.

Q. Did you know what he was going for?

A. No.

Q. Did you have at that time any idea what was in his mind?

A. No, sir.

Q. Or what the nature of this errand was?

A. No, sir.

Q. And when he came back he didn't tell you anything about—

A. Not at that time.

Q. While Mrs. Devlin was there?

A. No.

Q. Didn't he come back and tell you that Pat had told him that he wouldn't confess, or words to that effect.

A. He didn't say that at that time.

Q. At that time he did't say that—he gave no explanation of the reason why he went, but simply when he came back, said, "You may go on and read the letters"?

A. Yes.

Q. And you read them?

A. Yes.

Q. And that ended the—

A. No, sir.

Q. What happened then?

A. After Mrs. Devlin heard the reading of the letters, she broke down and wept bitterly; we had to send for Ren's wife to come and pacify her. After she became pacified and leaving us, she said, "Then there is only one thing in this world for me to do, go home and blow out the brains of all my children and then kill myself."

COURT: Mrs. Devlin, at the time she was urging you to become reconciled to your wife, did she know her husband was implicated in your suspicions or the charges you were making?

WITNESS: I think she did.

Q. Do you know how she knew?

A. Mrs. Ren Cartan had told her of it.

Q. Prior to this conference?

A. Yes.

Q. Between May and October, 1918, what room did your wife occupy; how were the rooms arranged in that house? That occupied by your wife and that occupied by you?

A. My wife occupied the front room upstairs.

Q. On the second floor?

A. Yes.

Q. Above the parlor?

A. Yes,—no, it was over the sitting-room and hall

Q. Front at any rate?

A. Yes.

Q. Was that the room which you and your wife had occupied when you slept together?

A. No, sir, not at that time.

Q. What room did you occupy?

A. The back room on the other side of the house, on the same floor.

Q. Across the hall?

A. There was another room which was back on the side of the house, back of the room she occupied; there was a room between and a hall between that she occupied.

Q. How were the children arranged?

A. My daughter slept in the room—occupied the room right in front of the room that I occupied and alongside of the room that my wife moved to, and my son was on the opposite side of the hall, back of the room that my wife occupied, and my little girl, when my wife moved, she slept with my wife, in the front room, the big room in front.

Q. Where was the batth room?

A. Back of the hall upstairs, not quite to the top floor, in the back of the house.

Q. As I understand your testimony, between May and October, you were never in your wife's room?

A. Only one or two times. That you spoke to me about this morning.

Q. Why do you always make the mistake of not hearing me right? I said "between May and October"; that

is the third time now. Can't you hear? Between May and October, as I understand your testimony, you were never in your wife's room?

MR. WILSON: He didn't say May and October; he said between the time he heard the story.

Q. Between May and October when you heard the story?

A. I never occupied a room after I heard the story.

COURT: How many times were you in the room?

WITNESS: I had been in there.

Q. In the bedroom during that period?

A. I have been in there during the day.

Q. Have you ever been in there during the night?

A. Not that I know of, no, sir.

Q. What brought you in there during the day?

A. No particular reason, unless I wanted to see somebody—see my wife or someone up there, or wanted to get some clothes of mine; I had to pass through this room.

Q. Did you keep your clothes in that room; were they in that room?

A. Sometimes we had—

Q. (Last question repeated.)

A. No, they were in the hall in a closet.

Q. You have been in that room when your wife was there?

COURT: He said he went up to see her?

Q. You have been in the room in the early morning?
A. No, sir.
Q. Sure of that?
A. I might have spoken to her.

COURT: Have you been in the room in the early morning; if you don't know, say so.

WITNESS: I don't know; I don't remember.

Q. Have you been in the room when your wife was in there?
A. I don't remember that.
Q. You remember whether you have been in the room and undressed there with your wife?
A. I don't remember.

COURT: During this same period.

Q. You don't remember whether you did or didn't?
A. No, sir.
Q. Don't you remember you did the night before she went to Florida?
A. What was that?
Q. Don't you remember that you were in her room and undressed in her room, both of you undressed in the same room, the night before she went to Florida?
A. No, sir, I did not; I undressed in my own room.
Q. You are sure of that, on that occasion?
A. Yes.
Q. Do you remember where you dressed the next morning?
A. The same room.

Q. You are sure you didn't dress in the room with her —in her room?

A. No, sir.

Q. When did you retain anyone else as your counsel, other than Mr. Carton?

A. In the fall of 1918.

COURT: Was that Wilson & Smock?

WITNESS: Yes.

Q. Was it before October or after October or November or when?

A. I think it was in October.

Q. Was it after Mrs. Devlin had been told on October first?

A. I think it was.

Q. How long after?

A. I don't know how long after; I don't know exactly what date it was.

Q. Was it before the first of November?

A. I don't know about that; I think it was either in October or November. I understand my cousin was in consultation with Mr. Wilson.

Q. I don't want any understanding, I want what was the first date that you first know, from your own knowledge, that someone else had been retained?

A. My recollection is that they were retained in November of that year; that is my recollection.

Q. What date in November?

A. I don't just remember what time exactly.

Q. How long before your wife went to Florida?

A. Two or three weeks.

Q. Did you see any one of the firm of Wilson & Smock?

A. Yes.

Q. Did you tell him the facts in reference to your case?

A. Yes.

Q. What?

A. Yes, sir.

Q. Did they advise you to get out of the house?

A. I don't think they did.

Q. Anything said with respect to that?

A. I don't remember about that.

Q. You don't remember whether it was or not?

A. No, sir.

Q. They knew that you were living in the same house with your wife?

A. I suppose they did.

COURT: Did you tell them that you were?

WITNESS: Yes.

Q. When did you first tell anyone of your counsel that Mrs. Cartan was going to Florida?

A. I think I spoke to cousin Jim and—

Q. When?

A. I think that was in November sometime.

Q. How long before she left?

A. Possibly a month, about the time she spoke to me about it.

Q. About a month?

A. About a month, I think.

Q. Then you spoke to your counsel about it before

you determined to let her go, is that right?

A. I asked my counsel if it made any difference if she went to Florida, and he said no, it didn't make any difference. I asked him if it made any difference, to our side, whether she went away or not, and they told me no. I was in consultation along at that time and they told me it made no difference, that the case would have to be tried, and I would have to support them wherever they were, whether in Matawan or in Florida.

Q. Were you induced to go to your counsel to determine whether you would have to support her or not?

A. No, I knew I had to support her.

Q. I want to ask you one more question, and that is, whether you have thought during the noon recess of any reason why this subject was first broached and the information first given to Mrs. Devlin rather than to anyone else?

A. No, sir, I didn't.

Q. You have no explanation to give for that?

A. No, sir.

RE-DIRECT EXAMINATION BY MR. WILSON:

Q. I think I omitted to ask you to describe this outbuilding, wehther or not in May, 1916, there was glass at the side, and what sort of a structure it was?

A. Yes, there was hot bed sash on the side towards the Hopkins lot.

Q. And whether there was any furniture of any kind in that building at that time?

A. Yes, sir, there was a willow couch and chair.

Q. And for what purpose in May, 1916, was the building used for?

A. A kind of a play house.

Q. For the children?

A. For the children, yes, sir.

Q. After Mrs. Devlin had been told of this matter and these letters had been written and forwarded to your wife, after you knew those two facts occurred, did you see Devlin?

A. Yes, sir, I did.

Q. Did you say anything to him?

A. Yes, sir.

Q. Where did you first see him?

Q. In the store of Cartan & Devlin.

Q. Did you go there for the purpose of seeing him?

A. I did.

Q. What did you say to him?

A. I said to him, calling my two little children by their first names, "Pat every day you see Jean and Betty on the street, I want you to think of what you have done to me; you have wrecked my home, you have torn it all loose, and there is one thing in this world that you could have done worse to me, and that is murder me, I should blow your brains out, but you are not worth the powder that would come out of that gun"; he made no reply.

Q. Was that the first time you saw him?

A. That was the first time.

COURT: You haven't fixed the time.

WITNESS: In November, 1918.

Q. It was in November?

A. Yes.

Q. And did you have any talk with him after that?

A. Yes, in the same store.

Q. What did you say to him then?

A. I called all the names I could think of. I called him a serpent, snake, a sneak.

COURT: Did he say anything?

WITNESS: He made no reply to any of these remarks. I called him numerous other names. I cannot think of them now. Some of them I would hate to repeat; he made no reply to any of those remarks.

Q. Did you say anything to him after that second occasion?

A. Yes, I met him on the street and called him a sneak and snake and that he had intercourse with my wife and robbed my home, everything I had in the world; he made no reply; he never made any reply.

COURT: Did you tell him in any of these talks that you were going to begin an action for divorce and name him as co-respondent?

WITNESS: Yes.

COURT: Did he say anything to that?

WITNESS: Nothing to that.

Q. You have described three occasions; were there any other occasions? Were there any other occasions on which you spoke to him about it?

A. Along the month of November, whenever I met

him on the street, no matter where it was.

Q. You did what?

A. I would tell him he robbed my home and had intercourse with my wife, took everything I had in the world, and called him a serpent, a snake, a sneak. There was no end to the names I called him. Some names I daresn't mention; he made no reply; he never made any reply.

Q. Had you noticed whether or not, whether the associations between Devlin and your wife were more or less pronounced during, we will say, the year preceding the spring of 1918, when you learned of this outhouse episode; had the association as you observed it been more or less pronounced during that previous year?

A. Less pronounced.

Q. Did you explain that as a circumstance to Mr. Carton when you went to him for advice?

A. I did. I told him he was worried that year about his boy going to war and that was the reason.

Q. Who was worried?

A. Devlin.

Q. What had been the condition of your wife during that previous year; did you tell him about that, whether she had been sick or well?

A. Yes, she had been sick that winter before.

Q. Did you tell Mr. Carton that circumstance?

A. I did, yes, sir.

RE-CROSS EXAMINATION BY MR. LANE:

Q. So that notwithstanding the fact that the relationship between your wife and Devlin—prior to the spring of 1918, was less pronounced than it was before, it was at

that particular time that you made up your mind to find out if there was anything in the relationship—improper relationship?

A. Yes, because I just heard of it from my brother a little while before that.

COURT: He is referred to the time prior to that.

Q. You went to your sister before you went to your brother?

A. Yes.

Q. You went to her because you were going to find out, so you told us?

A. Yes.

Q. This relationship which you were going to find out about had been decreasing instead of increasing, according to your testimony now; that is true?

A. Yes.

Q. Now, I ask you in view of the decrease of that relationship what was it that induced you at that particular time to find out about it, when it was apparently ceasing for some reason or other?

A. I didn't hear anything about until the spring of 1918.

COURT: If the relationship or other evidence of fondness and affection which you have described, and intimacy, was decreasing during that year, as you told Mr. Wilson, Mr. Lane wants to know why it was that at that particular time you were more interested than ever to find out what the relationship was and had been. Can you tell us why at that particular time you aroused yourself and became more active and interested in their rela-

tionship?

WITNESS: I wasn't any more interested than I was as soon as I heard from my brother.

COURT: This was before you heard from your brother. Your answer to Mr. Wilson's question would indicate that sometime in 1916 and 1917, or 1917 and 1918, the intimacy or friendship or fondness between Mrs. Cartan and Mr. Devlin had lessened so far as you observed it.

MR. WILSON: He said the association was less pronounced.

COURT: The association was less pronounced. Mr. Lane wants to know if that was so, why did you at that particular time become more active in demanding information or finding out what really had existed between your wife and Devlin. I am talking about 1917 and 1918, prior to the time your brother told you anything.

WITNESS: It wasn't any more pronounced until I heard from my brother, until he told me.

COURT: You don't understand the question.

Q. Why did you become more active and try to find out what the relations had been or were; and you showed that activity at that time by going to your sister and then going to your brother and insisting on information, which you hadn't done in the previous year or more; why did you do it at that particular time?

A. Because I had just—my brother had just made it known.

Q. This was before he made it known to you.

A. I don't know as my activity was any greater.

COURT: Then that answers it.

Q. When you told Mr. James Carton that this relationship was not pronounced, what did he say?

A. He said then we will hold off a little while, maybe the thing will work itself out.

Q. Anything else?

A. He suggested that we hold off a while, maybe now that it was not so pronounced the thing will work out itself.

Q. And you acquiesced in that?

A. Yes.

Q. And there was nothing particularly drawn to your attention in the relationship of your wife and Devlin from that time or until the time you started this suit, was there?

A. Only what my brother told me.

Q. From the time your brother told you this story in May, 1918, and the time that Mr. Carton told you that it might work itself out, so long as the relationship was getting less, nothing happened that was brought to your attention with respect to the relationship between your wife and Mr. Devlin, was there, until you started this suit?

A. Not particularly, no, sir.

Q. That is what I mean; there was nothing particularly in their relationship after May, 1918, as drawn to your attention or that you observed yourself, was there?

A. No, sir.

Q. Will you tell me why it was, if you have any explanation, that you could hold your temper so well and your tongue so well from May until October, seeing Devlin almost every day, and yet in November were induced, or felt yourself obliged every time you met him, to indulge in these outbursts of anger?

A. I cannot give any reason for it; I couldn't hardly hold myself. I had a hard time.

Q. You succeeded in holding yourself from May until October or November?

A. I did my best.

Q. You succeeded in doing it and didn't say a word to him?

A. To Devlin?

Q. Yes.

A. I did.

Q. Until November?

A. Not until November.

Q. May, June, July, August, September, October, for six long months you held your temper, didn't you?

A. Yes.

Q. And in November this temper broke and this anger broke and four or five times you saw him you called him these names, some of which you don't want to repeat on the stand?

A. I did.

Q. And each time Devlin simply took it and said nothing?

A. He said nothing.

Q. Anybody present when you made some of those onslaughts?

A. No, sir.

Q. Always alone?

A. Yes.

Q. As far as you know, no one heard you say anything to him at all?

A. I think my brother overheard it.

Q. No one outside of the Cartan family?

A. No, sir.

Q. You met Devlin when others were present, didn't you?

A. What do you mean by that?

Q. You don't mean to tell me that you didn't upon occasion in this little town of Matawan meet Devlin when there were others present?

A. I did.

Q. Many times?

A. Not many times.

Q. From October to November, during the time in November, quite a number of times, didn't you, the store it within 100 feet of his?

A. Yes.

Q. And you were always able to hold your temper and hold your anger when anyone else was around?

A. Yes.

Q. And you saved these names for a time when he and you were alone, that is right, isn't it?

A. I didn't care who heard them when I mentioned them.

Q. If you didn't care who heard them—as a matter of fact no one did hear them?

A. Not that I know of.

Q. Was there any reason why you should hold your temper when others were around?

A. I did do it, but there was no reason for it.

Q. Did you consciously do it or unconsciously on

your part?

A. I tried to hold my temper.

Q. A moment you told me you didn't care who overheard it?

A. I didn't at that time, when I was in there and told him about it.

Q. I suppose the reason why you didn't tell us about this talk—these three or four occasions you saw Mr. Devlin, before recess, was that you were not asked the question; is that the reason why you didn't tell us?

A. What is that?

Q. You didn't tell us anything about these talks that you had with Mr. Devlin when you called him names, until a few moments ago; the reason why you didn't tell it until now is because you were not asked the question; that is the reason?

A. Yes.

Q. And the only reason, isn't it?

A. I was asked the question this morning, but I got it the wrong way; I thought you asked me what Devlin said to me; Devlin said nothing to me.

Q. When were you asked the question this morning?

A. I don't remember; sometime during the morning.

Q. You considered I did ask you that question?

A. I thought you did.

Q. And you took it wrong; you thought what I asked was whether Devlin said anything to you?

A. Yes.

Q. And because you thought that, that what I asked was whether Devlin said anything to you, you didn't tell me what you said to Devlin?

A. No, I didn't tell you, because I thought the question was the other way.

(MRS.) EDNA CARTAN, sworn for petitioner.

DIRECT EXAMINATION BY MR. WILSON:

Q. You are the wife of Herbert Cartan—Bert Cartan?
A Yes.
Q. Is his name Herbert?
A. Bert.
Q. He is a brother of A. J. Cartan?
A Yes.
Q. Where do you live?
A. Matawan.
Q. How long have you lived there?
A. Always.
Q. How long have you been married to Bert Cartan?
A. Seventeen years.
Q. How near did you live to the A. J. Cartan home?
A. I live on the opposite side, about three or four houses down.
Q. The same street?
A. Yes, sir.
Q. And shown here; is this it; is that the house, marked "B. Cartan"?
A Yes.
Q. And your brother is Norman Tice?
A Yes.
Q. He lives nearly opposite on the same street?
A Yes.
Q. Did you notice the association between Devlin and Mrs. A. J. Cartan in the last eight or ten years before this proceeding?
A. Yes, sir.

Q. Anything particular which attracted your attention to it?

A. Well, on our parties they always wanted to be together and they danced together, and at card parties I have seen them push their knees together under the card table.

Q. How frequently have you seen that exhibition, pushing their knees together when playing cards?

A. Several times.

Q. During the last seven or eight years?

A. Yes.

Q. Where were you when you saw them?

A. In the same room.

Q. At the same table?

A. No, sir.

Q. Playing cards also?

A. Yes, sir.

Q. Was this conduct of knees the casual and accidental conduct that might occur, or was it of some other character; describe it.

A. Well, no, I didn't think it should occur.

Q. Just how did it happen?

A. They would push their knees together under the table.

Q. When they pushed them together, did they keep them together or pull them apart?

A. They would rub them together.

Q. Go on and describe what you saw. You saw that on more than one occasion, did you?

A Yes.

Q. What did you see about their dancing?

A. They always danced together a lot, and when he was dancing with Mrs. Cartan, I have often seen him

pull her right up to him tight and squeeze her.

Q. And did they dance with each other more frequently than with other people, or the reverse of that?

A. They danced with each other more than with other people.

Q. Did Mrs. Cartan dance with him more frequently than she did with her husband?

A. Yes. Then on one occasion when Mr. Devlin was going home to dinner one day, I saw him throw a kiss to Mrs. Cartan as she stood over in her sitting- room window.

Q. Did she see him?

A. I don't know; I know she was sitting there; I was in my sister-in-law's house when I saw it.

Q. Coming back to the dance matter, was Mr. Devlin a good dancer or a poor dancer?

A. Poor dancer.

Q. Describe their association and companionship at your various parties; what was there about that?

A. They always had a lot of conversation of their own, and I don't know, they just seemed to be in each other's company.

Q. What about theatre parties? What was their habit in respect to that?

A. All the theatre parties I ever was on where they were, they would always sit together and next to each other.

Q. How frequently would you have these family parties of which you have spoken?

A. Once a week.

Q. Average once a week?

A Yes.

Q. During a series of years?

A Yes.

Q. And by whom were they attended?

A. By Mr. and Mrs. A. J. Cartan—the Cartan and Devlin families, and very often my brother and his wife, and sometimes their sister Kate.

Q. This is the Cartans' sister?

A Yes.

Q. And were the parties of which you spoke confined to that group?

A. Yes.

Q. They were not parties shared in generally by the community?

A. No, we always had a party of our own.

Q. Did you notice anything about their habit and custom on automobile parties?

A. I noticed the Cartans never took anyone but the Devlins, and always when I would see them together, Mr. Devlin would be in the back between the two women, Mrs. Devlin and Mrs. Cartan.

Q. Who usually would be driving the car as you observed?

A. Usually Johnson.

Q. The son or the father?

A. The son.

Q. And where would the father be sitting?

A. In the front, alongside of his son.

Q. Do you recall an occasion when there was a family party on Labor Day at Asbury Park?

A. Yes.

Q. What did you observe on that day?

A. We had dinner at the Coleman House, and at this dinner Mrs. Cartan and Mr. Devlin were all attention to each other.

Q. How did they pay all attention to each other?

A. They sat alongside of each other at the table, and they did their conversing together, and she was seeing that he was well served, and you could tell that they were just fond of each other.

Q. Did any of you go bathing that afternoon?

A. Some of the party.

Q. Did you?

A. No.

Q. Did you go to the place where they were bathing?

A. No, sir.

Q. Where did you go that night?

A. We came up to Bridgewater Inn.

Q. What, if anything, did you observe there?

A. That night her whole attention was to Mr. Devlin; her husband sat on the other side of her, and she didn't notice him at all; in fact, she turned her arm around like that (indicating) and her back to him, and her whole conversation was to Mr. Devlin, and they neither one danced with anyone else at the Bridgewater Inn that night but themselves.

Q. Was that made the matter of comment, their talking at table, by anybody?

A. Yes, we all felt it strange.

Q. Did anyone make any audible remarks about it?

A. At the Coleman House that day, his wife said—she called across the table to them, and she said, "Well, I am here."

Q. Do you recall any occasions when you were arranging—

MR. LANE: When was that?

WITNESS: Labor Day, seven or eight years ago.

Q. Do you recall any occasions when the ladies in the family were arranging for automobile parties, anything that occurred in respect to Devlins going?

A. No, sir, we had lots of automobile parties.

Q. Was Devlin invited?

A. Sometimes we ladies would have automobile parties.

Q. What about them?

A. And when we would get where we were going, Mrs. Cartan would always suggest sending for the men, and Mr. Devlin was always sure to come.

Q. Do you recall an occasion when Mr. Devlin had been invited to go by his wife and declined to go and afterwards went?

A. Yes, sir.

Q. What was there about that?

A. She would come down some mornings and say it would be a good day to go somewhere on a party.

Q. Come down where?

A. To Mrs. Ren's, as a rule it was, and we would all be there, but she would say "Pat cannot go, because I asked him this morning", but if Mrs. Cartan would ask him he would always go.

Q. Did that happen on more than one occasion?

A. Yes.

Q. How many occasions in the last seven or eight years?

A. Oh, several occasions.

Q. Do you mean by that two or three occasions or more?

A. I would say more.

Q. How many more, if you can give us any idea?
A. Ten or eleven occasions.
Q. Do you know the location of the Linzmeier Lane?
A. Yes.
Q. That is between your house and the depot?
A. Yes, sir.
Q. And on the opposite side of the street from your house?
A. Yes, sir.
Q. Do you know the location of the Ervin Lane?
A. Yes, sir.
Q. And that is immediately beyond the A. J. Cartan property?
A. Yes, sir.
Q. Have you ever seen Mr. Devlin going in and out of this lane?
A. Yes, sir.
Q. Did you see him go in and out of either of those lanes in 1915?
A. Yes, sir.
Q. How often.
A. I saw him twice in the summer and fall of 1915.
Q. Go in which lane?
A. Linzmeier's Lane.
Q. He went in the lane, did he?
A. Yes.
Q. Would the use of that lane be one which he might devote to making a direct journey to his house from his store?
A. No, sir.
Q. It would take him out this way, wouldn't it?
A. Yes.
Q. You saw him go in there, you say, twice? Before

1915?

A. Before 1915, I never remember any date that I saw him in there until 1915, but before that, it must be seven or eight years ago, one night there was a men's dinner over at Seidler's which Mr. Devlin always attended, but I noticed that night he didn't go; there was no particular—well, I noticed that he didn't go, and I was over on my sister-in-law's porch, opposite the store, and when he closed up his store—

Q. You mean your sister-in-law over on Mrs. A. J. Cartan's porch?

A. No, Mrs. Ren's

Q. You were there?

A. Yes, on her porch, and when he closed the store he came across the street—he went across the street and I watched him and he went in Linzmeier's Lane; I saw him go in Linzmeier's Lane, and that I thought strange, and I said to my sister-in-law—

MR. APPLEGATE: Objected to.

Q. What did you do?

A. I went down in the back of my sister-in-law's yard and I saw Devlin come up under the electric light into A. J.'s back lot, and just as he did, I heard Mrs. A. J. Cartan call to Mrs. Ren something about it being a hot night, and I heard Mrs. Ren's voice back to her, and then he left the yard hurriedly.

Q. In which direction did he go?

A. He must have gone up, because he didn't come down under the electric light.

COURT: Are either one of these lanes built up, any

houses or anything on them?

WITNESS: That back street has a—

Q. The Linzmeier Lane has no house on it?
A. Yes, there are a couple of houses back there.
Q. How about Ervin's Lane, any houses on that?
A. No.
Q. There are two on the Linzmeier Lane or were at that time?
A. Yes, shacks.
Q. Are there any houses on the long lane back of the Cartan properties?
A. Not back of A. J.'s.
Q. Between the Linzmeier Lane and Mrs. A. J. Cartan's are there any houses or shacks there?
A. Yes, two.
Q. And have they been there for some years?
A. Yes.
Q. You say this occurred at some time prior to 1915, and you are not able to fix the date; in 1915 you saw him go in the Linzmeier Lane, did you?
A. Yes.
Q. What part of that year?
A. The summer and fall.
Q. Did you see him make use of either of these lanes, the Ervin Lane or Linzmeier's Lane in 1916?
A. Yes.
Q. How many times, and which of them did he use?
A. He went twice in Linzmeier's Lane and once in Dr. Ervin's.
Q. Where were you when you saw him on these various occasions go in and out of those lanes; where did

you happen to be?

A. As a rule, on my own porch, or in my end window.

COURT: When you saw him was he walking or driving?

WITNESS: Walking.

Q. Did you notice anything about—anything peculiar in the way in which he entered those lanes on any occasion?

A. One night I did; he crossed the street and went by the fence of the old homestead and then close in to the porch of the double house, up to both porches and around the corner.

Q. There being no fence in front of the house?

A. No, not at the corner.

Q. He entered upon the lot and went around the line of the house to go out into the lane, is that it?

A. Yes.

Q. These trips into both lanes, which you described, were they made in the day time or night time?

A. Night time.

Q. How were you able to see him from your porch at night?

A. I could see anybody at night.

COURT: Are there lights there?

WITNESS: Electric lights. The night he went in Dr. Ervin's Lane, just at the time he closed up, I was going up town; it was a rainy night and I walked behind him and saw him cross over and go in Dr. Ervin's Lane.

Q. In making use of both of these lanes he would be going away from his home?

A. Yes.

Q. Do you know whether these moves he made—what day of the week these trips were made upon?

A. They were mostly on Saturday night.

Q. Had you ever observed the way in which Mrs. A. J. Cartan passed the Cartan & Devlin store, anything about her conduct in passing the store?

A. Yes, sir.

Q. What have you seen her do?

A. She would always look until she could get a look at him and then give him a very sweet suggestive look and wave of the hand like this (indicating).

Q. Where would the hand be waved, by the side of her face?

A. Yes.

Q. Did you see that more than once?

A. Yes.

Q. How many times have you seen it in the last seven or eight years?

A. A dozen or more.

Q. Do you recall an incident in 1914 when Mrs. A. J. Cartan went to New York?

A. Yes.

Q. Did you see Devlin that day?

A. Yes.

Q. What did you see him do?

A. After Mrs. Cartan went down and gave him this wave I just described, I saw him go down the lumber yard in a hurry, and then in about ten or fifteen minutes he came up the street in the same hurry and went in the

store.

Q. Was there a lane back of the lumber yard?

A. Yes, a street down there.

Q. That led around into Main street?

A. Yes

Q. Where did you see him go in the yard, toward this lane?

A. Yes, sir.

Q. And then saw him come back Main street?

A. Yes.

Q. Do you know where Mrs. Cartan went that day, did she ever tell you?

A. Yes, she went to New York.

Q. Did she tell you so?

A. Yes.

Q. Did you see these two people sometime in the latter part of May, 1916, together; or if not together, did you see them near each other?

A. No, sir.

Q. I am speaking now of May, 1916.

A. No, sir; oh, I saw them to parties the same as I have described.

Q. Did you see them anywhere near the outhouse of the A. J. Cartan property?

A. No, sir.

Q. You didn't see any part of that episode?

A. No, sir.

Q. And don't know anything about that yourself?

A. No, sir.

COURT. Do you remember the night it occurred; do you recall there was an occurrence?

WITNESS: Yes, sir.

Q. Where were you that night?

A. I was away.

Q. Out of town, you mean?

A. Yes. About seven or eight years ago—this is one thing I forgot when I was telling my story—we were on a party over to Perth Amboy, Mr. Devlin, Mrs. Devlin, Mrs. Cartan and Mrs. Ren Cartan and myself, and when we came home that night, we were let out each at our own house, and it was my custom when I went home and my husband wasn't home, I went over to my father's.

Q. He lived just next door?

A. Across the street. I went over to wait until my husband came home, and as I sat in the window I saw Devlin come out of the lumber yard next to my house, go across the street, and I went out on the—

Q. Had he been with you on this party over to Perth Amboy that night?

A. Yes; I saw him come out of the lumber yard, which I thought strange, and go across the street—

MR. APPLEGATE: I object to what she thought was strange.

COURT: Strike out that part.

Q. Where did he go?

A. He went across the street and I came out on the sidewalk and watched him and he went down Linzmeier's Lane and turned the corner and I went in and said to my father—

MR. APPLEGATE: Objected to.

COURT: Objection sustained.

COURT: Did you see Devlin do anything else?

WITNESS: I saw him come up in back of my father's place, up beyond the electric light, into Cartan's yard.

Q. A. J. Cartan's yard?
A. Yes.
Q. Did you see him go into A. J. Cartan's yard?
A. Yes, in the back lot.
Q. And was this an occasion other than the occasion you referred to, where you said you saw him go in the lot?
A. Yes.
Q. This was an additional occasion, was it?
A. Yes.
Q. Was there any search made for him that night?
A. Yes.
Q. What about that, do you know?
A. I only know what they told me about it afterwards.
Q. You didn't go when they were searching for him?
A. No.
Q. All you know is hearsay about that?
A. Yes.
Q. You saw him go through the lumber yard and into Linzmeier's Lane?
A. Yes.
Q. Where did he go from Linzmeier's Lane?
A. He came across the street to the side I was on, and went on down town, and as he did, I came out on the sidewalk to see where he went, and he went around Linzmeier's corner.
Q. Then where did he go?

A. He went up the back street past my father's lot, on up under the electric light into Cartan's back yard.

Q. Did you see him in Cartan's back yard?

A. Yes.

Q. And saw where he went?

A. No.

Q. Why didn't you?

A. Because I was afraid to go any further.

Q. Afraid to go any further?

A. Yes.

Q. Where were you in the street when you saw this?

A. In my father's back lot.

Q. Did he pass out of your vision as you stood in the back lot?

A. Yes.

Q. Was he on the A. J. Cartan lot when he passed out of your vision?

A. I saw him until he got on the Cartan lot.

Cross Examination by Mr. Applegate:

Q. These lanes that you referred to—this is Mrs. Cartan, is it?

A. Yes.

Q. They are public lanes, are they not?

A. They are lanes leading to nowhere, I should say.

Q. People use those lanes?

A. Some.

Q. You have seen people use the lanes, have you not?

A. Yes, sir.

Q. Why did you think it so strange that Devlin used either one or both of those lanes?

A. Because I couldn't see what business he would have around there.

Q. That is the only reason you thought it was strange, because you didn't know what business he had there? Isn't that so?

A. Yes, sir.

Q. You referred to Mr. Devlin and Mrs. Cartan dancing together; have you ever danced with Devlin?

A. Yes.

Q. Did you ever go out with Devlin?

A. Yes.

Q. Did you ever play cards with him?

A. Yes.

Q. You have seen other ladies besides Mrs. Cartan do the same thing, too, haven't you Dance and play card with him and go out with him?

A. Yes, we all did.

Q. Were you very intimate with Devlin?

A. No, sir.

CROSS EXAMINATION BY MR. LANE:

Q. Were you present at the time Mrs. Devlin was told about this affair on the first of October, in Ren's house?

A. No, sir.

Q. You were not there?

A. I came in after—just after Mrs. Cartan had finished telling her.

Q. You were there before Mrs. Devlin left?

A. Yes, sir.

Q. What was said by any of the parties after you

came there?

A. I don't remember.

Q. You knew what they were talking about?

A. Mrs. Devlin was just going when I went in.

Q. Did you know that they were going to be there?

A. No, sir.

Q. Did you know what they had been talking about?

A. No, sir.

Q. How long was Mrs. Devlin there after you got there?

A. Two or three minutes.

Q. What was said by anybody after you got there?

A. She said that she would go to Pat's store.

Q. What else was said?

A. That was all.

Q. When she said that she would go to Pat's store what did that mean to you at that time?

A. She didn't say it to me.

Q. You heard it said; what did it mean to you when you heard it said; what did you understand she meant by it?

A. I didn't know.

Q. You had no knowledge whatever from what she said as to what she and they had been talking about?

A. No, sir.

Q. Did you stay there after she left?

A. No, sir.

Q. So that you came there; whom did you go away with?

A. I think I did stay a few minutes.

Q. Did you or didn't you?

A. I did.

Q. A moment ago you said you didn't; why did you

say you didn't? Is it your recollection now that you did stay after Mrs. Devlin left?

A. Yes.

Q. Why did you say before that you didn't stay?

COURT: Why waste time on that; it is evident she was confused about it.

Q. You didn't remember; how long did you stay after Mrs. Devlin left?

A. A little while, I would say ten or fifteen minutes.

Q. What did you talk about when you stayed there? What did you say after Mrs. Devlin left?

A. After she left Mrs. Cartan told me what she had told Mrs. Devlin.

Q. What did she say?

MR. WILSON: Is that a proper inquiry?

COURT: I don't see how it is unfair; it is not binding on anybody, but I will receive it.

Q. What did she say about telling Mrs. Devlin?

A. She said that she told Mrs. Devlin of Devlin's intimacy with Doll, which we had known about.

Q. And then did she say what Mrs. Devlin had said?

A. She said Mrs. Devlin said she would go to Pat's store.

Q. You heard her say that; you heard Mrs. Devlin say that; that is right?

A. Yes.

Q. And that is all you heard Mrs. Devlin say?

A. Yes.

Q. "I will go to Pat's store"?

A. Yes.

Q. You were not there during any of the time that Mrs. Ren Cartan was telling this story to Mrs. Devlin?

A. No, sir.

Q. And you didn't say—

MR. WILSON: May I have it appear upon the record that our insistence is that that is not a cross examination, this particular episode; this witness's attention was not directed to it in any way, and it is not cross examination; it may have some bearing upon the subsequent use of it.

COURT: You mean you didn't touch upon this particular incident?

MR. WILSON: What occurred at that house that day was not even referred to.

COURT: I don't recall it was. I think you are right; that is my recollection of it. I may be in error, but I don't recall its being asked about.

MR. LANE: It is for the purpose of showing bias on the part of this witness.

COURT: You are going entirely outside of the scope of the direct examination, and you will have to make her your witness, and I will have to sustain the objection. I won't exclude this testimony. I think it is beyond the scope of the direct examination.

MR. LANE: I will take the chance of whatever ruling

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your Honor might subsequently make to that.

COURT: Will you use the testimony now as your own evidence?

MR. LANE: Yes.

Q. And you didn't say to Mrs. Devlin at the end of the conversation, when Mrs. Devlin said that she didn't believe it, "Why, Pat has been intimate with me"?

A. No, sir.

Q. Or anything that sounded like that?

A. No, sir.

Q. And you never said that to Mrs. Devlin at all, did you?

A. No, sir

Q. I ask you to look at this letter and tell me whether the three pages are in your handwriting?

A. Yes, sir.

Q. They are in your handwriting?

A. Yes.

MR. LANE: I ask to have the four pages marked for identification.

(Marked Exhibit D 1 for identification.)

Q. You sent that letter?

A. Yes, sir.

Q. Why?

A. Because I was mad at Mrs. Devlin the way she had used me after she heard how—after she had been told the story.

Q. The way she abused you?
A. The way she acted toward me.
Q. Or treated you, you mean?
A. Yes.
Q. When did she first act toward you in such a way as that it made you mad at her?
A. When I met her at a party.
Q. Shortly after the story had been told or some time after?
A. Some time after, I think.
Q. How soon after?
A. I don't remember.
Q. Did she say anything to you at this party that made you angry?
A. No, sir, it was the way she acted.
Q. How did she act?
A. Oh, she acted mean and disagreeable.
Q. How? Can you describe her actions or treatment of you? Did she address you at all or speak to you?
A. Well, no; if she did, she did it mean.

COURT: What do you mean by "mean"; will you describe just what her conduct and treatment was? Are you unable to do it?

WITNESS: Well, I cannot describe it any further than she just treated me mean.

Q. You hadn't said anything to her with respect to this matter, had you?
A. No, sir.
Q. Whatever had been said to her had been said by Mrs. Ren Cartan?

A. Yes, sir.

Q. At a time when you were not there, that is right?

A. I came in while she was there.

Q. But you were not there during any of the time that she said anything?

COURT: I understand at no part of it?

WITNESS: Yes.

Q. In that conversation or any other with respect to Mrs. Devlin?

A. Yes, sir.

Q. And yet Mrs. Devlin treated you the next time she saw you in such a way as to make you mad—so mean as to make you angry, that induced you to write this letter, is that right?

A. Yes, sir.

Q. You cannot account for the reason why she treated you so meanly, is that right?

A. Yes, sir.

Q. What do you mean in this letter when you said, "I never intended telling this story to your wife, but her usage of me yesterday forced me to do it."

MR. WILSON: Are you reading from the letter now?

MR. LANE: Yes.

A. Well, the way she treated me.

Q. What was this story; what story did you refer to?

A. Well, I told her in that letter that I wrote her how he had tried to force his attentions on me.

Q. That is what you mean?

A. Yes, sir.

Q. But you never had said a word to her before that date?

A. No, sir.

Q. And it was the first time you had said anything about that to her—when you wrote this letter; is that right?

A. Yes.

Q. Have you told us, Mrs. Cartan, everything that you remember with respect to the conduct of Mrs. Cartan and Mr. Devlin?

A. Yes, sir, I think so, as far as I can remember now.

Q. Is there anything that you have overlooked?

A. I don't think so.

Q. Did you ever find them together upon any other occasions than what you have testified to?

A. I don't think so.

Q. Let us have again the occasions that you have referred to. They were the times you saw them together at the dancing parties, at the card parties and on the automobile trips, and what other occasions did you ever see them together?

COURT: Theatre parties.

Q. Theatre parties, and on what other occasions did you ever see them together?

A. That is about all.

Q. Is there any other incident that you remember that appeared to you to be suspicious?

A. No, sir.

Q. No other, is that right?

A. Yes, sir.

COURT: When were these weekly parties discontinued, if they ever were discontinued?

WITNESS: In 1918.

Q. What time?
A. I don't think we ever had any after May, 1918.
Q. Was there any occasion that you found Mrs. Cartan and Mr. Devlin together in the house?

MR. WILSON: What house?

MR. LANE: Her house or any other house.

A. I don't think so.
Q. Don't you know?
A. Not that I remember.
Q. Well, do you know; have you any idea how it was that counsel for Mr. Cartan apparently got the impression that you found them together in the house about the forepart of March, 1916, as appears by the bill of particulars?

COURT: Do you know how they got that information?

WITNESS: No, sir.

Q. You didn't give it to them, did you?
A. No, sir; I don't think so.
Q. Mrs. Cartan, don't you know whether you told them that you found these two people together in a

house under such circumstances that you thought they committed adultery in the forepart of March, 1916?

A. No, I didn't.

Q. You never gave them any such impression, did you?

A. No, sir.

Q. Do you know how they got the impression; has it ever been brought to your attention?

A. No, sir.

Q. Did you talk with counsel before you went on the stand as to what you were going to testify to?

A. No, sir.

Q. Have you talked over with Mr. A. J. Cartan what you were going to testify to?

A. No, sir.

Q. Or have you talked with Ren Cartan?

A. What I was going to testify to?

Q. I don't mean by that preparing your testimony; I mean talking about the case generally, and what your testimony was going to be?

A. No, sir.

Q. You haven't talked to anybody about it?

A. No, sir.

Q. Did you talk to Mr. James Carton about it?

A. No, sir.

Q. Didn't you tell someone in this case what you were going to testify to when you were called on the stand?

A. We talked the case over.

Q. You talked the case over; when did you talk the case over?

COURT: You had a right to talk the case over; there is no impropriety in that.

MR. LANE: I am not insinuating that.

WITNESS: Of course we talked the case over.

Q. When did you talk the case over last?

A. I don't know, a week or so ago.

Q. And wasn't anything said at that time with respect to the time that you were supposed to have found Mrs. Cartan and Mr. Devlin together in a house in the forepart of March, 1916?

MR. WILSON: Objected to , because the question assumes they were found there in the house by her; there is no such suggestion anywhere in the testimony.

COURT: He claims it is in the bill of particulars.

MR. LANE: (Reading bill of particulars.) How did that get in the bill of particulars?

COURT: I think his inquiry is proper. The time Mr. Lane is referring to is the time you had a conversation about the case; was anything then said about this incident?

WITNESS: I don't quite understand it.

Q. Did you know, Mrs. Cartan, up to this moment, that it had been said in this case that you found Mrs. Cartan and Mr. Devlin together in the forepart of March, 1916, in the house of Mrs. Cartan?

A. No, sir.

COURT: You didn't know it until it was read to you now?

WITNESS: No, sir.

Q. Nothing was said about that in your conversation?
A. No.
Q. You never told anybody that you had found them together at a house in the forepart of March, 1916, or at any other time?
A. No, sir.
Q. You had not found them together at that time or any other time?
A. No, sir.
Q. Did you observe any of those outward manifestations of fondness between Mrs. Cartan and Mr. Devlin, such as embracing and kissing, &c., at any party at which there were present any others than members of the Cartan and Devlin families?
A. No, sir.
Q. Did you ever observe her suggestive, as you put it, greeting of Mr. Devlin as she passed down the street, at a time when there were any others that saw it except members of the Cartan family?
A. I don't know who saw it.
Q. Was it done in open day light so that anybody could have seen it if they wanted to look?
A. Yes.
Q. Would she salute you in the same way?
A. No.
Q. It was a special thing that would attract attention if anybody happened to be looking at the time she did it?
A. Yes.

Q. Done openly and without concealment?

A. No, sir.

Q. Nothing sneaky about it?

A. I always thought she waited until she got past her husband's window at the store.

Q. There is a window in the side of the Cartan store?

A. Yes.

Q. Of the store of her husband I mean?

A. Yes.

Q. That window is pretty close to the front of the store?

A. Pretty close.

Q. And looking through that window you can see any person who passes the Cartan & Devlin store?

A. I don't know.

Q. Until they are long past the Cartan & Devlin store?

A. I don't know.

Q. Did you ever look through it?

A. I looked through it, but I never noticed.

Adjourned to Wednesday morning, October 6, 1920, at 10 A. M.

IN CHANCERY OF NEW JERSEY

BETWEEN

ANDREW J. CARTAN,
Petitioner,
and
SARAH CARTAN,
Defendant.

Continuation of testimony in the above entitled cause, before Hon. John E. Foster, Vice Chancellor, at the Chancery Chambers, Newark, New Jersey, on Wednesday, October 6th, 1920, at 10 A. M., in the presence of counsel as before stated.

EDNA CARTAN, recalled for further

EXAMINATION BY MR. WILSON:

Q. Your attention on cross examination was directed to a letter,—

A. Yes, sir.

Q. Which you say was written by you and addressed to Mr. Devlin; a certain portion of the letter was read to you and you were interrogated in respect to it.

MR. WILSON: I ask that that letter be given to us for the purpose of cross examining on the portion of the letter to which the witness's attention was directed. My understanding is that the letter was used, as counsel ex-

plained, for the purpose of showing the animus and feeling of the witness. Of course, it is always the legitimate province of cross examination, before having made use of the letter and a certain sentence in it—it seems to me we are entitled to call attention to that portion of the letter.

COURT: I think you are entitled to that portion of it to which her attention was directed.

MR. APPLEGATE: I think that portion of it is in the record.

MR. LANE: I think the words I read were "I never intended telling this story to your wife, but her usage of me yesterday forced me to do it."

COURT: If you read anything more and it is found in the record, I will allow Mr. Wilson to go into it.

Q. Mrs. Cartan, you were then asked what that usage was, what Mrs. Devlin had done to you yesterday, that proked this letter. Do you recall being asked that yesterday?

A. Yes, sir.

Q. And when you sent this letter to Mr. Devlin did you keep a copy of it?

A. Yes, sir.

Q. And have you that copy in your possession—you have had it in your possession?

A. I have had it; it is in your possession now.

COURT: You gave it to Mr. Wilson?

WITNESS: Yes.

COURT: When?

WITNESS: This morning.

Q. Since you were on the stand yesterday, have you read this copy and the whole of it?

A. Yes.

Q. And having thus refreshed your memory as to what is in the letter, can you give any more definite answer as to how this woman had treated you yesterday that provoked the writing of this letter? Since you read this letter do you recall anything else that occurred the day before that provoked the letter?

A. Well, yes, she treated me very mean; she treated me just like I was something beneath her.

COURT: Will you tell us how she did treat you, what she did to indicate that she treated you in that way; had she said anything to you?

WITNESS: Yes, she called me a little whore.

Q. Your memory is refreshed by having read that letter?

A. Yes.

Q. Is that statement contained in the letter—that explanation contained in the letter?

A. Yes, sir.

Q. Did you send a copy of that letter to Mrs. Devlin?

A. Yes, sir.

Q. And the original to Mr. Devlin?

A. I sent two letters, one to Mrs. Devlin and one to Mr. Devlin.

COURT: And they were copies of each other?

WITNESS: Yes, one was a copy of the letter.

COURT: At the same time and the same day did you send them?

WITNESS: Yes.

COURT: By mail?

WITNESS: No, the one I took in the store myself to Mr. Devlin, and he wasn't there and I left it for him.

COURT: And the other was sent to Mrs. Devlin?

WITNESS: Yes, the other was sent to Mrs. Devlin

COURT: By mail?

WITNESS: No, by messenger.

Q. I understand this to have been done sometime after the first of October, 1918, and after these letters had been prepared by Mr. Devlin and sent to Mrs. Cartan?

A. Yes.

COURT: Does the letter bear date?

MR. WILSON: I am unable to say. The copy which I

have bears none.

MR. LANE: In fact it is not dated, except the date of "Wednesday".

Q. I show you these four sheets of pencil written letterpaper, and ask you if that is a copy of the letter that you referred to?

A. Yes, sir.

Q. A true copy, is it?

A. Yes, sir.

MR. WILSON: We ask for the production of the original letter, with this idea in mind, that if the production is refused, we want to offer this as secondary evidence, and on this theory that the witness was interrogated with respect to this letter, a portion of its contents was quoted, and read to her; she was rigidly cross-examined upon it, the whole episode was gone into and justified upon the theory that it showed the animus of the witness toward either the defendant or the defendant's wife. Of course, that was a proper province of cross examination, but my understanding is that anything that may be developed by that method may be explained by the witness, and it seems to me that we are in this posture: a full, fair and complete explanation as bearing upon this question of animus disclosed by this letter and the writing of it, must be inferred not from a disconnected sentence in the letter, but from an examination of the whole letter.

COURT: I don't think you need argue it any further. You may mark it for identification. On its admissibiltiy I will finally rule after I see what takes place in regard

to the original letter which has been marked for identification. In other words, if that letter is not finally offered by the defendant, I will be very much inclined to let in your offer now. I am having it marked for identification.

MR. APPLEGATE: As the solicitor for Mrs. Cartan, I object on the ground that this letter can in no way effect Mrs. Cartan.

MR. WILSON: It is not offered for that purpose.

COURT: It does not reflect on Mrs. Cartan. As yet I don't see how it effects Mrs. Cartan. I will let it be marked now for identification, and if the original letter is not offered by the defendant when the time comes, I will let it go in as one of your exhibits. The purpose for which it is admitted will be limited. I see no prejudice or bias on the part of the witness as yet, and if Mr. Lane does not offer the letter when his turn comes, I will grant your application and allow the letter in, and counsel can have the right to cross examine in relation to it.

MR. LANE: We will produce the letter we have, and it will be produced when called for.

MR. WILSON: There is no point about it any way in view of what his Honor the Vice Chancellor has said.

COURT: I don't recall if you were asked yesterday by counsel what your purpose was in sending these letters or copies of them to Mr. and Mrs. Devlin. What purpose had you in mind in sending the letters?

WITNESS: I wanted Mrs. Devlin to know what the man tried to be to me, how he tried to ruin me.

COURT: What was your object in telling him that also, because I understand both letters were alike?

WITNESS: I wanted him to know what I told his wife.

MR. WILSON: One other matter.

Q. Are you familiar with this outbuilding back of the A. J. Cartan house?

A. Yes, sir.

Q. Did you hear of this incident in May, 1916, shortly after it occurred?

A. Yes, sir.

Q. And by whom were you told?

A. My sister-in-law, Mrs. Ren Cartan.

Q. And how soon after its occurrence were you told about it?

A. The next morning.

Q. Did you go over to the outhouse?

A. In the afternoon.

Q. In the afternoon of that day?

A. Yes.

Q. Was there at that time a hot bed sash, a part of the back wall of the building?

A. Yes, sir.

Q. Through which one could see; was it so located that one standing on the adjacent lot could see through it into the building?

A. Yes, sir.

Q. What furniture did you find in it, if any, at that

time?

A. A bamboo couch and a chair—a willow couch, I guess.

Q. Some sort of a wooden affair?

A. Yes.

CROSS EXAMINATION BY MR. APPLEGATE:

Q. What purpose did you have in viewing this house?

A. After I heard the story about it the next morning, I went up to see what was in it.

Q. Why?

A. Because my brother-in-law told me to go and see.

Q. Tell us why he wanted you to see it?

A. I knew after they told me the story.

Q. Did he tell you why he wanted you to go and see it?

A. Yes, sir.

Q. Why?

A. Because he wanted me to see what was in there.

Q. Why did he want you to see what was in there; what difference did it make to you whether you saw it or not?

A. Because of what he had seen the night before.

COURT: How did that effect you; what difference did it make to you what he had seen the night before?

WITNESS: He had been up that morning and seen for himself and he wanted me to go and see, too.

Q. Why did he want you to go and see, did he tell you?

A. Yes.

Q. Why?

A. So I would know what was in there.

Q. So you would testify as a witness, is that it?

A. No, he didn't say that.

Q. That was your idea in going, though?

A. No, he wanted me to go and see what was in there so I would know. He didn't say anything about testifying as a witness.

Q. That is the only reason why you went?

A. The only reason.

COURT: Had you ever been in that building before or near it, that outhouse, or close by it?

WITNESS: Close by it, surely.

Q. Had you ever seen this chair and couch in there before?

A. I don't remember.

CROSS EXAMINATION BY MR. LANE:

Q. What was the building used for, do you know?

A. It was built in the beginning for a chicken house.

COURT: When you saw it, was it being put to any use at all?

WITNESS: No.

Q. It was used as a playhouse?

A. Only as the children played in it.

Q. Did you say anything to A. J. Cartan about what you had seen?

A. No, sir.

Q. Was anything said to Mrs. Devlin about what you had seen?

A. No, sir.

Q. Say anything to Mr. Devlin about what you had seen?

A. No, sir.

Q. Did you continue going around with Mrs. Cartan and Mr. Devlin and Mrs. Devlin on parties?

A. Yes, sir.

Q. Theatre parties?

A. Yes, sir.

Q. Dances?

A. Yes.

Q. And the regular family gatherings?

A. Yes, sir.

Q. You didn't indicate by anything that you did or make any change in your relations because of the discovery of what you thought was the adultery of Mrs. Cartan?

A. No, sir.

COURT: Why did you continue to associate with her and Mr. Devlin?

WITNESS: Why, because my brother-in-law said that we couldn't say anything about it because it would—he thought that Johnce would see through it himself, and it would straighten itself out all right.

Q. Straighten itself out all right how?

A. On account that we wouldn't do anything about it until we had to.

Q. You said that your brother-in-law said first that Mr. Cartan would see through it himself; what did you mean when you said he would see through it himself?

A. That he would see how attentive Devlin and Mrs. Cartan were and get wise himself.

Q. In other words, discover for himself his wife's adultery?

A. Yes.

Q. Then you said that it would straighten itself out upon his discovery of his wife's adultery; what did you mean by that?

A. I thought he could do as he pleased then.

Q. But you used the expression that Ren said it would straighten itself out; based upon the discovery by Mr. Cartan of his wife's adultery, what did you have in mind when you said that it would straighten itself out?

A. I thought that Johnce's wife would see her folly and if Johnce got wise, and it would be all over.

Q. You thought then—what was in your mind was that as soon as Johnce discovered that his wife was guilty of adultery, his wife would see her folly and there would be a grand reconciliation?

COURT: Is that what you mean? If it is not, don't let him state what you mean; state what you mean yourself.

WITNESS: Yes, sir.

Q. It is. You are a sister of Norman Tice?

A. Yes, sir.

Q. How long have you known Devlin?
A. Sixteen or seventeen years.
Q. And Mr. Cartan about the same length of time?
A. Mr. Cartan?
Q. A. J.?
A. Yes, sir.
Q. When were you married?
A. 1904.
Q. Can you after thinking over night tell me what it was or what you thought it was that induced Mrs. Devlin to act the way she did toward you, which induced you to write these letters?
A. I thought she was mad at all of us.
Q. You thought that you were merely coming in for your share of it, because you were one of the Cartan family?
A. Certainly.
Q. You hadn't yourself done anything?
A. No, sir.
Q. Which would bring her wrath down on you particularly? That is right?
A. Yes, sir.

NORMAN TICE, sworn for petitioner.

DIRECT EXAMINATION BY MR. WILSON:

Q. You live at Matawan?
A. Not now, no, sir.
Q. You formerly lived there?
A. Yes.

Q. When did you stop living there?
A. A year ago last May, I think.
Q. How long before that time had you lived there?
A. I resided there since I was a boy.
Q. How old are you?
A. Forty-two.
Q. This last witness on the stand is your sister?
A. My sister.
Q. You are not related to the Cartan family in any other way?
A. No, sir.
Q. In 1916 you were living in Matawan?
A. Yes.
Q. Indicate on the map the house in which you lived.
A. Right here (indicating).
Q. Is there a house indicated on the lot?
A. No, the house isn't shown on the map.

COURT: But your name is there?

WITNESS: "N. Tice", yes, sir.

Q. That is the house immediately south of the Wooley property as marked there?
A. Yes, sir.
Q. Do you recall a night in the latter part of May, 1916, when you saw Devlin at a lane of A. J. Cartan's premises; do you recall that night?
A. Yes.
Q. What if anything directed your attention to his movements that night; what first attracted your attention to the matter; what first prompted you to give any attention to the movements of Mr. Devlin that night?

A. Mrs. Ren Cartan—

COURT: Told you something?

WITNESS: Yes.

Q. Where were you when she told you it?
A. On my father's porch.
Q. How far away from your house was your father's house?
A. Just the adjoining property.
Q. Which way, north or south?
A. Up the street between Sickles—the next adjoining property.
Q. You were on your father's stoop and Mrs. Ren Cartan came to you?
A. Yes.
Q. And she told you something?
A. Yes.
Q. Did she ask you to do something?
A. Yes.
Q. What did she ask you to do?

(Objected to. Objection sustained.)

Q. What did you do as a result of her request?
A. I did as she asked me to do.
Q. What was that?
A. To go into the rear of the back lots of Johnce's lots, that she had seen a suspicious move on Mr. Devlin's part—

COURT: I will strike it out.

Q. As a result of her request you did what she asked you to, by going in the back of the lots?

A. Yes.

COURT: What else did you do?

Q. How did you get from your house to the back of the lot?

A. I went to the rear of my father's house, through a gate in the rear of Sickles', on across to Ren's house, and down Ren's lot to Mr. A. J. Cartan's.

Q. Will you indicate on the map the course you pursued?

A. I come over here (indicating).

COURT: What are you pointing to?

WITNESS: My father's lot.

Q. You came from your father's lot on whose property?

A. On Sickles' next, on down here to Ren's lot, on down to here (indicating).

Q. You passed a portion of Ren's lot and did you station yourself,—did you stop in Ren's lot or did you go on?

A. No, sir.

Q. You went on?

A. Yes.

Q. And whose property did you then go on?

A. A. J. Cartan's.

Q. What position did you take in A. J. Cartan's lot?

A. I was at the lower end of the lot; I took a position

at the lower end of the—

COURT: The lot toward the lane, the easterly end?

WITNESS: The lot next to Ren's.

Q. In respect to the location of the outbuilding on the back of the A. J. Cartan property, where did you station yourself in the A. J. Cartan lot?

A. I was practically opposite the fence that surrounds that building.

COURT: What distance from there?

WITNESS: I was 50 feet from the building, I would say.

Q. What time of the night was it or day?

A. I cannot say exactly; I would say around nine o'clock, probably a little later, I am not sure about that.

Q. When you got to the position which you described, which was nearly opposite the fence which enclosed this outbuilding, what did you do?

A. I got down in the grass and concealed myself in the grass and weeds there.

Q. How long were you there before you observed anything?

A. I should say five minutes, probably a little more.

Q. Then what did you see?

A. I saw someone come down the lane—on the path leading from Broad street.

Q. You are referring now to Ervin's Lane?

A. No, sir, I refer to the path that leads to Broad

street, that leads off of Broad street down.

Q. And the path that is in the rear of the A. J. Cartan property and other properties there?

A. Yes, sir.

Q. And you saw someone coming in what direction?

A. Coming down the path, they were coming down from Board street.

COURT: Coming from the south toward the A. J. Cartan property or from the north?

WITNESS: Coming down.

Q. Were they coming in the direction of your property and the A. J. Cartan property?

A. Yes.

Q. Coming toward it?

A. Yes.

Q. From what direction?

A. From Broad street.

COURT: Is Broad street north or south of the A. J. Cartan property?

WITNESS: North.

Q. Well, this person whom you saw coming, you first saw him when he was in that road or lane way?

A. Yes.

Q. Indicate upon the map about where he was when you first saw him.

A. About here (indicating).

COURT: On the line between A. J. Cartan's property—

WITNESS: Somewhere about on the line between A. J. Cartan's property and Hopkins, in the lane.

Q. From that time on describe his movements.

A. He come across at this angle (indicating); he left the path and come down—

Q. When you speak of the path you are referring to the thing here which bears the legend upon the map as the "Lane leading to Broad street"?

A. Yes, sir.

Q. What did he do; he went across the lane, you say?

A. He left the lane here (indicating).

Q. Where you described him as having first seen him?

A. At a point opposite the division between—

Q. The Hopkins and the Cartan lot?

A. Yes.

Q. And he went across the lane and into the A. J. Cartan lot?

A. Yes.

Q. And passed into the lot?

A. Yes.

Q. Was there any fence there?

A. Yes.

Q. Did you notice his going over the fence?

A. Yes, sir.

Q. Then describe his journey from that time on, as you saw it.

A. He got over the fence and went along in front of this building up to a gate.

COURT: You mean the outhouse?

WITNESS: Yes.

COURT: Up to a gate?

WITNESS: Yes.

Q. Was there a fence around the three sides of the outhouse at that time?

A. Yes.

Q. What about the fence; how did he get over the fence, or over it or under it?

A. He jumped over it up close to the building by the tree.

Q. You have pointed to a point on the map you indicated at which he got over the fence?

A. Yes

Q. Is that the corner of the fence nearest the lane and also nearest the Hopkins lot?

A. Yes.

Q. When he got over the fence where did he go?

A. Walked up in front of this building to the gate.

Q. To what gate?

A. The gate that leads from the house into the yard.

COURT: From the outhouse?

WITNESS: No, sir, leads from the main house into this yard.

Q. You have said that there was a fence around three sides of this outhouse?

A. Yes.

Q. Is it three sides?

A. Sure, it runs across and down this way, and then up this way a few feet to the building, a tree stands in there.

Q. It really only covers one side of the outhouse, the fence?

A. Yes.

Q. It covers only one side, the side nearest to your property?

A. One part of it, the building acts as a fence.

Q. Is there a gate in that fence on the side of the fence nearest the house?

A. Yes, sir.

Q. How near is that gate to the outhouse itself?

A. It is not far.

Q. You say you saw him go over the fence at the point you described and go to that gate?

A. Yes.

Q. The gate in the fence?

A. Yes.

Q. What did you see then?

A. I saw meet someone there.

Q. Did you see who that person was?

A. No, sir.

Q. Could you see whether it was a man or a woman?

A. It looked to me like a woman.

Q. When they met at that gate how long were they there together?

A. Probably a minute or two.

Q. Did you see what they did?

A. Yes, sir.

Q. What?

A. They drew back to the door of this building.

Q. And was there a door in the building?

A. Yes.

Q. Have you examined this map; look and see if you find the door on the map.

A. Yes.

Q. And it is properly located according to your recollection, as to the conditions then; is it located on the map where it was as you recall on the night in question?

A. Yes.

Q. They went down to that door; what then happened?

A. They went in.

Q. Did you see them go in?

A. Yes.

Q. Did you recognize the man who got over the fence and went into this yard adjacent to the outhouse?

A. When he got over the fence?

COURT: At any time did you know who he was?

WITNESS: Yes, but not at that time.

Q. Did you know who it was before he went into the outhouse?

A. I knew it was Devlin, yes.

Q. Did you recogize him as Devlin before he went into the outhouse, or was it after he came out of the outhouse?

A. I recognized him absolutely sure after he came out.

Q. Then you didn't recognize him absolutely sure when he went in?

A. No, sir.

Q. How long did these two people remain in that place?

A. I should say half an hour, or a little better; I am not sure as to the time.

Q. Did you see them come out?

A. Yes, sir.

Q. Did you see both of them come out?

A. Yes, sir.

Q. Did you see which way the woman went?

A. No. I didn't see which way the woman went.

Q. Where did you see her last?

A. At the gate.

Q. At the gate of this enclosure?

A. Yes.

Q. You didn't see her after that?

A. No.

COURT: When she came out, you saw her at the gate?

WITNESS: Yes.

Q. Did you see the man at that gate?

A. Yes.

Q. Where did you see him?

A. He walked along—

Q. Wait a minute; when you first saw him after he came out, where was he?

A. At the gate.

Q. Where she was?

A. Yes.

Q. And they were together?

A. Yes.

Q. Which way did he go after that?

A. He came out of the gate, around the fence to a roadway or driveway that leads from Main to this path, on down the path.

Q. You mean the lane leading from Broad street, as shown on the map?

A. No, sir, I do not.

Q. What path are you talking about?

A. I am talking about the driveway in A. J. Cartan's residence.

Q. You mean the driveway in the residence at it comes down to the lane?

A. Yes, the lane or path.

COURT: He means the lane, then. They went down a driveway in Cartan's yard?

WITNESS: Yes.

COURT: Which leads into the yard?

WITNESS: Yes.

COURT: You keep calling it a path and we call it a lane.

WITNESS: I will call it a lane.

Q. Will you indicate upon the map the course which this man pursued?

A. He came out her (indicating).

Q. Where the dot is you indicate him?

A. Yes.

Q. Out here?

A. At the corner of this fence.

Q. And came along the side of the fence nearest the house?

A. Yes.

Q. Then where did he go?

A. He came out to this driveway that leads to the lane.

Q. There was a driveway into Cartan's lot that led from the lane?

A. Yes.

Q. How far was that located beyond the northerly side of this enclosure, about how far?

A. I should judge four or five feet probably, probably six.

Q. You say you saw him go in that path in that driveway?

A. Yes.

Q. Then which way did he go?

A. He come down to the lane.

Q. He went in a straight line, did he?

A. He did until he got to the corner of the fence.

Q. You are speaking of the corner—

A. Of the lower end of the fence.

Q. The corner of the fence on the northerly side of it, nearest the lane leading into Broad street?

A. Yes.

Q. When he got to the corner of this fence, where did he go?

A. He came across to the Hopkins line.

Q. He went diagonally across to the corner of the A. J. Cartan lot nearest the Hopkins line?

A. Yes, out to the line.

Q. During the time when you observed the coming

and going of this man, how were you located?

A. I was in the grass.

Q. Standing up or lying down?

A. Down on my knees.

COURT: Did you recognize the woman when she came out?

WITNESS: No, sir, I did not.

COURT: Where were you when you say you had a clear view of Devlin and recognized him then; where were you at that point?

WITNESS: That was when he came down and went across from the fence to the path.

COURT: And going across the Hopkins corner?

WITNESS: Yes.

Q. What light, if any, assisted you in seeing the man and recognizing him that night; what light was there that was of any assistance to you?

A. There is a light in this lane, on the line of Sickles and Ren Cartan's lot.

Q. Look on the map and see if you can see an electric light pole indicated on the map in the lane?

A. Yes.

Q. Was that the location of it at that time?

A. Yes.

Q. What else, if anything, assisted you in seeing the man, by way of light, that night; were there other

lights in the neighborhood?

A. Yes, there is one opposite A. J. Cartan's store.

COURT: On Main street— this is Main street?

WITNESS: Yes.

Q. Was it on Main street or Broad street?

A. On Main street. And the light from A. J.'s store shown down there, too.

Q. I notice there is an electric light pole indicated or designated by that legend on the map; was that the location of the light on the night in question?

A. Yes.

Q. Could you see this man distinctly?

A. Yes, sir.

Q. What was the back of that lot, was it overgrown, or not, with shrubbery or grass or weeds to any height on A. J.'s land?

A. Yes, the lower end of it, it is low, and it is always growed up wild.

COURT: Was it of sufficient height to obstruct your view?

WITNESS: Yes—it didn't obstruct my view, no.

COURT: That is what I am asking you. It would have obstructed your view if you had lain flat?

WITNESS: It might have.

Q. You described yourself as having been on your

knees?

A. Yes.

Q. After this man passed out into this lane leading into Broad street, as indicated upon the map, what did you do?

A. I went out to the lane then myself, after he got up through the lane on Ervin's property.

Q. You went out into the lane?

A. Yes.

Q. Then what did you see or do?

A. I saw Ren get over near Ervin's fence.

Q. Ren Cartan?

A. Yes.

COURT: And going over that fence would bring him where, into the lane?

WITNESS: Into the lane.

Q. Into Ervin's Lane?

A. Not Ervin's Lane, the lane that leads back—

Q. Did you see what he did?

A. Yes.

Q. What did he do?

A. He followed Devlin on out to the lane.

Q. And what did you do?

A. I went back to Ren's house.

COURT: What became of the woman when Devlin left her; did you notice?

WITNESS: No, sir.

Q. Do you know where she went?

A. No, sir.

Q. She passed out of your sight?

A. Yes, my view was obstructed there.

Q. By what?

A. Grape arbor and things; I couldn't see on the other side of the space.

Q. What about a hedge; there is a hedge shown running across almost the A. J. Cartan lot; which side of the hedge were you on when you were making your observation?

A. The lower side.

COURT: The easterly side?

WITNESS: Yes.

COURT: The side next to the lane leading into Broad street?

WITNESS: Yes.

Q. Did that hedge serve to cut off your view as to where this woman went?

A. Yes; she left the gate here (indicating); I couldn't see over there from the point where I was.

Q. There is a gate, is that right?

A. Yes.

Q. How is this outbuilding constructed; did it have any glass in the side of it?

A. I don't know about that.

Q. Did you never notice that; did you notice whether it had any furniture in it that night in question?

A. No, sir, I was never in it.
Q. And you made no further examination about it?
A. No.
Q. You told all you know about this incident?
A. No, sir.
Q. What is it I have omitted to ask you?

MR. APPLEGATE: Objected to.

COURT: What else do you know about it?

WITNESS: I came back to Ren Cartan's house that night and met Mrs. Cartan in the kitchen.

Q. Which Mrs. Cartan?
A. Mrs. Ren Cartan, and she wanted to know—

MR. APPLEGATE: Objected to.

COURT: Sustained.

Q. Did you tell her what you had seen?
A. Yes.
Q. Did she tell you what she had seen?
A. Yes.

MR. APPLEGATE: Objected to.

COURT: Strike it out.

Q. Do you know where she was while this thing was in progress; do you know of your own knowledge?
A. Who?

Q. Mrs. Ren Cartan?

A. Yes.

Q. Where was she?

A. She was in the adjoining lot to her property, or her husband's property.

Q. How do you know she was there?

A. I seen her there.

Q. Did you see her there at the same time that you were out in the A. J. Cartan lot?

A. Yes.

Q. You spoke of the adjacent lot; weren't you both in the same lot?

A. Yes.

Q. And which one of you was nearer the lane leading into Broad street?

A. I think we were both about the same distance from the lane leading in—

COURT: The Broad street lane?

WITNESS: Oh, I was nearest to that.

Q. You were nearest to that?

A. Yes.

COURT: How far were you from Mrs. Cartan?

WITNESS: I should say 60 feet.

COURT: She was that much nearer the dwelling house, then?

WITNESS: Yes.

Q. It is not much more accurate to say she was that much nearer Main street?

A. Yes, sir.

Q. Did you see Ren that night after this experience of yours?

A. Yes.

Q. Did you tell him what you had seen?

A. Yes.

Q. Did he tell you what he had seen?

MR. APPLEGATE: Objected to.

COURT: Objection sustained. Is there anything else within your own knowledge and observation, not what someone told you, that you haven't already told us, that occurred that night in relation to these parties?

WITNESS: No, sir, only the conversation we had in the house.

CROSS EXAMINATION BY MR. APPLEGATE:

Q. How long have you known Mr. Devlin?

A. Ever since I was a boy.

Q. How long have you known Mrs. Cartan?

A. The same length of time.

Q. Your relations with Mr. Devlin have been more or less strained for the last three or four years, have they not?

A. I wouldn't say so.

Q. He brought an action against you, did he not,

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some two or three years ago?

A. Yes.

Q. In March, 1918?

A. I just forget the date.

Q. You didn't speak to him from that time on, did you?

A. Yes, sir.

Q. When I say you didn't speak to him, I mean you didn't speak to him in a friendly way?

A. I might have not for two or three months.

Q. It continued longer than that; it continued down to the present time, has it not?

A. No, sir

Q. You say then that your relations with Mr. Devlin with the exception of two or three months after March, 1918, were friendly, do you?

A. Part of that time, yes, sir.

Q. After the three months?

A. We haven't been speaking the last year or so.

Q. How long were you friendly—continued friendly after the three months from March, 1918?

A. Up until around Election time, November.

Q. What year?

A. 1918.

Q. Then from November, 1918, you mean to say your relations were not friendly?

A. No, sir.

Q. And haven't been since?

A. No, sir.

Q. You have made many threats against Mr. Devlin, have you not, on the street and public places?

A. I don't know that I have.

Q. You say you have not?

A. I don't say that I haven't, no.

Q. Haven't you threatened upon more than one occasion, and made use of the expression that you would drive Devlin out of town if you could?

A. I don't ever remember of making it.

Q. Might you have done it and not remember it?

A. I don't ever remember making that expression?

Q. Might you have said it and not now remember it?

A. It might be possible.

Q. And possible because why?

A. I don't know.

Q. At any rate your attitude was such that it might have been possible for you to have said such things?

A. I don't deny that I didn't say it.

Q. And did you not also make use of the expression, or words to this effect, that you would drive Devlin from the post office?

A. No, sir.

Q. He was then Post Master, was he not?

A. Yes. I might have said that; I didn't think he was in at the proper time; he was supposed to put in eight hours there and he didn't put it in; and I might have made a remark to that effect.

Q. And did you make that remark because of your hostile attitude toward Mr. Devlin, did you?

A. I might have.

Q. You have been very active in endeavoring to secure evidence in this case on the part of Mr. A. J. Cartan, have you not?

A. I don't see where I have.

Q. Have you or haven't you?

COURT: If you have not, say so.

A. No, sir; on this night I went down there and saw what I saw.

Q. Have you interviewed persons in Matawan and other places requesting that they be witnesses and attend at this suit at this hearing?

A. Not that I remember of.

Q. Do you say you haven't.

A. I say I don't remember of it.

Q. That is all you will say?

MR. WILSON: I think this witness is entitled to have the names of the persons.

COURT: Unless they go into it more in detail I will rule it out, unless they lay the foundation properly.

Q. Haven't you met in conference with Mr. A. J. Cartan and Ren Cartan many times in the last year relative to this suit.

A. We have talked of it.

Q. You met with them and talked the matter over?

A. I am to my sister's most every other Sunday.

COURT: Have you met for the purpose of discussing it or having a conference over this trouble between Mr. and Mrs. Cartan?

WITNESS: We may have.

Q. Haven't you any recollection on the subject at all?

A. I think we did on two or three occasions.

COURT: I expect you to have just as good a recollection of what occurred in 1919 and 1920 as in 1918. Don't

keep saying that you may have. I want information; I don't want guess work about it.

Q. Directing your attention, when you were in the so-called garden in the rear of Mr. Cartan's premises, how near were you located to the outhouse in which you say you saw two persons enter? How far away were you from it, the place where you stationed yourself in the grass?

A. I should say 70 feet.

Q. You were at that place 70 feet away when you first saw the man to whom you have referred?

A. About that, yes, sir.

Q. How near were you to the man when you first saw him?

A. About the same distance.

Q. Were you any nearer to the man that night?

A. Yes.

Q. And how much; what was the shortest distance you were from him?

A. 50 feet about.

Q. When did you first recognize him as Mr. Devlin?

A. When he came down the lane, down the street that leads to the lane.

Q. How far away from you was he then when you first recognized him?

A. About 50 feet.

Q. He was at one time farther than 50 feet?

A. When he got over the fence.

Q. You saw him coming towards you?

A. I saw him coming down the lane.

Q. You couldn't recognize him then?

A. No, not distinctly.

Q. But you could recognize him at 50 feet?

A. When he came down the street that leads to the lane, I recognized him.

Q. You said you recognized him at about 50 feet?

A. Yes.

COURT: Do you mean came down the driveway, when you say lane?

WITNESS: Yes.

Q. Was this after he had come out of the outhouse or before?

A. After.

Q. You didn't know who it was positively until after the person had left the outhouse, did you?

A. No, sir.

Q. And how was it you were able to recognize him after he left the outhouse and not before?

A. I was closer to him.

Q. You were 20 feet nearer?

COURT: I don't understand that. Weren't you just as close to him when he went in the gate?

MR. WILSON: He didn't go in the gate; he went over the fence.

COURT: How far was the fence he jumped over from the gate, six or eight feet or more?

WITNESS: He jumped over the fence at the lower end—

Q. Of the house?

A. Yes.

Q. How far was he from you then?

A. I would say 70 to 80 feet, I don't know exactly.

Q. What was the nearest electric light to this man when you saw him jump over the fence and go toward the outhouse?

A. The one here in the lane.

Q. What lane?

A. The lane leading to Broad street, as shown on the map.

Q. How near was he to that light when you saw him going over the fence?

A. This lot is 62 feet—

Q. Which lot are you referring to?

A. R. Cartan—and I was about in the center of this one (indicating)—

Q. You were in the center of the A. J. Cartan lot?

A. Yes.

Q. And the electric light that you have referred to is in the southeast corner of the Sickles lot, just opposite the southeast corner?

A. About on a line.

Q. So that the electric light is 62 feet according to the map, from the southeast corner of the R. Cartan lot—from there to there (indicating)?

A. Yes, sir.

Q. And you were whereabouts, in the middle of what lot, A. J. Cartan's lot?

A. About in the middle.

COURT: The middle of the northerly plot marked "A. J. Cartan"? There appear to be two marked that way.

Q. You were in the middle of the northerly plot marked "A. J. Cartan" on the map?

A. Yes, sir.

MR. WILSON: Most northerly or southerly?

MR. APPLEGATE: Northerly.

Q. And in the rear end or out from the rear end?

A. I was on the rear end of it.

Q. How near to the easterly line of the A. J. Cartan lot were you?

A. I would say I was in there 25 or 30 feet.

Q. Take a pencil and mark it where you say you were on the A. J. Cartan lot.

A. I cannot do that, because I don't know exactly.

Q. To the best of your knowledge.

A. I don't understand the scale of the map. I would say I was in there an inch.

Q. Mark it.

A. (Witness does so).

COURT: You have hardly marked a quarter of an inch. I will not hold him down to it. He is not a surveyor or map maker.

MR. APPLEGATE: We understand it is merely approximate.

Q. When you saw Mr. Devlin, as you say, coming out of the outhouse, whereabouts was he when you first saw him?

A. When I first saw him, I saw him walk along the

line of the fence to the driveway.

Q. Where was he when you first recognized him, to know positively it was he?

A. When he came down by me.

Q. How near was he to you then?

A. About 50 feet.

COURT: He was then in the driveway?

WITNESS: Yes.

Q. You were still standing at the place as you marked, at the approximate spot?

A. I was kneeling, not standing.

Q. You were there?

A. Yes.

Q. And Devlin was coming down this lane leading from Broad street, walking south, was he?

MR. WILSON: After he came out?

MR. APPLEGATE: After he came out of the house.

MR. WILSON: He didn't say so.

Q. Did he?

A. I don't understand.

Q. Which way was Mr. Devlin walking after he came out of the outhouse and he was in the lane?

A. He walked along this fence and turned into this lane (indicating).

Q. Now you are pointing to what lane?

COURT: He indicates the lane in the rear of the lot.

WITNESS: The driveway.

Q. Was he in the driveway when you first recognized him?

A. Yes, down at this point.

Q. What point?

A. Down here (indicating).

COURT: Mark it approximately.

(Witness does so.)

Q. How far was Devlin from the lane when you first saw him in the driveway?

A. I should say 50 or 60 feet.

Q. I won't pin you down to five or ten feet; I want your best judgment.

A. 50 or 60 feet. (Witness indicates place on the map, as requested.)

Q. What was the nearest electric light to Devlin that night when you recognized him positively as Devlin?

A. What time?

COURT: When he was in the roadway, when you were sure it was Devlin?

WITNESS: This light here (indicating).

COURT: The one on the corner of the Sickles lot?

WITNESS: Yes.

Q. The same light to which you referred a few moments ago?

A. Yes. There also was a light from Main street which shown down there, in front of the A. J. Cartan store, and the light in his store shown down there, too.

Q. And the electric light you referred to in Main street is the one opposite or nearly opposite the building marked "Dwelling" in lot of R. Cartan on the map?

A. Yes.

Q. And opposite the A. J. Cartan store?

A. Opposite the A. J. Cartan store.

Q. Is there any building on the A. J. Cartan lot immediately south of the R. Cartan lot?

A. No, sir.

Q. Any trees in the lot, A. J. Cartan lot?

A. Yes, sir; there is a big hedge tree there.

Q. Any other trees; is it grown up with bushes?

A. Some bushes in the lower end of it.

Q. How about the front end? The Main street end?

A. This hedge there was one time planted as a garden.

Q. Are there any other bushes in there; are there any trees in the front end of that lot and bushes, the Main street end of the lot?

A. There is a tree, yes, sir.

COURT: Only one tree?

WITNESS: As I remember.

COURT: Any bushes, Mr. Applegate asks you, on the street end of the lot?

WITNESS: You mean the Main street end?

COURT: The front of the lot?

WITNESS: There is a hedge that comes across there.

Q. How high was the hedge then?

COURT: Speaking of the time as of 1918?

A. I suppose it was about three feet high.

Q. Was that hedge on the street line or back in the lot?

A. It was back.

Q. How far from the street?

A. I should say 70 feet.

MR. WILSON: It is indicated on the map.

Q. There is no hedge that the average man or person of average height couldn't see over at that time?

A. There is a big bush there?

Q. Hedge I am talking about.

A. No, the hedge is about three feet high.

Q. There is no hedge there that one of average height couldn't see over?

A. No.

CROSS EXAMINATION BY MR. LANE:

Q. Did you change your position from the time you

first saw Devlin until the time you last saw him?

A. On that night?

Q. Yes.

A. No, sir.

Q. You stayed right there at that one place?

A. Yes.

Q. And as I understand it, that position was a kneeling position or half kneeling position?

A. Kind of.

Q. By half kneeling, the foliage or grass was so thick that you were concealed from anybody that might happen to look in that direction, is that right?

A. Yes, sir.

Q. Was the foliage out?

A. The latter part of May—yes, the foliage was out.

Q. Was it?

COURT: Do you recollect anything about it?

WITNESS: There were a lot of dead weeds in there and a stump of rubbish in there.

COURT: If you haven't any recollection about it, say so, don't be ashamed to say you don't know.

WITNESS: I don't remember.

Q. It was in the latter part of May?

COURT: That is what he said.

Q. Is the foliage in that part of the country—you have lived there for years—out in May; is the foliage

usually sprouting at that time, in Matawan, in the latter part of May?

A. I think so.

Q. After Devlin jumped the fence of the A. J. Cartan lot where did he go?

COURT: When he was going in or coming out?

Q. Going in, where did he go?

A. He got over the fence at this point here (indicating).

Q. Then he walked across the A. J. Cartan southerly lot to the southwest corner of the chicken yard, is that right?

MR. WILSON: Southeast corner.

Q. Southeast corner of the chicken yard, is that right?

A. Yes.

Q. Then what did he do?

A. He went up along in front of that building.

Q. How far?

A. He went up to the gate?

Q. What did he do when he got to the fence?

A. He got over it.

Q. How?

A. He jumped over it.

Q. You saw him jump over it?

A. Yes.

Q. Did he jump over it the same way he jumped over the rear fence of the Cartan lot?

A. How is that?

Q. (Last question repeated).

A. He only jumped over the fence once.

Q. Is that the fence you have been talking about he jumped over?

COURT: Didn't he jump over also the fence he jumped over at the chicken house?

WITNESS: That is the fence he jumped over, and the only fence.

COURT: There was no fence on the line of the lot on the lane where he came in, there wasn't any fence there?

WITNESS: He jumped over this wire fence, by this tree here (indicating), close up to the building.

COURT: That is the only time he jumped over a fence, then?

WITNESS: Yes.

Q. Did you see him clearly as he jumped over that fence?

A. I saw someone jump over it.

Q. Did you see whoever it was jump over that fence?

A. Idid.

Q. How did he jump over it; describe the operation of jumping over the fence.

A. He put his hands up on the building, and got over that way; he lifted himself up.

Q. How high is the fence?

A. I should say the fence is five feet high.

Q. Wire or picket?
A. Wire.
Q. A close chicken wire, isn't it?
A. With a rail on top.
Q. Did he jump over it or climb over it? So you know the difference between the two?

COURT: We will assume he does.

Q. Did he jump or climb over it?
A. He climbed over it; it means the same thing.

COURT: That is what you mean by it?

WITNESS: Yes.

Q. You saw him climb over this fence?
A. Yes.
Q. And then you saw him walk up along the front of the building, in view of you all the time?
A. Yes, sir.
Q. Until he reached this gate on the other side of the chicken yard, is that right?
A. The gate that goes into the chicken yard.
Q. On the other side from where he jumped over the fence or climbed over the fence?
A. I didn't see him on the other side of the fence until he went out.
Q. Did you see him after he went into the chicken yard?
A. I did.
Q. Walking up along the front of the chicken house?
A. Yes.

Q. And you saw him meet somebody at the gate which leads from the house into the chicken yard?

A. Yes.

Q. And he was in your plain sight all the time he was in this chicken yard?

A. Not all the time he was in there, no, sir.

Q. How much of the time was he in your plain sight?

A. Until he went into the building.

Q. So that he was in your plain sight all of the time from where you were until he and whoever was with him entered the building, is that right?

A. Yes.

Q. I show what purports to be a photograph and as you whether you can recognize it as a photograph of the chicken yard?

MR. WILSON: At what time?

MR. LANE: In May, 1916.

A. That looks a little like it.

Q. Is it a correct representation, as you recall it, or is it not?

A. That looks similar to it, yes, sir.

Q. And the place that he jumped over or climbed over the fence—I will ask to have that photograph marked Exhibit D 2 for identification—

(Photograph referred to marked Exhibit D 2 for identification.)

Q. (Continuing) And the place where you saw him climb over the fence is the place that I have marked here

"A" on D 2 for identification?

A. Yes, sir.

Q. And the gate to the chicken house is at a point, which if you could see it, would be "B", isn't it?

A. What do you mean "if you could see it"?

Q. You cannot see it in that photograph, can you?

A. No.

Q. But it is behind the place that I have marked "B"?

A. I don't know, I cannot see the gate.

Q. Take and look at that photograph and tell me whether or not what I marked "B" does not represent the approximate position of that gate?

COURT: Can you see that?

WITNESS: It looks like it might be in the line of it.

Q. You cannot distinguish the gate on that photograph, can you?

A. No, sir.

COURT: It is not shown there?

MR. WILSON: No, sir.

COURT: The gate is not shown, is it?

MR. LANE: No, the gate isn't shown there, because it is not within the view—it is within the view, but there is something intervening between.

Q. I show you another photograph—which I will ask

to have marked Exhibit D 3 for identification—

(Photograph referred to marked Exhibit D 3 for identication.)

Q. —and ask you whether that is another representation from an angle slightly different, of the same chicken yard?

A. Yes, I should say that that is a pretty good picture of it.

Q. When Mr. Devlin came out of the yard what did he do? Show us on the map.

A. He came out this fence and walked out here to the driveway.

Q. He walked along the line of the chicken fence to the driveway?

A. Yes.

Q. When he got to the line of the chicken fence and the driveway where the line of the chicken fence meets the driveway, what did he do then?

A. He walked down the lane; then he went down the driveway toward the lane.

Q. How did he get in the lane?

A. He walked in.

Q. Walked in how?

A. From the fence—from the gate.

Q. Did he just walk in, was there an open space there through which he could walk?

A. He was on the Main street side of the fence then; he walked through the gate to the Main street side of the fence and walked out to this lane, to this driveway.

Q. What did he meet before he got to the lane, if anything?

COURT: Any obstruction or anything, or gate?

WITNESS: No, sir.

Q. He met a hedge, didn't he?
A. He met a hedge.
Q. Then doesn't the hedge meet the gate there at that point?
A. At what point?
Q. At the point where Devlin struck the driveway?
A. The hedge is through the driveway, where he came out on the driveway.

COURT: He was to the east of the hedge when he came out on the driveway.

MR. LANE: Then I am entirely wrong.

COURT: Yes, that is what I understand Mr. Tice to say.

Q. I ask you to show me again on the map where he went after he came out of the chicken yard?
A. He came out through the driveway.
Q. We have him at a point at the end of the fence where the fence meets the driveway—

COURT: Does the fence meet the driveway?

MR. WILSON: He said it did not.

COURT: How far is the fence from the driveway?

WITNESS: Six or eight feet.

Q. We have him to the point at the end of the fence; then what does he meet?

COURT: Does he meet any obstruction?

WITNESS: No, sir.

Q. There is a hedge there, according to the map?
A. There is a hedge above it.

COURT: to the west of it?

WITNESS: Nearer Main street.

Q. But there is no hedge that you recall that joins the chicken yard fence, is that right?
A. Yes.
Q. There is or isn't?
A. Show me where you mean on the map.
Q. Right on the point that I have been pointing my pin at.
A. There is a hedge runs down there.
Q. And meets it?
A. It doesn't come past this fence.
Q. Does it meet it?
A. It probably comes close up.
Q. Doesn't it come right close to it?
A. I don't know about that.
Q. If you were watching so closely and you could see him jump over the fence, why don't you know whether that hedge meets that fence, and if it does, how he

got through it?

A. At that time the hedge was three feet high; he could step through it any way.

Q. Did he step through it or jump.

A. No, he didn't jump; he come out there unmolested.

Q. Don't you know if it was there?

COURT: He said he didn't think it came quite up to it.

Q. How close to the roadway was he accompanied by the woman, if at all, when he left the outhouse?

A. I don't know.

Q. How far did she come with him?

A. I only saw them at the gate.

Q. You didn't see her with him after that?

A. No, sir.

Q. There is brush, or was brush, in May, 1916, in this chicken yard?

A. There might have been a little.

COURT: Do you recollect anything about it?

WITNESS: No, sir.

COURT: Then say so.

Q. You were located on that photograph at a point a little further away than appears to be the point on the lower righthand point of this photograph?

A. I wouldn't say so.

Q. Where were you?

A. I was up more this way.

Q. You were up closer than this photograph would

indicate?

A. I wasn't up back here.

COURT: As I understand him, he says it doesn't show on this photograph.

WITNESS: I don't know that it does.

COURT: Is there any use of taking up all this time with all this detail? I cannot see anything to be accomplished by it. You must show me that he wasn't on the lot. I don't care if you show me 500 photographs at that time to make me disbelieve his testimony.

Q. Was the view that the camera had of this scene practically the same view that you had as shown there in D 3?

A. I don't know that I can answer that question intelligently.

Q. Does this look like it, what you saw?

COURT: I don't see how it can possibly look like it. That was taken in daylight and he had his view at nine o'clock at night. Can you say whether you were looking at it from the same point of view?

WITNESS: I cannot.

Q. You are familiar with that back yard?

A. Yes.

Q. The objects shown in that picture, were they within the range of your vision so you could have seen them if it had not been dark that night?

A. Any objects there in the range of my vision?

Q. That would have been in the range of your vision, if you had occupied the position in the daytime instead of night, in May, 1916; if you had occupied the same position, would you have seen these things shown on the picture?

A. I wouldn't have seen this big hedge, because it wasn't as high as that.

Q. Then with the exception of the hedge everything would have been alike?

A. Yes.

COURT: There is no claim that these pictures were taken in May, 1916?

MR. LANE: No, they were not. We will show when they were taken.

Q. Mr. Tice, do you know Mr. Cox?

A. Yes, sir, I know of him.

Q. You mean you know of him; have you talked to him?

A. I might have passed the time of day with him.

Q. Do you remember talking to him about the time that this suit was started against you in 1918, about Mr. Devlin?

A. No, sir.

Q. Do you remember at or about that time saying to him that P. J. Devlin had euchred you out of your property and that you would get square with him, if it took you all your life, or words to that effect?

A. I don't remember saying it.

Q. Might you have said that at that time?

A. I don't remember saying it, and don't think I said it.

Q. Do you know Mr. Fury?

A. Yes.

Q. Did you at or about that time that this suit was pending, or at or about the time that you made this discovery in May, 1916, or a little subsequent thereto, say to him the Patrick J. Devlin had euchred you out of the property, and that you would get square with him if it took you all your life, or words to that effect?

A. I don't remember it.

Q. Do you remember having said it to anyone in the presence of Mr. Fury, when Mr. Fury was there?

A. No, sir.

Q. Mr. Fury, the proprietor of the hotel in Matawan?

A. Yes.

Q. You don't remember whether you said it or not?

A. No, sir, I don't remember it.

Q. Do you remember sometime after the first of October, 1918, seeing Mr. Patrick J. Devlin at his store upon several occasions and stating to him that he had done you out of the money and that you would get square with him, if it took you all your life, or words to that effect?

A. When?

Q. About October 1, 1918?

A. No, sir.

COURT: When did you say it?

WITNESS: The latter part of October. It was the Monday before Election, 1918. I will relate that incident if you want me to.

COURT: Mr. Wilson will give you the opportunity to do so.

Q. Didn't you say at that time to him that if he didn't settle the matter, you would settle with him?

A. No, sir.

Q. Or words to that effect?

A. October first, no, sir.

COURT: About October first, when you say you had this conversation with him, did you then say that if he didn't settle the matter with you, you would settle with him?

WITNESS: No, I don't remember those words.

Q. Substantially?

A. I said a whole lot, but I don't remember those words.

Q. Substantially those words?

COURT: Did you use words to that effect?

WITNESS: I don't think I ever made any threats, no, sir.

Q. Did you after that ask him to settle it or fix it up, and did he tell you that he had filed his answer, and you would have to see his lawyers?

MR. WILSON: Referring to this suit?

MR. LANE: Referring to this suit.

COURT: Did Devlin tell you after that conversation in October sometime that he had filed his answer in this divorce suit, and you would have to see his lawyers?

WITNESS: No, sir.

COURT: Or words to that effect?

WITNESS: No, sir, he told my father, but not me.

RE-DIRECT EXAMINATION BY MR. WILSON:

Q. Your attention has been directed to Exhibit D 2 for identification, a photograph; examining counsel has put the letter B at a place where he says—or in opposition to where he says the gate is which leads into the chicken yard from the house.

MR. LANE: If I said that, I didn't mean it; I meant to say the gate into the chicken house.

MR. WILSON: The testimony is there is a door into the chicken house, and the expression of "gate" is very confusing.

MR. LANE: I meant the door.

WITNESS: I understood you to mean gate.

COURT: Let it appear that counsel corrects that, and the word used by him then refers to the door into the outbuilding.

MR. WILSON: I will not take any further time on that.

Q. I show you another photograph marked Exhibit D 3 for identification, and you were asked as to the conditions in this lot—physical conditions on the night that you described, in May, 1916; this shows a growth of some kind, bushes or the like, more or less dense, in the chicken yard; was there any such growth as that in 1916?

A. No, sir.

COURT: With that exception of height of the hedge, that correctly shows the conditions in May, 1916?

WITNESS: Yes, sir.

Q. There is a hedge shown upon this last photograph, and I am pointing to it, am I not?

A. Yes, sir.

Q. And were you located between the hedge and the lane leading down to Broad street?

A. Yes, sir.

Q. And not between the hedge and Main street?

A. No, sir.

COURT: You were of course on the north side of the driveway then? The position you occupied on A. J. Cartan's lot?

WITNESS: Yes, sir.

Q. How wide is that driveway, ten feet?

A. I would say so, yes, sir.

Q. You have been asked in particular in respect to a

suit which Devlin brought against you; that had relation to some real estate transaction?

A. Yes.

Q. Was that matter adjusted between you?

A. Yes.

Q. Was that a suit brought by Devlin alone or Cartan & Devlin?

A. Cartan & Devlin.

Q. Was there an amicable adjustment of it?

A. Yes, it was straightened out.

COURT: When?

WITNESS: It was along in the late summer or fall of 19—

COURT: The suit was brought in 1918; was the settlement effected that summer or fall?

WITNESS: That I cannot give you definitely, because I don't remember. Some months after the suit was started.

Q. How long after Cartan & Devlin had started suit against you did you reach some amicable adjustment of the subject matter of the suit; how long to the best of your recollection?

A. It was fixed up shortly after, that matter.

Q. You mean a matter of days or hours or weeks or months?

A. It was fixed up two or three days after he began suit.

Q. Have you any ill feeling for Devlin growing out of that transaction?

A. No.

Q. Have you any ill feeling toward him?
A. Now?
Q. Yes.
A. No.

COURT: Have you ever had any trouble with Mrs. A. J. Cartan?

WITNESS: No.

COURT: How are your relations with her?

WITNESSS Very pleasant.

Q. Your attention has been directed to an occasion when you went to Devlin's store; this trouble which is the subject matter of this suit was developed after October, 1918; what occurred on that occasion; what did you say to Devlin?

A. I met him one morning as I was getting off the trolley car, and I called him most everything a man could call another man.

Q. Was it in the street or at the store?

A. As he got off the trolley car, and I followed him to the store, and stood between him and the door; he didn't go in, and in the course of our conversation, his brother came up, and he handed him the keys, and he unlocked the door and went in, and Devlin went on up the street to the post office.

Q. Did you at that time say anything to him that related to this particular trouble?

MR. APPLEGATE: What trouble?

MR. WILSON: This divorce suit.

MR. APPLEGATE: Objected to as far as Mrs. Cartan is concerned.

COURT: I will receive it. Did you say anything to him?

WITNESS: Yes.

Q. Did you at that time charge him with having been intimate with Mrs. Cartan?
A. I did.

MR. APPLEGATE: Objected to.

Q. What did you say to him and what did he say to you, and what did you say to him?

MR. APPLEGATE: Same objection.

COURT: Same ruling.

A. When he got off the car, I said, "Devlin, what kind of a skunk are you anyway? I know you have ruined Johnce's home and family, and you have tried to ruin my sister; what do you mean by this? You are a dirty skunk and a stinker, and if I didn't have any more manhood in me than you have got, I would go down here in the creek and jump overboard."

COURT: What did he say, if anything?

WITNESS: Not a word.

Q. Did he make any response to anything you said at that time?

A. No, sir.

Q. Do you recall another occasion when you went to his store taking with you one of A. J. Cartan's children?

A. Yes.

Q. Which child was that?

A. Betty.

Q. How old was the child at that time?

A. I don't know how old.

COURT: She is six now.

Q. Was that two years ago, a year ago?

A. Two years ago, 1918.

Q. It was in 1918.

A. Yes, the forepart of November.

Q. How did the child get in there?

A. I picked her up and carried her in.

Q. In your arms?

A. Yes.

Q. And when you got in the store where did you go?

A. Up to the desk.

Q. With this child in your arms?

A. Yes.

Q. Who was at the desk?

A. Devlin.

Q. What did you say to him?

A. I said, "Betty, this is Judas. You are a little child, you don't know what Judas means, but maybe some day you will understand; you will know why I call him Judas, and what he has done to your father and family."

Q. Is that all you said?

A. That is about all, yes, sir.
Q. Did he make any response?
A. Not a word.
Q. And you went out of the store?
A. Yes.

RE-CROSS EXAMINATION BY MR. LANE:

Q. When did you make up your mind to go with that little child before Devlin in that way?
A. I was unloading potatoes in front of the house; I saw the child coming down, and the thought struck me, and I went to him.
Q. You thought that was a nice thing to do with that child?
A. I didn't give it any thought, I just went.
Q. You had known that Mr. Devlin was a Judas from May, 1916, hadn't you?
A. Yes. How is that?
Q. From May, 1916, you had known him to be a Judas?
A. Yes.
Q. And it didn't strike you to do anything like that between May, 1916, and October, 1918, did it?
A. No, sir, not until my sister told me he tried to ruin her.

MR. LANE: I move that be stricken out.

COURT: Strike it out.

Q. You didn't tell A. J. Cartan anything about what you discovered in May, 1916, until when?

A. Until the latter part of October, 1918.

Q. How did you come to tell him what you knew?

A. Because he asked me.

Q. When was it he asked you; the latter part of October, was it?

A. The Sunday before Election, down in his garage; he called me and took me down in his garage and asked me; I told him I didn't want to get mixed up in the affair, and he said, "You know something, because Ren has told me you know something, and I want you to tell me."

Q. That was Sunday before Election?

A. Yes.

Q. You are sure of that?

A. Yes, sir.

Q. Had you talked to Devlin before that?

A. What do you mean talked to him?

Q. About this case, on this subject?

COURT: About his relation to it?

WITNESS: No, sir.

Q. When you upbraided him and all that, was that the conversation—was that prior to your interview with A. J. or after when your sister told you?

A. The same day.

COURT: She told you after your talk with A. J.?

WITNESS: Yes.

Q. You knew nothing about your sister until that Sunday?

A. No.

Q. And that happened to be the same day that A. J. asked you for the information?

A. 'Yes.

Q. And Mrs. Ren Cartan and Ren Cartan both knew that you knew everything that they knew, or practically the same, with respect to this particular episode?

A. Sure.

Q. You talked it over together at the house after you came back?

A. Yes.

Q. Nothing was said to you by A. J. until this Sunday, is that right?

A. No.

Q. That was the first time that A. J. indicated to you that he wanted any information from you?

A. Yes.

RE-DIRECT EXAMINATION BY MR. WILSON:

Q. Did anything particular occur which prompted you to go and see Devlin and make that somewhat violent statement to him. which you described in your testimony; was there any particular thing which prompted you to do that?

A. Yes.

MR. APPLEGATE: Objected to.

COURT: I will hear it. I won't hear the detail.

WITNESS: What my sister told me the Sunday before.

COURT: I will let it stand.

Q. What was it your sister told you?

MR. APPLEGATE: Objected to.

COURT: He has already stated what the sister told him.

MR. WILSON: It was all stricken out.

COURT: Sometime ago he has stated that he knows Devlin did not only ruin Mrs. A. J. Cartan, but attempted to ruin his sister. You already stated that that is what you stated to Devlin; you said that?

WITNESS: Yes.

Q. Is it true, as an affirmative fact, that your sister did inform you of that fact? Did you get that information from your sister?

A. I did.

COURT: On the same Sunday afternoon?

WITNESS: Yes.

COURT: And that was the reason for addressing yourself as you did later to Devlin, as I understand you?

WITNESS: Yes.

MRS. REN CARTAN, sworn for petitioner.

DIRECT EXAMINATION BY MR. WILSON:

Q. You are the wife of Ren Cartan?
A. Yes.
Q. Who has been a witness in this case?
A. Yes.
Q. And you are a sister-in-law of A. J. Cartan who is the petitioner in this case?
A. Yes.
Q. You live in Matawan?
A. I do.
Q. How long have you been married?
A. Twenty-seven or twenty-eight years.
Q. Have you any children?
A. Yes.
Q. How many?
A. One son.
Q. How old is he?
A. He was eighteen in June.
Q. How long have you lived in Matawan?
A. All my married life.
Q. And whereabouts did you live in Matawan?
A. We lived right opposite the Cartan & Devlin store now; we have lived there about fifteen or sixteen years.
Q. You were living there in 1916?
A. Oh, yes.
Q. You were living on the property immediately north of the A. J. Cartan property; no intervening house and lot between the A. J. Cartan property and your property?
A. No, sir.

Q. Was there a front porch to your house?

A. Yes.

Q. Is there a side porch on the side nearest to the A. J. Cartan house?

A. A very small porch.

Q. Going back for seven or eight years, prior to October, 1918, did you notice what the association was between Devlin and Mrs. A. J. Cartan?

A. I did.

Q. What, if anything, first attracted your attention especially to that association?

A. We had a great many parties and Mr. Devlin and Mrs. Cartan were always very, very friendly, a little more so than any of the rest, but I wasn't suspicious until one morning, after one of the theatre parties, Mrs. Cartan came down in my house and she told me about the trip they had the night before to the theatre, and she said, "Pat kissed me in the telephone booth, and if Mame knew that, she would get mad as the devil."

Q. Mame is who?

A. Pat Devlin's wife.

Q. Did she say where the theatre party had been?

A. New York.

Q. Go on; what was the effect of that information?

A. That made me very suspicious; I saw things you wouldn't have seen if you hadn't been suspicious.

Q. Go on and tell us what you did see, with respect to the conduct of these two persons at the various parties that you referred to.

A. Mr. Devlin is a very cautious man; people if they were not suspicious, wouldn't—

MR. APPLEGATE: Objected to.

COURT: Objection sustained.

Q. Go on.

A. They were very particular to dance with one another. Mrs. Cartan is a very good dancer, Mr. Devlin is a very poor dancer, but she didn't mind taking a lot of pains to teach him to dance at any time, and on the other hand, Mrs. Cartan was never interested in cards; Mr. Devlin was a better card player than Mrs. Cartan, and he was always ready to show her how to play cards.

Q. With whom did she play most frequently?

A. We had many parties and she would start playing with him when they played Euchre, and later years we played Bridge, and it was at the Bridge parties that he took pains to teach her principally.

Q. Who?

A. Mr. Devlin.

Q. All these parties to which you have referred, were they parties in which the neighborhood generally engaged?

A. Oh, no, sir.

Q. To whom were they confined?

A. The Cartans and Devlins entirely; we were a party all to ourselves.

Q. How frequently would you get together as families?

A. Once or twice a week; it would be an automobile party or theatre party or some little thing going on between us.

Q. Was that true during a series of years?

A. Yes.

Q. During the period about which I directed your attention, seven or eight years?

A. Yes.

Q. Tell us what you observed in full in respect to the dancing of these two people together.

A. They would have a little conversation; Mr. Cartan's house had a hall and they would dance sometimes in the room and then they would afterwards go out in the hall; if they had a dance they had a little private conversation, any excuse, it seemed to be, at any time. One time we were at New Brunswick and Mrs. Cartan was never satisfied with her husband—

MR. APPLEGATE: Objected to.

COURT: Strike it out.

Q. Anything she said or did to show any dissatisfaction of her husband, I invite you to tell.

A. She complained of how hard she worked and that Johnce was mean and stingy, and he was this, things like that.

Q. In the presence of Mr. Devlin?

A. Yes.

Q. What response, if any, did you ever hear him make to that?

A. He said, "Why, Doll, you never ought to work; you never ought to wash, and if I had the money your husband has, you wouldn't have to do it."

Q. Did you hear conversations like that between them more than once?

A. Yes.

Q. A number of times?

A. Yes, sir.

Q. Do you recall an occasion when he gave his own

wife a sum of money after having made a remark of that kind?

A. He did.

Q. Where was that?

A. He has more than once thrown a ten or twenty dollar bill across the table to his wife, in our presence.

Q. Mr. Devlin?

A. Yes.

Q. Do you remember an occasion when he did that after having said to Mrs. A. J. Cartan that she never ought to work, and so forth?

A. Yes, at this New Brunswick incident.

Q. Did you notice anything about their associations at your dinner parties?

A. Yes.

Q. What?

A. They would always sit beside each other, always.

Q. Was that an inevitable fact?

A. Yes, always—very nearly always when we were out together.

Q. Do you recall a certain Labor Day when you went to Asbury Park?

A. I do.

Q. What occurred on that occasion?

A. This Labor Day we started out with two automobile loads and we had dinner at the Coleman House in Asbury Park, and during that dinner Mr. Devlin and Mrs. Cartan were particularly sweet on one another.

MR. APPLEGATE: Objected to.

WITNESS: They had many conversations.

COURT: She may describe what she means by that.

WITNESS: They had many conversations in a way that didn't impress you as being just right.

MR. APPLEGATE: Objected to and move to strike it out.

COURT: Yes, strike it out. You mean intimate conversations privately?

WITNESS: Yes, little whispered conversations at the table. In fact, so much so, Mrs. Devlin said to Mr. Devlin, "Say, I am here"; and then later in the afternoon, Mr. Devlin and Mrs. Cartan and myself went swimming in the pool at Asbury Park.

Q. Tell what, if anything, you observed at the pool?
A. At the pool, while we were in bathing, Mr. Devlin was fooling around Mrs. Cartan all the time.

MR. APPLEGATE: We object to that.

COURT: Don't use the word "fooling".

WITNESS: He put his hands on her; he said, "Come here, Doll, let me teach you how to swim."

Q. Could she swim?
A. She could.
Q. She knew how to swim at the time?
A. Yes, she did.
Q. How big was this pool?
A. It is the North Asbury Park pool, that open pool.

Q. How big is it, approximately?

A. I really don't know.

Q. Is it quite a big pool?

A. Yes.

Q. How deep was the water?

A. One end is,—I think it starts about three feet and runs up for the swimmers deeper, six or seven feet.

Q. You say he put his hands on her, saying he would teach her to swim; tell us exactly what you saw?

A. I would have to show you.

Q. Can't you describe it?

A. He would put his hands under her; when you are teaching anyone to swim, you either hold their chin up and put your hand under their stomach, and that gave him a chance to put his hand there.

Q. She didn't need her chin held up and she didn't need her stomach held up?

A. No.

Q. Where did he put his hand; did he put it on her stomach or on her breast?

A. I would say her stomach—below her stomach.

Q. And was this a gesture that he did more than once that afternoon as you observed him?

A. Yes; I am a good swimmer and swam all around and I saw everything they did.

Q. Do you recall anything that happened that night?

A. Yes.

Q. Where did you stop that night?

A. We came up later to Bridgewater Inn and had dinner there, and while we were at that table Mrs. Cartan was particularly rude to her husband; she turned on her elbow like this (indicating) to her husband; she was very rude, and it made him very angry because I had seen

these things; all day long that continued; they danced together.

Q. Devlin and Mrs. Cartan?

A. Yes, sir, they danced together at that time. You would naturally be polite and ask one another to dance, but they danced together that evening; they didn't dance with any one else, and when were going out—well, we were all waiting in the automobile for them to get in and Mrs. Cartan was pinning his coat collar across like that (indicating), across his chest.

Q. Were Mrs. Cartan and Devlin together with the party or were they behind or ahead of the party?

A. They were behind; we were waiting for them.

Q. How far behind?

A. About as far as the door.

Q. Did you see her do anything at that time?

A. They talked; they were talking and looking at each other; talking very earnestly and sweetly all day.

Q. Did you see her do anything about Devlin's clothing?

A. I told you she pinned up his collar.

Q. On these automobile rides when Devlin was along, was there any place in respect to any other person where he usually sat?

A. He always sat in the back between the two ladies. When Mrs. Cartan's son was driving Mr. Cartan would be in the front with his son and Mr. Devlin would be in back between Mrs. Cartan and Mrs. Devlin.

Q. When they were dancing, not only at Pleasure Bay, but on other occasions where you observed during this period to which your attention has been directed, was there anything unusual about the way they held each other?

A. Well, the whole general dancing was sweet; I cannot tell you, I cannot just describe it. Mr. Devlin was a very poor dancer, and Mrs. Cartan was a very good dancer, and she was always willing to dance with him, and Mrs. Cartan most always refused—when we were out Mrs. Cartan never cared to dance with Mr. Cartan.

Q. Have you heard him ask his wife to dance and she refused?

A. I have.

Q. And afterwards danced with Devlin? 10

A. Yes.

Q. Have you known that to happen more than once during that period?

A. Yes.

Q. How many times?

A. I would say ten or twelve times, maybe more; no doubt more.

Q. What was their habit as to where they sat with reference to each other, when attending dinner and theatre parties? 20

A. Always arranged by the side of each other.

Q. Did it happen in the intercourse of your families that the ladies would arrange automobile parties of their own?

A. Yes.

Q. What, if anything, occurred in connection with them that related to either Mrs. Cartan or Mr. Devlin?

A. The girls were in the habit of coming to my house in the morning.

Q. You mean your sisters-in-law? 30

A. Yes, and Mrs. Devlin, we were one family you might say, and Mrs. Devlin would say, "It is a fine day to go somewhere"—we were always ready to go—and

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Mrs. Devlin said, "I asked Pat this morning and he said he couldn't get off, he is too busy", and someone suggested that Doll go, and she would always get him; he would always come.

Q. Then would you go with Devlin as the lone man in the party; would he be the only man?

A. Yes.

COURT: Why did you desire his company?

WITNESS: Because he was ready to go whenever he got a chance.

Q. But why did all of you desire to have him along?

A. He and his wife went out a great deal, and we all went.

Q. But your husband didn't go and Mr. A. J. Cartan didn't go?

A. Nobody desired him, that I know, particularly, but Mrs. Cartan. He was a good fellow.

COURT: You took him along to pay the bills?

WITNESS: Yes.

COURT: He was a good spender?

WITNESS: We paid back equally, though.

Q. Mrs. Cartan, the point I want to inquire about is this: did it happen more than once, to your knowledge, that Mrs. A. J. Cartan procured the presence of Devlin, when before that effort of hers it seemed that Mr. Devlin couldn't go?

A, He would always come; he was always ready to come any time she asked him.

Q. Have you known of some occasion when his wife said he couldn't go, and she would go and get him?

A. Lots of times.

Q. Do you recall an incident in relation to the association of these two people that occurred in the year 1916?

A. Decidedly, yes, sir.

Q. And do you recall what time of the year it was?

A. Yes.

Q. When was it?

A. May, the latter part of May.

Q. What first attracted your attention to anything that was done by either Devlin or Mrs. Cartan?

A. I had been sitting on my porch alone.

Q. Which porch, front porch?

A. My front porch, and I had been there some time, an hour possibly, and Mr. Devlin came down town and went into the feed store.

Q. What time of the night was that?

A. About nine o'clock.

Q. When you saw him go into the feed store?

A. Yes. He stayed a few minutes and came back and went up town and as he went—

Q. When you speak of going up town, do you mean that he went away from the depot?

A. No, up town the other way, not toward the depot, up the other way.

Q. He went away from the depot, on Main street?

A. Yes.

Q. Go on.

A. And when he got up by Eskensen's—Eskensen has a little piece of lot between their house and Brown's

and when he got to this lot, Mrs. Cartan came off her front porch and ran acress the street—

Q. Will you locate that lot on this map?

A. That is Eskensen's (indicating).

Q. Immediately opposite Ervin's Lane?

A. Oh, no; he wasn't opposite Ervin's Lane.

Q. No, the lot is about opposite?

A. Yes.

Q. You say when he was about Eskensen's lot, what happened?

A. Mrs. Cartan came off her porch, and she rushed across over to the other side and talked with him; they stood and talked just a minute and then she came back on her porch.

Q. And did that conduct of hers have any special significance in your mind?

MR. APPLEGATE: Objected to.

COURT: She may say Yes or No.

A. Yes, sir.

Q. Were you at that time suspecting that the relation between these two people was not what it should be?

MR. APPLEGATE: Objected to.

COURT: I will receive it.

A. I was.

Q. Have you already stated in your testimony some of the things that put you in that state of mind?

A. Yes.

Q. At the time you saw this meeting upon the street was there any light in the A. J. Cartan house?

A. No, sir.

Q. What did you do after you saw this meeting on the street of these two persons?

A. I went over and told my husband?

Q. Where did you find him?

A. In the store.

Q. Did you ask him to go anywhere or do anything?

A. I did.

Q. What did you ask him to do?

MR. APPLEGATE: Objected to as far as Mrs. Cartan is concerned.

COURT: I will receive it.

A. I said to him, "Ren, Pat just met Doll out here."

COURT: What did you ask him to do?

A. I said, "Ren, you go up in Hopkins Lane and see what is wrong with Doll and Pat to-night."

Q. Did you tell him what you had seen?

A. Yes

Q. Did you see what he did after you spoke to him?

A. He locked the door and started up town.

Q. Did he leave the lights burning or put them out?

A. Yes, burning.

Q. Did you see in which direction he went?

A. Up town.

Q. Was that in the direction towards Ervin's Lane?

A. Yes.

Q. What else did you do after you had seen these two people meet on the street?

A. I went across the street to Norman Tice, who was over on his father's porch.

Q. Did you tell him what you had seen?

A. I did.

Q. Did you ask him to do anything?

A. I did.

Q. What did you ask him to do?

MR. APPLEGATE: Same objection.

COURT: Same ruling.

A. I said, "Norman, go cut across the lots."

Q. What did you ask him to do?

A. I said, "Norman, cut across the back lots and get Devlin; he has gone up there, and don't lose him like your father did."

COURT: Strike it all out except that she requested him to go across the back lots and get Devlin.

Q. Why had you requested your husband and Tice both to direct their attention to the back lot?

A. Because I knew that he had gone around back.

MR. APPLEGATE: Objected to.

COURT: I will take the answer.

A. (Continuing) My sister-in-law told me.

Q. Who told you?

A. Mrs. Bert Cartan.
Q. The lady who was on the stand?
A. Yes.
Q. You had never seen him back there?
A. Yes.
Q. But never had seen him go in the lane yourself?
A. No.
Q. (By the Court) But you had been told by someone?
A. I had.
Q. And you base that statement on information you received, that you supposed he had gone in?
A. Yes.

Court: I will let that stand and the rest will go out.

Q. After you had seen Norman Tice and you had seen your husband where did you go?
A. I went home.
Q. And to what part of the home did you go?
A. My side porch; I sat right by the screen door on my side porch.
Q. Did you sit on the porch or in the house?
A. In the house, right up close to the screen door.
Q. That screen door looks out upon the side of the A. J. Cartan house?
A. It does.
Q. How long did you remain in that position?
A. I had been there about three or four minutes when Mrs. Cartan came around the house, close up to the side.
Q. From the time that she had gone across the street and you saw her meet Devlin to the time when you say you saw her come around the house, you were sitting in

back of the screen door, had the A. J. Cartan house been lighted up in whole or in part anywhere?

A. No, sir.

Q. You say you saw her come around the house?

COURT: Her own house?

WITNESS: Yes, her own house.

Q. Could you see her distinctly?

A. Distinctly.

Q. Did you recognize who it was?

A. Absolutely.

COURT: What distance was she then from you when you saw her go around the house?

WITNESS: I don't know what distance, but from my porch to her house is—I haven't any idea of that; I don't know.

Q. As far as from here to the building across there (indicating Prudential Building across Bank street)?

A. I should say so.

Q. Fully that distance?

A. Yes.

Q. As she came around the corner of the A. J. Cartan house—and I am speaking now of the corner on the downtown side and the side nearest Main street; I mean as she came out and came around this corner (indicating) of the house, did you have her in absolutely full view?

A. Absolutely.

Q. What was the source of your light at that time

when she was coming around the corner of this house; what source of light had you?

A. There is a street light right at the division of their lot and ours.

Q. In the street?

A. It is right on our sidewalk.

Q. And is it correctly shown here, as you believe—is that about the location of it, where that brown dot is?

A. Yes.

Q. Was there a light from the A. J. Cartan store?

A. A bright light.

Q. Was there another street lamp at that time, as shown here, opposite the Eskensen lot?

A. Yes.

Q. You saw her at any rate distinctly?

A. Yes.

Q. Was there any hedge or tree or anything else that obscured your vision?

A. There is a hedge across the yard.

Q. When you first saw her come around the corner of the lot was there anything between you and her at that point that cut off your vision?

A. No, sir; she disappeared at the end of the house in the darkness.

Q. The end of the house, are you referring to the end to which I am pointing, which is the northeasterly corner of the house?

A. Yes.

COURT: That is where she disappeared in the darkness?

WITNESS: Yes.

Q. You saw her disappear in the darkness behind here (indicating)?

A. Yes.

Q. Did you see her pass into the grape arbor?

A. No.

Q. There is a grape arbor there?

A. Yes.

.....COURT: And there was one there at that time?

WITNESS: Yes.

Q. Your answers now all relate to May, 1916?

A. Yes.

Q. This map shows a hedge running at right angles to the sides of the A. J. Cartan lot and somewhere about the middle of it. This appears to be marked a hedge; was there a hedge there at that time?

A. There was.

Q. And was that about the location of it, about midway of the lot?

A. Yes.

Q. When you saw this woman, you saw her between that hedge and Main street?

A. Yes.

Q. And that hedge in no way cut off your view?

A. Oh, no.

Q. When you saw her come around the corner of that building, what did you do then?

A. I sat right where I was and waited for her to come back.

Q. How long did you sit there?

A. She was gone so long that I got so worried for

fear something had happened to Ren, because I thought he had confronted them. When I saw her go around the house I knew there was something wrong, and I got so fearful for something that happened to Ren that I came down our grape arbor across our lot over to this hedge.

Q. Indicate on the map the path that you took. This is your house and this the side porch of which you spoke?

A. Yes.

Q. And you were sitting behind the screen door here?

A. Yes.

Q. And when you say you became apprehensive you came out of your house; describe how you went from your lot and got into the A. J. Cartan property.

A. This is our side porch (indicating); I came out there and come right down.

Q. Did you have a grape arbor down there?

A. Yes.

Q. You went through that?

A. Yes, and then I came right across to their lot to this hedge.

Q. When you came into the A. J. Cartan lot, on which side of the hedge were you, on the side nearest Main street?

A. No, sir.

COURT: On the side nearest the lane?

WITNESS: Yes.

Q. How far did you go into the A. J. Cartan lot?

A. About half way of the hedge, and there is a piece of hedge tree; it is a piece of hedge that has been allowed

to grow, that makes a tree, and I stood right there.

Q. That is about half way the length of the hedge?

A. I would say so.

Q. You came on the lane side of that hedge?

A. Yes.

Q. Then what did you do?

A. I stayed there and I hadn't been there for just a minute or two when two people appeared at this chicken yard fence, and then when that happened I dropped right on my knees; one came directly toward me and when he got to the end of the fence I recognized Mr. Devlin and he turned to the back and I didn't see any more of him. When I raised up from my knees, Mrs. Cartan was going around the front of the house, the same as she came out.

COURT: Of her own house?

WITNESS: Yes, around to the front.

Q. When you located yourself, you say about half way down between the hedge and the lane, you saw two persons at the gate of the chicken house lot that is shown here on the map. Here is the chicken house and here is supposed to be the fence around it, and the gate is shown there; that is where you saw them?

A. Yes.

Q. At that gate?

A. Yes.

Q. At the moment you saw them did you recognize both?

A. Oh, no, sir, I knew that was the people I was looking for, at least I supposed it was, but when Mr. Devlin came toward me I recognized him.

Q. What course did Mr. Devlin take?
A. He came toward me.
Q. Walking to the end of the chicken yard fence, along beside the fence here?

MR. APPLEGATE: We object; let her tell.

COURT: Yes. You describe it in your own way.

WITNESS: I was right here behind this hedge tree, and he came toward me and I dropped on my knees.

Q. Was he inside or outside the enclosure around the chicken house when he came toward you?
A. On the outside.
Q. Did he come beyond the fence that surrounds the chicken house; did he come beyond that, still coming toward you?
A. He came to the end and then turned to the back.
Q. Which way did he turn, to the left, toward the lane?
A. Toward the lane.

COURT: That is back of the road?

WITNESS: Yes.

Q. Did you see him then?
A. Oh, distinctly.
Q. Was the woman with him then?
A. No, she had left him.
Q. At what point, do you know?
A. I don't know at what point.

Q. You didn't see her until you saw her coming around the house?

A. Then when I raised up from my knees.

Q. When he came out toward you going toward the lane, describe in a general way, if you can, what his journey was; did he come out into the lane; did you see him go out into the lane or didn't you?

A. I didn't see him after he turned and went to the back; I didn't see which way he went. I knew he went to the back street.

Q. How long did you remain at the tree and hedge after he went out?

A. When I saw Mrs. Cartan go around front, I came right straight home.

Q. Was there a grape arbor at the back of the A. J. Cartan property at that time?

A. Yes.

Q. It is shown here upon the map, the location of it and the size of it; was that, roughly, as it was at that time, as you remember it?

A. Yes, as I remember it, as near as I can tell by the map.

Q. Do you know what the business habit was between Ren Cartan and Devlin, as to which of them, if either, would stay at the store on Saturday nights?

A. Yes, one would stay one Saturday night and the other would stay the next one.

Q. Was that a business custom of theirs?

A. Yes.

Q. Did this occurrence happen on Saturday night?

A. I think it did.

Q. You went home after you saw this woman pass around her house?

A. Yes.
Q. Did you see Ren again that night?
A. I did.
Q. Did you tell him what you saw?
A. I did.
Q. Did he tell you what he saw?

MR. APPLEGATE: Objected to.

COURT: I will receive it.

A. He did.
Q. Did you see Tice?
A. I did.
Q. Did you tell him what you saw?
A. Yes.
Q. He told you what he saw?

MR. APPLEGATE: Same objection.

COURT: I will receive it.

A. Yes.
Q. Did you ever tell Mrs. Devlin what you saw and knew; did you ever tell her?
A. Never.
Q. I mean did you ever tell her, even after this trouble began, down to the present time?
A. I told her about their intimate relations, but I didn't describe this episode to Mame.
Q. You didn't go into detail?
A. No.
Q. This interview to which you referred was not un-

til October, 1918, or about that time?

A. That was in 1918, just the week of the American Exposition.

COURT: It has been mentioned here as sometime in October; would that be about right?

WITNESS: Yes, I would say October first.

Q. Did you ever tell Mr. Devlin what you saw that night, before October, 1918?

A. I did not.

COURT: Did you ever speak to your brother-in-law's wife about it?

WITNESS: Yes.

Q. When did you first speak to her about it, Mrs. A. J. Cartan?

A. The Sunday following the American Exposition.

Q. Did you ever tell your brother-in-law A. J. Cartan about it, and if so, when?

A. He came to me October first.

Q. The first day of October?

A. Yes, just before the American Exposition.

Q. Is that the first time you told him?

A. Yes.

Q. Why didn't you tell Mrs. A. J. Cartan and Mr. Cartan what you had seen that night; you saw it as far back as 1916, in the month of May, and you apparently never brought the knowledge home to the attention of either of them, nor to either of the Devlins, until two

years later nearly; now, why not?

A. Because my husband told me not to.

Q. Your husband Ren?

A. Yes.

Q. Did he give you his reason?

A. Yes.

Q. What was it?

MR. APPLEGATE: Objected to.

COURT: How is it competent; what his reasons were?

Q. At any rate, you exercised no independent judgment about it; you yielded to the judgment of your husband?

A. I did.

COURT: Did you continue your association with Mrs. Cartan and Devlin in those parties and things?

WITNESS: We didn't have as many parties.

Q. After May, 1916?

A. No, sir. Mr. Devlin was very busy with his son going to war.

Q. What about the condition of Mrs. A. J. Cartan during that time?

A. Mrs. Cartan had a very severe sickness.

Q. When was that?

A. I think that was during the winter.

Q. Winter of what year?

A. Right after 1916.

COURT: The winter of 1917?

WITNESS: I think so.

Q. Speaking generally as to the intimacy and character of the association between these two people, was it more pronounced or less so during the two years previous to October, 1918?

A. It was; we had occasional parties, but we didn't have so many. One was sick nearly all winter, and Mr. Devlin was very busy.

COURT: And when you did have the parties, was the same intimacy noticeable as you noticed formerly, or had it lessened?

WITNESS: It had lessened. We had hopes that it would right itself.

COURT: Do you know what had caused the lessening of it?

WITNESS: Only I suppose they didn't have—Mr. Devlin was so busy with his son, he didn't have the heart—I don't know what else; I don't think it was from any good motive.

MR. APPLEGATE: We ask to have that struck out.

COURT: Yes.

COURT: Why did you say it wasn't from any good motive?

WITNESS: Because from the kind of a man I know him to be.

COURT: What do you know about him other than what you have told us; anything else?

WITNESS: Yes.

COURT: That you think warrants you to entertain the opinion you have just expressed?

WITNESS: Yes.

COURT: I don't care to go into it. If counsel wish to, I won't shut it out.

MR. APPLEGATE: We object and move to strike it out.

COURT: I think it should go out. Strike it out.

Q. I direct your attention to an incident where you had all been attending a theatre party at Perth Amboy and you had been in Mr. Devlin's car; do you recall what occurred that night after you got back to Matawan?

A. Yes.

Q. Tell us what happened.

A. When we got back to Matawan, Mr. Devlin left us all at our home and he and Mrs. Devlin went on up the street, just a little ways above, and in about twenty minutes or half an hour, Mrs. Devlin came down, she was on a half cry; she caid, "Oh, Ren, won't you come help me find Pat; I am afraid something has happened to him. I sat on the front porch waiting for him to come around

from the garage, and he has never come out, and Bert is up there now with a lantern and we have been looking all around for him and cannot find him." So we two went up there.

Q. Did you go?

A. I did.

Q. And when you went up there what did you do?

A. We took a lantern and we all went way down the bank and all around behind the garage and looked all over, and we couldn't find him, so we walked out to the front and down the street a little ways, two or three houses below, and Mr. Devlin was coming up the street.

Q. Was there any conversation between him and Mrs. Devlin at that point?

A. Yes.

Q. What passed between them?

A. She said, "Why, Pat, where have you been?" She said, "How did you get out of here; I have been right here on the front stoop and I never saw you come out; how did you get out?" He said, "I went right by you and went down town and got some chewing gum." She said, "You never did, because I have been here every minute."

Q. How long an interval had elapsed between the time when you were let out at your house and the time when you met him coming up the street and he said he had been buying chewing gum?

A. I would say three-quarters of an hour.

Q. How long would it take a person to walk from the place he let you out at your house and the house where he lives?

A. Two or three minutes.

Q. Did you inform Mrs. Devlin of what you saw and knew as having occurred on this night in May, 1916?

A. I did.
Q. When did you tell her?
A. I told her that October first in my home, because Mr. Cartan had come to me and—do you want me to say what he said?

COURT: Did you tell her because of a request he made?

WITNESS: Yes. I don't know that you would call it a request; he told me he was going to tell her. I was out mowing the lawn.

MR. APPLEGATE: We object to any conversation.

COURT: Objection sustained. It is the result of something he said he was going to do, that caused you to tell her?

WITNESS: Yes.

Q. Did you believe at the time that you told her, that if you didn't tell her, he would?

MR. APPLEGATE: Objected to.

COURT: I will receive it.

A. I knew that he would.
Q. How did she come to come to your house?
A. Mr. Cartan telephoned her.
Q. When you told her was anybody present?
A. No, sir.
Q. What did you tell her?

A. I said to her, "Mame, do you know that Pat and Doll have been intimate?"

MR. APPLEGATE: Objected to so far as Mrs. Cartan is concerned.

COURT: Yes. I will receive it subject to the same ruling I have made.

Q. What else did you say to her?

A. I sid, "Do you know that Pat and Doll have been intimate?" And she said, "How do you mean intimate?" I said, "They have been doing wrong", and she said, "Why, no", and she said, "When did this happen?" I said, "I cannot tell you that, Mame", and I said, "Johnce was going to tell you, and I thought best to tell you because I have always been a very good friend of yours, and I thought I could tell you easier and better than he could."

EXAMINATION BY THE COURT:

Q. Did you have any foundation for telling her that they had been intimate and doing wrong, other than what you have disclosed to me to-day?

A. No, sir.

Q. Why did you conclude that they were doing wrong or had been intimate?

A. I knew it.

Q. How did you?

A. From what I had seen in May.

Q. That incident at the outhouse, is that what you mean?

A. Yes.

Q. Did you know whether there was any act of adultery committed at that time?

A. I didn't see it.

Q. Aside from the fact that you saw these two people meet at that point and remain there half an hour or three-quarters of an hour, and the other intimate actions that you noticed, and their relations of six or seven years, was there anything else that justfied you, at that time, that you haven't told me, to tell Mrs. Devlin that her husband and Mrs. Cartan had been guilty of adultery?

A. And something that my husband told me.

Q. You were here when your husband testified?

A. Yes.

Q. Has he told me what he told you; has he testified to that?

A. Yes.

Q. Then I have the benefit of that information?

A. I don't know that he explained all of the talk we had at this time.

Q. But his knowledge and information about their relations, has he testified to all that?

A. Yes.

Q. And as fully as he told you about it?

A. Yes.

Q. What reply, if any, did she make?

A. Mrs. Devlin?

Q. Yes.

A. She said, "I am going to hear Pat's story. I will see you later."

Q. Did you have any conversation with her after that

about this matter?

A. Yes.

Q. And where was that?

A. In my home.

Q. And how long after this occasion?

A. I didn't see her until about two or three days after.

Q. Did she come to your home voluntarily?

A. No, sir, she was brought there by my husband, from the feed store.

Q. You mean the store of A. J. Cartan?

A. No, Cartan & Devlin.

Q. Was she in an agitated condition at that time?

A. Oh, yes.

Q. Did you have any more talk about the matter on that occasion?

A. Yes. When she came in she said, "Edna, Pat wants you to tell me the story." I said, "Mame, I cannot do that. Pat will have to tell you his own story." She said, "I cannot get him to tell me that story, because he goes all to pieces every time I ask him anything about it", and she says, "I don't see why Johnce didn't put a bullet in him. How could Johnce stand it?" And she said, "Why didn't he put a bullet in him? They ought to have been rolled up and down on a rail."

Q. Did you ask her if she believed it?

A. I said to her, "Mame, did you know about this; didn't you have an idea of this?"

MR. APPLEGATE: Objected to so far as Mrs. Cartan is concerned.

COURT: Go on.

A. (Continuing) I said, "Mame, did you have an idea of this". And she said, "No." I said, "What was the matter with you that you didn't see this?" She said, "I don't know; I must have been asleep at the switch."

Q. Did you have any talk with her after that?

A. Yes.

Q. Where?

A. I talked with her—I don't know whether the next time was when she came to—we were trying to get this thing fixed up without its coming out and people knowing it, and couldn't get Mrs. Cartan to go to Mr. Cartan and ask him to forgive her.

Q. Whom do you mean by "we"?

A. My husband and I, all of us together; we didn't want this thing to come out, and Mrs. Devlin said, "Can't you—she said to me first at this time, "Can't Johnce overlook this and let the Lord punish them, like I am going to do?"

Q. Were you requested by her or by Mr. Devlin to seek to reconcile Johnce and his wife?

A. Not directly, but indirectly through Mr. Devlin.

Q. Through your husband?

A. Yes.

RECESS

FURTHER DIRECT EXAMINATION BY MR. WILSON:

Q. Mrs. Cartan, were you shown by your husband letters in the handwriting of Mr. Devlin?

A. Yes, sir.

Q. And how soon after you told Mrs. Devlin of this occurrence did you see the first of those letters?

A. I told Mrs. Devlin on October first and the following Sunday the letter was written.

Q. When did you see the letter?

A. The same day.

Q. Brought to you by your husband?

A. Yes.

Q. And did you read the letter?

A. I did.

Q. Was a copy of it made?

A. Yes.

Q. And by whom?

A. My husband wrote it and I read it off to him.

Q. I show you the first memorandum, dated October 6, marked Exhibit P 3, was the first of them—a copy of the first of them that you saw?

A. Yes, sir.

Q. And you read the original, did you?

A. I did.

Q. This is a true copy of it?

A. It is a true copy.

Q. I show you a letter dated October 8, 1918, marked Exhibit P 5; did you see the original of that letter?

A. Yes, sir.

Q. By whom was it shown to you?

A. My husband.

Q. Who made the copy?

A. He wrote it and I read it off.

Q. I show you Exhibit P 4, bearing the same date, October 8, did you see the original of that letter?

A. Yes, sir.

Q. Did you read the original?

A. I did.

Q. Is it a true copy of it?

A. Yes, sir.

Q. Did you deliver either of these letters to Mrs. A. J. Cartan?

A. I delivered the first letter.

Q. The one which you have identified as being dated October 6, is that the one you first delivered to her?

A. Yes.

Q. Exhibit P 3?

A. Yes.

Q. Before you delivered this letter to Mrs. Cartan had you had any talk with Mr. Devlin; had he made any request to you personally about the matter?

A. Not personally.

Q. You had had no talk with him about it?

A. No, sir.

Q. Had you talked with him at all about it between the time when you told his wife and the time when you delivered this letter to Mrs. A. J. Cartan?

A. No, sir.

Q. I think you said these three letters were in Mr. Devlin's handwriting?

A. Yes.

Q. This letter which you delivered to Mrs. Cartan, where did you find her; where did you make the delivery of the letter?

A. At her home.

COURT: Was it delivered the same day?

WITNESS: Yes.

Q. How long after your husband had handed it to you?

A. Just a little while.

Q. Had you been asked to join in any plan of reconciling Mr. Cartan and his wife?

A. I had.

Q. By whom?

A. Mr. Devlin through my husband.

MR. APPLEGATE: We ask to strike it out. It is perfectly apparent she doesn't know that of her own knowledge.

COURT: She states she has been requested; it merely goes to its weight.

Q. When you delivered this letter to Mrs. Cartan did she read it while you were there?

A. No, sir.

COURT: Was it sealed when you delivered it?

WITNESS: No, sir.

Q. Did you say anything to her when you handed it to her?

A. I went up—her children were all home, and I didn't get any chance, unless I made it very noticeable, so I started out, and when I went out to the door, she came to the door with me, and I said, "Here, Doll, is something for you."

Q. And then went out?

A. Yes.

Q. Did she come to see you later that day?

A. Yes, she did.

Q. What time of the day did you give her the letter, morning or afternoon?

A. Late in the afternoon.

Q. How soon after you gave her the letter did you see her?

A. About half an hour.

Q. Where did you see her?

A. She came down to my house.

Q. Did you have any conversation with her?

A. I did.

Q. What was it?

A. When she came in, she said, "What does this letter mean?" I said, "Doll, you know what that letter means", and she said, "Do you know what is in it?" I said, "I do", and just then my husband came in, and she said, 'Ren, do you know what is in this letter; do you know what this letter means", is what she said. He said, "You would think I did if you had seen the time I have had with Pat all the week, the way he has been going on all week."

Q. What further, if anything, did she say?

A. She said, "That is the way with Pat; that is just like a man."

Q. Do you recall all that was said?

A. She said, "Why didn't Johnce bring this up before the children got so old; anything that happened between Devlin and I happened years and years ago", and I said, "Well, Doll, I don't know anything about that." She said, "Anyhow, what can Johnce prove; you have to be within ten feet of anyone to prove anything on them." I said, "Doll, I don't know anything about law, but I

do know that you have done wrong, and", I said, "why don't you go to Johnce and beg him to forgive you?" And she said, "I will not do anything of the kind." I said, "Do it, Doll; if you don't do it for your sake, do it for your children's sake." She said, "Live with that man and have him throw this up to me the rest of my life? I will not do it." And I talked to her a little more about that, just like a woman can talk to another woman.

Q. Was your husband there during this conversation or only a part of it?

A. My husband was there.

Q. During the whole of it?

A. He came in , you know.

Q. He came in before you had finished talking with her?

A. Yes, he came in just as she asked me what this letter meant, just as I told you.

Q. Is that the substance of what passed between you that day?

A. Then she asked, before she went away, she said, "Did Mame know it?" And I said, yes, she did, and she said, "Who told her?" and I said, "Well, I cannot tell you that", and after that she seemed to be different. She sort of got up, after she thought Mame knew, she acted differently.

COURT: Was any reference made by you in that conversation to the incident of May, 1916, at the outhouse; did you mention that at all?

WITNESS: No, sir.

Q. Any reference made to it?

A. No, sir.

Q. You didn't tell her what you had seen?

A. No, sir.

Q. You say she asked you who told Mame, and you wouldn't tell her, or didn't tell her?

A. Yes, sir! I didn't have to tell her anything that was in the letter; there was enough in the letter.

Q. When was you saw this letter, the second one which you have identified as being Exhibit P 5?

A. Two days later. Two or three days later Mr. Devlin met Mrs. Cartan on the street.

Q. Did you see him meet her?

A. I did. I saw them talking. Mr. Devlin seemed to be edging away, but she stood right there talking to him, and I found her later—

MR. APPLEGATE: Objected to.

Q. How did you find it out?

A. When he came down to the store and told my husband that he had been talking to Doll and he couldn't make a dent in her.

Q. Did you hear what was said?

A. Yes.

Q. Your husband repeated it?

A. Yes.

COURT: You cannot tell that.

Q. After you saw them meet on the street and saw him come to the store, something happened in respect to the second letter; what was it? Was it after that you saw the second letter?

A. Yes, sir.

Q. The same day?

A. No, sir, not the same day.

Q. How long after?

A. Two or three days after, right after she had been talking to Mr. Devlin, she came down to the—Mr. Devlin came to the store and my husband told me—

MR. APPLEGATE: Objected to.

COURT: Objection sustained.

Q. What I want to ask you is, how long after Mr. Devlin met this woman on the street, and after he went to the store and had a talk with your husband, how long after that was it when this second letter was brought to you by your husband?

A. Two or three days.

Q. What was done with that, if you know?

A. My husband brought it over for me to read, because I was very angry to think he had told her right away.

COURT: Strike out her reason. Was it copied when he brought it over for you to read?

WITNESS: Yes.

Q. You mean this copy (indicating), don't you?

A. Yes.

Q. I thought you said you read the original to him and he made the copy in your presence?

A. I did.

COURT: They then and there copied it when he brought it over?

WITNESS: Yes, the second letter.

COURT: Now Mr. Wilson wants to know what was done with it, if you know.

WITNESS: He took it back to Mr. Devlin.

Q. Do you know why?
A. Devlin's brother delivered the letter to Mrs. Cartan.
Q. How do you know that?
A. All I know is what my husband told me, that Mr. Devlin had sent it up.

COURT: That will have to go out.

Q. There is a third letter, dated October 8, 1918; how did that second letter of October 8, 1918, come to be written, if you know—the third in number, but the second of that date; there were two on the eighth of October?
A. The last letter.
Q. How did that come to be written, if you know?
A. For the same purpose; Mr. Devlin had requested that I—

COURT: Did you have any talk with Mr. Devlin or Mr. Cartan about is?

WITNESS: He sent word over to me by my husband,

wouldn't I have a talk with Doll.

COURT: That is the message your husband brought you?

WITNESS: Yes.

COURT: Did you see Mr. Devlin in consequence of that?

WITNESS: No.

COURT: Or Mrs. Cartan?

WITNESS: No.

Q. Did you have a talk with Mrs. Cartan with a view of effecting a reconciliation?

A. I had a talk with her on the night when she was at my house.

Q. The night after she received the first letter?

A. Yes.

Q. Did you talk with her again about it?

A. Not again, no, sir.

Q. That talk you have already detailed?

A. Yes.

Q. This third letter, do you know what became of that?

A. Yes.

Q. What?

A. It was taken back to Mr. Devlin.

COURT: By your husband?

WITNESS: Yes, sir.

Q. And what was done with it then, you don't know?

A. I do not.

Q. There are two of October 8; are you able to tell us which of these was prepared first?

A. Yes, sir.

Q. Will you tell us which of these was prepared first and came to your hands?

A. This one.

Q. You are handing me one of October 6; there are two of October 8.

A. Oh, I see; I beg your pardon. This is the second letter of October 8th; I know by what was said, which was first.

Q. If I understand you correctly, you say that the letter of October 8, which is Exhibit P 5, was the second letter that reached your hands?

A. Yes.

Q. And Exhibit P 4 was the third letter that reached your hands?

A. Yes.

Q. Do you know what Mrs. Cartan did with the letter that you delivered to her?

A. I do not; I asked her for it.

COURT: When did you ask her?

WITNESS: The same day my husband asked her, and said she destroyed it.

COURT: Why did you ask her for it?

WITNESS: I don't know.

Q. How did he come to ask her for it?

A. I don't know.

Q. What did he say when he asked her where the letter was?

A. He said, "Doll, have you the letter?" She said no, she had destroyed it.

COURT: This accounts for one letter not being produced in response to the notice.

Q. I will ask you again, to make it clear, did you ever have a talk with Devlin about this matter between the first of October, the time when you say you told Mrs. Devlin about this business, did you ever have any talk with him about this matter from that time to this time?

A. No, sir.

Q. Did you have any talk with Mrs. Devlin during that interval?

A. I did.

Q. And when and where was the first talk you had with her?

A. The first talk was in my house.

COURT: Is that the one you gave before recess?

MR. WILSON: I don't think she did.

COURT: About putting a bullet in him?

WITNESS: That is the first talk in my house when my husband brought her over.

Q. You told us all that before recess?
A. Yes.
Q. Did you have a talk with her after that?
A. Yes.
Q. How long after that?
A. I don't know, a few days.
Q. And where was that talk?
A. She was in my home.
Q. And who was present when it occurred?
A. My husband.
Q. What did she say on that occasion?
A. Well, she came over to me—she said that Pat sent her over "to tell me the story"; I said, "I will not tell you the story; let Pat tell you his own story." She said, "I cannot ask him to tell the story, because every time I ask him, he goes all to pieces."
Q. The conversation substantially had passed between you the first time she came, hadn't it; didn't you detail that as a part of the conversation you had with her the first time she came to see you, when you testified this morning?
A. Yes.
Q. Did you go over the same ground again the second time she came?
A. No, that was the first time.
Q. I am directing your attention to the second time; what passed the second time she came?
A. She said to me the second time she came in—I think I have got the times confused—she said she was—
Q. What was her request; was she still asking you to tell what that story was?
A. Yes.
Q. And did you refuse?

A. I did.

Q. And did you ask her on that occasion if she believed it, or how she came to believe it?

A. Yes.

Q. What occurred in that connection?

A. I said, "How did you come to believe this story right away?" And she said, "Well, the way Pat acted."

MR. APPLEGATE: We object as to Mrs. Cartan.

COURT: Yes.

Q. She said what?

A. Because of the way Pat acted, and she was crying; Mrs. Devlin was crying, and she said, "Think of their souls being lost", and she said, "I cannot live with Pat unless he tells me this story."

Q. Do you recall anything else that occurred on the occasion of that conversation?

A. She said, "Edna, I don't know what is left for me to do but to kill myself." Oh, yes, that was the time that she said to my husband, she said, "Ren, Pat is all gone; I am afraid he will kill himself; won't you let him come home for a few days?" And Ren said, "No, Mame, Pat cannot come at this time, because we are very busy." She said, "Will you promise me you will watch him every minute in the store?" He said, "I will do that."

Q. Did she say anything on that occasion about her killing herself?

A. She said it on both occasions.

Q. Did you see her again; did you have another talk with her?

A. The next day they sent for me to come over to the

store, that Mrs. Devlin was all upset.

Q. Did you go over to the store?

A. I did.

Q. Which store?

A. My brother-in-law's store, A. J. Cartan's.

Q. Where did you find her?

A. Upstairs.

Q. What was her condition?

A. Bad.

Q. Do you recall anything that was said by either her or you on that occasion?

A. I tried to talk to her the best I could, and told her to overlook this thing;Pat had always been a good husband to her, and to try to not feel the way she did toward him; she said, "I don't want him to touch me; I cannot stand his touching me." I coaxed her to come over to my house, which she did.

Q. Do you recall any particular thing by way of conversation that passed between you and Mrs. Devlin at that time?

A. As she was coming out of the store, as we were coming down stairs, she said, "Johnce,'can't we overlook this for the children's sake", like she was going to do, and let the Lord punish them, but he said, "No, Mame, I cannot do that, it is different with me from what it is with you."

COURT: What is the significance of this, in your mind, Mr. Wilson, of these questions and expressions on the part of Mrs. Devlin? I can see where she might have been aroused, incensed and indignant and hurt, but how does that show guilt? Suppose the story had been wholly false, it would have had the same effect. What signifi-

cance do you attach to it? In my mind it is clearly incompetent. I allowed it to go in, because I supposed that you are more or less anticipating a denial of that attitude of Mrs. Devlin?

MR. LANE: That is why we are not objecting to it.

MR. WILSON: In the examination of Ren Cartan, I did not commit the indiscretion of having either Ren or the other man tell of any statement or declaration made by Mrs. Devlin out of the presence of Mr. Devlin. This whole matter of what transpired between Mrs. Devlin and Ren Cartan was developed in the first instance by cross examination of opposing counsel; it was permitted to go in; evidently I ought not to object because it was not prejudicial to us, and having gone into the case as a part of the cross examination, when I came to examine the two subsequent witnesses, I have gone into it; I don't justify the thing at all.

COURT: Mrs. Devlin, if the story is true, and the charge is true, is one of the unfortunate victims of it. I don't care personally to have it gone into any deeper, to have that woman's sorrow and agony as a result of this offence, if it has been committed, put on this record any more than necessary. If it does not establish the guilt of these parties, it should not go in, unless Mrs. Devlin goes on the stand later and puts an entirely different aspect on the case, in which case I will throw the door wide open for you to contradict it. I have allowed it in a little bit under another theory, to show that Ren Cartan and his wife and some of the others who detailed these conversations were not merely biased against Devlin and

Mrs. A. J. Cartan; to a certain extent that has controlled me in refraining from making any comment on it up to the present time; that it was more or less of a family affair on the Cartan's part to besmirch Mrs. A. J. Cartan and Devlin in connection with it.

MR. WILSON: I concede that we should not have gone into it at all, and we never would have gone into it at this stage—

COURT: I think I will stop it now, and if there is any occasion for it being gone into, I will allow it. Unless there should be an occasion to go into it, I will stop it.

MR. LANE: I will say that Mrs. Devlin will undoubtedly take the stand and testify as to those conversations.

COURT: If she does and it becomes necessary then to combat it, if they can, I will give them the opportunity to do it, but I think it should stop now.

Q. Do you know as a matter of fact whether this outhouse to which you have referred in your testimony had any glass in the side of it next to the Hopkins lot in 1916?

A. I don't know for myself, only what my husband told me.

Q. Do you know whether it had any furniture in it such as has been described?

A. I have never been in it.

COURT: You have been asked if you had any conversation with Devlin. Have you had any conversation with

Mrs. Cartan since the one you detailed on the delivery of the note?

WITNESS: No.

EXAMINATION BY THE COURT:

Q. Have you ever spoken to her since?

A. No.

Q. Did you keep up your friendly relations?

A. No, sir.

Q. Did you cease having friendly relations from that time on?

A. She did.

Q. She wouldn't speak to you and didn't visit you?

A. No, sir.

Q. And did you attempt to speak to her or visit her?

A. No, we haven't come in contact.

Q. Did you have an actual breach in your home that night when she was talking with you about this matter, or later?

A. She went out that night and I have never seen her to speak to since.

Q. Why haven't you attempted to speak to her since?

A. Because when she went out she was sort of unreasonable.

Q. In what way?

A. She wouldn't listen; I tried my best to talk to her, to go to her husband and ask him to forgive her.

Q. In the two or more years which elapsed before the husband was acquainted with the 1916 episode, did it

ever occur to you that the woman might need your sympathy and encouragement, and you should go and call on her and try to get her to meet her husband as you suggested originally?

A. I didn't.

Q. Do you know why you didn't?

A. No, sir.

CROSS EXAMINATION BY MR. APPLEGATE:

Q. Mrs. Cartan, you and Mrs. A. J. Cartan have been good friends?

A. Yes.

Q. Intimate friends?

A. Yes.

Q. And when do you say that intimacy ceased?

A. After I handed her this letter she didn't visit me or I her; we lived right next door.

Q. That was in October, 1918?

A. When I gave her the letter.

Q. That was in 1918?

A. Yes.

Q. So that right up to that time you and she had been intimate?

A. Very friendly, yes; we were one family.

Q. You had gone to parties, dancing, theatre, swimming, and automobile parties, you and the Cartans and the Devlins, right up to October, 1918?

A. Yes.

Q. Then when you had this talk or immediately after you had this talk which you have related with Mrs Car-

tan, that intimacy ceased and stopped short?

A. Yes.

Q. And is the same true as to Mr. Devlin?

A. Yes, sir.

Q. You had known, as you have related, of the outhouse occurrence of May, 1916?

A. Yes, sir.

Q. You had never spoken to Mrs. Cartan about that?

A. No, sir.

Q. And you haven't to this day?

A. No, sir.

Q. You had never spoken to Mr. Devlin about that?

A. No, sir.

Q. And you have not to this day?

A. No, sir.

Q. As you sat upon the porch, as you have related, in May, 1916, and saw Mr. Devlin go into the lane or by-path, or whatever it was that led to the rear of Mr. Cartan's property—

A. I beg your pardon, I didn't say so.

Q. Didn't you see Mr. Devlin go in at all?

A. No, sir.

Q. You saw Mrs. Cartan?

A. I saw Mrs. Cartan come around the house.

Q. Whose house was that?

A. Her own house.

Q. How far is your house from hers?

A. A little ways.

Q. In feet?

A. I cannot tell you.

Q. 60 feet?

COURT: She said about from here across the street.

A. Looking out into the street, I should think about out to front street.

Q. Between 60 and 100 feet?

A. That I cannot say.

COURT: Judging from the map and the scale it looked to be about 60 or 75 feet from house to house.

MR. LANE: About 80 feet.

Q. Had you been anticipating something of that sort?

A. No, sir.

Q. Like a bolt from a blue sky, was it?

A. I knew that he had been around the back street.

Q. How did you know that?

A. Because my sister-in-law had told me.

Q. As a result of what your sister-in-law had told you, you sat on the porch watching for something to occur?

A. No, sir.

Q. So that you were very much surprised, then, when you saw Mrs. Cartan coming close by her house, as you have described?

A. I wasn't surprised, because I had seen her go across the street and talk to Mr. Devlin.

Q. Early in the evening?

A. Not early.

Q. Some minutes before?

A. About nine o'clock.

Q. Is that the reason why you continued to sit on the porch watching for something to occur?

A. I didn't continue to sit on my porch.

Q. So at any rate what subsequently developed you had not anticipated in any way?

A. No, sir.

Q. Did you see Mrs. Cartan come out of her house?

A. No, I didn't.

Q. She was passing from the front to the rear of her house?

A. She was right up close to the house.

Q. Where did you first see her; where was she when you first saw her?

A. Coming around the corner of her house; there is a driveway runs along there, she wasn't out in the driveway, as you would if you were going back of the house, but she was walking close up to the house, like you come off your porch and cut across the corner.

Q. Your idea is she was sneaking around?

A. She was going pretty close to the house.

Q. Did it occur to you that if she had been sneaking around she would have gone directly out of her house and out the back way?

A. No.

Q. You never thought that over?

A. I wouldn't think that the safe way to go.

Q. Why?

A. Because she had two small children; she would be afraid of waking them up.

Q. They were asleep?

A. I suppose, I don't know; anyway she didn't go that way.

Q. It might wake them up if she passed through the rear?

A. I don't know about that; I know she came the way I told you.

Q. As soon as you saw her, then you proceeded to get busy?

A. I did.

Q. Your relations at that time were friendly?

WITNESS: How do you mean "proceeded to get busy"? I don't know what he meant.

COURT: You are not obliged to answer a question you don't understand.

Q. You went over and told Norman Tice something as the result of that?

A. I told him before I had seen her go around the house.

Q. Before you saw her come around the house, you say you told Mr. Tice something?

A. Yes.

COURT: And also told her husband something, before that.

Q. What was it you told him?

A. I told my husband first.

Q. What?

A. I said, "Ren, when Pat came down to the store and got up to the store in front of Brown and Eskensen's, Doll came off the porch and spoke to him a few minutes. I thought that looked very funny." I said, "You go up to Dr. Ervin's Lane and I will come around; I will go in the house and look", and he came—he was by the front door, and he said, "Well, there is Norman over there on his father's porch, he knows as much about this as we

do, go to Norman and tell him to go back and not to lose Devlin like his father did".

Q. So you went back to your porch?

A. I went back to my house; I went over to Mr. Tice and told him what my husband said.

Q. Was it after that you saw Mrs. Cartan?

A. After that.

Q. After you saw Mrs. Cartan then what did you do?

A. I was sitting right alongside of my wire door—

Q. What did you do?

A. I sat there for what seemed an hour to me, until I couldn't stand it any longer, and I was afraid—Mrs. Cartan hadn't come back and I knew there was something wrong, and I was afraid something had happened to Ren.

Q. How did you know there was something wrong?

A. Because a woman wouldn't be going up there that time of the night and not come back, for no reason.

Q. That is the only reason you had in mind?

A. Everything; Mr. Devlin coming around these back streets, and everything in general.

COURT: When you spoke to your husband and suggested he go in the back yard and also suggested the same thing to Tice, at your husband's request, why did you have the back yard in mind; what made that occur to you?

WITNESS: Because my sister-in-law told me about Devlin's trips around the back way.

Q. So then you took yourself over to the back yard also and you sat yourself to watch?

A. Yes, if you call it that.

Q. You were watching?

A. Yes.

Q. And you had gone over there for the sole reason, as you have stated, that you were very much exercised, you were afraid that something had happened? That is the sole reason you went over there?

COURT: Something happened to her husband.

A. That is why I went.

Q. Did you look up your husband after you got up there or hide yourself?

A. I didn't have time to do anything; when I got there, there were two people at the gate and one came directly toward me and went right on to the corner of the fence toward me; I recognized Mr. Devlin and I dropped right on my knees.

Q. You were keeping out of his sight?

A. I was.

Q. Did you hunt up your husband immediately after Devlin had gone?

A. No.

Q. Why didn't you, if you thought something happened to him?

A. When I rose up from my knees, Mrs. Cartan was going around to the front of my house; there was no need of my hunting up my husband.

Q. Having seen both Mr. Devlin and Mrs. Cartan you knew your husband was safe?

A. I thought so.

COURT: Why didn't you speak to Devlin or Mrs. Cartan?

WITNESS: It is a very hard thing to do, when you go to anyone and tell them that; it is a hard thing to do; I couldn't do that very well.

Q. It wasn't hard for you to watch them?
A. No, sir, that was easier.
Q. You didn't have to show yourself then?
A. No.
Q. And you didn't have to show your hand?
A. No. No hand about it.
Q. Calling your attention to the incident you have related, you say Mrs A .J. Cartan told you that Devlin had kissed her in the telephone booth; who were present at that time?
A. I was in the parlor.
Q. Anybody else there?
A. My husband was upstairs.
Q. Anyone else in the room?
A. No.
Q. And Mrs. Cartan without any preliminary volunteered this information, did she?
A. She did.

COURT: Did you say anything to her when she told you that?

WITNESS: No, I didn't say anything; I was still surprised just the same.

Q. Did you reprove her?
A. No, sir, I did not.
Q. You were the same friends then of A. J. Cartan as you are now?

A. Yes.

COURT: Did she ever disclose either before or after that anything confidentially about her relations with Devlin?

WITNESS: No, sir.

Q. In relation to the swimming pool incident, there were other people there swimming beside Mrs. Cartan and Devlin and yourself?

A. A few.

Q. There were some others?

A. Yes.

Q. And this pool is how large a pool, approximately?

A. I haven't any idea.

Q. As large as this room?

A. Oh, no.

Q. Not as large as this room?

A. I wouldn't say so; I don't know how large.

Q. Was this in the day time?

A. Yes, sir.

Q. Light there, wasn't it?

A. Yes.

Q. Everything that anyone did could be plainly seen?

A. If you were watching and knew, you would see.

Q. Why were you watching all the time?

A. Because I had seen lots of suspicious things that they had done.

Q. If you had already seen them, why continue to watch?

A. That is a question.

Q. After you had watched to your heart's content,

who were you going to tell about it?

A. No one.

Q. Why watch?

A. Because I didn't think it was the right thing for him to do.

Q. Then why look at it if it wasn't the right thing?

A. You couldn't help seeing it, if you knew.

Q. That was because it was so apparent anyone could see?

A. If you knew of their relations.

Q. In regard to the dinner parties which you have related, where you say that Mr. Devlin always sat next to Mrs. Cartan, who sat down first of the two?

A. I don't know that.

Q. You remember they always sat together; can't you remember who sat down first?

A. You cannot see them around the table; I suppose we would all sit down to gether.

Q. Anybody at any of these meetings object to their sitting together?

A. No, sir.

Q. Mr. A. J. Cartan?

A. Yes.

Q. Did he ever object?

A. Of course not to me.

Q. To anybody that you know of?

A. He has talked of it since.

Q. I mean at the time.

A. No, he never told any of his family troubles.

Q. Did he ever at the time of their sitting together, move the chairs or request them to sit apart, or fix a chair for his wife, Mrs. Cartan, and ask her to sit there, apart from Devlin; did he ever do anything of that sort?

A. Never to my knowledge.

Q. In regard to their dancing, did you ever dance with Devlin?

A. Yes.

Q. Lots of times?

A. Yes.

Q. And the other ladies have danced with him also?

A. Yes.

Q. Do you mean to leave the impression that Mr. Cartan never dance with his wife?

A. Oh, yes, he danced withh er, but she never willingly did; she never looked as if she was enjoying it.

Q. Your conclusion is based entirely upon appearances, not from what she said?

A. About her dancing?

Q. Yes.

A. She didn't make any remarks to me about it.

Q. So that when you say that she didn't want to dance with him, you mean that she looked as if she didn't want to dance with him; that is all you mean to say?

A. With her husband you mean?

Q. Yes.

A. I think she has refused to dance with him.

Q. Tell us when.

A. I cannot tell you when.

Q. Then why do you say you believe so?

A. I can remember different instances.

Q. Tell us one.

A. I cannot just tell you one; we were on a hundred parties.

Q. You stated that the outhouse incident occurred on a Saturday night; how do you know it did?

A. I think it did.

Q. Tell us why you think it did.

COURT: Why do you think it was Saturday night?

WITNESS: Because Saturday nights Mr. Cartan kept his store open late. Mrs. Cartan's husband kept his store open late and my husband was working that night; that left Mr. Devlin off.

Q. That is the only reason why you think it was Saturday night?

A. That is one reason.

Q. Wasn't the store kept open any other night than Saturday night?

A. Mr. Cartan's store?

Q. Yes.

A. Not at that time, not late.

Q. But at night; it was open at night other nights than Saturday nights?

A. I think they closed about nine o'clock other nights.

Q. What time did this incident occur; you said about nine o'clock.

A. I know it was about nine o'clock; it was later than that at the time Mrs. Cartan came around her house again.

Q. When you first saw Mrs. Cartan go out in the street and speak to Mr. Devlin, what time was it then?

A. That was about nine o'clock.

Q. The store was closed then?

A. No, sir, open.

Q. I thought you said it closed about nine o'clock?

A. That is why I think it was Saturday night, because it was open later than usual.

Q. Saturday nights it kept open later than nine o'clock?

A. Yes.

Q. What about holiday eves, did it keep open late then?

A. I suppose so.

Q. Decoration Day is a holiday?

A. Yes.

Q. And when you called upon Mrs. Cartan with the first letter, (Exhibit P 3), when you delivered that letter to Mrs. Cartan you say you delivered it at the door as you were leaving?

A. At the door as I was leaving.

Q. You didn't like to deliver it before that time because some of the children were present?

A. Yes.

Q. Who was present?

A. I know Helen was there.

Q. She is the oldest?

A. Yes. But the little children, I know her children were there, and I didn't want those children to know anything about anything.

Q. You are sure Helen was there?

A. I think Helen was there.

Q. As you passed out the front door, or about to go out, you gave her the letter, and then she called upon you a few minutes after at your home?

A. A little while after.

Q. That same evening?

A. Yes.

Q. Your husband was not present when she first came in?

A. No.

Q. He came in later?
A. Yes.
Q. How much later?
A. I would say five minutes, possibly.
Q. Can you give us an idea what time it was?
A. I can state the conversation.
Q. What time was it about?
A. No, I don't know.
Q. Whether it was nine, ten or eleven?
A. It wasn't eleven o'clock; I would say it was—it was dark; I don't know how early in the evening.
Q. Did she have the letter with her?
A. I don't know.
Q. You said a little while ago, didn't you, that your husband asked her for the letter?
A. He did.
Q. You said that she said she destroyed it?
A. Yes.
Q. Why do you say you don't know whether she had the letter with her or not?
A. I don't.

COURT: You didn't see the letter there?

WITNESS: No.

Q. What did she say when she first came in?
A. She said, "Edna, what does this letter mean?" I said, "Doll, you know what the letter means", and she said, "Have you seen the letter?" And I said, "I have." Just then my husband came in; that was all the conversation that passed.
Q. After your husband came in what did Mrs. Car-

tan have to say about the matter?

A. She said to him, "Ren, what do you know about this letter?" He said, "I know all about it, Doll; if you had seen the time I have had with Devlin this week you would think I knew all about it."

Q. What else did she say?

A. She said, "Ugh, that is like Pat; that is the way with a man", and she said, "Why didn't Johnce bring this up before the children got so old?" Anything that happened between Devlin and I happened years and years ago."

Q. "Anything that happened between Devlin and I happened years and years ago"?

A. Yes.

Q. What else did she say?

A. She said, "Anyhow, what can Johnce do? You have to be within ten feet of anyone to prove anything on them." I said, "Doll, I don't know anything about law, but I do know you have done wrong", and I said, "For the children's sake and your own sake, go to Johnce and ask his forgiveness; you haven't treated him right."

Q. What did she say?

A. She didn't say anything. She said, "Have you ever seen me do anything wrong", or something like that, and I said to her, "Doll, we have all seen you do this (indicating) to Pat when you would go down town."

Q. You are waving your hand?

A. This is the way she would go (indicating), because we often looked at her, just as knowing as could be.

COURT: Anything else? What did she say when you told her that you had seen her perform that action when

she went down town?

WITNESS: I don't think she made any remark to that.

Q. Have you told us all she said and all you said at that time?

A. I don't suppose I have.

COURT: Tell the rest of it. How long was she there at your home that night?

WITNESS: She asked me who told me. I said, "Well, Doll, I cannot tell you who told me that", and she said, "I will find that out."

Q. Anything else?

A. I said to her again, "Doll, you have lovely children; Doll, won't you go to Johnce, you don't want this thing to come out, Doll; if this thing comes out, it will be a terrible disgrace for your family and for all of us, and it will make"—no, I didn't say about making trouble in the business then; I just talked to her like any woman would talk to another woman, to try to make her go to her husband, whom I felt she hadn't treated right, and she said, "I am not going to live with that man and have him throw this up to me the rest of my life."

COURT: Was she angry at the time?

WITNESS: She seemed to be angry at first, but after she found that Mame knew it, she seemed to be different, —after she knew that Mrs. Devlin knew it.

Q. What did she do that was different; how did she act?

A. You could tell a big difference.

Q. Tell us how she acted.

A. She talked differently.

Q. What did she say?

A. She seemed to be milder and different.

Q. Tell us something she said.

COURT: Did she express herself differently?

WITNESS: After I told her that she said that anything that happened between she and Devlin happened years and years ago, and sort of admitted it.

MR. APPLEGATE: I object and ask to strike that out.

COURT: Strike it out.

Q. She was very much excited, wasn't she?

A. I wouldn't say so; she is a pretty game woman.

Q. She wasn't excited, then?

A. Not like Mrs. Devlin.

Q. Was she excited or not?

A. Well, naturally she was some excited.

Q. And she was some angry?

A. At first she seemed angry.

Q. Was she excited at first only, or continued excited all the way through?

A. She was very defiant.

Q. That was her attitude all the way through until she left?

A. No, sir, at first she was defiant, and after she

found out that Mame knew, she was different.

Q. You were the one that told Mrs. Devlin, or Mame?

A. I was.

Q. Why didn't you tell Mrs. Cartan that you told it; were you afraid to tell her?

A. We didn't know how this would end, and I hoped she wouldn't know; I had never done anything to injure Mrs. Cartan; I had never told this to a soul?

Q. Why did you deliver the letter to Mrs. Cartan, if you didn't want to do anything to injure her?

A. Because Mr. Devlin wanted me to.

Q. All you knew about Mr. Devlin's wishes in the matter was what your husband told you?

A. Yes, but that was enough.

Q. You never talked to Devlin about it?

A. Never.

Q. You didn't know whether it was true or not, except as your husband told you?

A. I knew it was true.

Q. How did you know?

A. The day that Mr. Devlin wrote the letter Mr. Cartan had gone to Asbury Park, and Ren said to me, "I wanted Pat"—

Q. What I want to know is, did you know anything from Devlin himself?

A. Yes.

Q. Something that Devlin told you?

A. Oh, no.

Q. So everything you knew, as you say, you knew from your husband?

A. No, sir.

Q. He didn't tell you?

A. My husband telephoned him that day and he came

down.

COURT: Your husband telephoned Devlin?

WITNESS: Yes.

Q. And Devlin came down to your house?
A. He came down to the store and wrote the letter.
Q. Your husband told you that?
A. Yes.
Q. And the source of your knowledge is your husband?
A. Yes. I saw Devlin go in the store; in a little while after, my husband brought over the letter.
Q. You don't know that your husband telephoned, except what he told you?
A. That is all.
Q. And when your husband came to you with the letter that he said Mr. Devlin wrote and he asked you to make a copy of it, or help him make a copy, did he tell you why he wanted you to do that?
A. He did.
Q. What did he tell you?
A. When he brought the letter over, he said, "Edna, here is the letter that Pat has written to Doll, and he wants you to talk to her at the same time."

MR. APPLEGATE: Objected to.

COURT: I will let it stand. What did he tell you when he brought the letter over? Answer that ques tion.

WITNESS: When he brought the letter over, he said to

me, "Edna, here is a letter that Pat has written to Doll, and he wants you to deliver it, and he wants you to talk to her at the same time and see if you cannot bring around a reconciliation between she and Johnce. Get her to go to Johnce and do as I have written in the letter."

Q. If you will answer my question, please; why did your husband ask you to make copies of the letters or help him make copies?

COURT: I don't suppose she knows unless he stated. What did he say?

WITNESS: He said to me, "Edna, you know this thing has worried me to death about whether withholding this news from Johnce is right or not", and he said, "I don't want to be in the position—he is my brother—to have him feel mad at me the rest of my life", and he said, "In order to protect myself, I feel that I should have a copy of this letter to show him."

Q. That is the only explanation he gave you in regard to why he was making copies of the letters?

A. That was enough.

Q. But that was the only one?

A. That was all.

CROSS EXAMINATION BY MR. LANE:

Q. When was it that Mrs. Cartan told you that Mr. Devlin had kissed her?

A. Some years ago.

Q. How many, about?

A. Seven or eight years ago.

Q. In the early part of their intimacy?

A. Seven or eight years ago.

Q. You were surprised that he kissed her?

A. I was surprised that he kissed her.

Q. Then you were not suspicious at that time; you didn't think there was anything wrong between them?

A. I had noticed that they had been unusually nice to one another, but I didn't think there was anything wrong.

Q. You didn't think there was any kissing yet?

A. Not yet.

Q. What did you say to her when she told you that he had kissed her?

A. Nothing.

Q. You took it in silence?

A. I did.

Q. And went on talking about something else?

A. Yes.

Q. And she made this statement to you; nothing led up to it?

A. Yes, she told me about the theatre party the night before.

Q. And as a part of telling you about the theatre party, she said that Pat had kissed her?

A. Yes, and "Mame would be mad as the devil if she knew it."

Q. You said nothing?

A. I said nothing.

Q. What was your object at this time in May, 1916, in having Mr. Devlin and Mrs. Cartan watched that night?

A. I had no object.

Q. Why did you do it?

A. Naturally; just the natural thing.

Q. Why; mere curiosity?

A. Not curiosity, no; I was one of the family. Mrs. Cartan had been using her husband mean for a good many years; we could see that.

Q. What was your object then in getting the evidence on her?

A. No object.

Q. That was what you were told to do?

A. No object.

Q. You were attempting to catch them actually?

A. I wasn't thinking of catching her.

Q. You were thinking of catching Devlin?

A. Yes, I wanted to know what he was doing, whether there was really anything wrong.

COURT: Did it occur to you to try to save her from herself and making a mistake on this occasion, by sending your husband and Mr. Tice around there?

WITNESS: Mr. Devlin is a strange man to deal with; he would squirm out if you didn't know what he was doing.

Q. Were you trying to catch Devlin or Mrs. Cartan?

A. Not either one; not in that way.

Q. So that thereafter you wanted to satisfy yourself and satisfy the persons who were with you as to what was actually taking place; you didn't know how you were going to use that information after you got it?

A. Not the slightest idea.

Q. But you were induced to use it, or to take the course you did, because of the mean way in which Mrs. Cartan had been treating her husband?

A. Oh, no, I wouldn't say that.

Q. What did you say that for a few minutes ago?

A. That is one of the things that led up to it, but that isn't it; I had no motive; I did everything I could to talk to Mrs. Cartan, and placed myself in a mean position.

COURT: Before this occurrence?

WITNESS: No, sir.

Q. I didn't understand what you meant, you had done everything you could for Mrs. Cartan and placed yourself in a mean position.

A. The night I talked to her.

COURT: After the occurrence ?

WITNESS: Yes.

Q. Now your attention is being directed to two and one-half years before that.

A. I did nothing.

Q. What was your frame of mind in May, 1916?

A. There was no frame of mind. I happened to be sitting on my stoop when this thing happened.

Q. But you went to the trouble of sending out for persons to go and find out what was happening between Mrs. Cartan and Devlin; what was your object in catching them?

A. No object; they were people we all knew about.

Q. Did you have any idea as to what you were going to do with the information after you got it?

A. No, sir.

Q. But you were induced to take the course you did because of the mean way in which Mrs. Cartan had been treating her husband?

A. No, I wouldn't say that.

Q. That was one of the things which led you to do it?

A. Of course that is one of the impulses.

Q. Or was it antipathy toward Devlin?

A. No, not exactly; I felt Mr. Devlin was a pretty mean kind of a man.

Q. For how many years before that had you been feeling that Devlin was a pretty mean sort of a fellow?

A. What date was that?

Q. Before May, 1916.

A. Ever since that pool incident; that made me very angry; I could see very plainly what he was doing.

Q. That was for several years?

A. Yes.

COURT: Why did you associate with them?

WITNESS: I associated with him?

COURT: Why did you?

WITNESS: That is the reason you couldn't tell the man, because we were so closely related.

COURT: Couldn't you drop him, you didn't have to associate with him?

WITNESS: We were all just like a family, and it was very hard to break those relations; you cannot go to anyone like that and tell them very easily.

Q. You did for several years prior to May, 1916, think that he was a mean sort of a fellow?

A. I thought from the time I saw his familiar actions in the pool that he was a pretty mean man.

Q. How long before you saw his actions in the pool was it that you thought he was a mean sort of a fellow?

A. I didn't think he was quite as mean; I didn't think he would do as much as that.

Q. When was it that he was a little mean, then?

A. We had been on a Perth Amboy trip and this garage incident that I told you about.

COURT: When he was missing for half or three-quarters of an hour?

WITNESS: Yes.

Q. That was a number of years ago, eight or ten years?

A. Yes.

COURT: Over eight years ago?

WITNESS: Yes.

Q. There is testimony in the record, when you answered the Vice Chancellor's question— I am not going into the details—that you had something else in your mind which made you think that Devlin would be likely

to do this thing; when was that, that that thing got in your mind? I want the day and date only.

Q. You want the day and date only?

COURT: When did you get that in your mind?

MR. WILSON: Her attention should be connected.

COURT: Do you understand to what Mr. Lane is referring?

WITNESS: I don't exactly.

Q. The Vice Chancellor asked you and drew your attention to the fact that in one of your answers you had indicated a feeling with respect to Mr. Devlin, and he asked you whether there was anything which you had not told which indicated, or which made you think that Devlin was the kind of a man who would do these things, and you said there was.

COURT: There is something of the kind. There was something similar to it, and I said I didn't care to go into it any further.

MR. LANE: She said there was something. All I want is when that something occurred.

COURT: Do you recall what he is referring to?

WITNESS: I cannot tell you what date.

COURT: Was it a year or two before this occurrence?

WITNESS: Yes.

COURT: Two or three years or longer?

WITNESS: I don't know the date or the year exactly, but my sister-in-law told me of different things he had done to her.

COURT: That was some years before May, 1916?

WITNESS: Yes.

COURT: That is as near as you can place it in point of time, as being three or four years before, or possibly a longer or shorter period?

WITNESS: I cannot tell you when she first told me.

COURT: Do you think it was two years before the May, 1916 affair?

WITNESS: Yes.

COURT: As long ago as that?

WITNESS: Possibly longer.

Q. Was there anything which had happened that you haven't told us, aside from what you sister told you?
A. What sister?
Q. Your sister-in-law, anything else that caused you to have this feeling, aside from what your sister-in-law told you?

MR. WILSON: That he was a mean man.

Q. Is there anything else other than what your sister-in-law told you a year or two or longer before that, that induced you to have that feeling about him in May, 1916?

A. Yes.

Q. Beside what your sister-in-law told you?

A. Which sister-in-law?

Q. Besides Mrs. Bert Cartan.

A. I have a personal matter.

Q. That is what I want, the personal matter is what I refer to; when did that happen?

A. I cannot tell you when it happened.

Q. About how long before May, 1916?

A. I don't know.

Q. Some years?

A. I would say four or five years.

Q. And yet notwithstanding all that—

A. It was a very slight offense, but it was enough to make me know what kind of a man he was.

Q. And it was enough to put you in a state of indignation or mad for a time, wasn't it?

A. It was, and if we hadn't been closely related like we were, it would have been, and connected up like we were, it would have been.

Q. Notwithstanding the personal incident you had, whatever it may be, and notwithstanding the experience which your sister-in-law, Mrs. Bert Cartan, had, and notwithstanding that you knew what was occurring between Mrs. A. J. Cartan and Devlin—notwithstanding all those things, you continued down to October, 1918, to go out with this man, go out with his wife, and to dance with him, go to theatre parties with him, treat him as an equal

and spend money on him and have money spent on you by him?

A. Yes, sir.

COURT: That did occur down to October, 1918?

WITNESS: No.

MR. LANE: I didn't mean to misstate it.

COURT: When do you say that relation ended, that friendly relation?

WITNESS: Up until the time that Mrs. Devlin was told, we were friendly.

COURT: Then that would be October, 1918, when you told Mrs. Devlin?

WITNESS: October 1, 1918.

COURT: You say it continued up to that time?

WITNESS: Yes.

Q. Was there anything that occurred—did it occur to you, Mrs. Cartan, that it wasn't fair to Mr. A. J. Cartan to permit him to go on living with Mrs. A. J. Cartan in ignorance of what you people had discovered in May, 1916?

A. It certainly did; it worried my husband sick.

Q. Worried you?

A. It did.

Q. But you stood it for two years?

A. We did.

Q. Was there anything that occurred, anything unusual that occurred just before October first, 1918, which inducted you to act at that time?

A. Yes.

Q. What?

A. I was mowing the grass on my side lawn, and Mr. A. J. Cartan came down the street and said to me, "Edna, come in the house, I want to talk to you."

Q. The unusual thing was that Mr. A. J. Cartan asked you for information, is that right?

A. Yes.

Q. That is the only unusual thing that occurred?

A. That was the start of it.

Q. You don't know what it was that induced A. J. Cartan at that time to stir this thing up, or to ask for information, do you?

A. I only know what he told me. He said, "Edna, I have stood this thing as long as I can. Ren and Jim have stood me off on this thing, thinking that Doll would come around to me all right, but she doesn't treat me a bit better now, and isn't any better than she was, and I cannot stand it any longer."

Q. Whom do you mean by "Jim"?

A. Mr. James Carton.

MR. WILSON: The attorney?

WITNESS: The attorney.

Q. When did you first know that Ren had told A. J.?

A. When he told him.

Q. You knew, then, in May, 1918, that your husband had told A. J.?

A. Yes.

Q. Did you know before he told him?

A. Know what?

Q. What he was going to tell him?

A. He always said he wouldn't tell him.

Q. When he did tell him, did you know he had made up his mind to tell him?

A. He didn't go tell him, because his brother came to him time and time again.

Q. Do you know of anything that occurred of an unusual in May, 1918, which led to the disclosure by your husband that he made to A. J. Cartan?

A. Mr. A. J. Cartan had been to my husband several times to ask him to tell him about—if you want to know what my husband said?

COURT: Do you know what occurred that induced your husband to either tell Mr. A. J. Cartan or induced Mr. A. J. Cartan to demand from your husband what information he had; did anything unusual occur just before that, either in April, May or March, did anything unusual occur that brought about that disclosure at that time? If you don't recall anything, say so.

WITNESS: I don't.

Q. You said that Mr. A. J. Cartan had been to your husband for some time before he actually told it?

A. Yes.

Q. How long a time had he been to your husband?

COURT: All she knows is what her husband told her.

Q. What did your husband tell you with respect to how long a time Mr. A. J. Cartan had been after him?

A. He had been at him lots of times.

Q. Commencing at what time?

A. I cannot tell you the date.

Q. Commencing how long before May, 1916; had he been at him in 1917, 1916, or 1918?

A. It was in 1916.

Q. That he first began his inquiry of your husband?

A. Yes.

Q. You are sure of that?

A. I am not sure.

Q. What time in 1916?

A. When he first went to my husband?

COURT: You think it was in 1916; what time in 1916 did he first go to your husband, if you can tell?

WITNESS: I would say the fall.

Q. The fall of 1916, and that continued—

A. 1916 or 1917, I don't know.

Q. Do you state it was in 1917?

A. I am not sure of that date.

COURT: If you are not sure and cannot answer, say so.

Q. Was it some time before your husband actually told A. J.?

A. He told me that he had been after him—oh, yes.

Q. Did your husband tell you how it was that A. J. knew that your husband knew anything about it?

A. I knew what my husband told me.

Q. What did he tell you as to how A. J. knew?

A. He said he stood this thing until he couldn't stand it any longer.

Q. How did A. J. know that your husband knew, and told you of the fact; what did your husband say about that, how A. J. knew it?

A. Oh, you mean when he come from his sister to my husband and he said, "Ren, you have got to tell me what you know; I know you know something"; you mean that?

Q. You say that A. J. was after your husband to tell him sometime before he did tell him?

A. Yes.

Q. I asked whether you knew how it was that A. J. knew that your husband knew anything about it?

A. His sister told him.

Q. Then he hadn't been after you or your husband, or your husband didn't tell you that A. J. had been after him since 1916, did he?

A. No, not until this time.

Q. In 1917?

A. That was the first.

Q. The first that A. J. had been after your husband was a few days before your husband actually told him, is that right?

A. No.

Q. How long?

A. When he came from my sister-in-law; he went to her a lot.

COURT: Can you fix that time; do you know when that was?

WITNESS: I don't know the date.

Q. In what year?

A. We knew of this May incident, that was in 1916, and it was two years after before we told him.

Q. You recollect distinctly, do you, that Mrs. A. J. Cartan when you talked to her said that you couldn't do anything because in order to have anything on them you would have to get within ten feet of them?

A. I recollect that distinctly.

Q. Those are practically her exact words?

A. She said in order to prove anything on any one you have to be within ten feet of them.

Q. Nothing had been said, do I understand, before that, as to whether Mrs. Cartan was accused of having committed adultery in the house or in the back yard or in any particular place, is that right?

A. Her husband had accused her of different things.

Q. But you hadn't?

A. No, nothing.

Q. Nothing was said in that conversation as to where it was charged that this adultery had taken place or under what circumstances?

A. No,, sir.

Q. When was it that Mr. Devlin and Mrs. Devlin moved up to the new house they own, up Main street?

A. I cannot tell you the year.

COURT: Can you tell us about? Was he living in that house in May, 1916?

WITNESS: Up town; no, sir—1916; yes, I think he was. I am not sure. I can tell you where he lived at the

time of the garage incident; he lived down right next to Rue's.

COURT: Can you recall where he lived in May, 1916?

WITNESS: Up town.

COURT: Up near the Freno station?

WITNESS: Yes.

Q. In the new house?
A. Yes.
Q. Did Mrs. Cartan at the first conversation that you had with her deny the charge?
A. No, sir.
Q. The first one; not the second?
A. She didn't deny it.

COURT: She said she only had one conversation with her.

MR. LANE: She said there were two.

WITNESS: No, only one.

RE-DIRECT EXAMINATION BY MR. WILSON:

Q. You were asked if you knew that your husband had consulted with Mr. James Carton, the attorney, after this occurrence in May, 1916, and you answered Yes.

How did you know it?

A. I went with him personally.

Q. And found Mr. Carton where?

A. At his home.

Q. It was on Sunday?

A. Yes.

Q. Did you hear your husband ask Mr. Carton as to what Mr. Carton thought his duty was in telling Mr. A. J. Cartan about this story?

A. No, sir, I talked with Mr. Carton's wife while my husband was talking with him.

Q. You didn't hear what passed between them?

A. I did.

Q. And went for that purpose?

A. Yes.

MR. WILSON: I should like to call Mr. James Carton for the purpose of explaining the delay in commencing suit. He feels that some explanation ought to be offered.

COURT: I don't feel that any explanation is necessary, but if he desires, I will receive it.

MR. WILSON: Mr. Carton feels that inasmuch as the conduct and good faith of A. J. Cartan in dealing with these facts which are made the basis of the divorce suit, and inasmuch as the motive and good faith of Ren Cartan and others, who knew the facts before A. J. Cartan did know them, are put in question, as a matter of duty and not as a matter of choice, by the indulgence of the court, he desires to be sworn.

JAMES D. CARTON, sworn for petitioner.

DIRECT EXAMINATION BY MR. WILSON:

Q. You are a member of this bar?
A. I am.
Q. And have been a member of the bar how many years?
A. Twenty-five.
Q. A member of what firm?
A. Durand, Ivins & Carton.
Q. Asbury Park?
A. Yes.
Q. And you have practised law at Asbury Park during the entire period of your professional activity?
A. Yes, during the whole of that time.
Q. Are you related to A. J. Cartan and Ren Cartan?
A. Yes, first cousins.
Q. I ask you whether you recall having had a visit from Ren Cartan sometime before May, 1916?
A. I don't remember as to dates, Mr. Wilson, but some time after the occurrence that has been related as having happened in 1916.
Q. You were visited by whom?
A. By Mr. Ren Cartan.
Q. Who was with him on the occasion of that visit?
A. Nobody.
Q. Did his wife come there with him?
A. No, he came to my office; the incident his wife was referring to was some time later, when they were at my house.
Q. When he came to your office did he relate certain things that he had seen in respect to the conduct of Mr.

Devlin?

A. He did.

Q. And Devlin's association with A. J. Cartan's wife?

A. Yes.

Q. Did he relate this incident about the outhouse affair?

A. He did.

Q. And how soon after the incident as fixed in his own narrative to you did he come to see you; about how soon?

A. My best recollection would be it was in the course of a week or two thereafter.

Q. Did he come to see you more than once about the matter?

A. Yes.

Q. How many times?

A. Oh, many times.

Q. What was the purpose of these calls; was he asking for your advice or counsel?

A. Yes, what he should do with regard to the matter.

Q. In what respect?

A. Whether he should take it up with his brother or not, and I advised against it.

Q. Do you remember on one of those occasions his wife coming with him?

A. Practically all of these trips were to my office; his wife never came to my office. I think it was after the trouble had broken in October before his wife came with him to my house. She never came during the first year or two at all.

Q. What did you advise him to do in respect to the matter?

A. I advised him to do nothing; that is, not to take

it up; see if the thing wouldn't in time work out itself.

Q. Advised him not to inform his brother A. J. Cartan?

A. I did.

Q. And not to inform A. J. Cartan's wife?

A. Yes.

Q. What prompted you to make that suggestion?

A. Oh, I don't know. In the first place we were closely related, Matawan was a small town, and both these men, both Cartan and Devlin, I suppose are fairly prominent in that town; I took care of their business interest; I knew they were jointly interested in the bank, both on the Bank Board, and I am intimately acquainted with both families, and I knew it would simply raise havoc with these people in the town with their families, and I knew that they were both—families were being raised and getting along in their married life, and I thought the thing would take care of itself and die out.

Q. Did you make any inquiry at to whether or not the association between these people was growing more pronounced or whether it was diminishing; did you make any inquiry in respect to that?

A. Not at the start, but I know as Ren came to me later on, that year or the next year, I made inquiry about it, and I did ascertain that that was true, and that convinced me still more strongly that—

COURT: That the association was less?

WITNESS: Yes, and the thing would probably take care of itself. I hadn't heard anything about Johnce's wife, but I heard about Mr. Devlin's activity with some other matters that seemed to lessen their association, and it

pleased me.

Q. It is said that A. J. Cartan became informed as to this incident in 1916, immediately before May, 1918. Was this matter brought to your attention at that time?

A. It was.

Q. At the time he was informed or before he was informed?

A. No, at the time he was informed.

Q. After he was informed?

A. Yes.

Q. And who brought it to your attention then?

A. Both he and Ren came to me?

Q. Together?

A. Together.

Q. What purpose, if any,—what plans, if any, in dealing with the situation did A. J. Cartan disclose to you?

A. He came there for a divorce right off the reel, and I talked with him and dissuaded him from doing it; I told him we could get him a divorce at any time.

Q. Why did you dissuade him?

A. I had in mind the same consideration I had had a year or two before, that it would be bad for them.

COURT: That they might drop it and be forgiven?

WITNESS: That they could be reconciled in some way.

Q. Did you then have brought home to you the fact that the companionship of these two people was less pronounced at that time?

A. I knew prior to that time in my talks with Ren that it had been less pronounced.

Q. And I presume that A. J. Cartan told you how he had gathered his information, these details?

A. Oh, yes.

COURT: Did Mr. Cartan, the petitioner, follow your advice and refrain from instituting action, as long as you advised him to?

WITNESS: He did, but I suppose during that summer he was at my office more than once a week,—likely once a week, and practically every Sunday, I think.

Q. Urging some sort of action?

A. At first he was concerned about it. At first he seemed to be satisfied that the thing might work out, but then he told me that his wife was cold and he couldn't make any headway, and later on—in the later fall, August, September or November, he was very insistent.

Q. What did he insist upon; did he insist upon taking any course at that time—upon doing any particular thing in the latter part of August or September?

A. Other than that he was insistent that I should proceed by filing a suit, that was all.

Q. And nothing was done up to the time he insisted upon it?

A. Nothing that I knew anything about.

Q. Nothing had been done by you, at least?

A. No.

Q. When he announced his determination in the matter, what did you do?

A. I told him—long before that, I had advised him time and time again, after this trouble arose, to see if they couldn't get together, and see if Ren was instru-

mental with Devlin, to try and get them together, and when they finally couldn't get together, and nothing to be done but to institute a suit for divorce, I told him that because of my relation, that I would prefer someone else to take charge of the matter.

COURT: Did you arrange a conference and meet with Mr. Cartan and Mrs. Cartan?

WITNESS: No.

Q. Did you know as a matter of fact that Ren in that interval, between the time you were first informed that A. J. knew the facts, and the time he announced to you that he was determined to bring the suit for divorce, do you know whether there had been any attempt made to reconcile the husband and wife?

A. Yes, I knew around this October time, time and time again, I knew they were making several such attempts.

COURT: If I understand the gist of your testimony, that whatever delay occurred, first, in the disclosure by Ren to his brother of the knowledge he had, and secondly, whatever delay occurred in the prosecution of Mr. A. J. Cartan's suit, or the institution of it, was due to your advice?

WITNESS: Entirely so.

Q. You also advised him not to inform Mrs. A. J. Cartan?

A. Yes.

Q. When he announced his determination to bring this suit, and giving the reasons which you have recounted, what was done then?

A. I turned him over to your firm, and I think I met with him on one or two occasions.

Q. About when was it turned over to the firm of Wilson & Smock?

A. Only from—this bill was filed in December; I thing about a month before that; I should say in November, 1918. I think I took it up with Mr. Smock on a couple of occasions before you came in it; I know I did.

COURT: About November?

WITNESS: About November.

Q. Were you informed by Mr. A. J. Cartan that his wife wanted to go to Florida?

A. I was.

Q. Did he ask you about the propriety of that matter?

A. He did.

Q. And did you advise him?

A. I told him I thought it would be all right, for the reason it appeared then as though they were not going to get together, and I knew they were living under the same roof, and I thought if she wanted to go to Florida, it would be just as well that she should go.

Q. Did you tell him that he had to support her either there or here?

A. I told him it made no difference whether she went to Florida or whether she was here or not, it was his duty to support her.

Q. It appears as a matter of fact that the process

in this proceeding was served on this lady the day before she went to Florida; was that by reason of any arrangement or was it by drift of circumstances?

A. It was by drift of circumstances, as I recall.

COURT: There was no arrangement?

WITNESS: No, other than when she fixed—I remember Mr. Cartan coming to me and saying that she had fixed on going, he said, and set a day; I don't think we had seen you yet; then we hurried to get the matter in shape before she did go away, to get service made before she went away.

COURT: Was there any understanding that she go to Florida and not contest the case?

WITNESS: Not to my knowledge.

COURT: Anything else you wish to state?

WITNESS: No.

CROSS EXAMINATION BY MR. LANE:

Q. Did it occur to you when you were talking to Mr. Ren Cartan in May, 1916, that if this information was kept from Mrs. Cartan, and if the matter did not work out, that as time went on she might be considerably prejudiced in making defence to the suit, if the story were false?

A. I hadn't anticipated any suit, Mr. Lane; that matter never suggested itself to me in that way.

Q. That idea did not suggest itself?

A. No, sir.

Q. You did not at that time keep a memorandum of the exact date upon which this occurrence in the chicken house took place?

A. I did not.

Q. And Ren Cartan saw you, as I understand, within a week after this occurrence?

A. That would be my best judgment.

Q. Did it occur to you in May, 1918, when Mr. A. J. Cartan spoke to you, that if there wasn't any reconciliation and finally there had to be a suit, that the length of time that was elapsing was prejudicing or would prejudice Mrs. A. J. Cartan?

A. It hadn't concerned me whether it would prejudice either one, because that wasn't what I was thinking about at that time.

Q. Did it occur to you that there was danger from Mr. A. J. Cartan's standpoint, for him to remain under the same roof with Mrs. A. J. Cartan?

A. It did not. My thought about that was, that if they stayed under the same roof, there would be more likelihood of their getting together.

Q. A reconciliation?

A. Yes.

Q. Did Mr. A. J. Cartan express a willingness for a reconciliation?

A. Yes.

Q. Up until the suit was actually started in November?

A. No, up until I think the time of the passing of

these letters, in October.

Q. Up until that time he expressed a willingness to forgive his wife?

A. To a reconciliation; it would be tantamount to it, probably.

Q. It meant a forgiveness?

A. Yes.

CROSS EXAMINATION BY MR. APPLEGATE:

Q. Didn't you think that if Mrs. A. J. Cartan knew all the particulars, knew of this incident in the back yard, the outhouse incident, if she knew all the facts connected with the case, that there would be more chance of a reconciliation than if she was absolutely ignorant?

A. No, that thing never suggested itself to me.

Q. Why didn't you tell Mrs. Cartan; why did you advise Mr. Ren Cartan not to tell her?

Q. You mean before the 1918 time?

A. Yes.

A. Because I thought that would undoubtedly aggravate the thing and likely cause trouble rather than cure it; I thought it would die out and not to stir that story up.

Q. You thought the less said, the better?

A. Yes.

The further taking of testimony is adjourned to November 17, 1920, at 10 A. M.

Continuation of testimony in the above entitled cause, before Hon. John E. Foster, Vice Chancellor, at the Chancery Chambers, Newark, New Jersey, on Wednesday, November 17, 1910, at 10 A. M., in the presence of counsel as before stated.

JAMES CARTON, resumes the stand,

FURTHER DIRECT EXAMINATION BY MR. WILSON:

Q. Mr. Carton, you told how Mr. A. J. Cartan came to see you shortly after he learned of his wife's conduct in May, 1918. On that occasion did you say anything to him or he to you, about the effect of cohabitation?

A. Yes, he asked me about that, and I told him that if there was cohabitation that would amount to forgiveness. He said that if it were necessary he would go and live in the homestead across the street, and I told him that was not necessary, that if there was no cohabitation he might remain in the house.

CROSS EXAMINATION BY MR. APPLEGATE:

Q. Didn't you say on your previous examination, that nothing was said between you and Mr. A. J. Cartan in regard to the effect of cohabitation?

A. I don't recall having said anything about, Mr. Applegate.

Q. You had this conversation with him when?

A. It was when he first came to see me—well, after he had known of it, when he first came down to see me

about it.

Q. When do you fix that?

A. I take it that was in the spring of 1918, possibly in May or June.

Q. You say you advised him at that time as to what the effect of cohabitation with his wife would be?

A. I did, in this way, that he asked me—he had just learned of it at that time, and asked me if it would be all right for him to live in the house, and I told him it would, if there was not cohabitation, and he was quite concerned about it, and rather thought he should go over to the homestead and live there. I told him there was no need of that; if there was not cohabitation it would be all right for him to remain in the house.

COURT: Did he state when he had last cohabited?

WITNESS: If I recall he told me that there was practically no association between him and his wife, and had not been since the previous January—even before he knew it.

CROSS EXAMINATION BY MR. LANE:

Q. You were asked on your cross examination whether it had not occurred to you that there was danger from Mr. A. J. Cartan's standpoint, for him to remain under the same roof with Mrs. A. J. Cartan, and you answered that it did not occur to you.

A. Well I don't recall just what the question was.

Q. You followed it up by saying, (p 526) "My

thought about that was, that if they stayed under the same roof, there would be more likelihood of their getting together", "Q. A reconciliation?" "A. Yes."

A. That was my own opinion about the thing, because it was our idea to have them become reconciled and get together.

Q. And you expected that there would be forgiveness?

A. I had hoped that; that was my hope and my thought and my wish.

Q. Did you realize at the time you advised him that it might come to a question of his word against hers, if he stayed in the house—

A. No.

Q. Wait a minute—as to whether there had or had not been cohabitation?

A. No, I hadn't given that matter any thought.

Q. Wasn't that apparent?

A. The matter uppermost in my mind at that time was that these parties should get together, and it was my opinion that if they remained in the same house there would be more likelihood of their getting together; he was concerned about it and he spoke to me about it several times later on, and I told him he need not concern himself about that.

RICHARD HEUSER, recalled for further

DIRECT EXAMINATION BY MR. WILSON:

Q. You have already been sworn?

A. Yes.

Q. You are the surveyor that made this map, Exhibit P 2?

A. Yes.

Q. Did you make measurements showing the dimensions of this building which you designated as "outbuilding" on the map?

A. Of some parts of it, yes, sir.

Q. What part did you ascertain by measurement?

A. The height.

Q. What is the height of it?

A. At the highest point, six feet.

Q. What is the character of the roof upon it?

A. It has one slope.

Q. And at its highest point it is six feet; is that measurement inside?

A. Yes, sir.

Q. And at its lowest point?

A. Four feet eight inches.

Q. How wide is the building?

A. I don't recollect that, just how wide that was.

Q. Could you determine that from putting a scale on the outbuilding as shown upon the map?

A. Yes.

Q. Do it, please.

A. I have no scale with me.

Q. Tell us approximately what was the width of it.

A. Four or five feet.

Q. About how long?

A. My recollection is, in the neighborhood of 25 feet.

Q. What is the scale of this map?

A. 60 feet to the inch.

Q. Is the building laid down there on a scale?

A. Yes.

Q. What do you think is the approximate width of the building, bearing in mind the scale?

A. About ten feet.

Q. The outbuilding is ten feet wide?

A. Yes.

COURT: Instead of four or five feet.

Q. What is the size of the door?

A. The door is 4 feet 8 inches high and 2 feet 1 inch broad.

CROSS EXAMINATION BY MR. LANE:

Q. Did you measure the height of the glass in the rear of it, the back part of it?

A. There is only one glass to my recollection.

Q. There are two sashes?

A. Two hot bed sashes.

Q. Did you measure the height of them from the ground?

A. I measured the height of the sash, about 3 feet.

COURT: Each sash?

WITNESS: Each sash is 3 feet.

COURT: 6 feet from the ground?

WITNESS: No, they are in line.

COURT: Not one above the other?

WITNESS: No.

Q. Do you recognize that photograph shown you as the photograph of the rear of that outhouse?

A. Yes, sir.

Q. What I want to know is, how high the top of that sash is from the ground, this sash here (indicating)?

A. That would be about four feet.

Q. And it goes down to about a foot of the ground?

A. About a foot of the ground, to my recollection.

COURT: How long are these sashes?

WITNESS: They measure 13 feet.

MR. LANE: I ask that that photograph shown the witness be marked.

(Marked Exhibit D 5, November 17, 1920.)

Q. Is there a sill in the doorway into this outhouse?

A. There is a little sill.

Q. And about how high from the ground?

A. The ground there is a little uneven, and I would say the top of the sill isn't very much above the ground.

Q. I show you another photograph and ask you whether you recognize that as a photograph of the entrance, and ask you whether that shows the sill?

A. Yes, that shows the sill, but there is a depression in the ground right at the sill.

Q. The sill is about four to six inches above the ground, isn't it?

A. That might be.

MR. LANE: I ask to have the last two photographs shown the witness marked.

(Marked Exhibits D 6 and D 7, November 17, 1920.)

CROSS EXAMINATION BY MR. APPLEGATE:

Q. When were these measurements made?
A. Yesterday.
Q. At whose request?
A. At Mr. Cartan's request.
Q. A. J. Cartan's?
A. Yes.
Q. Who was present when they were made?
A. Myself and helper.
Q. Who is the helper?
A. Herbert Fry.
Q. Anybody else?
A. No, sir.
Q. Mr. Cartan there?
A. No, sir.
Q. How did you know what to measure?
A. He asked me to make measurements of certain things.

COURT: What did you measure, the height of the building, what you have just given us now?

WITNESS: I measured the height of the building, the size of the door, and I measured the height of the glass and the length of the glass, but I wasn't requested to take all those measurements.

Q. You did take such measurements as you were asked to take?

A. Yes.

Q. And certain specific measurements were requested; were you requested to take the measurement of the glass?

A. No, sir.

Q. Did you make any inside measurements?

A. Yes.

MR. WILSON: Your Honor will recall we served notice upon the solicitor representing Mrs. Cartan for the production of two certain letters, originals, said to have been written by Mr. Devlin, and which according to our version, reacher her hand. Those letters in response to that request were not produced; we were permitted to use secondary evidence. My application now is, that your Honor direct the solicitor or solicitors to produce the original letters; my theory about it being this: we sufficiently laid a foundation for the use of secondary evidence; the secondary evidence has gone in the case, but if the originals were produced, then the complainant and the court would have the benefit of two additional substantive facts. What are they? First, that the letter was received; and second, that they were in the handwriting of the alleged paramour. My understanding is

that quite apart from any procedure which might require your adversary to produce a paper, that if there is a substantive fact within the control of the contending parties then before the court, it is the court's common law right to require the production of that evidence. My application therefore relates, in the first instance, to two of these letters, which as your Honor will recall, reached the hand of the wife. My application also relates to a third letter, which under the testimony as taken, never did reach her hand, but again reached the hand of Devlin, who we allege was the sender and framer of it.

COURT: I will direct as you request, that these letters be produced .I am going to do it on the theory that I will not permit the parties to suppress any evidence that belongs properly in this case, and I will direct you gentlemen, if you have the letters, to present them and produce them.

MR. LANE: I don't know whom he is calling on.

COURT: Both of you.

MR. LANE: We have no such letters.

MR. APPLEGATE: We have no such letters. The testimony is that they were destroyed.

MR. WILSON: The testimony is that one was destroyed by Mrs. Cartan.

COURT: The record shows, as I recall, Mr. Lane's attitude was that he neither admitted nor denied the letters;

that he didn't produce them and didn't respond.

MR. LANE: That was the attitude which we took up to this time, the attitude I think we are entitled to take. We now do not take that attitude. We say we have no such letters with one exception. Mr. Wilson has mentioned a letter which he says never reached the hands of Mrs. Cartan, but was written by Mr. Devlin. There may be some difference; we may have that letter.

COURT: I will go beyond Mr. Wilson's request, and direct counsel to produce any letter which passed between the parties.

MR. WILSON: My application relates to the last letter.

MR. APPLEGATE: That never reached Mrs. Cartan, and she never received it.

COURT: I will direct its production, if you have it.

MR. LANE: We may have that letter. The others we haven't.

COURT: I don't see if it never reached Mrs. Cartan how she can be bound by it, but I will receive it if it is produced, as affecting Mr. Devlin.

MR. APPLEGATE: My notion is that such a letter might be used in this cause on cross examination of Mr. Devlin and in contradiction, but certainly has no bearing or weight as against Mrs. Cartan.

COURT: It hasn't now, but what effect it will have

before the close of the case remains to be seen, but I will require you, on both sides, to give the Court all the information in your possession. I will make the same direction to Mr. Wilson, if he has any papers or letters belonging to you.

MR. APPLEGATE: We haven't any letters at all and never have seen any. I have never seen any letters written by Mr. Devlin.

MR. WILSON: Then your reply relates to your own knowledge, you not having seen them?

MR. APPLEGATE: That is it.

COURT: His reply goes beyond that now, that neither he nor his client have letters to produce that you now demand.

MR. WILSON: He added "and never seen them".

COURT: That is speaking for himself; I don't want that reply to relate to the fact that the letters are not produced.

MR. APPLEGATE: Oh, no

MR. WILSON: On page 68 of the record, he said, "We don't dispute the delivery, in other words."

COURT: I presume he has made inquiry of his client, in response to your demand, and has been informed by her that she hasn't the letters, and therefore he makes

reply that he hasn't the letters to produce, in response to your notice, or the Court's direction. I take the same view as to Mr. Lane's position.

MR. WILSON: Mr. Lane's present admission is that he may have one.

MR. LANE: I may have one.

MR. WILSON: May we ask for its production?

MR. LANE: With respect to the last letter, we have no objection to stating, although we do it under protest, that we have in our possession a letter, or a copy of a letter, dated October 8, 1918, with a memorandum on it, "This letter was not used". We do not know whether this is a copy of the letter which at that time was handed to Ren Cartan and was not used, or whether it is the original that was handed to him and was not used.

COURT: Is this the letter of the date you are inquiring for, the third letter?

MR. WILSON: Yes.

MR. LANE: We don't know whether it is the original or a copy. It is one or the other. The letter that was used or was handed to Mr. Ren Cartan was in the same terms as this letter was. (Letter handed to Mr. Wilson by Mr. Lane.)

MR. WILSON: I offer this in evidence.

MR. APPLEGATE: Objected to so far as Mrs. Cartan is concerned.

COURT: Suppose you read it.

MR. WILSON: "October 8, 1918.
Dear Doll:

I am sorry you are offended because Edna told Mame. A good friend of mine persuaded her, very much against her will to go to Mame, as Johnce was to go to Mame with the story. It was thought best to induce Edna to tell Mame first, and to tell her in such a way that it might not be made so hard for her."

It is not signed at all, and is on the letterhead of Cartan & Devlin. It is understood to be in the handwriting of Devlin.

MR. LANE: Certainly an exact copy of that is already in the record and testified to as being in his handwriting.

(Marked Exhibit C 8, November 17, 1920.)

MR. WILSON: You will remember when Mrs. Edna Cartan was on the stand, Mrs. Edna being the wife of Bert Cartan, Vice Chancellor Lane, in order to establish her hostility or interest, interrogated her in respect to a certain letter which it appeared she had written to Mr. Devlin, and called her attention specifically to this sentence of the letter, "I never intended telling this story (obviously the story contained in the letter) to your wife, but her usage of me yesterday forced me to do it." Upon this foundation he endeavored to build up a theory of the witness's hostility. Now, if your Honor please, our

theory is that we ought to be permitted, as meeting this suggestion of hostility, to offer the entire letter in evidence.

COURT: Has the letter been used at all?

MR. WILSON: It has been used only to be identified by counsel for the complainant and defendant, and upon the re-direct examination of Mrs. Edna Cartan, I showed her the paper, which she said was a copy, and she examined it for the purpose of refreshing her memory as to the details.

COURT: You now offer the entire letter?

MR. WILSON: Yes, sir, and on the theory if they are to build a theory of hostility upon some fragment in the letter—

COURT: That all she said should be used?

MR. WILSON: Yes, especially in view of the sentence, "I never intended telling this story".

COURT: I will let the letter be offered and marked.

MR. WILSON: May we have the original?

MR. APPLEGATE: May I object as far as Mrs. Cartan is concerned; it cannot possibly bind her.

COURT: It doesn't bind Mrs. Devlin, so far as I know, for the purpose for which Mr. Devlin offers it; it is to

overcome any question of hostility that may have been developed on the part of Mrs. Edna Cartan.

MR. LANE: We object to the offer of the letter. We produce it, of course. Your Honor has already ruled.

COURT: I will receive it; it will be marked. You offer the original letter or a copy?

MR. LANE: I am not prepared at this time—

COURT: Is there an envelope with it?

MR. LANE: Yes. I am not prepared at this time, but it may be that because of the offer of that letter I may desire to recall Mrs. Bert Cartan.

COURT: You will be given the privilege, and if the matter should strike me later as not being competent, I will strike it out; I will put it in now, however, and reserve to both of you the right to examine Mrs. Cartan in reference to anything in the letter. I limit you to that because you have exhausted your examination.

MR. WILSON: I offer the original just produced by the solicitor of Mr. Devlin.

(Marked Exhibit C 9, November 17, 1920.)

(Reading) "Wednesday.

Mame came to the party, to Edna's, and she treated me like a dog. I understood she also called me a little

whore in speaking of me, and this I will not stand for. She better stop and think what her husband is and put the blame where it belongs. You annoyed me with your persistent attentions and tried in every way to win my affection from my husband, which I thank God you did not do. You always assured me you were lucky and could get out of anything."

Envelope also offered and marked Exhibit C 9, envelope, November 17, 1920.)

COURT: Was the letter signed?

MR. WILSON: No, sir, and we are informed that the envelope is the envelope in which the letter came.

MR. APPLEGATE: An anonymous letter.

COURT: Was she asked if that was her letter?

EDNA CARTAN, recalled for further

DIRECT EXAMINATION BY MR. WILSON:

Q. You are the wife of Bert Cartan?

A. Yes.

Q. I show you Exhibit C 9 today, and ask you if that is the original of the letter which you have already said in your testimony you sent to Patrick Devlin?

A. So far as I know.

Q. Is it in your handwriting?

A. Yes, sir, I think it is.

COURT: Did you say you sent it to Mr. Devlin?

WITNESS: I sent one to Mr. Devlin and one to Mrs. Devlin.

Q. A copy of that letter?
A. Yes.
Q. I show you this envelope marked Exhibit C 9 Envelepo; is that the envelope in which you sent it?
A. Yes.
Q. Marked "Personal" on the outside, did you write that?
A. Yes, sir.
Q. Whom did you send it to?
A. I took it in the store.
Q. Did you hand it to him there?
A. He wasn't there; I left it on his desk for him.

COURT: How did you send it to Mr. Devlin?

WITNESS: By messenger.

Q. Who was the messenger?
A. A little boy who lives across the street.
Q. From you, in Matawan?
A. Yes.
Q. What was his name?
A. Sickles.
Q. About when was this you sent this, with reference to October, 1918?
A. I don't know exactly, but I would say the middle

of October.

Q. Was it after all this fuss about the accusing back and forth?

A. Oh, yes, surely; that was the first of October, and this was—

Q. Later than that, in October?

A. Yes.

MR. WILSON: We rest.

PATRICK J. DEVLIN, sworn for defendants,

DIRECT EXAMINATION BY MR. LANE:

Q. Where do you live?

A. Matawan, New Jersey.

Q. How old are you?

A. My nearest birthday is fifty.

Q. How old is your wife?

A. I think she is fifty-two.

Q. And when were you married?

A. Twenty-eight years ago.

Q. Are you living with your wife?

A. Yes.

Q. And you have been living with your wife continuously?

A. Yes.

Q. How many children have you?

A. Five.

Q. What are their ages?

A. I think twenty-seven, twenty-three and nineteen,

fourteen and thirteen; I am not positive, but approximately.

Q. How many of them are living home at the present time?

A. At the present two of them are living home.

Q. And those are the two younger?

A. Yes.

Q. How long have you lived in Matawan?

A. Forty-five years.

Q. When did you first become acquainted with the Cartans?

A. I have known them nearly the whole time.

Q. When did you go into partnership with Cartan?

A. It is just about thirty years ago.

Q. What relation was the Cartan with whom you went in partnership to A. J. Cartan, the petitioner in this suit?

A. His father.

Q. When did that Cartan die?

A. I think about fifteen or sixteen years ago.

Q. Who succeeded to the business?

A. The business was continued the same as formerly, and his son Ren Cartan represents the estate.

Q. Who are actually interested in the business?

A. The whole family, the rest, meaning all the children.

COURT: Who are they?

WITNESS: Lawrence Cartan—

COURT: All the children of the elder Cartan?

WITNESS: Yes.

COURT: Who are they?

WITNESS: Andrew J. Cartan, Ren Cartan, Garret Cartan, Bert Cartan, and Mrs. Kate Wilson.

Q. And in the actual operation of the business, the Cartan family is represented by Ren?

A. Yes.

Q. When did that method of conducting the business start, immediately upon the death of Lawrence?

A. Yes.

Q. And has it continued up until the present time?

A. Yes.

Q. What are the respective duties of yourself and Ren Cartan?

A. We are there to do whatever seems best for the interest of the concern; our duties are similar in many respects.

Q. You have both of you been running that business down to the present moment?

A. Yes.

Q A. J. Cartan conducts a general store, doesn't he, next door to the store of Cartan & Devlin?

A. Yes, sir.

Q. About how many feet away from the Cartan & Devlin store is A. J. Cartan's store?

A. I should say 50 feet.

Q. With a window looking out of the store onto your store?

A. Yes.

Q. In what direction from the store is the house of

A. J. Cartan?

A. I should say south-east.

Q. It is diagonally across the street, isn't it?

A. Yes.

Q. About how many feet from being directly opposite?

A. About 150 to 200 feet.

Q. Where do you live with respect to that house at the present time?

A. We live on the same street, but on the southerly end of it, perhaps one mile away.

Q. About a mile away, on the opposite side?

A. Yes.

Q. How long have you lived in that house?

A. Almost six years.

Q. Did you build that house yourself?

A. Yes.

Q. Before that time where did you live, with respect now to the A. J. Cartan house?

A. On the opposite side of the street from the A. J. Cartan house, and perhaps 300 yards away.

Q. 300 yards further south?

A. Yes.

Q. Further away from the Cartan store?

A. Yes.

COURT: On the same side of the street as the store?

WITNESS: Yes.

Q. How friendly did you become with the Cartan family?

A. We were always friendly; we visited backward

and forward; they came to our house and we went to theirs.

Q. When did that intimacy commence?

A. I don't know just when it did commence; it always existed more or less.

Q. Did you have parties of your own?

A. Yes.

Q. Who were in those parties?

A. Well, they weren't always the same; sometimes we would have some people and other times have different people.

Q. Did they generally consist of the members of the Cartan and Devlin families?

A. Very often, yes.

Q. You had card parties and dances, among other things?

A. Yes.

Q. Do you remember—or was there at these card parties any effort made by you or made by A. J. Cartan's wife to your knowledge to so place yourself and herself, or so place yourselves that you would be together most of the time?

A. No.

Q. At these dances that you had did you dance more with Mrs. A. J. Cartan than you did with anybody else in the party?

A. No.

Q. At the dinner parties did you and Mrs. Cartan arrange so that you should be seated together, or under such circumstances as that you would be able to carry on a conversation without including the others in the general conversation?

A. Never.

Q. Do you remember an incident at the Coleman House in Asbury Park, or at any other place, at which you and Mrs. Cartan became so engrossed with each other that Mrs. Devlin, your wife, interfered and said, "I am here", or words to that effect?

A. No, I do not.

Q. Is it possible that Mrs. Devlin may have used the words, "I am here", and interrupting a conversation which you were having with someone else?

A. That might have happened; she often does that.

MR. WILSON: I move to strike that out.

COURT: Strike out the last part; "That might have happened will stand.

Q. Have you heard Mrs. Devlin use that expression?

A. Yes.

Q. "I am here"?

A. Yes.

COURT: At these parties and gatherings you were at?

WITNESS: No, I don't remember her using it at a party or gathering; often in our house she might use it, if I wasn't paying any particular attention to her, or any one else around the house, she would say, "I am here", to attract my attention.

Q. It is not an unusual expression for her to use?

MR. WILSON: I object as leading and immaterial.

COURT: I will receive it and let it stand.

Q. Do you remember on this same occasion at the Bridgewater Inn, at Pleasure Bay, or any other occasion, at which you were present, with Mrs. Cartan and Mr. Cartan, talking together with Mrs. Cartan, and being interrupted by A. J. Cartan, who asked his wife to dance with him, and that she refused to dance and continue this conversation with you; do you remember any such incident?

A. I have no recollection of anything of that kind.

Q. Do you remember upon this same occasion or upon any other occasion, her coming up to you when the party broke up, preparing to go out, and fixing your collar, or something of that kind?

A. I do not; it might have happened, but I don't remember it.

Q. Do you remember an occasion when you were out in an automobile, a party which Ren Cartan was on—do you remember sitting in the front seat and turning around and trying to touch Mrs. Cartan on the leg, underneath the blanket?

A. Nothing of that kind ever happened.

Q. Do you remember this incident which has been testied to with respect to swimming, teaching Mrs. Cartan to swim; do you remember teaching her to swim?

A. No.

Q. Do you remember any incident when you were present at a swimming pool with her?

A. Yes.

Q. Were there more than one of those instances?

A. Only one as near as I recall.

Q. When was that?

A. I cannot fix the time; it was several years ago.
Q. Who was in the party?
A. Big Edna.
Q. Give their names.
A. Mrs. Ren Cartan and Mrs. Bert Cartan; there were others, but I cannot recall who they were.
Q. Was Mrs. Devlin in the party?
A. She wasn't swimming; she seldom went in swimming; she was in the party; they were waiting for us.
Q. She was in the pool or outside?
A. No, she was on the street.

COURT: When you say you don't remember teaching Mrs. Cartan to swim—

WITNESS: Did I say I don't remember?

COURT: Do you remember doing so?

MR. LANE: That is my fault.

Q. Did you as a matter of fact ever teach Mrs. Cartan to swim?
A. No.
Q. Tell about the incident in the pool.
A. There was nothing unusual about it; we were there in bathing.
Q. Did you upon that occasion teach Mrs. Cartan to swim?
A. No.
Q. Did you put your hands on her and fool with her in the pool?
A. No.

Q. And support her with your hands under her stomach?

A. No.

Q. Did you ever during the time that you knew Mrs. Cartan, either at these card parties or dances or on any other occasion, become familiar with her?

A. Never.

Q. Did you ever address to her any endearing terms?

A. Never.

Q. Of any kind?

A. Never.

Q. Did she ever address any endearing terms to you?

A. No.

Q. Did she ever attempt to become familiar with you?

A. Never.

Q. Did Mr. Cartan ever, or did anyone else ever say anything to you with respect to any conduct between yourself and Mrs. Cartan?

A. No, not until after this came out.

Q. I am talking about preceding the first of October, 1918.

A. No, never.

Q. Did anybody else ever say anything about it?

A. No.

Q. Did you ever kiss Mrs. Cartan in a telephone booth or any other place?

A. No, sir; oh, yes, I did, in the hospital in New York, when my wife was present, when she was sick; a party of us visited her and everybody kissed her.

Q. When was that?

A. I cannot fix the time; it is a long while ago, perhaps ten or twelve years ago.

Q. And she was ill and you kissed her?

A. Yes.

Q. Mrs. Devlin was there?

A. Yes.

Q. Was there any other occasion when you kissed her?

A. No, sir.

Q. You know the place that has been called the lane back of the Cartan house?

A. You mean Broad street?

COURT: Do you know if there is a lane back of the Cartan house?

(No answer.)

Q. At the Kline Hotel in New Brunswick, seven or eight years ago, did you say to Mrs. Cartan, in the course of a conversation, "Doll, you ought never to work; you ought never to wash; you ought to have everything in the world that you wanted, and if I had the money that your husband has, I would give it to you", and did you display a twenty dollar bill and give it to your wife, with ostentation?

A. I have no recollection of any such thing happening.

Q. Or did anything of that kind ever take place?

A. No, sir.

Q. Is it possible that you may have in the presence of Mrs. A. J. Cartan given your wife a twenty dollar bill?

A. If she asked me for it, I would give it to her, surely.

Q. It has been testified to that during the entire course of your acquaintanceship, Mrs. Cartan in passing the

store would give you what one of the witnesses has called "a sweet salute"; what is there about that?

A. There isn't anything unusual if she passed and waved her hand.

Q. Did she as she passed the store give you a sign of recognition?

A. She might have.

COURT: Not what she might have done.

WITNESS: Yes, she did.

Q. In what form?

A. Waving the hand or something like that.

Q. Was there anything secret about it?

A. No, broad day light.

Q. Did you ever see her greet others in the same way?

A. No, I cannot say I did.

Q. It has also been testified to that upon one occasion when she passed the store you came back to the store and then left hurriedly, and the inference is you went to New York; you said you had to go and buy a suit of clothes; did anything of that kind ever take place?

A. No.

Q. Did you ever go to New York with Mrs. Cartan alone?

A. Never.

Q. Have you been in New York with Mrs. Cartan?

A. Never alone.

Q. With others?

A. Yes.

Q. Upon numerous occasions?

A. Yes.

Q. With her husband and Mrs. Devlin?

A. Yes.

Q. Ever without her husband or Mrs. Devlin being in the party?

A. No.

Q. Do you remember any incident in which you told Ren that you were sorry to leave him, but you had to go to New York to get a suit of clothes?

A. That might have happened, but I don't recall any such incident at this time.

Q. If such incident did occur, did you go to New York with Mrs. Cartan?

A. No.

MR. WILSON: Objected to.

COURT: I will let it stand. He says he has never been with her alone in New York.

Q. Mr. Devlin, this lane that has been referred to as back of the A. J. Cartan house, what is it; is it a lane or what?

A. Back of A. J. Cartan's house, parallel with Main street, is Broad street, but it is not graded directly in the rear.

Q. Is it a street opened for travel and use?

A. It is a by-path; people walk through there.

Q. You cannot drive through?

A. No.

Q. It is known technically as Broad street?

A. Yes.

Q. What connections are there from Broad street with Main street; how do you get from Broad street to

Main street?

A. A little further north is what they call Rabbit Lane.

Q. How far is Rabbit Lane from the A. J. Cartan house?

A. Maybe 500 feet.

Q. Have you ever been on Broad street?

A. Yes.

Q. Seldom or often?

A. At that particular point—

Q. Back of the A. J. Cartan house.

A. In the daytime I have been there once or twice, I guess; I walked through there to see the lie of the land, because they were about to open it up, and the matter was being agitated and petitions were being circulated.

Q. Does anybody live on Broad street?

A. Oh, yes.

Q. Does anybody live on Broad street almost immediately back of the A. J. Cartan house?

A. Yes, a little to the north.

Q. Who are they?

A. There is a house there owned by a man named Carroll, and a house owned by a man named Flagg.

Q. Have you ever been to those houses?

A. Yes.

Q. More than once a month?

A. Yes, often.

Q. For what purpose?

A. I have been around to a house owned by Mr. Radl; I have had more or less business with Mr. Radl, and Mr. Radl's sister lived there with him. She is a trained nurse, and we have had her in our house, when we have had trouble, but there are a number of other houses a little

further on, that are occupied by working men. We have had more or less business with those working men; there is a hall there where they have meetings, and we have more or less business in that end of the town on Broad street always.

Q. Have you been there at night?

A. Nights, yes.

Q. For what purpose?

A. To see those people.

Q. Is there any part of Matawan that you haven't been at nights, on one occasion or another?

A. Yes, there are places where I have not been.

MR. WILSON: I object as being immaterial.

COURT: I will let it stand, but I don't see how it is material.

Q. Do you know where this chicken yard is that has been referred to with reference to the A. J. Cartan house?

A. Yes, you can see it from Main street.

Q. And you can see it from Broad street?

A. Yes.

Q. Were you upon any occasion at night in the chicken house or yard or in the vicinity of that chicken yard with Mrs. A. J. Cartan?

A. Never.

Q. Were you upon any occasion in that chicken yard or in the vicinity of that chicken yard with Mrs. A. J. Cartan other than that night?

A. No.

Q. Have you been in the back yard of the A. J. Cartan house?

A. Perhaps twice in my life.

Q. Do you remember those occasions?

A. Yes.

Q. What were they?

A. Once there was an alarm of fire, a lot of us went back there and tried to climb up on the back stoop to get in the house and put the fire out; another—

COURT: When was that, about how long ago?

WITNESS: It must be eight or ten years ago.

A. (Continuing)—and another time one of our men was over there and he was having trouble making delivery of some coal—there didn't seem to be anyone home, and I went over to see if there wasn't some way to get the window open.

Q. Both of those occasions were in the daytime?

A. Yes.

Q. Did Mrs. Cartan ever stop you upon the street to talk to you?

A. Yes.

Q. Have you any recollection of any specific occasion at which she crossed the street to stop you?

A. Yes.

Q. Any specific occasion?

A. Yes.

Q. Tell us any specific occasion you recollect.

A. It was in the morning about eight o'clock.

COURT: When?

WITNESS: In October, 1918.

Q. I am speaking of before October, 1918; do you

remember any occasion before October first, 1918, at which Mrs. Cartan crossed the street and interrupted you and spoke to you?

A. No, I have no recollection of her ever doing it but once.

Q. That was around October first?

A. Yes.

Q. Either in the day time or night time?

A. Never.

Q. Before coming to the chicken house incident, I forgot to ask you if you remember an incident in which you were lost, after you had come home from an automobile trip and returned home and found everybody looking for you; do you remember that incident?

A. Yes.

Q. When was that?

A. That must have been perhaps 1911; I fix the date because we had an automobile—I think we had it a year or two at that time; we got it in 1909.

Q. What took place on that occasion?

A. I don't remember just who were in the party, but we unloaded them in front of our house, and I drove down the lane to our garage, and put the car in there.

Q. How far was this garage from the house?

A. Perhaps 300 feet, and I came up the lane and went down to the candy store to get some chewing gum, and while down there I met some people and was detained talking with them about something or other, and when I came back I was surprised to find that my wife was agitated because I had been gone a little while, and she had some of her friends around trying to find me.

Q. Who was out in that searching party?

A. I understood Mr. Ren Cartan.

Q. Did you see Ren that night?

A. I don't remember whether I saw him that night or not.

Q. That was the time before you were living at your new house?

A. Yes.

Q. How far was this candy store from your old house?

A. Perhaps 300 yards.

Q. Did you see Mrs. A. J. Cartan that night?

A. No, sir, I did not.

Q. Do you know where Mrs. A. J. Cartan was that night; is there anything that calls to your mind where she was that night?

A. No.

Q. Was she with the party or not?

A. I don't know.

Q. Do you know where A. J. Cartan was that night? Have you any recollection about that?

A. No, I have not.

Q. Was he on the party that night?

A. I don't know.

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

A. It was before the candy store closed; it must have been in the neighborhood of nine o'clock.

Q. How late did you keep the store open ordinary times?

A. At that time I think we used to keep it open until perhaps half past eight or nine o'clock.

Q. What was your custom with respect to the person who stayed in the store?

A. Ren Cartan stayed in on alternate nights.

COURT: He stayed one night and you the other?

A. Yes.

Q. How late did A. J. Cartan keep his general store open?

A. About the same time.

Q. Did he stay there most every night up until closing time?

A. I don't know what his custom was.

Q. Couldn't you tell whether the store was lighted?

A. He asked me if Mr. Cartan stayed there.

Q. Did you see him there frequently at night?

A. Yes, I often saw him there.

Q. You don't know what his custom was with respect to whether he stayed there every night?

A. No.

Q. Did he stay there some nights?

A. I suppose he did.

Q. Do you know anything about it?

A. I seldom went in the store. I had reason to believe he was there.

Q. Have you seen him leave his store and go over to his house?

A. Yes.

Q. Could you from your store see him leave the store and go over to the house at night?

A. I couldn't see where he went after he closed the store.

COURT: Did you see him go in the direction of the house?

WITNESS: Yes.

Q. Were you ever in the A. J. Cartan house at night?

A. Yes.

Q. Were you ever there at night when Mr. Cartan wasn't there?

A. I might have been.

COURT: To your knowledge were you ever there when he wasn't there?

WITNESS: Yes.

Q. Were you ever there when Mrs. Cartan was there alone?

A. No.

Q. Were you ever there upon any occasion when there wasn't a party of some kind of a gathering there at the house?

A. No.

Q. Can you tell me of any reason which would take you to the chicken yard in the rear of the Cartan house at night at a time when Mrs. Cartan was there?

A. No, I cannot.

Q. Did you ever commit adultery with Mrs. Cartan?

A. Never.

Q. When did you first hear that there was any trouble arising out of your assumed relations with Mrs. Cartan?

A. When my wife—

Q. When?

A. October first, 1918.

Q. Where?

A. At my house.

Q. When did you next hear of any trouble?

A. It was just a continuation of it from time to time.

Q. I am talking about the next.

A. I cannot fix the date. Norman Tice would come in our store and say a lot of things that—

Q. I want to get it in sequence. When were these letters written?

COURT: You say you heard it from your wife on October first; when next did anything occur in connection with these matters; what happened next after October first?

WITNESS: There might be a variation of a day or two, but it was October first.

Q. Was it the same day your wife was told?

A. Yes.

Q. What next happened in relation to these matters? Tell what occurred from that time on.

A. My wife came in to the house—

Q. I don't want your conversation between your wife.

COURT: She told you; what next happened?

WITNESS: I said to Mr. Ren Cartan a couple of times after that his wife and his wife's sister-in-law, Mrs. Bert Cartan, had told my wife things that made trouble for me, and that I wanted him to help me, and he said that he would; he appeared to be familiar with the whole thing and knew all about it; he said he would; I asked him if he would get those women to go to my wife and retract those terrible lies they had told her; he assured me that he would help; that he would get his wife, and that she would help and that she could help. And when he said that A. J. was estranged from his wife; he said, "she

has been mean to him, and she is turning the children against him; she has taken the son Johnson out of his store, where he was working, telling him he was giving him a mere pittance", and he said, "What is it her business what he gives him; and she took the boy Johnson out of the store and sent him over to Morgan to work in the munition factory." Then we talked over the probability of getting Mr. A. J. and Mrs. A. J. reconciled; there seemed to be a difference there.

COURT: Did you learn what the difference was at that time from Ren?

WITNESS: Yes.

COURT: What did he say the difference was ?

WITNESS: That is what he said.

COURT: About getting the children estranged and treating her husband mean?

WITNESS: Yes. And he talked about getting someone to go and see Mrs. A. J., and after mentioning several people, he didn't seem to think any of those would do; he asked me if I would write a letter; I said, "Yes, I will do anything", and then he helped me build the letter to be written to Mrs. A. J., passed on every word of it, and when it was written, he said to me, "Can't you make it stronger?" I said, "I don't know; that seems to be strong enough."

COURT: Did he in this conversation tell you that you

were the person responsible for this estrangement?

WITNESS: No.

Q. Did he ever say that your relation with Mrs. Cartan had caused this estrangement between her and her husband?

A. He didn't use that word, but he said I was guilty, and I said I never had anything to do with this woman; I have denied it every time he spoke about it, and tried to convince him that I was innocent, but he hung on and hung on.

Q. Go on with your story.

A. Then he asked me whether his wife should deliver the letter; I said, "Yes", and she delivered the letter to Mrs. A. J.

Q. Which letter are you referring to now? I show you copies of three letters which have been marked Exhibits P 3, P 4 and P 5, and ask you whether these are copies of the letters which were in fact written?

A. As near as I can tell, they are copies of the letters.

COURT: In whose handwriting are these copies?

WITNESS: I would say that that is Mr. Ren Cartan's writing.

Q. Which one of these letters was written first?

A. Exhibit P 3.

Q. Is that the one about which you have been testifying, that he said to make it stronger?

A. Yes.

Q. Where was that letter written?

A. In our store.

COURT: It is a note—a short piece of paper, it is only a few lines.

MR. LANE: There are eight lines.

Q. What did you do with it after you prepared it?
A. I handed it to him.
Q. What did he say he was going to do with it?
A. Give it to his wife to deliver.
Q. When next did you hear anything with respect to these letters?
A. The following day, I think it was, Mrs. A. J. Cartan accosted me on the street.
Q. What time of the day was that?
A. About eight o'clock in the forenoon.
Q. Where on the street?
A. Directly opposite her house where she lives, on the opposite side of the street.
Q. How did she accost you?
A. She came across and asked me about this letter.
Q. What did she say?
A. She wanted to know about that letter; then I told her that Mrs. Ren Cartan told my wife something.
Q. What else took place?
A. And I tried to persuade her to try and make up with her husband.
Q. What else?
A. That is about all there was to it.
Q. What next did you hear?
A. The next, Mr. Ren asked me—he saw me talking to her on the street, and he wanted to know, of course,

what happened, and I told him; then he went over—

Q. At your store?

A. Yes, sir.

Q. After you came back?

A. Yes, I was on my way to the store at the time.

Q. Go on.

A. He told his wife, and his wife was angry to think that I had told Mrs. A. J. Cartan that she had told this story to my wife; she was afraid Mrs. A. J. Cartan, he told me—

Q. What did he say?

A. That she was afraid Mrs. A. J. Cartan would hold it up against her.

Q. And then what?

A. Then he wanted me to write a letter to Mrs. A. J. Cartan exonerating his wife from any blame in the matter.

Q. Then what happened?

A. And then he helped me compose the letter.

Q. Which one?

A. Both of them; the one that was delivered and the one not delivered.

Q. These two letters, Exhibits P 5 and P 4, were both of those delivered?

A. I don't believe—

COURT: I think P 5 was written before P 4.

WITNESS: It was not delivered; he brought it back to me; one of them wasn't signed, and my brother delivered the other one.

Q. Are you referring to the letter which was not de-

livered, Exhibit C 8 of to-day?

A. P 5 was not delivered.

Q. Is C A a copy of P 5?

A. It seems to be.

COURT: You say that was not delivered, so far as you know?

WITNESS: There is a memorandum on there saying it was not delivered and not used.

Q. Do you know whether it was delivered or not?

A. I do not.

Q. To whom was it addressed?

A. To Mrs. A. J. Cartan.

Q. And when you wrote it, what did you do with it?

A. I handed it to Mr. Ren Cartan.

Q. What reason have you for saying it was not delivered?

A. He brought it back and handed it to me and said he guessed they wouldn't use it.

Q. Did he say why he wouldn't use it?

A. No, he didn't make any explanation.

Q. After he brought it back, did he ask you to write another one?

A. No, I don't think so, I think that was the last letter.

Q. Then there had been written before that Exhibit P 4, of October 8?

A. Yes.

Q. What did you do with Exhibit P 4?

A. After it was written—he suggested nearly every word of it, in fact the language in this letter was almost

identical with his testimony here on the stand.

COURT: Strike that out.

Q. You say he suggested almost every word of it?

A. Yes.

Q. What did you do with it after he suggested it and you wrote it?

A. I said to him, "I am very glad I am able to make up a letter that pleases you", and let him have it; he took it over and submitted it to his wife, and brought it back, and I gave it to my brother to deliver it.

Q. To whom was that addressed?

A. Mrs. A. J. Cartan.

Q. Exhibit P 4 was not delivered by your brother, but by Mrs. Ren Cartan?

A. That is right.

Q. Following the letter Exhibit P 4 there was written the proposed letter, P 5; how did the proposed letter, P 5, come to be written?

A. He wasn't quite satisfied and took another think at it and wanted another letter.

Q. What time of the day?

A. I don't remember; I guess it was the same day.

Q. They both bear the same date?

A. Yes.

Q. What did he say?

A. He thought he ought to have something stronger, and to satisfy him, why I tried to write a letter that might satisfy him, with his assistance and his suggestion.

Q. And that is the letter that was finally composed, which is Exhibit P 5?

A. Yes.

COURT: But which was never delivered?

WITNESS: Never delivered.

COURT: So far as you know?

WITNESS: So far as I know.

Q. These letters I noticed are addressed to "Dear Doll"; is the word "Doll" your term of endearment?

A. That is the only name she is known by.

Q. That is the only name Mrs. A. J. Cartan is known by in the intimate circle?

A. In the town, they don't know her by any other name.

COURT: Everybody addresses her that way?

WITNESS: Yes. There isn't one in one hundred that knows her real name.

Q. Did you know her real name until this suit was started?

A. Yes, I have seen her name to legal papers.

Q. After the drafting of these letters, what was the next thing that happened in the scheme of events?

COURT: Were these all the letters that were written at Ren's suggestion or the suggestion of anyone else in connection with this charge and trouble?

WITNESS: That is all.

Q. In your intimacy with Mrs. Cartan did you ever write a letter to her?

A. No.

Q. Did she ever write a letter to you?

A. No.

COURT: When you got through writing letters, what happened, if anything?

MR. LANE: What is the next thing you heard after these charges, I withdraw that.

Q. Did you see A. J. Cartan between the first of October and October 8?

A. Yes, the very day that my wife brought the news to me, that evening we had a meeting of the bank directors; A. J. Cartan and I are both directors; we met in the corridor of the bank that evening and transacted business as usual, and we came out on the sidewalk and he said to me, "Which way are you going, up or down?" I said, "I left some work unfinished at the store, I guess I will go back to the store." We walked to the store and we were as friendly as could be.

Q. Between the first of May, 1918, and the first of October, 1918, was there any change in the attitude of A. J. Cartan toward you?

A. No, sir.

COURT: Was there any change in your relation with Mrs. Cartan during that period?

WITNESS: No, sir.

Q. How about the parties?

A. They were not so frequent, but there was no particular reason for that.

Q. Was there any parties after the spring of 1918, which you recollect?

A. In June, I think the eighteenth of June,—I fix the date because it was commencement time at school—Mr. A. J. Cartan and Mrs. A. J. Cartan and their son Johnson drove up to my house and took me and Mrs. Devlin to Bigget's Park at Sea Girt, and they entertained us down there until late in the night and brought us home.

COURT: June 18?

WITNESS: June 18 or 19, 1918.

Q. Were there any other parties that you can now recall that took place between those dates?

A. Yes, we attended the party of Mr. W. A. Close—A. J. Cartan and his wife; Ren Cartan and his wife, and myself and my wife, and some others.

Q. Any other parties that you can recollect?

A. I don't recollect any others where Mr. and Mrs. A. J. Cartan were present, although there might have been.

Q. Was there anything to indicate to you that there was any strained relation between you and Cartan?

A. No, nothing; this party at Mr. Close's wasn't very long before October 1.

Q. A week or ten days or two weeks?

A. A few weeks, but not very long.

Q. Did you during that space of time come in contact with A. J. Cartan?

A. Yes.

Q. How often; what was your life that would bring you in contact with him?

A. We would meet on the street, and we belonged to the Building and Loan; we were directors in the Building and Loan, and met their regular meeting nights, and met in the bank, and had more or less business together anyway.

COURT: Did he ever accuse you of having intimate or improper relations with his wife?

WITNESS: Not until October 1, 1918.

Q. How long after that?

A. Two or three weeks after; I told him it was a lie.

Q. When you met him in the bank on the night of October 1, after Mrs. Devlin had informed you of the situation, do you know if he had knowledge of the accusation?

A. All that I know is that Mrs. Ren Cartan testified here that he told her—that was the first I knew how the story came to be told to her.

Q. Did he treat you any different that night from what he had formerly treated you?

A. No, there wasn't anything noticeable at all.

Q. What was the next thing that occurred after the writing of the letters? When did A. J. Cartan first say anything to you about this matter?

A. Perhaps a couple of weeks after that.

Q. How did he come to say it, and what did he say?

A. He came in the store, and to tell you the truth, I don't know just what he did say. He talked at random, and it was told around the town that he was drinking—

COURT: Strike that out.

Q. What did he say?
A. He talked like a drunken man.

MR. WILSON: I move to strike that out.

COURT: Strike it out.

Q. What did he say? Did he appear to you to be under the influence of liquor?
A. He acted like one.

MR. WILSON: I move to strike that out.

COURT: I will let it stand. It don't follow that he was, but that is his impression. What did he say that you recall?

WITNESS: The principal thing seemed to be that I broke up his home.

COURT: Were you in the store together, just you two, no one else?

WITNESS: I cannot recall; I think his brother must have been there.

COURT: Day or night?

WITNESS: Day time.

COURT: Tell us everything that was said.

WITNESS: I cannot recall what he did say.

COURT: As near as you do recall, what did you say to his statement?

WITNESS: I didn't say anything at the time, because I realized there was a plot or conspiracy of some kind on foot.

MR. WILSON: I move to strike that out.

COURT: I will let it stand; it is explanatory of his failure to say anything at that time to so serious an accusation. Go on and tell us everything that was said by you to Mr. Cartan or he to you.

WITNESS: I told him it was a lie; that if it broke up his home, he broke it up himself.

Q. How long did this conversation take place?
A. He would only come in and say a few words and wheel on his heel and go out.

COURT: Did he come in a number of times on this same day or evening?

WITNESS: Perhaps once a day for a number of days.

COURT: The first occasion when Mr. Cartan spoke to you, you are directed to; that was about two weeks after October first you said, and you were asked to tell what he said and what you said.

WITNESS: I told him that it was a lie; he said it was not a lie, and he wheeled on his heel and went out.

Q. When did you next see him?
A. About the same thing, just a repetition.

COURT: How long after was the next time, the next day or week or month after?

WITNESS: A couple of days after; not very long after.

Q. Was this a continuous thing for a little while?
A. Yes, he kept it up for a little while.
Q. For how long a period of time?
A. A week or ten days.
Q. Then did it stop?
A. Yes.
Q. What stopped it?
A. I don't know.
Q. Did you have any particular trouble just before it stopped?
A. I told him on the last occasion he came over and talked to me, that I wouldn't listen to it any longer; that if he came over talking about my breaking up his home, that I wouldn't be responsible for what happened, and he realized something would happen.
Q. Did he come again?
A. No.
Q. Was there any other reason why you didn't more vigorously resent it—why didn't you do more to him when he came in these times?
A. My wife was afraid that something—

MR. WILSON: I object.

COURT: Was there any reason that prevented you from making more vigorous denial, or asserting your denial more vigorously?

WITNESS: I promised my wife I would try and refrain from getting into any argument, for fear it would lead to trouble.

Q. When did your wife ask you with respect to that?
A. A couple of days after it came out.
Q. After October first?
A. Yes.
Q. When did you first hear from Norman Tice with respect to the trouble?
A. That was only a few days after October first.
Q. What happened with respect to him?
A. He met me on the porch of our store early in the morning, about six o'clock in the morning, when I came down to open the store, and he started to upbraid me—his exact language I cannot repeat, but I could see, of course—
Q. Never mind that; tell us what happened.
A. It was in line with these stories that had been told to my wife.

COURT: Strike that out. What did he say? Give your best recollection of what he said.

WITNESS: He said, "You are Chairman of the Red Cross, eh; Chairman of the Red Cross"; he said "You gave the Red Cross $100, eh; that is my $100; that is my money."

Q. What else?

A. And he said, "You beat me out of a thousand dollars on that property deal, and I can prove it."

Q. What else?

COURT: Did he say on this occasion—did he make any reference to the charge about your relations with Mrs. Cartan?

WITNESS: No.

Q. Did he give any explanation for talking to you in this way and sneering at you and your connection with the Red Cross and beating him out of his money?

A. No.

Q. How had you and he been up to that time, on friendly relations or otherwise?

A. Not very friendly for six or eight months, because of this property deal.

Q. Why do you associate what he said to you on the steps that morning with this case; what has that to do with it? You haven't told us anything to show any connection.

A. He mentioned his sister, and his sister had been telling my wife, in connection with big Edna, this story; that is how I came to associate it.

Q. What did he say with respect to his sister on that occasion?

A. He mentioned her name.

Q. How did he mention her name?

A. "My sister", that is all he said.

Q. But you knew what he referred to by reason of what your wife had told on October first?

MR. WILSON: Objected to as leading.

COURT: He has already said it.

A. Yes.
Q. How did you know to what he referred when he mentioned his sister?
A. Because his sister and the other woman had told my wife this story.
Q. You knew that because your wife had told you—

MR. WILSON: I object to the leading question.

COURT: He has already testified to it. He made a reference to his sister, and you concluded that that is what he referred to that day, and then he upbraided you about the Red Cross, and beating him out of his money; what else did he say?

WITNESS: I don't know; that is all I remember.

Q. What did you say?
A. I didn't want to get into any argument.
Q. What did you say?
A. I didn't say anything; I stood and listened.

COURT: Why didn't you resent it?

WITNESS: I didn't want to get into any argument which might lead to trouble.

COURT: What kind of trouble?

WITNESS: I might take hold of him.

COURT: If you knew he was charging you with having been unfaithful to your wife and having improper relations with Mrs. Cartan, why didn't you take hold of him?

WITNESS: I felt like doing it many times.

Q. Why didn't you?

A. I promised my wife that I wouldn't; she was afraid that I would kill him, and I promised her I wouldn't.

Q. What was the next time he interfered?

A. A couple of days after he repeated it.

Q. Repeated what?

A. The same thing.

Q. About the Red Cross?

A. Yes.

Q. Say anything else?

A. No, I cannot recall that he said anything else.

Q. What was the next occasion; how long did he continue to—

A. Three of four times; he came to the store once and called me Judas, and brought this little girl.

Q. When was that?

A. A few days after.

Q. What occurred?

A. He brought this little girl in there in his arm, and he said, "There is Judas; look at him; you cannot understand it now, but you will understand it later on", and he went out.

Q. And who was the little child?

A. A. J. Cartan's child.

Q. How old was she at that time?

A. Perhaps four years old or five.

Q. When did he cease coming to the store in this way?

A. A couple of nights after that he came up on the stoop and looked in the lighted window at me, and was getting ready to say something, and I shook my fist at him; I said, "I am in no humor to listen to you to-night; you come in at your peril", and he went away, and that is the last time I heard from him. Oh, yes, another time he came with his father and wanted to know if I wasn't going to settle this thing.

COURT: When was that?

WITNESS: That was about the time the answer was filed in this case. I said to him then, "I filed my answer, you consult my lawyer."

COURT: Did he make any suggestion as to what kind of settlement he had in mind?

WITNESS: No, he did not.

Q. Was anything said with respect to why he wanted it settled?

A. No.

Q. Did he refer to his sister?

A. No.

Q. Upon that occasion?

A. No, but he did on a previous occasion; I missed that. He said "Ed Wilson is going to put my sister on the stand and get her to tell all she knows about you."

Q. What happened then?

A. Nothing happened.

Q. Did he make any suggestion with respect to that?

A. No.

Q. What was the next thing that occurred?

A. I don't know that anything occurred in reference to this case after that.

Q. Did you have any talks during this period of time with Mrs. A. J. Cartan?

A. No, not any.

Q. Did you have any talks with anyone except Tice and Mr. Ren Cartan?

A. No.

Q. Do you remember an occasion at your store at which Mr. Ren Cartan came down to you after having a conference upstairs with Mrs. Devlin and A. J. Cartan?

A. Yes.

Q. Tell us about that; when was it?

A. That must have been in the middle of October, 1918; they had sent for my wife and wanted to talk to her; Mr. A. J. Cartan took her up in the loft of their grocery store—

Q. A. J. Cartan store?

A. Yes.

Q. That is what I call the general store?

A. Yes, and then Mr. Ren came for me, and took me way down in our back yard to an old building we have nails stored in, and tried to make me—

Q. What did he say?

A. He wanted me to tell my wife that what A. J. said was right.

Q. Did he tell you what A. J. said?

A. No, that is his language.

Q. That isn't his language; it can't be; tell us as nearly as you can what he said.

A. He said, "I want you to tell your wife that what A. J. says is right.

Q. Did he say what A. J. had said?

A. No.

Q. What did you say to that?

COURT: Did you know at that time that Mrs. Devlin and Mr. Cartan were in conference at his store?

WITNESS: Yes.

Q. How did you know it.

A. Because she told me she was going down there, and I knew that she was there, and I supposed they were in conference.

Q. Tell us the whole conversation.

A. He said that there would be a big law suit when I wouldn't do the things he wanted me to do, or I wouldn't say that to my wife.

MR. WILSON: If this is for the purpose of contradicting Mr. Ren Cartan, it seems to me that the question should be propounded in the same terms in which the questions were asked Mr. Ren Cartan on cross examination. If it is only upon the theory of contradiction of Ren Cartan that this evidence is receivable—

MR. LANE: It is not for the purpose of contradicting; Mr. Ren Cartan has testified to this conversation.

COURT: I am not receiving it for that limited purpose;

it may be competent for that purpose, but I am receiving it to get the general situation in relation to all these parties. I will receive it.

Q. Tell us what took place.

A. He wanted to separate A. J. and his wife, and thought they would be reunited again, and he wanted me to tell this story to my wife, tell my wife that what A. J. said was right; that is his language. I said, "I do nothing to separate any man and wife", and then he threatened me.

Q. What did he say?

A. He said there would be a big lawsuit. I said I didn't care; I didn't care anything about money.

Q. What else did he say? Did he say what the big lawsuit would be?

A. He said it would cost a lot of money; he said that.

COURT: Keep on telling us what was said.

A. (Continuing) When he found that I wouldn't consent to his arrangement, he shook hands with me and tried to persuade me; he said, "We have been together a long while", and tried to persuade me to do it.

COURT: What did he do to persuade you?

WITNESS: Just asked me to do it. That was the only thing that he wanted me to do, was to say that what A. J. said was right.

Q. Did you do any crying that day on Ren's shoulders?

A. No.

Q. Sobbing and so forth?

A. No.

Q. Did you upon any conference with Ren Cartan do any sobbing or crying on Ren's shoulder?

A. No.

COURT: When did you and Ren Cartan cease to talk about this suit?

WITNESS: I think it is a year ago.

Q. Before this suit was started or after?

A. After the suit was started.

Q. And kept on talking about it?

A. Very little.

Q. You are still doing business together?

A. Yes.

Q. Was the subject dropped by mutual consent or without any understanding?

A. Your Honor, on one occasion when I tried to persuade him to allow my son to come in the office to help us, and he objected to it, he said, "Yes, this whole affair may be settled all together", and I said, "I don't want to talk to you about anything, only about my boy."

Q. When was that, before the suit or after?

A. After the suit started; then on another occasion, when I wanted to get my boy in there, and he still objected to it, and he referred to this other matter, he said, "I will give as much to settle this as you will." My reply to that was, "I don't want to talk to you about anything but my boy."

Q. I show you a letter and an envelope, and first ask

you whether the letter was received by you enclosed in the envelope?

A. It was.

Q. I note there is a date on the letter, August 17, is that in your handwriting?

A. Yes.

Q. The rest of the letter is in whose handwriting?

A. Mr. Ren Cartan's.

Q. And did you put the date on from the date the post mark bears on the envelope itself?

A. Yes.

Q. Did you receive the letter through the ordinary course of mail?

A. Yes.

MR. LANE: I offer the letter in evidence.

(Marked Exhibit D 7, November 17, 1920.)

COURT: What is the purpose of the offer?

MR. LANE: The purpose is to show the friendly relation existing between Ren Cartan and Mr. Devlin and Mr. A. J. Cartan within two months after the incident at the chicken house.

COURT: Did you and Ren Cartan talk on any subject except matters relating strictly to business—these few conversations you mentioned in October, 1918?

WITNESS: Oh, yes, we continued quite friendly up to the last six or eight months, I suppose.

Q. Long after this suit had been started?
A. Yes.
Q. Was Ren's wife with him at Atlantic City?
A. Yes.

COURT: What was the gift which he mentioned in the letter?

WITNESS: He was sick and I gave him $200 to pay his expenses, the firm's check of $200 to pay his expenses for a while, and telling him at the same time, "Stay until you are perfectly well, and I will send you a thousand dollars to pay your expenses while you are away."

COURT: Was it in the nature of a gife or advancement from the firm?

WITNESS: A gift; there was no charge made of it.

COURT: Then half the gift came from the Cartan end of the business?

WITNESS: Yes.

COURT: So you were only one-half the donor?

WITNESS: One-half.

COURT: Did you make other gifts in addition to that?

WITNESS: No, he came back in two weeks, and it wasn't necessary.

COURT: Did he ever return the gift to the firm?

WITNESS: No.

Q. During the time that you and Mrs. Devlin have been married have you ever been far away from your home at night?

A. I think on two occasions.

Q. Do you know when those occasions were?

A. Yes.

Q. When were they?

A. I went to see her sister at one time, she was sick, and I couldn't get home, and another time, when Mr. A. J. Cartan and myself and Mr. Lefferts were befogged in Elizabeth and had to lie along the road all night.

Q. Those were the only occasions during your married life that you haven't been home at night?

A. That is all I can recall.

COURT: You have professed your innocence of any improper relation with Mrs. Cartan; can you give any reason for Ren Cartan and his wife and Tice and these people coming here and accusing you of this offence?

WITNESS: I cannot give any reason for it.

COURT: Have you had any trouble or difficulty with any of them?

WITNESS: No, not that I know of.

COURT: You mentioned some property trouble with Tice some six or eight months before?

WITNESS: Yes.

COURT: What was that?

WITNESS: We arranged with him to buy a piece of property.

COURT: I don't want the details; was it over money matters?

WITNESS: Yes.

COURT: Was he dissatisfied with the transaction?

WITNESS: Yes.

COURT: And I notice you say later he accused you of cheating him out of $1,000?

WITNESS: Yes, sir.

COURT: Was that the first time he ever made that accusation against you?

WITNESS: Yes.

COURT: But you say during the preceding six or eight months you hadn't been on friendly terms; what was the cause of that?

WITNESS: He never accused me of cheating him out of $1,000.

COURT: Did he accuse you of cheating him out of any part of it?

WITNESS: He was satisfied with the arrangement over the property deal, because we had to bring action against him to compel him to convey the property to us. He was holding us up for $500 commission.

COURT: Whom do you mean by "us"; was Mr. Cartan interested in the matter with you?

WITNESS: Yes.

Q. Who was responsible for bring the suit?
A. I was.
Q. When was that suit brought, about?
A. In the spring of the same year, 1918.
Q. And was the suit in this court?
A. It was a suit in Chancery. I think so; I don't know the month, but it was settled before we got into court. He found he had to come across.

MR. WILSON: I move to strike that out.

COURT: Strike out the last part.

Q. Was there any talk between you and Tice at or about the time or after the suit was brought, with respect to it?
A. Yes.
Q. What did he say; what was his attitude toward you?
A. Not friendly.

Q. How did he evidence that unfriendliness?

A. When he would meet me, it was apparent that he had a feeling?

COURT: How was it apparent?

WITNESS: He wouldn't say Good Morning or Good Evening, as he used to.

Q. He wouldn't speak to you?

A. He might speak, but there wasn't any friendship in it. He would speak when he was forced to speak.

Q. Do you know whether he blamed you for the bringing of that suit?

A. Yes, I think he blamed me, because he—

MR. WILSON: I object.

COURT: Objection sustained.

Q. (Question repeated.)

A. The business was all done with me, and when he was trying to arrange a settlement, he said he wanted to do the business with me; he didn't want to do any business with Ren Cartan, he wanted to do it with me.

Q. Did you ever have any trouble with either Mrs. Ren Cartan or Mrs. Bert Cartan?

A. No.

COURT: What is the explanation of that letter of Mrs. Bert Cartan to you, in which she accuses you of endeavoring to ruin her, for years; why did she write you a letter of that kind?

WITNESS: That is a frame-up, as far as I am concerned.

COURT: I called your attention to it. Tell me all you know about it.

WITNESS: That is all I know about it.

COURT: What do you mean by a frame-up?

WITNESS: She was in the conspiracy, I suppose, to ruin me.

COURT: What reason should she or anyone else have to ruin you? Tell me all you know about it.

WITNESS: Your Honor, A. J. Cartan's daughter goes to my wife shortly after this thing came out and told her—

MR. WILSON: Are we to be bound by that?

COURT: I may strike it all out, but I will hear it. If it is not competent, I will strike it out. If there is anything in this so-called frame-up, I will hear it.

WITNESS: A. J. Cartan's daughter Helen went to my wife and told her that from a conversation she heard going on in her house, she knew it was a plot to ruin me.

COURT: What was the purpose of ruining you; why did they have any desire to do that?

WITNESS: They told my wife a story, expecting my

wife would smash me.

COURT: Why did they wish to ruin you?

WITNESS: I cannot understand, unless it be for business purposes, then they will take over the business and get clear of me.

COURT: Anything else you wish to state about the matter?

WITNESS: No.

COURT: If there is any reason, state it; if not, say so.

WITNESS: I don't know of any other reason.

COURT: Did you have any relation with Mrs. Bert Cartan?

WITNESS: No, never.

COURT: Wait a minute; you did have some. Did you ever have any relations with Mrs. Bert Cartan which would form a foundation for the writing of that letter—the facts stated in that letter?

WITNESS: No.

Q. Was there anything that ever took place between you and Mrs. Bert Cartan of that nature?

A. No.

Q. Did you ever have any relation of that kind be-

tween yourself and Mrs. Ren Cartan?

A. No.

Q. Was any accusation, to your knowledge, ever made by either of these women prior to October 1?

A. No.

Q. Do you know of any charge being made by Mrs. Ren Cartan against you until she testified here on the stand?

A. No.

Q. During the course of your trouble did Mrs. Ren Cartan or any one of the family ever say anything with respect to your relations with Mrs. Ren Cartan?

A. No.

Q. Or anything you had ever done to her years ago?

A. No.

Q. Had you ever done anything to her years ago?

A. No, never.

Q. Or to Mrs. Bert Cartan?

A. No, never.

Q. Did you ever say to A. J. Cartan that you were guilty of any of these charges?

A. I always denied it.

Q. Did you ever say that you were guilty, to Ren Cartan?

A. No, never.

Q. To Tice?

A. Never; I always denied it. I told them I never had anything to do with this woman.

Q. To Mrs. Ren Cartan?

A. I never had any conversation with her about it.

Q. To anybody?

A. I never had any conversation about it.

MR. WILSON: Do you think that the statement made by the witness on information that he gained in a roundabout way as to what A. J. Cartan's daughter Helen said to his wife?

COURT: What Mr. A. J. Cartan's daughter told Mrs. Devlin and Mrs. Devlin, I presume, repeated to Mr. Devlin, will go out.

MR. LANE: The daughter will be called and Mrs. Cartan will testify to it.

COURT: They can both swear to it.

RECESS

CROSS EXAMINATION BY MR. WILSON:

Q. Mr. Devlin, your attention has been directed to a map which has been offered in evidence in this case. Is the Linzmeier's Lane shown correctly upon the map where it is designated by that name?

A. Yes.

Q. And that Linzmeier Lane is between A. J. Cartan's house and the depot, which lies further to the east?

A. Yes.

Q. You spoke of Main street as lying generally east and west?

A. Yes.

Q. And the Ervin Lane is shown here upon this map and so designated as Ervin's Lane, is it not?

A. Yes.

Q. In its approximate position?

A. Yes.

Q. And that is to the west of the Cartan-Devlin store proper?

A. I don't know whether you call this east and west; we call it north and south.

MR. WILSON: Suppose we call it north and south, or east and west.

COURT: North and south about is the way the arrow indicates.

Q. The lane is then to the south of the Cartan-Devlin property?

A. Yes.

COURT: If you can, change that reference to Main street running east and west, to running northerly and southerly.

Q. And having made this correction as to the route of Main street, then the Linzmeier Lane would lie to the north of the Cartan and Devlin property, to the north of the A. J. Cartan house?

A. Yes.

Q. Is this lane leading to Broad street shown as you recall it on this map?

A. Yes.

Q. And according to the legend that appears upon the map?

A. Yes.

Q. You have referred to that as Broad street; it is known as a lane leading to Broad street, isn't it?

A. No, it is known as Broad street, these house which appear, as being on Broad street.

COURT: Whether it is called a lane or Broad street, it is the same ground as you described being on this morning?

WITNESS: Yes.

Q. I think you said it was not used by vehicles?

A. Only as far as these houses. At the rear of A. J. Cartan's property it is only used for pedestrians.

Q. How many houses immediately in the rear of the A. J. Cartan property have you ever visited?

A. None immediately in the rear.

Q. What is the nearest house to the A. J. Cartan property on this lane, or Broad street, which you visited?

A. I think 100 feet from it.

Q. Whose house is it?

A. It belongs to a man named Carroll.

Q. How frequently have you visited that house?

A. I don't know that I ever visited that house particularly.

Q. What house did you visit? You gave me that as the name of the house; were you mistaken, or did I misundersetand you?

COURT: He went to the Radl house.

Q. Then you visited the Radl house?

A. Yes.

COURT: Where is that with relation to the A. J. Cartan house?

WITNESS: Still further north; about 100 feet north.

Q. That would be 200 feet from Mr. Cartan's house?

A. From the rear of his property.

Q. If you were going to pass from the Cartan-Devlin store to this house which you mentioned, which is to the north 100 feet or more of the rear of the A. J. Cartan property, you would approach it most readily by going through the Ervin Lane and not the Linzmeier Lane?

A. No, sir.

COURT: Indicate the route you would take to go from your store to the Radl house; would you go northerly on Main street?

WITNESS: Yes, down Linzmeier's Lane and around.

COURT: And then around into the lane, or Broad street so called, to the Radl house?

WITNESS: Yes.

Q. And you think that would be nearer than to go south on Main street, then into Ervin's Lane and then down Ervin's Lane to the house?

A. Yes.

Q. Is that a mere guess on your part, or have you made any measurement to determine it?

A. I made no measurement, just from the picture I have in my mind of the properties as they lie there.

Q. You think the house is within 100 feet of the rear of the A. J. Cartan property?

A. Which house?

Q. The house you visited?

A. No.

COURT: What distance is it from the rear of the A. J. Cartan property?

WITNESS: About 200 feet.

COURT: The Carroll house is 100 feet and the Radl 100 more?

WITNESS: Yes.

Q. Did you ever visit the Radl house more than once?

A. Yes.

Q. How many times?

A. I cannot recall just how many times, but on several occasions.

Q. And do you recall what you did there?

A. Yes.

Q. What?

A. I went around to see Joe Radl, with whom we had more or less business, a son of Mr. Radl.

Q. What sort of business did you have with him?

A. Politics.

Q. And what time of the year does the business of politics thrive mostly in Matawan?

A. Principally in the fall, of course.

Q. Do you recall anybody else whose house you visited on this lane, or Broad street?

A. Yes, I went around to Mrs. Flagg's.

Q. More than once?

A. Yes, two or three times.

Q. Was that where the trained nurse lived?

A. No.

Q. What did you go to the Flagg house for?

A. Because she goes out to service, and my wife sent me there on two or three occasions to see if we could get her to come around to our house to work for us.

Q. You were in the habit of going there at night?

A. Yes.

Q. You went to the other houses at night?

A. Yes.

Q. What other houses did you go to by night on that lane?

A. A colored fellow named Blackwell lives around there on the other side of the lane, north of the lane.

Q. You went to see him at night?

A. Yes.

Q. Do you thing of any more night business you had with anyone else who lived on that lane?

A. Yes, there is a hall down there where they have meetings.

Q. And that hall is there yet?

A. Yes.

Q. What sort of a building is it?

A. An old school house?

Q. Windows out and the door is off?

A. I wouldn't say so.

Q. It is not a question of what you would say; what is the fact; isn't it a building in utter dilapidation?

A. No.

COURT: Is that the building with the high wooden steps that was used for a hospital during the epidemic?

WITNESS: No, that is Grange Hall.

Q. How many meetings have you attended there in the last five years?

A. Perhaps four or five.

Q. And they, of course, were at night?

A. Yes.

Q. Were those negro meetings?

A. Yes.

Q. Was that hall south or north of Ervin's Lane?

A. Nowhere near Ervin's Lane.

Q. It must have been either south or north of Ervin's Lane.

A. It was on the corner of Linzmeier's Lane and Broad street, north of Ervin's Lane.

COURT: It would be north of Linzmeier?

WITNESS: Yes, on the northerly corner.

Q. Of Linzmeier's Lane and Broad street extension?

A. Yes.

Q. When did you first determine, Mr. Devlin, to intervene as a defendant in this suit?

A. I didn't take any legal advice directly, but once—

Q. When did you make up your mind to intervene in this suit as a defendant?

A. I cannot tell the date.

Q. How long was it after the papers had been served on Mrs. A. J.?

A. It was common talk around the town that papers had been served on her.

Q. You had more definite knowledge than common talk, didn't you; you knew from her that the papers had been served?

A. No, I didn't.

Q. You communicated with her when she was in Florida?

A. No.

Q. You didn't telegraph her when she was in Florida?

A. No.

Q. And didn't write her?

A. No.

Q. And she didn't write to you?

A. No.

Q. And you didn't confer with her attorney or solicitor?

A. No.

Q. And you didn't know when she was going to Florida?

A. No.

Q. And you didn't know when she was coming back?

A. No.

Q. All that prompted you in determining that you would intervene here as a defendant was the common rumor around town that the papers had been served on her?

A. I had several talks with Mr. Lefferts.

Q. Answer it Yes or No.

A. No, it was more than that that caused me to intervene.

Q. What more was there?

A. Mr. Lefferts told me it was the proper thing to in-

tervene. I had several talks with him.

Q. Mr. Lefferts is an attorney?

A. Yes.

Q. And so you intervened because Mr. Lefferts told you that was the proper thing to do?

A. Yes, he advised me.

Q. How long after you had heard that this woman was served with papers did he tell you it was the proper thing to intervene?

A. I cannot say as to that.

Q. A matter of two or three days?

A. No, more than that.

Q. Two or three weeks?

A. It was months after.

Q. What explanation have you, if any, as to why you permitted the time to elapse between December, 1918, and October, 1919, a matter of ten months, before you interposed your defence in this case?

A. I haven't explanation to make.

Q. No explanation whatever?

A. I am not familiar with the law; I didn't know it was necessary to intervene until the time came.

Q. You believed this woman to be innocent?

A. Sure and do yet.

Q. You knew, you were there very near—you knew that she had been charge and papers had been served, in which she was accused of an act of adultery, didn't you?

A. Yes.

Q. And you waited ten months before you came to her rescue and interposed your defence?

A. It wasn't necessary to come to her defence before.

Q. Did you wait?

A. Yes.

Q. And during the interval you had no communication with her whatever.

A. None whatever.

COURT: You mean you didn't even speak to her about the matter?

WITNESS: I had no talk with her at all.

Q. When did she return from Florida?

A. I don't know.

Q. Did you ever see her after her return from Florida?

A. Not to talk with her.

Q. Never have talked with her?

A. No.

Q. Did you see her before she went to Florida?

A. Not to talk with her.

Q. But then you told us to-day you met her on the street and talked with her.

A. I don't know how long you want to go back.

COURT: Do you know when she went to Florida?

WITNESS: I cannot say exactly.

COURT: Do you know how long she was away?

WITNESS: I do not.

Q. After this trouble became public property in October, 1918, you did meet her on the street and had a talk with her?

A. Yes, a few minutes on the street one day.

Q. And in that conversation what did she say to you?

A. She was angry because I had written her a letter, I believe, because of a letter that I had caused to be sent to her.

Q. That is one of the letters you identified here today?

A. Yes.

Q. She was angry about that?

A. Yes.

COURT: What did she say to you?

Q. And she expressed her anger?

A. Yes.

Q. What did she say?

A. She wanted to know who told my wife.

Q. Did you tell her?

A. Yes, I said big Edna told her.

Q. Did that mollify her anger or did you part in anger?

A. We parted.

Q. You parted in anger?

A. We didn't part in anger.

Q. You apparently met in anger, you told us that.

COURT: Then did you part in anger, or didn't you?

WITNESS: She was angry because this letter had been sent to her.

Q. Angry at you or this woman for telling your wife the story?

A. She seemed to be angry, that was all; I cannot tell just what she was angry at, but she wanted to know, of course, what about this letter and who told my wife, and I told her big Edna had told her, and I tried to persuade her to make up with her husband, and she said it seemed to be impossible, and I said to try, and I left her at that.

Q. When next after that did you have any trouble with her about this affair, if ever?

A. I don't know that I ever had any trouble with her after that.

Q. You don't recall any occasion ever after that until this moment, when you have ever talked with her about this trouble?

A. Yes, that is true.

Q. She has never written you and you have never written her?

A. Never.

Q. And did you ever confer with her solicitor or counsel in this case?

A. No.

Q. Never had any talk with him?

A. No.

Q. And so far as you now recall, you never had any communication with her whatever about this matter?

A. None whatever.

Q. Did you cause photographs to be made of the outhouse and the A. J. Cartan buildings?

A. No.

Q. That was not done by you?

A. No.

Q. Nor done at your direction?

A. No.

Q. Or upon your request?

A. No.

Q. Do you know who did it?

A. I understand my attorney did it, but no by my request; he did it of his own volition.

Q. Whom do you refer to as your attorney?

A. Mr. Lefferts.

Q. You referred this morning to a letter that Mr. Ren Cartan had written you from Atlantic City in 1916, and you produced it here; you recall that?

A. Yes.

Q. That letter of his was written in reply to a letter you had written him, or was that just an ebullition of good fellowship on his part?

A. It seemed to be.

Q. You didn't write him in point of fact?

A. I think I replied to his letter.

Q. Before that?

A. No, I don't think so.

Q. Are you sure of it?

A. That is my best recollection.

Q. How did you send him the $200?

A. Handed it to him before he went away.

Q. Before he went away?

A. On his way.

Q. You heard nothing from him or communicated with him in no way at all until you received that letter from him which you produced to-day?

A. That is my recollection.

Q. That is your firm recollection about it?

A. Yes.

Q. Your recollection is perfectly clear?

A. Yes.

Q. You cannot be mistaken about that?

A. That is my recollection.

Q. Are you apt to be mistaken about it, or is your recollection firm about it?

A. I think it is firm; I don't think I am mistaken.

Q. Bearing in mind that your recollection is firm, I show you this paper and ask you if you didn't write him this letter, and if this letter didn't precede the letter which he wrote you?

A. No, it says, "Yours just received".

COURT: What is your answer, that this letter did not come from you before he wrote you?

WITNESS: It did not come from me before he wrote.

Q. You are sure about that?

A. It says so; there is a reply to his letter.

Q. You did write this letter, though?

A. Yes.

Q. You wrote it to him while he was in Atlantic City?

A. Yes.

COURT: Do you want that marked for identification?

MR. WILSON: No, not now.

Q. This $200 you gave him, in what form was it, firm's check?

A. Yes.

Q. So instead of being a gift from you of $200, it was presumptively a gift of $100?

A. Yes.

Q. Do you know when he used that check?

A. No, I do not.

Q. Who keeps the bank account and the bank books?

A. I do.

Q. You never had any curiosity to ascertain when it was used?

A. No.

Q. Don't you know as a matter of fact that the check wasn't used for two years?

A. No, I don't.

Q. You don't know that?

A. No. Our bank book is written up sometimes once a year and sometimes once in two years, and until then I don't know.

Q. If it was written up once a year you would be apt to see it there during that period of time?

A. Yes.

Q. Do you think you ever did see it credited or charged on the book within a period of one year after you gave it?

A. I cannot say.

Q. How long did he stay in Atlantic City?

A. My recollection is he stayed two weeks.

Q. He was sick when he went?

A. Yes.

Q. Do you remember he had the check when he came back?

A. I don't know.

Q. You remember he wanted to give the check back to you?

A. He never offered it to me.

Q. You don't know when he used it?

A. No.

Q. Isn't it true that when he came back he went to you and had the check in his possession and displayed it to you and wanted to give it back to you, or half of that check—wanted to give back your half of that check?

A. No, he never did.

Q. That never happened?

A. No.

Q. I think you have already said that there was nothing especially affectionate or conspicuous in your association with Mrs. A. J. Cartan during all this period of time?

A. I said so, yes.

Q. Isn't it true in point of fact that your attentions to this woman were of such a character as to attract the attention of your own wife?

A. No.

Q. Hadn't she upbraided you about it?

A. Never.

Q. Do you recall an occasion when you were attending a men's dinner at Fury's in Matawan some years ago when your wife called you from the dining-room?

A. No, I do not.

Q. And you deny that that incident happened?

A. Yes.

Q. You deny it?

A. Yes.

Q. Do you deny that she called you from the dining-room and told you that she had that very day or that afternoon or that evening heard of some of your conduct with Mrs. A. J. Cartan?

A. I deny that, too.

Q. And she called you out and called you to task for it that very night at that banquet?

A. It never happened.

Q. You have attended men's banquets at Fury's Hotel, haven't you?

A. I have been at banquets; I don't remember any men's banquets; what do you mean?

Q. I mean distinction from having both men and women present, and only men present.

A. Oh, yes.

Q. Then you have attended such banquets?

A. Yes.

Q. But the alleged incident to which I called your attention never happened?

A. No, it never happened.

Q. You were attending here in court on the first day of the trial of this case, were you?

A. Yes.

Q. Sat here all through the evidence?

A. Yes.

Q. And during a large part of the first day when evidence was being taken and evidence being received by the Court, which charged you either directly or indirectly with improper and immoral conduct with Mrs. A. J. Cartan you sat in your seat and you laughed and you sneered during its progress, didn't you?

A. No.

Q. Do you deny that you did?

A. Yes.

Q. You deny that that was descriptive of your conduct at any time during the first day when this testimony was received?

A. I do.

Q. And that is just as true as anything else you have said, isn't it?

A. Yes.

COURT: The Court observed Mr. Devlin while he was in court frequently. I did see him smile; I cannot say he was smiling over the testimony, nor can I say that he was sneering at the evidence. That is going upon the record. How it is going to be established, if he did smile, that that was what he was smiling or sneering at. I observed him sitting in the chair. I observed him smile on a number of occasions. Whether it was at the testimony or whether there was some other incident that someone mentioned to him, I cannot say, or I don't know how anyone else can say. I cannot see what you develop by that testimony.

Q. Now, Mr. Devlin, directing your attention to the circumstances that immediately led up to the preparation of these letters, as I recall your statement this morning, your wife was informed by Mrs. Ren Cartan you think on the first of October, that you had been guilty of immoral conduct with Mrs. A. J. Cartan.

A. I don't know words to that effect; that might be the inference.

COURT: Was that the substance of the information that that was given; did you understand that is what she had been informed about?

WITNESS: Yes.

Q. That that charge had been made to your wife about the first of October?

A. Yes.

Q. You think it was the first of October?

A. Yes.

Q. How soon after that was it when you had your first conversation with Ren Cartan?

A. I think it was two days afterwards.

Q. How did that conversation occur?

A. I said to him in our store that these two women, big Edna and little Edna, had told my wife this story that made me trouble, and asked him if he would help me. He said he would, and I asked—

Q. Did you tell him what the story was?

A. No, he seemed to be familiar with it.

Q. What made you think he was familiar with it?

A. Because he didn't ask the details.

Q. And because he didn't ask the details you assumed that he knew that his wife had charged you, to your wife, with adulterous conduct with A. J. Cartan's wife?

A. That is what I assumed.

Q. You assumed that?

A. Yes.

Q. You referred to what his wife had said to your wife as merely a story?

A. Yes.

Q. That she had told?

A. Yes.

Q. Go on; what else did you say and he say?

A. I asked him to get these women to retract what they had told my wife, and he said that his wife could help, and she would help, and then he talked about Mrs. A. J. and her husband being estranged; he talked about the mean things she had done to him, that she had estranged the children against him, I believe he said, and that she had taken their boy Johnson out of his store and sent him to work at Matawan, and we talked over the best

way; he seemed to be inclined to help them get together, and it was suggested —

Q. Was it he who was trying to get them together or was it you who was trying to get them together?

A. Both of us.

Q. Who suggested first in this interview that they ought to be reconciled; was that you or Ren?

A. It was my first suggestion that he help me, and he brought up the subject of A. J. and his wife.

Q. If I correctly understand your story, it was this: you wanted him to go and get his wife to go to your wife and retract what she had said about your conduct?

A. Yes.

Q. Which you understood charged you with adultery?

A. Yes.

Q. And upon the other hand, as a sort of a trade between you, he wanted you to go and see if you couldn't reconcile A. J. Cartan and his wife by reason of their estrangement?

A. No, he said it wouldn't do for me to go and see her.

Q. He wanted your help in the matter?

A. Yes. He suggested other people's names, and finally he asked me if I would write a letter.

Q. At any rate, the purpose of the letter which you wrote to Mrs. A. J. Cartan was solely for the purpose of making a reconciliation between her and her husband, wasn't it?

A. Yes.

Q. And hadn't anything to do with having Mrs. Ren Cartan withdraw this charge that she had made to your wife? It hadn't anything to do with that?

A. No.

Q. In other words, the two things were entirely divorced, as you talked them over?

A. Yes.

Q. You wanted this story withdrawn before your wife, and he in turn wanted A. J. Cartan and his wife reconciled, is that it?

A. That is what seemed to be his motive.

Q. That is what he said was the motive?

A. Yes.

Q. And when you speak of motive, I think you have already said that it was you who first suggested that you wanted his wife to withdraw that statement that she had made to your wife?

A. Yes.

Q. You made that suggestion?

A. Yes.

Q. And then you got talking about A. J. Cartan and his wife?

A. Yes.

Q. Which one of you suggested that they ought to be reconciled? I think you said it was you who first suggested it?

A. I cannot say about that.

Q. You don't remember about that?

A. No, who suggested it first?

Q. But finally it got down to your proposition that he was anxious and you were anxious that the husband and wife should be reconciled?

A. Yes.

Q. And when you wrote these letters that was the purpose you had in mind?

A. Yes.

Q. And reconciled because of such differences as Ren had disclosed to you? He told you about the boy in the business, and about his wife and children treating him mean; that was all there was of it, was it?

A. Yes.

Q. He didn't tell you they were estranged because A. J. Cartan suspected that his wife had been guilty of adultery with you?

A. No.

Q. And when you wrote those letters you hadn't that idea in mind at all, had you?

A. No.

Q. And you were not trying to square anything between A. J. Cartan and his wife that involved your bad conduct with Mrs. Cartan, were you, by those letters?

A. No.

Q. All that you were seeking to do by those letters was to reconcile this man and woman who had become separated about matters that didn't involve her chastity at all; that was true, wasn't it?

A. Yes.

Q. Mr. Devlin, why was it suggested that you write these letters to Mrs. Cartan; had you any special influence with her?

A. I don't know as I did; no.

Q. You might just as well ask the next man on the street, I suppose?

A. Yes.

Q. You didn't think you had any special influence over her?

A. I don't know; we were all friendly. I don't know of any special influence.

Q. Notwithstanding the fact that you didn't suppose

you had any special influence with her, you took up this problem of reconciliation, did you?

A. Yes.

Q. You think you had no more influence with her than Ren had?

A. I don't know.

Q. Why didn't you say to Ren, "You have as much influence with her as I have," if it was a mere reconciliation about those minor differences?

A. He asked me if I would do it; I had already asked him to get his wife and little Edna to retract the story; he asked if I would do this and I said "Certainly".

Q. And yet at that time you knew that his wife had charged you before your wife with having committed adultery, didn't you?

A. I don't know whether you call it charging or not, Mr. Wilson.

Q. You knew that his wife had told the story, which you admitted a moment ago imputed adultery to you, and had told that story to your wife?

A. Yes.

Q. You knew that A. J. Cartan knew it?

A. No.

Q. When did you first know he knew it?

A. He came in the store and accused me of it later on.

Q. Was that the first time?

A. Yes.

Q. Didn't you have enough curiosity to ask Ren whether A. J. Cartan had heard this same story that his wife had told your wife?

A. No.

Q. You want us to believe that when you had this talk with Ren Cartan a few days after the first of October,

1918, that you didn't know and didn't think that A. J. Cartan knew that you had been charged with this adultery?

A. No.

Q. And you want us to think that?

A. I didn't know whether he knew it or not. Nobody had told me that he knew it.

Q. You didn't even conjecture that he knew it?

A. No.

Q. You didn't even suspicion that he knew it?

A. No.

Q. And when you entered into this arrangement with Ren Cartan it was a sort of a trading of your respective influences for each other; he was to get his wife to go and square things with your wife, and you were to do what you could to square things between A. J. Cartan and his wife, a sort of a bargain?

A. I don't know if it was any bargain or trade.

Q. That is the way you put it.

A. He asked me to do it, I said, "Certainly".

Q. You asked him to do something, and he said 'Certainly"?

A. Yes.

Q. You didn't suspect at that time that A. J. Cartan knew that you had been charged with this conduct with his wife?

A. No.

Q. Is it not true that your denial that A. J. Cartan had knowledge of your alleged conduct is in order that you may the better explain and justify this letter that you wrote under date of October 6, 1918?

A. No.

Q. Let me read this letter to you: "Dear Doll", you

wrote that?

A. Yes.

Q. In using the name "Doll" you say you were using simply a name that everybody used in the village?

A. Yes.

Q. And using the expression "Dear", I suppose that meant no more than that?

A. No more than you commence any ordinary letter with.

Q. Any more than you had addressed me as "Dear Mr. Wilson"?

A. Yes.

Q. There is no significance in that?

A. No.

Q. Did you regard the condition between Johnce and his wife as a critical one?

A. No, I didn't.

Q. Not of any very great seriousness?

A. No.

Q. As you gathered it from Ren, they had had these quarrels about the boy and things of that kind, his treatment of her and children; you didn't regard it as very serious?

A. No.

Q. And not having regarded it as very serious, then why did you begin your letter by saying, "For God's sake, go to Johnce and ask him to forgive you?"

A. Ren said to me, "Make it as strong as you can".

Q. And notwithstanding the fact you didn't regard the matter as very serious, you began your letter by calling on your Maker?

A. Yes.

Q. And not being at all serious you began by saying,

"For God's sake go to Johnce and ask him to forgive you for everything"; when you used the word "everything", what did you mean by that?

A. Just a general term.

Q. You meant every thing from the beginning of the world to that date?

A. Yes, anything that might have happened.

Q. That was broad enough to cover adultery as well as other matters?

A. That wasn't thought of.

Q. If it had been thought of, it was wide enough to cover adultery?

A. But it wasn't thought of.

Q. You know what "everything" means?

A. Yes.

Q. You used the word to cover every possible difference that could have arisen between them, whether the difference arose over adultery or any other cause?

A. No, that wasn't considered.

Q. You wanted "everything" to include everything on earth except adultery?

A. The word "everything" wasn't considered seriously at all.

Q. You used it, however?

A. Yes.

Q. And then you go on in this letter, "and promise you will do anything on earth that a woman could do for her husband"; did you think she had done some things that a woman ought not to do for her husband?

A. Sure, if she did the things that Ren Cartan had said.

Q. What had she done?

A. She had been mean to him; turned the children

against him; she took the boy out of the store when he needed him.

Q. You thought these trivial matters were sufficient to justify you by beginning your letter by saying, "For God's sake", and then importuning her 'For God's sake, to promise him you will do anything on earth that a woman can do for her husband." You had those special things in mind when you wrote that letter?

A. Yes.

Q. "And that for the rest of your life you will do your utmost to make him happy and contented". Now Devlin, do you want us to believe, when you wrote that letter to her you didn't know perfectly well that you had been charged before your wife, and you had been charged by Ren Cartan, and you had been charged by Ren Cartan's wife and that the charge was known to A. J. Cartan, that you had been criminally intimate with this woman?

A. That isn't so.

COURT: He cannot answer Yes or No to that. He has said he knew that his wife had been informed by Ren's wife; he knew or assumed that Ren knew, but he didn't know that A. J. knew at the time he wrote the letter.

MR. WILSON: The answer to your Honor's comment is, that he has already answered.

COURT: He hasn't answered it intelligently. I will strike it out; it is of no value to me.

Q. And this letter of October 8—there were two on

that day, and by the proofs I cannot distinguish what you said this morning, but won't you pick out the one you first wrote on October 8?

COURT: They are Exhibits P 4 and P 5?

WITNESS: Yes.

COURT: Which one do you think was written first on that day?

WITNESS: I think the last one was written first, Exhibit P 4.

MR. WILSON: I will write the word "first" on the bottom of it.

WITNESS: The one marked Exhibit P 5 is the one not used.

Q. When you wrote the letter which you refer to as Exhibit P 4, and which you think was written first on October 8, did you think at that time that A. J. Cartan had heard of this alleged improper conduct of yours with his wife?

A. No.

Q. You didn't think so then?

A. No.

Q. When did you first make up your mind that Mr. Cartan did know of this alleged conduct of yours?

A. I cannot say just exactly when it was, but he came in the store and charged me with it.

COURT: About how long after October first?

WITNESS: Perhaps a week or a couple of weeks

Q. Not until then?
A. That is my recollection.
Q. Did you make any effort to find out whether he had found out or not?
A. No.
Q. Didn't you ask Ren whether A. J. Cartan knew about it?
A. No.
Q. Had you talked with Mrs. Ren Cartan?
A. No.
Q. When you talked with Mrs. A. J. on the street that morning, which I think you said was in a day or two after the letter of October 6th was written, did you ask her whether her husband knew about it?
A. No.
Q. Didn't you have enough curiosity to inquire of any of those people?
A. No.
Q. You closed your mind to that whole possibility, did you?
A. Yes.
Q. Never thought anything about it and never knew anything about it, and never knew that he knew, until you say how long after these letters were written, two or three weeks?
A. Perhaps a couple of weeks, he came in the store and accused me.
Q. That was the first intimation you had that he had information of those facts?

A. Yes.

Q. When you wrote the two letters of October 8 you were endeavoring by these letters merely to induce A. J.'s wife to reconcile herself with her husband in respect to these differences to which you have referred,—something that didn't involve your adultery?

A. Those letters that you refer to, if I understand you right, Mr. Wilson, were written at the request of Mr. Ren Cartan.

10

COURT: And did not involve any charge of adultery between you and Mrs. Cartan?

WITNESS: No, that was n't referred to.

Q. It related to the other differences between her and her husband?

A. No, they were written at the request of Mr. Ren Cartan, to try to shift the responsibility. Mrs. A. J.
20 Cartan was angry because Mrs. Ren Cartan had told my wife, and when I told Mrs. A. J. Cartan that Mrs. Ren Cartan told my wife, Mrs. Ren Cartan heard about it and she was indignant, and she was afraid that something might happen to her and she persuaded her husband to get me to write these letters, to shift the responsibility, so Mrs. A. J. Cartan wouldn't blame Mrs. Ren Cartan for telling the story to my wife.

Q. I ask you again when you wrote the letters of October 8th, whether you had in mind simply reconciling
30 Mr. and Mrs. Cartan about matters that didn't involve your adultery?

A. Yes, that is right, about other matters.

Q. Bearing that in mind, let me direct your attention

to one of the letters of October 8th, "Dear Doll; I am sorry you are offended because Edna told Mame". Mame is your wife?

A. Yes.

Q. "A very good friend of mine persuaded her much against her will to go to Mame, as Johnce was surely going to her with the story". Who was this good friend?

A. What you have just read is all the language of Mr. Ren Cartan. That was his language put in that letter.

Q. Suppose that was so; you mean that he dictated these words to you?

A. Yes, word for word.

Q. You are fifty-six years of age?

A. Yes.

Q. You had some business experience?

A. Yes.

Q. And you knew that you were dealing with a somewhat grave matter, a difference between husband and wife?

A. Yes.

Q. And so you wrote, "I am very sorry you are offended because Edna told Mame. A good friend of mine persuaded her much against her wish, to go and tell Mame." You don't know who that good friend was, of course?

A. No, I just took his word for it.

Q. And when you subscribed your name to that letter that some good friend of yours had done that, you merely did that because he asked you to?

A. Yes, because he asked me to.

Q. You haven't in mind any good friend at all?

A. No, I have not.

Q. So that the statement contained in the letter as you

wrote it , was false; it was coming from you just as he told you?

COURT: It wasn't true.

Q. It was false as coming from you?

A. I wouldn't say false; he told me to put it in there.

COURT: There was no good friend, as a matter of fact; that wasn't true when you referred to a good friend?

WITNESS: It was the language he told me to put in.

COURT: You told us that. Address yourself to the question. Mr. Wilson will repeat it.

Q. I understood you to say that this very language was dictated to you by Ren?

A. Yes.

Q. And in a heedless way you sat down and wrote what he said?

Q. And when you spoke of the good friend who had persuaded her against her will—that is, had persuaded Edna against her will, to go and tell your wife, you knew of no good friend who had done that; you merely made that statement because he told you to make it in the letter?

A. Yes.

Q. So when you made that statement in the letter you stated what was untrue, didn't you; it was false?

A. If he told me an untruth, yes.

Q. And so far as you were concerned, it was an un-

truth; you didn't have any good friend who had done that, that you knew of?

A. Not that I knew of, only what he told me.

Q. You were willing to take a chance on anything he told you to say?

A. I took a chance on that, not on anything.

Q. Did you believe it was true that some good friend had persuaded her, much against her will to go to your wife; did you believe that to be true, when you wrote it?

A. I didn't question it.

Q. Did you believe it to be true?

A. I didn't question it.

Q. Won't you say Yes or No to that.

A. Yes.

Q. You believed it to be true?

A. Yes.

Q. Was that the reason why you wrote it in there?

A. Yes, because he told me.

Q. Do you still believe it to be true?

A. No.

Q. You think it is a frame-up now?

A. Yes.

Q. When you said in here that this had been done "as Johnce was surely going to her with the story"; was that true; did you believe that to be true?

A. I didn't know, only what he told me.

Q. Did you believe it to be true?

A. I took his word for it.

Q. And then how could Johnce go to her with the story if you didn't know at that time that Johnce already knew the story?

A. I was taking his word for everything put in that letter.

Q. You did tell us that you had no means of knowing or believing that Johnce knew this story until some two weeks afterwards?

A. No, I didn't.

Q. If that is true, why did you say in this letter that Johnce was going to her with the story if some good friend hadn't persuaded Edna to go to your wife?

A. Because he told me to.

Q. And when he told you to say that, you wrote something in this letter that you knew to be false, or believed to be false, didn't you?

A. No, I didn't. I did n't know anything about it; I took his word for it.

Q. Wasn't it your belief at that time that Johnce knew nothing about it?

A. Yes.

Q. Yet you wrote in here a statement to the effect that Johnce did know of it?

A. He wanted that letter for a purpose, and I thought that it would serve the purpose.

COURT: You did write in there what Mr. Wilson asked you?

WITNESS: Yes, I wrote it.

Q. And when you wrote it in there you believed it to be true?

A. On the strength of what he said to me.

Q. Then on the strength of what he said you believed at that time that Johnce did know this story, didn't you?

A. No.

Q. Why do you make both statements? This letter

implies that he did know, doesn't it?

A. The letter was written for a purpose.

Q. I don't care what the purpose was, you said you believed it to be true when you wrote it, and one of the statements in the situation, by implication, is that Johnce did know at that time. You believed at that time that Johnce knew about it ?

A. No.

Q. If you believed this statement to be true, isn't that so?

A. No, that isn't so.

Q. Do you wish to make any further explanation by way of answer to my question?

A. What is the question.

COURT: You have already answered it.

MR. WILSON: I won't press that any further, Mr. Devlin.

Q. (Still reading from the letter) "To go to Mame as Johnce was surely going to her with the story, and felt that Edna would tell her in such a way that it might not be so hard". You wrote those words, didn't you?

A. Yes.

Q. What did you mean by the statement that Edna had gone to tell her in such a way—that is tell your wife in such a way that it might not be so hard?

A. I didn't attach any meaning to it; it was dictated by him and I wrote it.

Q. And yet you knew at that time that you had been accused of committing adultery with Mrs. Cartan, by Mrs. Ren Cartan, and that the accusation had reached the

ears of your wife, you knew that?

A. Yes.

Q. And you knew the thing that Mrs. A. J. Cartan was angry about was that Mrs. Ren had gone and told her, you knew that, didn't you?

A. Yes.

Q. And yet you say in this letter that she had gone to tell your wife, and to tell her in such a way that it might not be so hard, and that when you wrote those letters it didn't mean anything to you; you did that because he told you to?

A. Right.

Q. You were entirely sober at that time?

A. Yes.

Q. You were not excited?

A. I might have been excited.

Q. You were not weeping, at any rate?

A. No.

Q. You never lost control of yourself about this matter?

A. No.

Q. And you sat down and wrote these words which now you cannot explain at all, except as you say, you did that because he asked you to do it?

A. Yes.

Q. That is your only explanation?

A. Yes.

Q. Can you remember ever having written business letters of this character, or letters involving reputation of people, at someone else's request?

A. No.

Q. What particular hold was it that Mr. Ren Cartan had over you at that time that made it possible to have

him dictate to you letters of this important character?

A. He was going to get his wife to go to my wife and retract the story, because I assured my wife it was a lie, and I would prove it to her.

Q. And as the reward of his promise to do that, you were willing to write anything he asked you to write in this letter?

A. Oh, no.

Q. Why was it he had such control over you, as that you would write these letters at his dictation?

A. I don't know.

Q. Putting in a statement that you didn't even understand? Why was it; that is the only reason?

A. I have just stated?

COURT: Then you wanted him to go to his wife and have her retract?

WITNESS: Yes.

Q. Well, you really wanted A. J. Cartan and his wife to be reconciled?

A. Sure.

Q. Why?

A. That was only a natural feeling anybody would have.

Q. What?

A. That was only a natural feeling that anybody would have.

Q. Didn't you have anything more than a mere passing interest in it?

A. Of course I had a friendly interest.

Q. Let me direct your attention to the other letter

of October 8: "Please don't have any hard feeling toward Ren's wife for telling Mame. She had the best motive and did it to prepare Mame for what was coming." What did you mean by that when you wrote in the letter, "what was coming"?

A. I don't know what he meant by that when he told me to put that in.

Q. Didn't you ask him?

COURT: Did you ask him?

WITNESS: No.

Q. You mean to say you didn't even have enough curiosity to say to him, "Ren, what do you mean by that, 'what is coming'?"

A. No, I didn't.

Q. And yet you were writing about an interview that someone had with your wife, weren't you?

A. Yes.

Q. And an interview in which you had been charged with adultery?

A. Yes.

Q. That is true?

A. Yes.

Q. And when you were asked to write in this letter that she had the best motive and did it to prepare Mame for what was coming, you didn't even ask him what he meant by that expression, did you?

A. No.

Q. Then you say here, "I know you would be doing the noblest thing that any person on earth can do. Please, Doll, do this, and I am sure you will never regret it,

for I know positively someone else was going to tell her." When you wrote that did you know positively that someone else was going to tell her, referring to your wife?

A. No, I didn't.

Q. Your entire explanation for having written this in this letter was that Ren simply asked you to write it?

A. Yes.

Q. That is true, is it?

A. Yes.

Q. After you knew that Mr. A. J. Cartan had heard of this matter, you knew it first; that is, the only intimation you had was when he came to see you?

A. Yes.

Q. I think you said that was a week or two after the eighth of October?

A. I think about that time.

Q. He came to you at the store?

A. Yes.

Q. You had no doubt about it then?

A. No.

Q. In this interval between the first of October and the time when he came to see you—he came to see you a week or so after the eighth of October, somewhere about the middle of October he came to see you?

A. I think so.

Q. And you knew as early as the first of October that you had been accused of this conduct?

A. Yes.

Q. You knew within a day or two after the first of October that A. J. Cartan's wife knew that you had been accused of that conduct, because she told you when she met you on the street; you knew that?

Q. How is that?

Q. You knew that A. J. Cartan's wife knew that you had been charged with this offence, in the presence of your wife?

A. No, I cannot say that, Mr. Wilson.

Q. You told us that Mrs. A. J. Cartan met you on the street?

A. Yes.

Q. And told you about and wanted to know who had told your wife?

A. No, it was in response to that letter.

Q. But you knew that Mr. A. J. Cartan's wife knew all this, didn't you?

A. No.

COURT: At what time?

Q. At what time did you first know that she knew of it?

A. I really never knew that she knew.

Q. I thought you said a moment ago that Mrs. Cartan met you on the street and was angry at Mrs. Ren Cartan for having told your wife the story?

A. Yes, but I didn't know what story it was. I don't know that she knew what the story was.

COURT: Did you ask her what the story was she was angry about having had told to your wife by Mrs. Ren Cartan?

WITNESS: No.

Q. Didn't you ask her that day on the street?

A. No.

Q. You didn't have enough curiosity to ask her?
A. I didn't want to stand there talking with her.

COURT: When do you say that to your knowledge ever had knowledge that she was charged with having committed the offense of adultery with you; when was the first time you knew that she had such knowledge?

WITNESS: When I heard the papers had been served on her.

Q. You had no such knowledge when she stopped you on the street?
A. No.
Q. She was angry because Ren's wife had told something to your wife?
A. Yes.
Q. And your wife had told you that something, hadn't she?
A. Yes.
Q. Right away?
A. Yes.
Q. When Mrs. A. J. Cartan stopped you on the street and was angry because Ren Cartan's wife had said something to your wife, you didn't even think then that Mrs. A. J. knew of this accusation, did you?
A. I didn't know that she knew.
Q. You didn't have enought curiosity to ask her?
A. I wouldn't ask her.

COURT: Did you have any doubt in your mind as to the story that Mrs. Cartan was referring to when she expressed her anger about Mrs. Ren Cartan?

WITNESS: I cannot tell you.

COURT: Did you have any question about it in your mind?

WITNESS: No, I didn't.

Q. You mean to say you think that was the story?
A. I didn't think what story it was.
Q. You didn't think anything about it?
A. No.
Q. At any rate you did know as early as the first of October that you had been charged with this improper conduct, to your wife, and it was along in the middle of October before you had any talk with A. J. Cartan about it?
A. Yes.
Q. When that talk occurred, it came about by his effort, and not by yours; he came to see you, you didn't go to see him?
A. No.
Q. You had no ill feeling toward him?
A. Yes.
Q. You knew that you had been accused?
A. Yes.
Q. And you knew that his wife knew that Ren's wife had told something to your wife, you knew that?
A. Yes.
Q. But you didn't go to A. J. Cartan with any explanation, did you?
A. No.
Q. You waited for him to come to you?
A. Yes.

Q. Both lived in the same town?
A. Yes.
Q. Known each other from boyhood?
A. Yes.
Q. You didn't go to him and tell him that this story was being circulated in the family and there was no truth in it; you made no explanation to him whatever?
A. No.
Q. You waited for him to come and accuse you?
A. Yes.
Q. On this first occasion when he did accuse you, what did he say to you?
A. I cannot recall just what he did say.

COURT: Give the substance as near as you can recall it.

WITNESS: He came in and accused me about breaking up his home; I said it was a lie.

Q. Was that the first time he came in?
A. I think it was.
Q. Is that all you said to him?
A. That is all.
Q. That is all he said to you?
A. He said it was not a lie, and went away.
Q. That is all there was of it?
A. Yes.
Q. Did he come back again?
A. Yes, he came back again a day or two afterwards.
Q. Did he come back again after that?
A. I think he did. Ithink he came two or three or four times.
Q. Two or three times within an interval of a week

or ten days?

A. Yes.

Q. Did you have precisely the same conversation on each occasion?

A. Practically the same.

Q. He would say what?

A. "You broke up my home."

Q. You would say what?

A. I said it was a lie, I hadn't done it.

Q. And he would turn on his heel and go out?

A. Yes.

Q. That is all that passed between you?

A. Yes.

COURT: Did you ask him where he got his information making such a charge against you?

WITNESS: No, I didn't.

Q. Why didn't you?

A. I felt it was a scheme all the way through, and I didn't want to get into any argument; I felt that if I got into an argument that something might happen, and my wife had cautioned me, no matter what they said to me, to say nothing about it until the proper time came.

Q. You didn't feel called upon to ask Mr. Cartan how you had broken up his home?

A. No.

Q. He came in there and made the bald assertion that you had broken up his home, and you didn't ask him how, in what respect?

A. No.

Q. You said it was a lie, and he turned on his heel

and went out?

A. Yes.

Q. And that happened three or four times, two or three times?

A. Yes.

Q. And that is all the explanation you ever gave him?

A. Yes.

Q. And all the accusation he ever made against you?

A. Yes.

Q. When you heard this story in the first instance, that you had been charged before your wife by Ren Cartan's wife, why didn't you go and hunt A. J. Cartan up and sit down like a neighbor and friend and tell him that this story was current, and there nothing in it, and talk it over with him?

A. I felt that Mr. Ren Cartan would arrange to have the story retracted, and that would explain everything.

Q. How would it explain everything?

A. If they retracted the story that it was a lie, which was so, that would explain everything.

Q. You didn't feel called upon to go and see Mr. A. J. Cartan at all?

A. No.

Q. You didn't go and see him?

A. No.

Q. You didn't go and see him because you thought someone else would brand it as a lie and relieve you?

A. Yes.

Q. You didn't think you owed him that much, did you?

A. No.

Q. Norman Tice, you say, came to your place, but he didn't charge you with adultery, did he?

A. No.

Q. He merely came there and said that you were chairman of the Red Cross and gave $100 to the Red Cross, in a sneering sort of way?

A. Yes.

Q. And that you cheated him out of a thousand dollars?

A. Yes.

Q. That is all he said to you?

A. He may have said some other things.

Q. He didn't say anything by way of accusing you of adultery?

A. No.

Q. You and Tice had had trouble about a land deal?

A. Yes.

Q. And the firm of Cartan & Devlin had sued him?

A. I suppose you would call it suing him.

Q. It was some time, a month before this incident?

A. Yes.

Q. And the matter had all been settled?

A. Yes.

Q. And you had paid him something to settle it?

A. Yes.

Q. He had rights which you recognized by the payment of money?

A. He wanted an exorbitant price.

Q. You paid him what you thought was right?

A. Yes.

Q. And that settled the suit?

A. Yes.

Q. And isn't it true that after that, down to the time when this story came out, that you and he were on such friendly relations that you arranged or wanted to ar-

range to have him run for assessor in the borough, after you had this trouble about the land?

A. No, sir.

Q. That isn't true?

A. No, sir.

Q. You never suggested his being a candidate for assessor?

A. Never.

Q. You never discussed it or considered it with him or others?

A. No, sir.

Q. You do remember an occasion when Mr. Tice came into the store with A. J. Cartan's infant child in his arm, you remember that?

A. Yes.

Q. And that was the occasion when he said to the child, "This is Judas", referring to you?

A. Yes.

Q. Did you make any response at that time; did you say anything to him?

A. I don't believe I did.

Q. Why didn't you?

A. Because it got to be an old story.

Q. What got to be an old story?

A. First he would come and then A. J. would come.

COURT: When they came what did you do; what made it an old story?

WITNESS: They came in talking about that affair.

COURT: And that is the reason, because it was an old story, you didn't make any reply?

WITNESS: Yes.

Q. Didn't I understand you to say that Mr. Tice never came there and charged you with anything; that when he came he always referred to your being chairman of the Red Cross Committee and your giving $100, and your beating him out of a thousand dollars, and didn't you say to-day in your direct examination that he never mentioned this act of adultery?

A. He didn't at this time when he came in with the child.

COURT: Did he say this when he came in any of the times?

WITNESS: No.

Q. Then how was it an old story for him to come in and say to the child, "Here is Judas"; How was that an old story?

A. It was all along the same line.

Q. You think it was, do you?

A. Yes.

Q. Is that the only reason you can give for not having made any comment when he said to you, in the presence of this child, "Here is Judas", it was an old story?

A. Yes; this man had just undergone an operation.

COURT: Who, Tice?

WITNESS: Yes, and my wife cautioned me not to get into any argument or any mix-up with Tice, because she was afraid I would kill him.

COURT: Well, is that the reason you didn't answer him?

WITNESS: Yes. I tried to control myself and keep away from him.

COURT: I will let the answer stand.

Q. She cautioned you not to make any answer to A. J.?

A. Yes.

Q. She was afraid you would kill him?

A. Yes.

Q. You promised you wouldn't make any answer?

A. Yes.

Q. Why didn't you tell A. J. Cartan it was a lie; that was an answer?

A. I didn't carry on any argument with him.

Q. You didn't think it proper to make any response to Tice when he came?

A. No, sir, I did not.

Q. On one occasion after these disclosures early in October, in talking with Ren, didn't you say to him that if ever a man had paid the penalty, "I have", and that you had suffered everything but death?

COURT: Did you tell him that?

WITNESS: No.

Q. You never made any use of that statement or expression?

A. No.

Q. Did you in requesting Ren to aid in the reconciliation of A. J.'s wife and A. J. himself,—didn't you ask him on more than one occasion—

COURT: You are misquoting his testimony; he has said that Ren solicited him to aid in the reconciliation of A. J. and his wife, while he solicited Ren to aid him in having Ren's wife retract what she had told Mrs. Devlin.

MR. WILSON: I am going on an assumption, which will be supported by our testimony.

COURT: You are quoting his testimony.

MR. WILSON: I hadn't intended to.

Q. My question is this: whether you hadn't asked Ren to help reconcile A. J. Cartan and his wife, and whether or not on more than one occasion you hadn't asked him (Ren) to try and make things a little easier for you?

A. No.

Q. You never made that statement to him?

A. No.

Q. Do you recall the incident which you already referred to, when you were being hunted for by your wife and others, the night you went to the candy store?

A. Yes.

Q. The night you couldn't be found by them?

A. Yes.

Q. Had you gone out of your premises that night through the lane?

A, Yes.

Q. And your wife met you on the street as you described?

A. I didn't say she met me on the street.

COURT: He hasn't told that.

Q. In point of fact, didn't she meet you on the street later that night?

A. I don't think so.

Q. Wasn't Ren Cartan and Bert Cartan in her company when they were searching for you?

A. I don't know.

Q. Where was your wife when you told her that you had been getting some chewing gum?

A. I think she was home.

Q. In the house?

A. I think on the porch.

Q. That didn't occur on the street?

A. I don't recollect just where it did occur.

Q. Didn't your wife say to you, in the hearing of Ren Cartan and Bert Cartan and Mrs. Ren Cartan, that you hadn't gone out of the lane, that she had sat there on the piazza and watched, and you hadn't gone out of the lane?

A. No, sir.

Q. She didn't say that?

A. No.

Q. You had gone out of the lane that night?

A. Yes.

Q. Mr. Devlin, if you had committed adultery with Mrs. Cartan, you wouldn't admit it in this proceeding, would you?

A. I would if I had.

Q. You think you would?

A. Sure.

Q. You have no doubt about that?

A. Why certainly.

Q. Isn't it true that in talking over this whole difficulty with Ren Cartan before any divorce suit was commenced, that you said you would not admit the adultery, that you would have to fight that for your sake and for your wife's sake?

A. Never.

Q. You never made that statement?

A. Never.

Q. That your friends expected you to; didn't you make that statement?

A. No, sir.

Q. And if you had had intimate connection with this married woman and she were charged with adultery in this suit, and you had committed adultery with her, you would have gone on the stand and sworn to it?

A. Yes.

RE-DIRECT EXAMINATION BY MR. LANE:

Q. Would you have gone on the stand, Mr. Devlin, do you think?

A. If I were asked the question and I had to tell.

Q. Would you have voluntarily gone on the stand under such circumstances?

A. No.

Q. What was your mental condition, Mr. Devlin, in the first weeks of October, 1918?

A. Naturally I was a little bit—
Q. What was it?
A. Perturbed.
Q. Why perturbed?
A. Because my wife had told this story.
Q. How did your wife take it; was it all serene in that direction or was there trouble?
A. I tried to pacify her.

COURT: Was she worked over it, or did she take it calmly?

WITNESS: She didn't take it calmly; she was excited, too.

Q. And you were excited?
A. Yes.
Q. How long did that condition continue?
A. It continued for some time.

COURT: What do you mean by that; hours or weeks?

WITNESS: A couple of weeks.

Q. Were any of your children home at this time?
A. Yes, my boy was sick—next to the oldest boy was sick in bed at the time, with influenza.
Q. How old was he?
A. Perhaps twenty.
Q. Was he about to join the Army?
A. Yes, he was waiting to be strong enough to go to Sandy Hook.
Q. And where was the older boy?

A. In service in France.

Q. How long had he been in service in France?

A. From the beginning, about October, 1917, I think.

Q. And your other children, were they home?

A. Yes.

Q. This suit that has been testified to, in which Tice was interested, was that suit settled satisfactorily to him?

A. I don't think he was ever satisfied; he accepted the award, but I don't think he was ever satisfied.

Q. Was anything said which indicated that, so far as you know?

COURT: At the time of settlement or later?

Q. Before October?

A. Not to me.

Q. Had you heard during that time from others—

MR. WILSON: Objected to. I ask to have that stricken from the record, what he thought, whether he was satisfied or dissatisfied.

COURT: Yes, let it go out. The examination showed that he expressed dissatisfaction before October first.

Q. I want to know whether Tice expressed dissatisfaction before October first, to your knowledge?

A. Not to me.

RE-CROSS EXAMINATION BY MR. WILSON:

Q. I think you said you were a good deal perturbed in the first part of October by things that were happening in your home; you said that?

A. Yes.

Q. What were the things that were happening in your home that disturbed you?

A. My wife insisted on this matter being proven to her.

Q. Proven or disproven?

A. Disproven.

Q. She didn't believe the story was true, did she?

A. No, she didn't believe it.

Q. Why did she want to have it disproved?

A. Because I told her I would disprove it. I told her from the beginning it was a lie and I would prove it was a lie.

Q. And that was the thing that perturbed you?

A. Yes.

Q. Did it occur to you that one of the best ways to disprove it would be to have gone to see A. J. Cartan?

A. No, that didn't occur to me.

Q. You didn't do it?

A. No.

COURT: How would that have disproved it?

MR. WILSON: I think if had gone and made his peace with him, and he had gone with him to his wife, it seems to me that is the very best way in which the wife would have been reconciled and convinced it was not true.

RE-DIRECT EXAMINATION BY MR. LANE:

Q. Have you consulted with counsel, Mr. Lefferts and myself, as this case has progressed?

A. Yes.

Q. Have you ever consulted with Mr. Applegate?

A. No.

Q. Were you in my office three or four days ago at the same time that Mr. Applegate was there with Mrs. Cartan?

A. Yes.

Q. During that conference which took all day did you ever consult or see Mr. Applegate?

A. No.

Q. Or were you ever in the room at the same time when Mr. Applegate was there?

A. No.

RE-CROSS EXAMINATION BY MR. WILSON:

Q. When I as counsel for Mr. A. J. Cartan demanded the production of the original letter that was sent by you through Mr. Ren Cartan to Mrs. A. J. Cartan, were you in court?

A. Yes.

Q. And do you recall that when that demand was made, the answer was made to my demand, not by Mr. Applegate, but by your counsel, do you recall that fact?

A. No, I don't.

Q. And if he did respond to that demand as representing Mrs. A. J. Cartan, it was without any knowledge

or authority of yours, was it?

A. Yes.

COURT: They both responded.

MR. LANE: I didn't intend to respond for Mrs. A. J. Cartan.

MARTHA SMOCK, sworn for defendants

DIRECT EXAMINATION BY MR. LANE:

Q. Where do you live?

A. Perth Amboy.

Q. Do you know Mr. and Mrs. Cartan?

A. Yes.

Q. Did you ever live at the Cartan house?

A. Yes.

Q. When did you live there?

A. Off and on I was there for about seven or eight years, possibly longer.

Q. When did you leave?

A. The last time I was there was this summer—last summer; this past summer.

Q. Do you know this house that has been called the outhouse or the chicken house?

A. Yes.

Q. Do you know where it is?

A. Yes.

Q. Have you been out there?

A. Yes.

Q. Did you during the time that you were there ever

see a couch in that house?

A. No, sir.

Q. Did you have a conversation with Mr. Cartan?

A. Yes.

Q. Wait a minute; when?

A. Last Thanksgiving eve.

Q. Thanksgiving eve, 1919, a year ago?

A. Yes.

Q. Where did you have that talk with him?

A. Over in Mrs. Bert Cartan's house.

Q. How did you come to be there?

Q. Mrs. Cartan sent for me; I was in New York working for General O'Ryan's wife.

Q. They sent for you to come over to Mrs. Bert Cartan's house?

A. Yes, to come over to Matawan, and I came down and went over to Mrs.—I don't know the lady's name—it is in the Cartan homestead, and Mr. Cartan sent Mr. Tice's brother or Mr. Tice himself over after me.

Q. When you got to the Cartan house who was there?

A. There was Mrs. Edna Cartan, Mrs. Bert Cartan, and Mr. A. J. Cartan.

Q. Was there a talk with respect to this case?

A. Yes.

Q. What did they ask you?

A. Mr. Cartan asked me—

MR. WILSON: Has the foundation been laid for this?

COURT: It wouldn't have to be laid as to A. J. Cartan.

MR. LANE: That is the one we are referring to.

Q. What did they ask you?

A. A. J. Cartan asked me, he said, 'Martha, you know I have taken divorce proceedings against Mrs. Cartan", and I said, "Is that so?" He said, "Yes"; and he said, "You know that Mrs. Cartan and Mr. Devlin—she has been running with Mr. Devlin"; I said, "Why, Mr. Cartan, I don't believe it." He said, "Yes, it is so." I said, "Well, I don't believe it." He said, "Well, Martha, didn't you ever see anything wrong of her", and I said I did not ever seen anything between her and Mr. Devlin; I said, no, sir, because they all seemed to be on very friendly terms; he said "Are you sure?" I said, "Yes, sir, I am", and he said, "Well, now, you just think over your mind and see can't you remember something"; I said, "There is nothing that I could tell you, unless I sit here and start in to tell you lies. Do you want me to do that?" He said, "No, I do not." Then he asked me, he said, "Do you know of anything about her and Sam Van Marter?" And I told him, no, sir, I did not. "I never saw anything wrong with Mrs. Cartan, and never saw anyanything wrong out of you"; and then Mrs. Bert Cartan came in and asked me did I ever hear Mrs. Cartan make the expression that she was going to do the Cartans up, and I said, "No, I never did", and she said, "Are you sure?" And I said, "Yes, I am sure", and in the meantime her father came in and she went out and closed the door.

MR. WILSON: Is it proper to receive this conversation between persons other than Mr. A. J. Cartan?

COURT: If it was in his presence and hearing.

MR. WILSON: I object to it upon the ground that we

are not bound by it, even though he was present.

COURT: The objection will be overruled.

Q. What else was said?

A. I told him no that I never saw anything wrong, and he said, "Well, Martha, anything that you could think of to tell me, I would make worth your while." I said, "I don't know anything about Mrs. Cartan to say", and I said, "I have known her all my life and I never knew nothing wrong of her."

Q. Was anything said with respect to a couch in the chicken house?

A. Yes.

Q. What?

A. He said that she—I cannot exactly tell how that came up.

COURT: As well as you can recall.

A. He spoke of the couch.

Q. Who did?

A. Mr. A. J. Cartan spoke of something concerning that Mrs. A. J. Cartan was seen meeting Mr. Devlin out in the chickenhouse, and he spoke something about an old couch being out there, and I said, "there was never a couch out there, Mr. Cartan, never", and I said, "Because you cannot get a couch in there anyway, because it is all I can do to get in and out."

COURT: You were working at the Cartans in May, 1916?

WITNESS: Yes, I worked there some parts of every year.

COURT: Do you remember distinctly working there in May, 1916?

WITNESS: Yes.

COURT: Did you have occasion to go to this outhouse at that month at any time?

WITNESS: I told you I used to go down there to that chicken house to feed the chickens and ducks but I don't like to say when that was, because I don't know.

COURT: At any time in 1916 did you ever see a couch in that house?

WITNESS: No.

COURT: In any year you were there?

WITNESS: No, sir.

Q. You have been there for six or seven or eight years?

A. Seven or eight years.

Q. During all the time you were there in the household did you ever see any intimacy between Mrs. Cartan and Mr. Devlin?

A. No, sir.

Q. Anything of an improper or intimate nature between them?

A. No, sir, they were all very, very friendly.

Q. Mr. Devlin called there very frequently in the absence of Mr. Cartan?

A. No, sir, he never was there?

COURT: You say you worked for the Cartans last summer?

WITNESS: Yes.

Q. For whom?

A. For Mrs. A. J.

Q. Did they keep chickens and ducks in this chicken house?

A. Yes.

Q. Do you remember what year it was?

A. No, sir, I cannot, but I know it is quite some time ago. It was during the time when Betty was quite small.

Q. And you remember particularly their keeping ducks there?

A. Yes, I used to go there and feed them.

Q. Do you know who put the ducks up at night?

A. Most generally I would; if not, Mr. R. J. Cartan, because I always locked the back door myself and always went out the front.

Q. Did you ever know Mrs. A. J. Cartan to do it?

A. No, sir, I didn't.

CROSS EXAMINATION BY MR. WILSON:

Q. Where do you live?

A. Perth Amboy.

Q. Are you working?

A. No, sir, not just now.

Q. What are you doing now?

A. I live 335 Willett's Lane, Perth Amboy; I make my home there.

Q. What do you do there?

A. I am not doing anything; I am stopping there with a friend.

Q. Who is the friend?

A. A gentleman, Joe Brown; he runs the house, but I have been living there for a little over a year.

Q. Living there with Joe Brown for over a year?

A. I am not living there with a man; I make that my home.

Q. And he stays there?

A. Yes.

Q. Is he a married man?

A. I know he is.

Q. Is his wife there with him?

A. No, sir.

Q. And you are married?

A. No, sir.

Q. Never been married?

A. Yes.

Q. Divorced?

A. No, sir, my husband is dead.

Q. What year did you first go to work with Mr. Cartan?

A. It must have been about 1913 or 1914.

Q. Do you remember what time of the year it was when you went there?

A. I think it was in the spring of the year.

Q. How long did you stay?

A. I stayed—I don't know, five or six months, I guess.

Q. Did you ever stay more than two or three weeks at a time?

A. Yes.

Q. Did you ever stay at the house as a servant more than four weeks at any one time?

A. Yes, I did.

Q. What is the longest time you ever stayed there as a servant?

A. About five months, to stay steady.

Q. You think you were there continuously for five months?

A. Yes.

Q. How many times did you go back there?

A. I don't know; several; lots of times.

Q. Two or three times?

A. More than that?

Q. Isn't it a fact you never worked in the household more than two or three times, and on no occasion did you ever stay there longer than about four weeks?

A. No, sir, that isn't so.

Q. Were you there in the year 1916?

A. I think I was; I cannot be positive about the years?

Q. You don't know whether you were there in 1916 or not?

A. I am quite sure.

Q. What makes you sure?

A. Because I have been there nearly every year since the first time I told you.

COURT: Have you missed any one year from working there since 1913 and 1914?

WITNESS: Yes,—let me see, I don't know; I cannot say for sure; I don't like to say.

Q. Have you ever been convicted of crime?
A. Yes, I have, but I wasn't guilty of it.
Q. No?
A. No, sir.
Q. What was the crime?
A. In Jersey City, a woman waylaid and robbed a man, and I don't know where the man was, but I know she robbed him, and I came through the hall that night, and as I came through the hall the man hollered "Murder", and the police grabbed me, but I was not guilty of the crime.
Q. The crime that they charged you with was robbery?
A. Yes.
Q. Ever been convicted of crime more than once?
A. No, sir.
Q. Wasn't there another time that you were locked up?
Q. Yes, I was locked up in Freehold, but I don't know what for, and Judge Foster sent me home.
Q. Now you are not willing to say that you were working there in 1916, are you; you don't know; you don't remember?
A. I was there every year right along, as I told you, now and then during the year.
Q. Didn't you tell the court just now that you couldn't say that there hadn't been a year when you were not

there?

A. I cannot say just what year it was.

Q. I ask you again, are you quite certain you were there in 1916?

A. I think I was.

Q. Is that as strong as you want to put it, you think you were?

A. Yes.

Q. Before you went over to Mr. Bert Cartan's house, which you think was Thanksgiving Eve—

A. It was Thanksgiving Eve.

Q. A year ago?

A. Yes.

COURT: 1919?

WITNESS: Yes.

Q. Before you went over there you had seen Mrs. A. J. Cartan?

A. No, sir.

Q. Didn't you see her while you were in Matawan?

A. I met Mrs. Cartan as she was—I was just coming out—no, I was going over from Mrs. Bert Cartan's and she was going down towards the station.

Q. Was that before you had your talk with Mr. A. J.?

A. No, that was after.

Q. Isn't it the truth—is this the truth, that you had a talk with Mrs. A. J. Cartan before you came to Bert Cartan's house?

A. No.

Q. Did you have a talk with her after you had this

talk at Bert Cartan's house?

A. No, not for a long while after.

Q. You met her as soon as you came away from the house?

A. Yes, but I never stopped; she said, "How do you do, Martha?" and I said, "How do you do?"

Q. You didn't stop there and have any talk with her?

A. No.

Q. How long after you had had this talk at Bert Cartan's house did you talk with her about this case?

A. This last summer past.

Q. And where was the talk; where did you have the talk?

A. I went to do some work for them.

Q. At Matawan?

A. Yes.

Q. Was that the first time you had any talk with her?

A. Yes.

Q. And did you tell her then what you knew?

A. I did.

Q. And told her what you testified here today?

A. I told Mrs. Cartan what—

Q. (Last question repeated.)

A. Yes.

Q. How did you happen to go over to Mrs. Bert Cartan's house?

A. Mr. A. J. Cartan sent for me to come down, and I went over to Mrs. Morton's, because she was the one who sent for me.

Q. Where were you?

A. I was working in New York at General O'Ryan's, and when I went to Mrs. Cartan's—

Q. You got word from somewhere and got over to

his house?

A. Yes, I went up first to Mr.—he keeps a garage there, and Mr. Cartan sent, I think, Bill Tice after me twice and then he came himself.

Q. When you were there in the Cartan house, didn't you say in the hearing of Mrs. Bert Cartan and Mr. Bert Cartan and Mr. A. J. Cartan, that Mrs. A. J. Cartan had asked you if you had noticed a couch in this outhouse?

A. No, sir.

Q. Didn't you tell them that she had asked you that question?

A. No, sir, I hadn't seen her, and Mr. Bert Cartan wasn't there.

Q. A. J. and Mrs. Bert Cartan were there?

A. Yes.

Q. As a matter of fact didn't you tell them that Mrs. Cartan had asked you if you noticed whether there was a couch in that chicken house or play house, and didn't you say that you told her that you didn't remember?

A. No, sir.

Q. Didn't they ask you what your then recollection was as to whether there was any couch in the outhouse or not, and didn't you tell them that you didn't remember?

A. I told Mr. Cartan there never was a couch out there.

Q. Answer that question; didn't you tell them that you didn't remember, when they asked you that question?

A. I didn't say that; I said that there was no couch out there.

Q. Then you deny that you told them that you didn't

remember?

A. Yes, because I didn't say it.

Q. Didn't you tell them that Mrs. Cartan had told you that she had been charged with using this couch in the outhouse or play house, and asked you whether or not you remembered the couch was there, and didn't you say you didn't remember?

A. No, sir.

Q. Nothing like that occurred?

A. No, sir.

Q. Are you being paid for coming over here to give your testimony?

A. No, sir.

Q. You just came over voluntarily?

A. Yes.

Q. Weren't you subpoenaed?

A. I got a subpoena, yes.

Q. Weren't you paid any witness fee?

A. No, sir.

Q. Haven't you been promised any sort of pay?

A. No, sir.

COURT: Who paid your carfare?

WITNESS: I paid it myself, two days.

COURT: Has it been paid back to you?

WITNESS: No, sir.

COURT: Has it been promised to be paid back to you?

WITNESS: No, sir.

Q. You expect to get it?

A. No, sir, I am not expecting to get it; no one has promised me anything.

COURT: They ought to pay it to you, whether it is promised or not.

Adjourned to November 18, 1920, at 10 A. M.

IN CHANCERY OF NEW JERSEY

BETWEEN

ANDREW J. CARTAN,
Petitioner,
and
SARAH CARTAN,
Defendant.

Continuation of testimony in the above titled cause, before Hon. John E. Foster, Vice Chancellor, at the Chancery Chambers, Newark, New Jersey, on Thursday, November 18th, 1920, at 10 A. M., in the presence of counsel as before stated.

HELEN CARTAN, sworn for defendant.

DIRECT EXAMINATION BY MR. APPLEGATE:

Q. You are the daughter of Mr. A. J. Cartan, the petitioner in this suit?

A. Yes.
Q. And Mrs. Cartan, the defendant?
A. Yes.
Q. How old are you?
A. Twenty-seven.
Q. You of course knew the Devlins?
A. Yes.
Q. Patrick J. and Mrs. Devlin?
A. Yes.
Q. And Ren Cartan and Mrs. Ren Cartan?
A. Yes.
Q. They are all relatives of yours?
A. Yes.
Q. Are the Devlins related?
A. Oh, no, not the Devlins, but the Cartans.
Q. Are you living home with your mother?
A. Not just now.
Q. But you have lived at home with your mother and father all your life?
A. Yes.
Q. Until when?
A. Until this spring.

COURT: And since the trouble between your father and mother you have been living with your mother, as I understand?

WITNESS: Yes.

Q. What has the home life of your father and mother been, as you observed it?
A. Just the life of any ordinary home, very congenial; nothing—no quarrels or bickerings, I should say.

New Jersey State Library

Q. So far as you observed, your father and mother think a great deal of each other?

A. Yes, sir.

Q. Did you see any change in the relationship, and if so, when?

A. It was just the same way until the spring—May of 1918.

Q. Then what did you observe?

A. From that time on the home life wasn't quite so congenial.

Q. How was it indicated to your mind?

A. My father wasn't so pleasant toward me or—he acted rather queerly.

Q. Tell us how he acted; give us an illustration.

A. He would come in very suddenly and look all around and go through all the different rooms, and he would hear noises out in the back and all that sort of thing, and then sometimes he would go away and stay all day Sunday and we wouldn't know where he was; we didn't know what the trouble was.

Q. This was when, did you say?

A. The summer of 1918.

MR. WILSON: She said spring a moment ago.

WITNESS: It began in May.

Q. What were his relations toward your mother particularly, from May on?

A. He was rather provoked with mother.

Q. What did he do and say, if anything, to indicate that he was provoked?

A. I don't know just exactly what he said; nothing—except—

COURT: How did he treat her; any differently from what he had prior to May?

WITNESS: I should say Yes.

Q. Can you define the difference? In what way did he treat her differently?

A. They had arguments now and then, mostly about me.

Q. More frequently than they had before?

A. Yes.

Q. What was the subject of those arguments about you?

A. My father didn't like the idea of my being very intimate with Mr. Van Marter.

Q. Mr. Samuel Van Marter?

A. Yes, sir.

Q. Is he a friend of yours?

A. Yes.

Q. Did he call at the house frequently?

A. Yes.

Q. Did he call to see you or your mother?

A. To see me.

Q. Any intimacy that you ever noticed between him and your mother?

A. None; no more than he would to my mother, being a friend of mine.

COURT: How old is Mr. Van Marter?

WITNESS: Twenty-seven.

Q. What was the feeling of your father towards Van

Marter; have you noticed?

A. In May he commenced to say that he didn't like him; up until then I never noticed anything.

Q. To whom did he say that?

A. To me, and he didn't want him to come to the house any more, so he didn't, and from then on, frequently, once or twice a week, he would upbraid me about it; of course, I still went out with him to places, and he didn't like it.

Q. Can you say whether or not your mother shared the feeling of your father in regard to Van Marter?

A. No, she didn't.

COURT: Did they differ on the question of his calling on you?

WITNESS: Yes.

COURT: She took your side?

WITNESS: Yes.

Q. Did you ever observe any indication of fondness on the part of your mother for Devlin or on his part for your mother?

A. No.

Q. At any time?

A. No.

Q. Did you ever seen any intimacy or acts of intimacy between them?

A. No.

Q. Devlin called at the house alone?

A. No.

Q. That you ever saw?
A. No, I never remember it.

COURT: Were you home during the day?

WITNESS: Oh, yes.

Q. What was your mother's attitude toward your own family; did she attend to her household duties diligently or not?
A. Yes.
Q. Who took charge of the house?
A. Mother.
Q. Did you keep a servant steadily?
A. No.
Q. Who did the work?
A. Mother.
Q. Who did the sewing of the house?
A. Mother.
Q. Who did the cooking?
A. Mother.
Q. Who did the washing?
A. Mother did when we had no laundress.

COURT: Did this colored woman who was on the stand yesterday ever work for you?

WITNESS: Yes, off and on.

COURT: With any continuity at all or only occasionally?

WITNESS: Off and on; she didn't stay; the longest she

stayed was three or four months.

COURT: And what year was that?

WITNESS: I don't recall that year; it was when Betty was very small.

COURT: Aside from those three or four months you mentioned what was the longest she would stay at any one time?

WITNESS: I don't just remember.

COURT: A matter of days or weeks?

WITNESS: Oh, no, weeks, I should say; in the summer she would stay just a few days.

COURT: Did you have any other maid or help beside her?

WITNESS: Yes.

Q. You say there was another maid; did you keep any maid in the house continuously?

A. No, off and on we had a maid, just a few months at a time; in the meantime my mother did the work.

COURT: Did you help her?

WITNESS: Yes.

Q. You have a brother Johnson?

A. Yes.

Q. And the two small children of whom you have spoken?

A. Yes.

Q. Between May, 1918, and October, 1918, can you say whether or not your father and mother and Mr. Devlin and his wife went out automobiling?

A. Yes, I think I remember one time when they went down to the shore, about commencement time; I recall that time.

Q. When?

A. In June, 1918, that summer.

COURT: Do you recall who was in the party?

WITNESS: Mr. and Mrs. Devlin, I think, and my brother usually drove the car; I think he was along, too.

Q. Do you remember any other occasion when you knew that they were together?

A. Yes, I remember them going down to Mr. Close's house to a party.

Q. Do you know how they went there, whether they went in an automobile?

A. No, I don't.

Q. How do you know they were?

A. I heard them say so.

Q. Heard who say?

A. Both mother and father.

Q. Say anything about Devlin being there?

A. Yes, they mentioned they were there.

MR. WILSON: Do you think that should be received?

COURT: She said they both said so. Did you hear your father say so?

WITNESS: Yes, I think so. I think I was there when they went out.

COURT: I will allow it on that, as well as the fact that Mr. Cartan himself gave her the information.

Q. Your father and mother, did they both occupy the same room?

A. Yes, up until sometime in the winter while I was South, mother was ill and she went in the other room to sleep.

Q. What winter are you referring to?

A. The winter of 1918, January.

Q. Up to January, 1918, they occupied the same room?

A. Yes.

Q. Do you know whether your mother was ailing at that time or not?

A. Yes.

Q. Do you know what was the matter with her?

A. Yes.

Q. What?

A. She had the grippe, I think, and appendicitis.

COURT: And she moved into another room temporarily?

WITNESS: No, she stayed in there and slept with Betty.

Q. Up to the time that this trouble arose or later or before?

A. Oh, sometimes she slept in the other room.

Q. In his room?

A. Yes.

Q. You mean after January, 1918?

A. Yes.

Q. At that time what were their relations, friendly or otherwise?

A. Oh, yes.

Q. Coming on down to October, 1918, this same year of which you have been speaking, did your mother continue to keep by herself generally?

A. Yes, quite often; she slept in the other room most of the time.

Q. And when she didn't sleep there, where did she sleep?

A. In father's room, back of my room.

Q. How do you know that?

A. You have to go by the door to get to the bathroom and I have seen her in there, and she kept her clothes in there—in father's room, and the closets connect, my room and the back room, one long closet goes between, and the doors open facing each other; you can see from one room right on through.

COURT: How late did that continue, up to what time?

MR. WILSON: She fixed it between January and October.

WITNESS: January to August or first part of September, off and on during the summer.

COURT: You think it ceased, if it did cease, about September or October?

WITNESS: I know after October.

COURT: You know it stopped after October?

WITNESS: Yes.

COURT: Did you notice that it ceased before October?

WITNESS: No, I don't remember anything about that.

Q. Can you say whether or not you ever saw your mother and father occupying the same room at night after May, 1918?

A. Yes, I have, positively.

Q. Can you say whether more than once?

A. Yes.

MR. WILSON: What is the purpose of this testimony; upon what theory is it thought to be relevant?

MR. APPLEGATE: Contradiction; Mr. Cartan has gone on the stand and stated he did not cohabit with his wife after May, 1918, and it is on the other theory.

COURT: You charge him with notice and therefore you will contend there was condonation?

MR. WILSON: If it is to establish condonation, my understanding is that the defendant in a divorce case must in her answer set up the cause or causes of defence, and

it has been held in this state that in order to avail yourself of that defence it must be interposed in the proper way.

MR. APPLEGATE: The authorities also hold, in 69 N. J, Equity, I think, that while that is a matter of pleading procedure itself, yet that the pleadings may be amended at any time.

COURT: If it is desired, I will permit an amendment of the pleadings; that would give the petitioner further time, if he desires, to meet the situation on the ground of surprise.

MR. WILSON: There isn't any surprise. She now interposes a defence, and never any intimation anywhere, except such as might be gathered from the cross examination of the petitioner, that this would be interposed as a defence. Your Honor has assumed that the amendment should be made as a matter of course.

COURT: She may avail herself of any defence, so she will have her complete day in court, and if this were the only one she had to interpose, I would do it on terms so you will have an opportunity to meet the situation presented by the amended pleadings, and have ample opportunity to do it.

Q. As time progressed after May, 1918, down to October, even after August or September, can you say whether or not you ever saw your father in the same room with your mother, either dressing or undressing?

A. Yes, I have.

Q. Can you say when, the month or season?

A. After August or October; yes, I have seen her.

COURT: After August or October, which?

WITNESS: I have seen them in October and after October.

Q. Your mother left for Florida in December, 1918, did she not?

A. Yes.

Q. Between October and December, 1918, did you see your father and mother dressing or undressing in the same room?

A. Yes.

Q. Can you say whether it was frequently or infrequently?

A. Yes, frequently.

Q. Was that the general practice, can you say that?

MR. WILSON: I object.

COURT: I wouldn't have her characterize it; she says frequently; you can follow that up.

Q. Can you say whether or not you ever saw your father dressing or undressing in any other room than in your mother's room?

A. No, I never have.

COURT: Would that be true when she occupied the separate room, would he still undress in her room?

WITNESS: Her clothes were kept in his room.

Q. So when you say you saw them dressing and undressing in the same room, which room was it?

A. Father's room.

Q. Where were his clothes kept?

A. There in his room.

Q. Where were your mother's clothes kept?

A. There, in that same room.

Q. Did you and your father ever have a conversation in regard to a note or a writing that he had shown you, purporting to come from Mr. Devlin?

A. Yes.

Q. When?

A. After mother went south.

Q. Can you fix the time?

A. No, I cannot.

Q. She went south in December; how long after that?

A. A few days it must have been, because she came back in two weeks; it was within two weeks.

Q. Will you relate that incident?

A. Of course, we had had other conversation about it, and he brought me in this note one day and I was in the kitchen, and told me if I didn't believe all these things, here was a note, I could read that, and prove it to me. So I read the note, and I said, "I don't see anything in that to make me believe it."

Q. Make you believe what?

COURT: All these things.

WITNESS: All these things.

COURT: You are referring to this charge?

WITNESS: Yes.

Q. What were these things; you say you had had previous conversations with him?

A. About Mr. Devlin being intimate with mother, and so I tore up the note, and threw it away, and he said, "You need not bother tearing it, I have plenty more like it."

Q. In these previous conversations that you had had with your father relative to the alleged intimacy between your mother and Devlin, had your father charged her with intimacy?

A. Yes.

Q. And when he did so to you, what did you say?

MR. WILSON: I object to that.

COURT: I don't see how it is material what she said. Did he ever charge your mother with this intimacy in your hearing?

WITNESS: Yes, I came down one night when he was charging her.

COURT: When was this, before she went south?

WITNESS: Yes.

COURT: Was it before or after October?

WITNESS: In October; it was the night that Mrs. Ren

Cartan brought the note up to her.

COURT: What did he say?

WITNESS: He told her—he said, "You know it is true, and you know it."

COURT: What reply did your mother make?

WITNESS: She said, "It is not"; she denied it; "It is not so", and she asked him who said it was so, to bring them there to prove it.

COURT: Did he make any reply to that?

WITNESS: He said he couldn't bring them there.

COURT: Give any reason why he couldn't bring them there?

WITNESS: Yes, he said they were good friends of his and he wasn't going to bring them there, he couldn't do it; he was going to shield them; he promised them he wouldn't bring them there.

Q. Did your mother say anything further at that time?

A. No, except to deny it and say it wasn't so, and I came downstairs—I heard it and came down and I talked to them both.

Q. Did he specify where she was said to have committed this offence?

A. No, never.

MR. WILSON: Never in your hearing?

WITNESS: Never in my hearing.

Q. What did you say in reply when you told him you didn't believe it and tore up the note, and he told you you need not tear up the note, he had others?

A. I said that note wouldn't make me believe it.

Q. After your mother had gone South did you and she have any arrangement as to her possible return home from Florida?

A. Yes.

Q. Will you state what it was?

MR. WILSON: Objected to.

COURT: I will receive it.

MR. WILSON: May we inquire the purpose?

MR. APPLEGATE: We will show that after Mrs. Cartan had gone South, she came back home within two weeks; we want to show here she went South at the time she did, and why she returned home, that she wasn't running away from her husband's charges, as indicated by her conversation with her daughter before she left.

MR. WILSON: It is suggested that the fact cannot be established by any conversation which she may have had with the daughter.

Q. Did you hear any conversation between your mother and father as to her contemplated trip South?

A. Yes.

Q. What was said about it?

A. She wanted to go south, she always had wanted to go.

Q. Did she say why she wanted to go, or give any reason?

A. Yes, she wanted the trip, the vacation.

Q. What did he say after that?

A. At first he didn't want her to go.

Q. Did he change his mind and consent?

A. Yes, I wasn t home at that time, I don't know what he said; I was working.

Q. Did you learn from him that he did consent to her taking the trip?

A. Yes.

Q. What did he tell you about it?

A. I don't remember what he said; I don't know that he ever said anything to me about it; I knew from mother.

Q. Before that time did you ever hear your mother ask your father to permit her to go South?

A. Yes.

Q. More than once?

A. Yes.

Q. And long before December, 1918?

A. Three or four years before—several winters.

COURT: When he said he didn't want her to go South this year, what objections did he offer, if any?

WITNESS: None.

COURT: What reason did he give for not wanting her to go? What did he say?

WITNESS: I don't recall what he said.

Q. Did your mother say particularly to your father why she wanted to go South at this time; did she give any particular reason that you remember?

A. No, nothing particular.

COURT: When did she first take up the subject with your father of going South? How long after the talk in October when he accused her of this offence?

WITNESS: I don't just remember.

COURT: A short time or long time?

WITNESS: It wasn't a short time.

COURT: Some weeks elapsed?

WITNESS: Yes, it must have been in November.

Q. 1918 you mean?

A. Yes.

Q. Did you have any arrangement with your mother in regard to her returning home from Florida?

MR. WILSON: Objected to.

COURT: I will receive it for the present. I may strike it out if I don't see it has any bearing.

A. Yes, I did.

Q. What was it?

A. When she left—

MR. WILSON: The objection goes to the statement, too?

COURT: Yes.

A. —she was very much upset, and I didn't think she ought to go.

MR. WILSON: I move to strike that out.

COURT: I will strike that out.

A. (Continuing) I said, "You should not go."
Q. Did you tell her why?
A. Yes, I thought she should consult—

MR. WILSON: I wish to object to that.

COURT: I will receive it all subject to your objection, and I may strike it out, but I will hear it. If I don't see that it has any bearing, it will go out; that is the quickest way, to hear it.

A. (Continuing) I said, "You should consult a lawyer before you go", but she was very much upset; I said, "If you go and I ask advice after you are gone, will you come back, or do you think you want to come back?" And she said yes, she would; so I did ask advice, and they thought she should come back; she wanted to defend herself, of course, and they said if she wanted to, she should come right back and start.

Q. Whom are you talking about; who gave you this advice?

A. Mr. Geran.

Q. Elmer H. Geran, the lawyer in Matawan?

A. Yes.

Q. As a result of the advice you received did you communicate with your mother?

A. Yes, I wired her.

Q. After the wire had been sent, did she return home?

A. Yes.

Q. How long after?

A. A few days.

COURT: Did you tell your father that you had wired your mother to come back or return?

WITNESS: No.

Q. Did you have any conversation with your father in relation to your mother's return, and if so, when?

A. Nothing that I said; he said to me—

Q. When?

A. Just the day before she came back; of course, he didn't know she was coming, and he said, "Helen, don't try to get your mother back, because she is better off where she is—don't try to get her back."

Q. At that time had you already telegraphed?

A. Yes.

Q. Did you tell him that you had?

A. No.

Q. After she came back did you have any conversation with your father in regard to her return, or he with you?

A. The next morning after she arrived—she arrived at midnight, and she stayed with me at the Matawan House, and I told him that mother was back, and he said, "Oh, why did she do that?"

Q. Where did this conversation take place?

A. Up in father's bedroom.

Q. After your mother went South did you and your father continue to occupy the homestead?

A. Yes.

Q. And the two small children, Betty and Jean, had accompanied your mother South?

A. Yes.

Q. So that you and Johnson and your father—

A. Johnson was South, too.

Q. So that you and your father then kept house?

A. Yes.

Q. Who took care of the house for him, you?

A. I did.

Q. Where did you have your meals?

A. I ate at the Matawan House.

Q. Where did he eat?

A. I think he ate down to his brother's, Bert's.

Q. He didn't eat with you, at any rate?

A. No.

Q. Did he say why he didn't?

A. No.

Q. Had you expected that you and he would eat your meals out?

MR. WILSON: Objected to.

COURT: Objection sustained.

Q. Did you and your father have any conversation in regard to eating your meals out?

MR. WILSON: Objected to as being immaterial; we are dealing with a witness who is the daughter of the complainant in this case, and she is asked what arrangement she had with him about eating her meals.

COURT: He left the impression on my mind in his testimony that she was hostile to him, and she had taken an attitude in favor of the mother; I think she is entitled to have her position placed upon the record. I may conclude that she was; I think I will receive it.

A. Yes.

Q. What did he say to you?

A. He said I could eat any place I pleased and I chose the Matawan House, and I presumed that he was—

COURT: What was said?

WITNESS: He didn't say anything.

Q. Did he make any objection to your taking your meals there?

A. No.

Q. Did he ask you to take meals where he was going to board?

A. No.

Q. Were you capable of cooking for the family or for yourself and him?

A. Yes.

Q. Any suggestion made that you do so?

A. No. He knew I didn't care about it, and he said

it will be all right for me to take my meals out; he knew I didn't like cooking, and he said I could take my meals out.

Q. And he would do the same?

A. Yes.

Q. So you didn't refuse to cook for him?

A. No.

MR. WILSON: I submit that her explanation hasn't disclosed any relevancy.

COURT: It may or may not be an answer; I am receiving it for what it is worth.

Q. Did you know before you found that your father was not taking his meals with you, that it was not his intention to share his meals with you at the hotel?

MR. WILSON: I object to that.

COURT: I will receive it on the same idea.

A. No.

Q. Did you treat your father respectfully all this time, even up to the present time?

A. Respectfully, yes.

Q. Was your attitude toward him hostile after May, 1918, or not?

A. Oh, not hostile I wouldn't say. We had various arguments, of course.

Q. What was his attitude toward you after that time, after the note incident?

MR. LANE: You said May?

Q. After October, 1918, what was his attitude toward you?

A. Just the same.

Q. The same as what?

COURT: As yours toward him?

WITNESS: Yes.

COURT: What was that?

WITNESS: The same as it has been all summer, I meant to say.

Q. And what was that?

A. We didn't hold very many conversations, except the ones that he started about the Van Marter affair, which was several times a week.

Q. Did that continue after your mother went South, too?

A. No, not after he went to France; there was nothing more said about it.

COURT: When did he go to France?

WITNESS: September, 1918.

Q. You said you and your father had several quarrels; was it over Van Marter, or over the trouble between him and your mother?

A. Over Van Marter.

Q. After the note incident which you related, when you tore the note up, was there any change in your father's attitude towards you?

A. Yes.

Q. What indicated that change?

A. He told me I couldn't eat at the hotel any more; I would have to eat home and cook my own meals.

Q. When was that?

A. That was after mother went South, of course; she ate with me at the hotel while she was North.

Q. How long did she remain in Matawan after she returned?

A. Four or five weeks, I should say.

COURT: You boarded there four or five weeks before he told you that?

WITNESS: Yes. After she went back South he told me that.

Q. What was your father's practice in regard to giving you any spending money?

COURT: How is this material?

MR. WILSON: We object to it on the same ground that the prior objections were interposed as to testimony from this witness.

COURT: I will receive it. If there is hostility, it may explain it.

Q. Did he make you a regular allowance?

A. No, I had no regular allowance, but I always had

what I wanted, as a rule.

COURT: All you had to do was ask for it?

WITNESS: Yes.

Q. Did that stop at any time?
A. Yes.
Q. When?
A. After mother went South.
Q. The second time?
A. Yes.
Q. Did he have any conversation with you at any time as to why he had stopped giving you money?
A. Yes, because I wouldn't side with him against mother.
Q. He told you that, did he?
A. Yes.

EXAMINATION BY THE COURT:

Q. When did he tell you that, when the allowance first stopped; how did he come to tell you that?
A. He didn't say "I am stopping your allowance because you"—
.Q There wasn't any regular allowance?
A. No.
Q. How did this conversation come about; did you ask him for money and he refused you?
A. He did give me money once while in Trenton; he sent me money to come home with.

Q. How did he come to make this last statement about your siding with your mother; did you ask him for money?

A. Yes.

Q. When was that?

A. I asked him for money to pay for a pair of shoes that I had bought, and he started the argument about my attitude toward him.

COURT: Strike out 'he started an argument".

Q. What did he say?

A. He told me that I had told people that I felt sorry for him and all that sort of thing; he said he didn't want my pity or sympathy or love or anything like that.

Q. Did he then refuse you in that conversation?

A. Yes.

Q. When you first learned of this difference between your father and mother, had you continued to show him any affection or love or consideration, or did you cease doing it?

A. No, I didn't cease.

CROSS EXAMINATION BY MR. WILSON:

Q. How had you formerly shown your pity or love for him?

A. We are not a very demonstrative family and—

Q. You don't think of any act that you have done for several years, do you, that would show any especial expression of pity or love for your father, do you?

A. No, no specific thing.

Q. You asked him for money, as I understand,—he gave you money once after your mother went to Florida?

A. Yes.

COURT: That was after the second trip to Florida?

WITNESS: Yes, he gave me money before that.

COURT: He continued to give it even after the second trip on at least one occasion?

WITNESS: Yes.

Q. Then there was another occasion when you asked him for money and he refused you?

A. Yes; that was in connection with the same thing, to pay for a pair of shoes.

COURT: When was that?

WITNESS: I was in Trenton at the time I bought the shoes, and he sent me the carfare but not the money for the shoes.

COURT: Did you come home on the carfare he sent you, and then have a conversation about the money for the shoes?

WITNESS: Yes.

Q. Where had you been on the car?

A. Trenton.

Q. At that time you knew that your father was paying a sum of money to your mother out of which she undertook to take care of the children, didn't you?

A. Yes.

Q. And wasn't the real reason why he didn't continue to give you money was because he was giving money to your mother for the purpose of taking care of the children; wasn't that the reason he told you?

A. I didn't see how it was.

Q. Didn't he tell you that?

A. No.

Q. He didn't mention that to you?

A. No.

COURT: The allowance to your mother included yourself as well?

WITNESS: No.

COURT: You were to get money in addition?

WITNESS: I didn't understand—

MR. WILSON: She has no knowledge on the subject and I don't think we should receive it.

COURT: I will receive it.

Q. Was that the only time you asked him for money when he didn't give it to you?

A. Yes, I think that was the only time.

Q. You are twenty-seven years old?

A. Yes.

Q. What you wanted was some money for a pair of shoes?

A. Yes.

Q. Did you know how much your mother was receiving from him at that time?

A. Yes.

Q. How much?

A. $40 a week.

Q. And did you know how much he had given her to go to Florida with?

A. No.

Q. You didn't have any knowledge of that?

A. Yes, I knew he had given her the house rent, but I don't know how much extra.

Q. You knew he had bought her ticket to go and the tickets for the children to go?

A. Yes, I knew that.

Q. I think you already said that your father didn't approve of the attentions of Mr. Van Marter?

A. Yes.

Q. And that was a constant source of contention between you and your father, wasn't it?

A. Not until May, 1918.

Q. That got to be a continuous source of conflict between you, beginning about May, 1918?

A. Yes.

COURT: How long prior to May, 1918, had Van Marter become attentive to you?

WITNESS: He has been coming to the house seven or eight years—seven years.

Q. He is a young man about your age?

A. Yes.

Q. Your mother sided with you about the matter?

A. Yes.

Q. He didn't want you to have Van Marter coming to the house at all, did he?

A. No.

Q. And he wanted you to give up your companionship with him?

A. Yes.

Q. And that you refused to do?

A. Yes.

Q. And he was so insistent about it that, beginning in May, 1918, two or three times a week it became a matter of argument between you?

A. Yes.

Q. And you continued to do what he didn't want you to do, didn't you?

A. Yes.

Q. And in doing that you had the approval of your mother; she approved of what you were doing?

A. I suppose so.

COURT: Do you know?

WITNESS: She never told me so.

Q. She never told you to obey your father, though, in that matter?

A. Why he didn't come to the house; father forbade him to come to the house.

MR. WILSON: I wish to have that stricken out.

COURT: Yes. Did she ever tell you to obey your father in that matter?

WITNESS: I don't remember that she did.

Q. Wasn't that the only serious difference that you ever had with your father in all your twenty-seven years?

A. Yes.

Q. To go back to the rooms which your mother and father occupied in the same house—

COURT: Are you going to file a formal amendment to your Answer, pleading condonation? Do you wish to avail yourself of it? As I understand the rule, you must plead it. I want to give Mr. Wilson the same leave. I will consider that you have amended your Answer and he has filed a Replication to it.

MR. APPLEGATE: Yes, we will make an amendment.

COURT: Mr. Wilson will be given his opportunity to meet it, if not to-day, some other time.

MR. APPLEGATE: It is on the theory that she may take advantage of every defence that she might have.

Q. To go back to the rooms which your mother and father occupied in the house, what is the upstairs arrangement of the house; is there a hall in the middle of the house?

A. Yes.

Q. How many rooms are there and how are they arranged?

A. There are four rooms upstairs.

Q. The house is, generally speaking, square, is it?

A. Yes.

Q. And if we assume this to be the house, this square, and this the street, is there a hall down the middle of the house like this? (Indicating on a rough diagram.)

A. The hall doesn't run the whole length of the house.

Q. A is a bedroom?

A. Yes.

Q. Facing the street?

A. Yes.

Q. B is another bedroom?

A. Yes, and C is a closet, which runs all the way across to the side of the house?

Q. Is there a door from the hall into the closet?

A. No, there is a door out of B into the hall; the hall goes far enough up to admit of a door into both bedrooms.

Q. There is no doorway from the hallway into the closet?

A. No, but there is a door from the room B into the closet, and another door facing it.

Q. There is one big room back of the closet, marked D; that is a bedroom, also?

A. Yes.

Q. Does this hall extend all the way back?

A. No, there is another small hall goes this way (indicating).

Q. There is a hall which goes all the way across to the side of the house?

A. Yes, between bedrooms A and B.

Q. There is a hall marked E?

A. Yes; one room is F, on the other side of the house; the bathroom is on the landing back of the stairs; you

go down three steps.

Q. G is the bathroom?

A. Yes.

Q. Which one of these rooms did your mother and father occupy together?

COURT: The witness has indicated on the plan that the upstairs floor of the father's home contains four bedrooms, which have been designated as A, B, D and F; that there is a main hall coming from the stairway below, then there is a small hall leading off from it, on one side of the house, between A and F; there is a closet, as stated, between B and D; the entrance to which is from the bedroom B and also from bedroom D, and below the landing from the stairs from the first floor, down about three feet, there is a bathroom, which is marked G.

Q. Your mother and father stopped occupying the same room in about January, 1918, you say; which one of those rooms did they occupy?

A. D.

Q. Which room did you occupy?

A. I occupied B.

Q. Who occupied A and F, if anyone?

A. No one.

Q. Where did the children sleep?

A. The little girl slept in E, and the two boys slept in F.

Q. This closet C had an opening from your room and it also had an opening from your father and mother's room?

A. Yes.

COURT: It is a clothes closet?

WITNESS: Yes.

Q. Were these doors opposite each other?
A. Yes.
Q. And your father and mother kept their clothes in this closet C?
A. They kept theirs on this side (indicating).
Q. They kept their clothes in the closet nearest the side of the house?
A. Yes.
Q. Was it a big closet?
A. Yes.
Q. What size closet, about?
A. I don't know how large the rooms are.
Q. Is the closet as long as from here to the door over yonder?

COURT: Ten or twelve feet long?

WITNESS: About twelve feet long and three or four feet wide.

Q. How far would you think it was from here to that door going into the Judge's office, was it about that distance?
A. That was about the length.

COURT: What distance do you think it is from you?

WITNESS: I should say twelve feet.

COURT: That isn't a bad guess; it is probably a little more.

Q. You think the closet would be as long as that?
A. Yes, I think it is.

MR. WILSON: Shall we say it is the judgment of the Court that that distance is about what?

COURT: A little over twelve feet, I should say.

Q. How wide was the closet; how far across it?
A. Four feet—three or four feet.
Q. As far as from here to the window or not so far?
A. It is not any further than to there, about to the wall.

COURT: About four or five feet that would be.

Q. When your mother stopped sleeping in the room with your father in January, 1918, did she move over to room A?
A. Yes.
Q. And roomed with Elizabeth?
A. Yes.
Q. How old was she at that time?
A. Four years old.
Q. And your mother left her clothes in this closet?
A. Yes.
Q. And she was in the habit of going in the room to dress, of course?
A. Yes.
Q. That was when you would see her in the room?

A. Yes.

COURT: How would she go there, through the hall or through your room into your father's room?

WITNESS: She would come through my room, possibly the hall.

COURT: She could go through the hall also?

WITNESS: Yes, sir.

Q. She could go either way?
A. My door goes out this way (indicating).
Q. She could go into your room, and from your room into the closet?
A. Yes.
Q. And she did so at times?
A. Yes, sometimes.
Q. You have seen your father, of course, undress in room D?
A. Yes.
Q. And you have seen your mother in room D, you say, on several occasions since January, 1918, when both were dressing and undressing?
A. Yes.
Q. That was where your father was accustomed to dress and undress, wasn't it?
A. Yes.
Q. That was where your mother was accustomed to dress and undress?
A. Yes.
Q. And that continued down, I think you said, to the

time your mother went to Florida?

A. Yes.

Q. Did you ever see them occupying the same bed together?

A. Yes.

Q. And when was that?

A. In the summer of 1918.

Q. And where was the bed?

A. The bed is right here; the door is here, and the bed is right by the door. (Indicating.)

Q. You are speaking of room D?

A. Yes.

COURT: Could you see the bed from your room if both doors were open?

WITNESS: Yes.

Q. You could see, standing in your room?

A. No, from the closet; I wouldn't say my room.

Q. And where were you when you saw them?

A. I would be in the closet and in the hall; I would have to go by this door to get to the bathroom.

Q. You could see, too, by going by this open door in the hall?

A. Yes.

Q. And they were in the habit of leaving their hall door open and the closet door open?

A. Yes.

Q. That was their habit for years?

A. Yes.

Q. When did you fix the time of having seen them there?

A. I have seen them several times, June, July or August, during the summer, in all those summer months, all of those summer months.

Q. Of what year?

A. 1918.

Q. What time of the day or night was it when you observed them together?

A. When I was going to bed, putting my clothes in the closet, ten or eleven o'clock, possibly.

Q. When you were going to bed?

A. Yes.

Q. And was your mother occupying Elizabeth's room at that time?

A. Yes.

Q. And were the occasions when you saw her in there always at night?

A. Yes.

COURT: Were the occasions when you saw her in bed with your father always at night, and were the occasions when you also saw her dressing and undressing also at night and always at night?

WITNESS: Oh, no.

MR. WILSON: I understood her to say that her mother always dressed and undressed in the room.

COURT: She said she had seen her do it frequently after she occupied room A, but that she saw her undressing when she went to bed. You had seen her in the daytime as well?

WITNESS: I have seen her dressing in the daytime, yes.

Q. You are quite sure that the only occasions when you saw them in bed in this room was at night when you would be going to bed?

A. Yes.

Q. And that would be usually about eleven o'clock?

A. Yes.

Q. Were they in the habit of going to bed with a light burning in their room?

A. Leaving it burn all night?

Q. (Question repeated.)

A. The light was burning while they undressed.

Q. Were they in the habit of going to bed and leaving the light burning in their room?

A. No.

Q. How were you able to determine that your mother and father were in bed if there was no light in the room?

A. We always have a light in the hall all night.

Q. Suppose you had a light in the hall, was that a light sufficient to be able to discover that these two people were in bed?

A. Yes.

Q. Where was the light in the hall?

A. Right in the center of the hall; there is a gas fixture.

Q. Was it kept burning all night?

A. Yes.

Q. How far away was it from this door? From the door of this room?

A. The width of the hall.

Q. Was it on the other side of the hall?

A. Yes.

Q. Who first asked you about whether you had seen your mother and father in the room together?

A. Mr. Applegate.

Q. You mean your mother's counsel?

A. Yes.

Q. And where did he ask you that?

A. Right here now.

Q. That was the first time? You mean to say he was the first person who ever asked you and the first time he ever asked you was here?

A. I have consulted with him before.

COURT: But Mr. Wilson wants to know when he first asked you this question.

WITNESS: I don't remember when he first asked me.

Q. I first asked you who first asked you these questions; you heard me ask you that question. Do you recall I did ask you that question?

A. Yes.

Q. And you answered, "Mr. Applegate"; is that right?

A. Yes.

Q. Is that true?

A. Yes, I think it is.

Q. He is the first person who ever asked you about this matter, is he?

A. Yes.

Q. When did he first ask you?

A. I don't just remember when.

Q. Where did he first ask you, in his office?

A. I think so.

Q. About how long ago was it?

A. I don't know.

Q. Was it a matter of a few days or few weeks or months?

A. No, it was long ago, I should say months.

Q. Is that your answer?

A. Yes.

Q. You gave him the same answers that you have given here to-day?

A. Yes.

Q. Your mother hadn't previously asked you these questions?

A. No, I don't remember mother asking me.

Q. How did Mr. Applegate come to ask you these questions?

A. I don't know.

Q. You hadn't made that statement to anybody, had you? You hadn't told anybody what you had seen in that room?

A. No.

Q. Until you told him, is that right?

A. I had no reason to.

Q. And he asked you, without any prelude, so far as you know, like lightning out of a clear sky, whether you had ever seen your father and mother in bed together; is that the way of it?

A. Yes.

Q. The fact is you feel very unfriendly to your father, don't you?

A. Why, yes.

Q. And the fact is that that unfriendliness upon your part grew out of his persistent effort to break up your companionship with Van Marter?

A. No.

Q. Is it not true?

A. No.

Q. But whatever the cause of it is, you do feel unfriendly to him?

A. Yes.

Q. You feel very bitter toward him?

A. Yes, I do.

COURT: Why do you have such a feeling?

WITNESS: Well, because I don't think he went about the affair in the right way.

COURT: What affair in the right way.

WITNESS: I asked him to prove what he said was so.

COURT: What are you talking about, the affair of your mother?

WITNESS: Yes.

COURT: Is your feeling due to the charge he brings against your mother or because he interfered with your relation and friendship with Van Marter?

WITNESS: No, the charge he brought against mother.

Q. That is the whole thing that makes you feel sore toward him?

A. Of course, I felt rather badly about the other, but I think I could have gotten over that.

Q. You think so?

A. I am sure I could.

Q. You haven't gotten over it yet, have you?

A. Yes, I have gotten over that.

Q. When did you get over that?

A. When the worse things happened I forgot.

Q. What do you mean?

A. The charge father brought against mother.

Q. When did you first hear that?

A. In October, 1918.

Q. From whom did you hear it?

A. From mother.

Q. Didn't you hear from your father accusing your mother; wasn't that your first information about it?

A. No, I wasn't home.

Q. But you did hear your father accusing your mother?

A. Yes.

Q. You say your mother denied it?

A. Yes.

Q. What did your father say?

A. He said, "It is so, you know it is so"; that is all he said.

Q. Did you hear what your father accused her of? What was it he accused her of?

A. He said she had intimate relations with Mr. Devlin; those are the words.

Q. Was that all he said?

A. That was about all; he kept saying the same thing over and over again.

Q. Didn't he tell her where the intimate relations were?

A. No, he refused.

Q. Any of the details?

A. No.
Q. And she said it wasn't so?
A. Yes.
Q. And invited him to prove it?
A. Yes.
Q. And said she wanted him to prove it?
A. Yes, if—that is all.
Q. In point of fact, you didn't want your father and mother to be reconciled, did you?
A. I did.

Q. When did you have that feeling about the matter?
A. All along.
Q. What did you ever do to reconcile your father and mother, if that was your disposition?
A. I said, "You should not believe these things; you know they are not so", and I told him what kind of a woman mother was, and he should not believe it.
Q. Is that all you did to try to reconcile them?
A. I talked with him several times, but—
Q. But what?
A. I never got anything satisfactory from him; he just kept saying over and over again that it was so, and he knew it was so.
Q. When did you learn the details as to this outhouse episode; when did you first learn that?
A. When I saw the papers.
Q. When you saw the papers in this suit?
A. I guess it was when—I don't remember.

COURT: Did you know of it before the last hearing when you were here; had you heard of it before that?

WITNESS: Yes, I had.

Q. You heard it before October?

A. No.

COURT: Our former hearing here was October 4, did you hear of this outhouse incident before October 4, 1920; had you heard of it before that time?

WITNESS: Yes.

Q. How long before that previous hearing had you heard of it?

A. When I read it in the papers that were served.

Q. You think you did read it in the papers that were served?

A. I think I did.

Q. Don't you know whether you did or not?

A. No, I don't know; I am not sure.

Q. Did you read the papers that were served on your mother?

A. Yes.

Q. And how long after they were served on her did you read them?

A. The night they were served.

Q. And was that the night before she went to Florida?

A. Yes.

Q. And you think you read in those papers that he charged her with improper conduct with Mr. Devlin in the outhouse?

A. No, I don't remember reading it in the paper.

Q. What paper did you have reference to when you said you read it in the papers?

A. I don't know. I didn't read it in that paper; I know I didn't.

Q. You don't know what paper you read it in?

A. No.

Q. Do you think you knew of the details of this charge as early as the time when your mother went to Florida?

A. No.

Q. You must have known it then if you read it in the papers.

COURT: It is a mere argument now; she said she is not sure where she read it.

Q. Are you sure you ever read it at all anywhere?

A. No, I am not sure that I read it.

Q. Then if you didn't read it, where did you first hear, or how did you first learn of it?

A. I don't recall.

Q. Didn't your mother tell you?

A. I don't remember that either.

Q. You don't mean to tell us that your mother left for Florida in December, having been accused as early as October by your father, and that your mother never told you that she was accused of improper conduct with Mr. Devlin in the outhouse, before she went to Florida?

A. She never told me any such thing.

Q. Did she ever tell you at any time where she had been accused of improper conduct?

A. No.

COURT: Her mother already told her and informed her of the nature of the charge before even she heard her father accuse her mother.

WITNESS: Yes.

COURT: But she didn't tell you the details of it or the place where she committed the alleged offence?

WITNESS: She told me there were no details given her.

Q. She never did tell you that any details were ever given to her?

A. She never did tell me that any details were given.

Q. When she started for Florida, according to your understanding, all that your mother knew was that your father in a general way had charged her with immoral conduct, without giving her any details; that was your understanding of it?

A. Yes.

Q. You never asked your father for any details?

A. Yes.

Q. Did he give you any?

A. No.

Q. When was it you asked him for them?

A. From October right on.

Q. What was it you asked him?

A. What it was he knew.

Q. What did he say?

A. He said he wouldn't tell; he was going to save that until later.

Q. He wouldn't tell you?

A. No.

Q. I ask you again, if it is not true that instead of trying to bring your mother and father together, you did what you could to keep them apart?

A. No, that isn't true.

Q. Isn't it true that you wanted your mother divorced from your father?

A. No, that isn't true.

Q. Isn't it true that you advised her that what she ought to do was to encourage these divorce proceedings and then make him pay big alimony?

A. I did not.

Q. Isn't that true?

A. No, that is not true.

Q. Do you recall a letter?

COURT: I don't see how she would succeed in that, if it were true.

MR. WILSON: It is quite unimportant whether she succeeded or not; it is just the motive.

Q. Do you recall having received a letter from Van Marter when he was in France, in which he made reference to the trouble between your mother and father?

A. No. I might have had one, but I don't recall anything in particular.

Q. Didn't you, in point of fact, receive a letter from Van Marter, in which he advised you or asked you to tell your mother to go ahead with the divorce business? Was Van Marter at one time in M——, Germany?

A. Yes.

Q. Did he write you from there?

A. Yes.

Q. Did he write you about this trouble between your mother and your father?

A. He had written; I told him about it, and he probably made remarks about it, but I don't recall.

Q. Did he tell you in one of those letters to tell your mother to be sure and make your father "come across", and make it big, like Mrs. Worthley did?

A. I don't know. I don't remember; he might have said it; I don't know.

Q. And who was Mrs. Worthley, had she had a divorce proceeding?

A. Yes.

Q. And you spent a good deal of time with Mrs. Worthley?

A. Yes.

Q. Didn't you have a conversation with your mother before she went South, in which you told your mother that this was a good time to get rid of your father?

A. I said no such thing.

Q. Didn't that conversation occur in the house where you lived?

A. No.

Q. Did you have any talk with your mother as to the effect of this divorce?

A. The effect of it?

Q. Yes.

A. Yes.

Q. What was the conversation you had with her?

A. I talked—I said that I didn't think they ought to have a divorce, it would break up the home.

Q. You say you said you didn't think so?

A. Yes.

COURT: That it would break up the home?

WITNESS: Yes.

COURT: Did you say anything else to her about the effect of the divorce?

WITNESS: No, I don't remember anything else, except about the home life, and that sort of thing.

Q. What did your mother say?
A. And she agreed with me.
Q. And yet she went to Florida, did she, the next day after the papers were served?
A. Yes, she had already planned to go to Florida.
Q. And you say the arrangement was that after she went, after you had consulted with a lawyer, if you thought it best, she would come back; was that the arrangement you made with her?
A. She didn't know whether she should go, but she was very much upset and I said I would consult a lawyer and ask if she had to come back in order to answer the charge, because she intended to answer it.
Q. You did consult a lawyer?
A. Yes.
Q. You consulted Mr. Geran?
A. Yes.
Q. How soon after that was it you telegraphed her?
A. The next day.
Q. And she came back within two weeks?
A. Yes.

COURT: How long after you sent the telegram did she

return?

WITNESS: Four or five days.

Q. I thought you said you consulted Mr. Geran the next day after she went away?

A. No, not the next day.

COURT: When did you consult Mr. Geran?

WITNESS: Not the next day, but several days after, probably.

Q. Didn't you advise your mother rather than have a divorce she had better have a separation from him?

A. No.

Q. You had no such talk as that with her?

A. No.

Q. Didn't you go to your father and endeavor to persuade him to arrange a separation with your mother rather than to pursue the remedy of a divorce; didn't you have such a talk as that with your father?

A. I don't remember anything like that.

Q. What?

A. No.

Q. Is that as strong as you wish to put it, that you don't remember it; you remember talking with your father about a separation?

A. I have talked with him about it, and he said if he didn't like it, of course he didn't have to get a divorce.

Q. You suggested that idea to him, didn't you?

A. I don't know that I suggested anything.

COURT: Didn't you suggest the idea of a separation rather than a divorce?

WITNESS: No, I didn't suggest.

Q. When did you talk with Mr. Devlin about this case?

A. Never.

Q. Never mentioned it to him?

A. No.

Q. Never had any conversation with him about it at all?

A. No.

Q. When did you talk with Mr. Devlin's wife about it?

A. Sometime in October, 1918.

Q. Was it in October after the time when those letters were exchanged?

A. Yes.

Q. Where did you talk with her about it?

A. At her house.

Q. Was it a few days after these letters were exchanged?

A. I don't know; it must have been.

Q. Is that the only conversation you had with her about it?

A. Yes. I met her several times and I said a couple of words, but that is the only real conversation.

Q. What were the couple of words you said to her from time to time, do you remember?

A. I don't remember.

Q. That was the only time you went over the entire matter with her?

A. Yes.

Q. Did you have any talk with her after your mother went to Florida?

A. No, I don't recall any.

Q. So that all the talk you had with her was before your mother went to Florida?

A. Yes, I think I rode to New York one day in the train and happened to meet her and talk with her; not especially about that, but other things, too.

Q. That was after your mother went to Florida?

A. Yes, I know it was after she had been up and back again.

Q. That is the only occasion you remember having had any talk with her?

A. Yes.

Q. And the matter wasn't dwelt upon with any particularity at all; it was just mentioned in some casual way?

A. Yes.

Q. Was the day that you rode to New York with Mrs. Devlin in the train the same day that your mother started for Florida the second time?

A. No—I think she was in the train; yes, she and her sister, the day mother went back; Mrs. Devlin and her sister were on the train the day mother went back to Florida.

Q. Was that the day you had the talk?

A. No, I didn't go to New York that day.

Q. Did you see Mrs. Devlin that day at the Matawan Depot?

A. Yes.

Q. And did you have a talk with Mrs. Devlin that day that your mother started?

A. We accidentally met her there, she and her sister.
Q. Did you have a talk with her at the depot?
A. No.
Q. Did you talk with her at all?
A. Yes.
Q. Then you did talk?
A. I talked with her and her sister.
Q. Did your mother have a talk with her there at the Matawan Depot?
A. She talked with her; mother talked with her.
Q. Was it a talk of some duration?
A. No.
Q. Did you hear the talk?
A. Yes, I suppose so.
Q. Was this case mentioned at all?
A. I don't remember; yes, I think it was.
Q. Mentioned by you or your mother?
A. No; Mrs. Devlin's sister said something.
Q. And neither your mother nor Mrs. Devlin said anything?
A. Yes, I think they did say something, but I don't remember what it was.
Q. Did you say something about the case, too?
A. Not that I know of.
Q. Don't you recall that you made any comment at all?
A. No.
Q. You didn't go to New York that day?
A. No.

MR. APPLEGATE: One question I omitted.

FURTHER DIRECT EXAMINATION BY MR. APPLEGATE:

Q. In regard to the outhouse that was called the chicken house, were you ever in it?

A. Yes.

Q. Were you in it in 1916, 1917 and 1918; all those years?

A. Oh, yes.

Q. Did you ever see a couch or a chair in there?

10 A. Never.

Q. Was there ever a couch or chair in there?

A. Never.

COURT: What was in there? What was it used for?

WITNESS: Chickens and ducks.

Q. Anything for them to roost on or get on, anything for any person to sit down on?

20 A. Not in that part of the chicken house.

Q. In any part of it?

A. Yes, some rods and sticks that the chickens roost on.

Q. No furniture of any kind?

A. No.

Q. Do you know when ducks and chickens were kept there?

A. I don't know just the time exactly.

Q. Do you know whether there was any time in 1916?

30 A. I think we had them in the summer of 1916, but I am not sure, I wouldn't say positively.

COURT: How frequently did you go out there to see

what the place contained.

WITNESS: I don't know; maybe once a week.

Q. What occasion would you have to go out there if you didn't have chickens or ducks?

A. None when we didn't have chickens or ducks; why would I go there?

Q. My question is why you went there, and what reason you had to be familiar with the furniture?

A. After the chickens were gone, the children played in it, it was cleaned out.

Q. Turned into a playhouse?

A. Yes.

Q. Did they have children's playthings in there?

A There might have been a few boards.

CROSS EXAMINATION BY MR. WILSON:

Q. You are twenty-seven years old?

A. Yes.

Q You were not using it as a playhouse in 1916?

A. I was not.

Q. And you are not sure that there were any chickens kept in 1916 by your father or your mother?

A. No.

Q. And you had no occasion to go to this place except when chickens and ducks were kept in it?

A. I have seen through from the other side, from Miss Hopkins' yard; there is glass on that side; I am very often in her yard.

Q. Whatever knowledge you have at to what was inside you got through looking through the window, in the Hopkins yard?

A. Yes.

Q. What?

A. I would be there when there were ducks—I have gone down to call the children to come up.

Q. Have you gone in there?

A. Yes.

Q. Did you go in there in 1916?

A. I cannot say.

Q. And your chief knowledge as to what was in the place was what you got from looking through the glass on the Hopkins' side?

A. No, I have seen through the glass from the Hopkins' side, and I have also been there to call the children and to feed the chickens.

Q. And when you were there, how many times, and what years you were there, you don't now recall?

A. No, I have probably been there all the years.

JOHNSON CARTAN, sworn for defendants

DIRECT EXAMINATION BY MR. APPLEGATE:

Q. You are the son of A. J. Cartan?

A. Yes.

Q. And Mrs. Cartan?

A. Yes.

Q. How old are you?

A. Eighteen.

Q. You live in Matawan?

A. Yes.

Q. What are you doing, if anything?

A. Nothing just now.

Q. You recollect in times past when you would drive an automobile in which were the Devlins and your father and mother?

A. Yes.

Q. Did that occur frequently?

A. Yes.

Q. And who usually did the driving?

A. I did.

Q. Who sat with you?

A. Usually my father.

Q. And the other three on the back seat of course?

A. Yes.

Q. Did you ever observe any intimacy between your mother and P. J. Devlin.

A. Never.

Q. Did you ever observe any sign or indication of any fondness between the two?

A. No, sir.

Q. One for the other?

A. No, sir.

Q. Did you ever observe anything that in your mind was suspicious of intimacy between your mother and P. J. Devlin?

A. No, sir.

Q. At any time?

A. Never.

Q. Upon these automobile trips or any other occasion?

A. No, sir.

Q. What was the relation between your father and mother; what was their home life?

A. Friendly.

Q. They seemed to think a good deal of each other?

A. Yes, sir.

Q. Was there any change in that attitude, and if so, when?

A. In October, 1918.

Q. How was that change indicated, and on whose part?

A. On the part of my father.

Q. How was it indicated?

A. I heard him quarrel with mother.

Q. What about; what did you hear said?

A. I didn't hear what they said.

Q. When was this?

A. About the first of October.

Q. Where were you?

A. I was downstairs in the kitchen.

Q. Where were they?

A. They were both in the kitchen, and my father asked me to go out; he asked me three or four times to go out and I wasn't ready to go.

Q. He asked you to leave the room or the house?

A. He wanted me to go on an errand, and I wasn't ready to go just yet, and he told my mother he wanted to talk to her upstairs, and he took her up in their room, and after a while I heard my mother scream, and she hollered for me, and I was so surprised at anything like this going on in the family. I didn't know what to do.

Q. You had never seen anything like that before?

A. Never.

Q. What did you do?

A. I went upstairs and stood outside the door.
Q. Where were they?
A. In the room.
Q. Whose room?
A. In their bedroom.
Q. Was the door closed or open?
A. Open.
Q. What did you hear?
A. I didn't hear anything then; I don't remember what they said.
Q. When you say you didn't hear anything, what do you mean?
A. I heard them quarrel, but I don't remember what they said.
Q. Did you hear your mother scream again?
A. No, not after that.
Q. Did you hear anything that indicated to your mind that there was a tussle going on, any noise?

MR. WILSON: Objected to as leading.

COURT: I think it is objectionable; he should be asked to state everything he heard and saw there.

Q. Will you state everything you heard and saw whether words or noise?
A. I didn't see anything, I didn't look in.
Q. What did you hear?
A. All I heard, my mother hollered for me.

COURT: That was while you were downstairs. Your attention is directed to what occurred when you stood outside the door upstairs; what did you hear?

WITNESS: I don't remember.

Q. Hear any quarrelling?
A. Yes.
Q. What were they quarrelling about?
A. I don't know.
Q. Didn't you hear it?
A. I didn't hear what they said.
Q. What was to prevent you from hearing it; weren't they talking loud enough?
A. I don't remember what they said.
Q. Do you know the subject about which they were talking?
A. I didn't at that time; I didn't have any idea.
Q. When did you first know of the subject of the difference between your father and mother?
A. I heard my mother—

COURT: When did you first know of it, how long after the incident of the screaming?

WITNESS: It must have been the next day.

Q. Where did you learn it?
A. In the house.
Q. From whom?
A. From my mother.

COURT: Did she tell you?

WITNESS: Yes.

Q. Was your father present when she told you?

A. No.
Q. What did she tell you?

MR. WILSON: Objected to.

COURT: Objection sustained.

Q. Did your father ever talk with you about the differences?
A. No, never.
Q. Did you ever ask him what was the trouble between him and your mother?
A. I never did.

COURT: Did he ever talk about it in your hearing with anyone else?

WITNESS: I have heard him quarrel later after that.

COURT: About the same subject?

WITNESS: Yes.

COURT: What did he say as nearly as you recall it?

WITNESS: He accused her of being very intimate with Mr. Devlin and for always being very intimate when they were out—when they were out riding in the car and at dances and at outhouses.

COURT: Anything else?

WITNESS:: That is all.

COURT: Did she say anything?

WITNESS: She denied it and said it wasn't so.

Q. Anything else? Did you hear anything else between your father and mother about this subject?

A. No, nothing different than that.

Q. When was this quarrel which you spoke of which you remember in the first part of October?

A. About the fourth or fifth of October.

Q. Before that time had you ever heard them quarrel?

A. Never.

Q. Ever hear your father complain to your mother about intimacy with Devlin?

A. Never.

Q. At automobile rides or dances?

A. Never before that.

COURT: Were you with them when they were out on these automobile rides?

WITNESS: Most of the time.

COURT: To dances and parties?

WITNESS: Most of the time.

COURT: To these road houses?

WITNESS: Yes.

COURT: Did you eat with them when they were there?

WITNESS: Yes.

COURT: Did you participate in the dancing?

WITNESS: Not in the dancing, no.

COURT: Did you sit there while they were dancing?

WITNESS: Yes.

COURT: Did you observe anything improper or intimate between your mother and Mr. Devlin on those occasions?

WITNESS: I never did.

COURT: Or while they were in the car?

WITNESS: No.

Q. Do you remember whether or not you ever accompanied your father and mother and Mr. and Mrs. Devlin, or drove them in an automobile after May, 1918?

A. Yes, sir.

Q. When?

A. It was in the summer, about in June.

Q. Where did you go?

A. Down to Bigget's Park, Sea Girt.

Q. What time of the night was it or what time of the day?

A. At night; I went down for supper.

Q. What time did you get back, if you recall?

A. It must have been midnight.

Q. Late at night, was it?

A. Yes.

Q. You drove the car, I think you said?

A. I drove the car.

Q. Who sat with you?

A. My father, I think.

Q. Tell us where the car started from.

A. From our house.

Q. And when your car started at your house, did your father say anything as to where Mrs. Cartan, your mother, should sit?

A. No, sir.

Q. Did he ask her to sit in any particular place?

A. No, sir.

Q. He took the front seat, you said?

A. Yes.

Q. From there where did your car go?

A. To Mr. Devlin's house.

Q. And whom did you pick up there, if anyone?

A. Mr. and Mrs. Devlin.

Q. Did your father say anything at that time as to where Mr. Devlin should sit?

A. No.

COURT: Who told you to go from your house to Devlin's, if you were driving?

WITNESS: My father and mother were in the car at the time.

COURT: How did you know they wanted to stop at Devlin's?

WITNESS: They told me.

COURT: Do you know which one told you, your father or mother?

WITNESS: I don't remember.

Q. After having gotten Devlin, then you went on to Bigget's Park at Sea Girt?

A. Yes.

Q. Was it a joyous occasion or a solemn one?

A. Joyous.

Q. Everyone seemed to be having a good time?

A. Surely.

Q. Did you take dinner with the party at Bigget's Park?

A. Yes.

Q. And what was the attitude there of the members of the party toward one another?

A. Everybody seemed to be having a good time.

Q. Was your father on friendly terms with Devlin?

A. Yes.

Q. On friendly terms with your mother?

A. Yes.

Q. Did anything occur at that time to mar the happiness of the occasion?

A. Nothing.

Q. Do you know of the chicken house or outhouse in the rear of your premises?

A. Yes.

Q. It has been there as long as you can remember?

A. Yes.

Q. You have occasion to go in it or about it?

A. Yes.

Q. Often?

A. Quite often.

Q. What as to the year 1916, were you in and about it often at that time?

A. I don't remember about the time.

Q. Did you ever see a couch or a chair in there?

A. No, sir, never.

Q. Or any other article of furniture?

A. No, sir, no kind of furniture?

COURT: Where is your garage, on your father's lot?

WITNESS: No, that is in the rear of his father's house.

COURT: It is not in the rear of where you live?

WITNESS: No.

COURT: Not on the same lot as the chicken house?

WITNESS: No.

Q. Have chickens and ducks ever been kept in that house, to your knowledge?

A. Yes.

Q. When?

A. At different times.

COURT: When was the last time?

WITNESS: The last time was in 1918.

COURT: What time?

WITNESS: I don't remember what time. I think in the spring.

Q. Had they been kept every year before that?
A. No, just at different times.
Q. You kept ducks as well as chickens?
A. Yes.
Q. And when you kept ducks, did they also keep chickens?
A. I don't think so.
Q. Do you know when the ducks were kept?
A. No, I don't remember.
Q. Do you know whether or not anyone ever attended to putting the ducks up at night in this outhouse or chicken house?
A. Yes, sir.
Q. Do you know whether it was necessary to do so, and if so, why?
A. Yes, it was necessary to lock them in the yard, to close the gate.
Q. When they were locked in the yard, were they permitted to run at large?
A. Yes.
Q. Do you know who put the ducks up at night, if anyone?
A. Sometimes my mother and sometimes I did.
Q. Your father and mother occupied the same bedroom?
A. Yes.
Q. Do you know whether they ceased occupying the same bedroom, and if so, when?
A. I don't know when.
Q. Can you say whether or not they occupied the

same bedroom after May, 1918?

A. Yes.

Q. And when?

A. During the summer, June, July and August.

Q. How do you know that?

A. I have seen them there.

Q. Upon what occasion?

A. I have seen them dress and undress in the same room, and seen them in the bed together.

Q. How could you see them in there?

A. On going to my room, between my room and the bathroom I could see them through the door.

Q. A light there?

A. A light burning in the hall.

Q. Did they leave their bedroom door open?

A. Yes.

Q. Yours open also?

A. Yes.

Q. Your room is across the hall from theirs?

A. Mine was down what we call the back hall. I couldn't look in their room from my room.

Q. You slept with your little brother?

A. Yes.

CROSS EXAMINATION BY MR. WILSON:

Q. You remember that part of the furniture of your house was a willow sofa?

A. No, sir.

Q. A sofa made of woven rattan, something of that kind?

A. I think we have.
Q. Do you know where it is now?
Q. Where?
A. In our front room.
Q. In the front room?
A. In the sitting room.
Q. Downstairs you mean?
A. Yes.

COURT: When did you see it last?

WITNESS: It is there now.

COURT: When did you see it last?

WITNESS: The last time I was in the house.

COURT: When was that?

WITNESS: This morning.

COURT: Is that the only rattan or cane or wicker couch or sofa that you had in your house?

WITNESS: That is the only one.

COURT: That is the one you refer to in answer to Mr. Wilson's question?

WITNESS: Yes, that is the one.

Q. Do you remember another one that had a broken end?

A. I do not.
Q. The end frayed out?
A. No, sir.
Q. You never remember seeing but one in the house?
A. That is the only one I ever remember seeing.
Q. The one you do remember seeing is still there?
A. Yes.
Q. And has been there a good many years?
A. Yes, sir.
Q. This outhouse was used to keep ducks and chickens, you say, from time to time?
A. Yes.
Q. It was also used as a playhouse for the smaller children?
A. I think it was, yes, sir.
Q. And it was used for that purpose in 1916?
A. I don't remember?
Q. You don't remember that it wasn't?
A. No, sir.
Q. Or whether it was or not, you don't remember?
A. I don't remember just what time.
Q. And when they used it as a playhouse was there nothing for the children to sit on?
A. No, sir.
Q. Did that chicken house have a dirt floor?
A. Yes, dirt floor.
Q. No wooden floor?
A. No, sir, no wooden floor.
Q. And, when they used it as a playhouse, you say there was nothing for them to sit down on?
A. No, sir.
Q. You are quite sure about that, are you?
A. Quite sure.

Q. Did it have any boxes or barrels or anything of that kind in there to sit on?

A. I don't remember seeing any boxes or barrels there.

Q. How frequently were you in the habit of going there?

A. About once a week.

Q. What would you go there once a week for? Would you go there to put the chickens and ducks up?

A. Yes.

Q. When you had no ducks and chickens, how often were you in the habit of going there?

A. About once a week or once in two weeks, maybe.

Q. What occasion had you to go there once a week or once in two weeks—

A. To clean up the yard.

Q. When there were no ducks or chickens there?

A. I used to clean the yard up.

Q. You wouldn't clean the yard up by cleaning inside of that outhouse, would you?

A. I would go in there; maybe there would be a rake in there or something I would want to use, and I would go in there for that.

Q. That is a mere guess on your part?

A. Yes.

Q. Were the tools kept in there?

A. Yes.

Q. The tools for cleaning the yard?

A. Yes.

Q. And were you in the habit of cleaning the yard up all the year round?

A. Yes.

Q. The winter time and fall time and summer time

and all time, is that right?

A. At different times, not steadily.

Q. Are you friendly to your father?

A. Yes.

Q. Have you ever tried to make a reconciliation between your mother and your father since this trouble began?

A. No, sir.

Q. How have you shown your friendliness to him?

A. I still speak to him and talk to him.

Q. Ever talk to him about his trouble?

A. Never.

COURT: Has he ever talked to you?

WITNESS: Never.

Q. Do you go in and out of the store as much as you ever did?

A. Yes.

Q. Are you associating with your father just as much as you did before this trouble arose?

A. Not as much, no, sir.

Q. Much less?

A. Yes.

Q. Why?

A. Because I don't feel quite as friendly toward him as I did.

Q. Why not?

A. Because of this charge that he has brought against my mother.

Q. You don't believe that charge is true?

A. I do not.

Q. And you feel unfriendly to him because you think he has brought this improper charge against your mother; that is it?

A. Yes.

Q. You feel very bitterly toward him, don't you?

A. Yes.

Q. And the first thing that you knew about this matter was when your mother and father were talking in the kitchen?

A. Yes.

Q. And that was in October, 1918, was it?

A. I think it was, yes, sir.

Q. And your father wanted you to leave the room?

A. Yes, sir.

Q. And he wanted you to leave the room because he wanted to talk with your mother privately?

A. Yes, sir.

Q. And you wouldn't go?

A. No, sir.

Q. Why wouldn't you go?

A. He didn't tell me that he wanted to talk to my mother privately at the time.

Q. He asked you to leave the room, didn't he?

A. Yes.

Q. And you refused?

A. Yes. I didn't actually refuse.

COURT: I thought you said he wanted to send you on an errand and you didn't go right away?

WITNESS: He wanted me to take the clothes to the washlady and I said all right, I would; he said, "Why don't you take them around; hurry up and get them over

there"; I just said, "There's plenty of time."

COURT: You wanted to stay and hear what the trouble was?

WITNESS: No, I had no idea there was any trouble.

COURT: Did you know that he wanted to have a private talk with your mother, and you wanted to remain and prevent him from having it?

WITNESS: No.

COURT: When he said he wanted to have a talk with your mother, what did he say?

WITNESS: He said, "Come on upstairs, I want to talk to you", and then I got ready to go out, but didn't go out right away.

COURT: You didn't know what he wanted to talk about at that time?

WITNESS: No.

Q. Did your mother go up to her room?
A. Yes.
Q. And could you hear them talking up there?
A. I could.
Q. You mean when you were downstairs, you could hear them; were they talking loud?
A. Yes.
Q. Talking in a loud voice?

A. Yes.

Q. And then I think you said you heard your mother scream?

A. Yes.

Q. And you went upstairs?

A. Yes.

Q. Was that with a view of protecting her if necessary?

A. Yes.

Q. Or did you go up to find out what they were talking about?

A. Both.

Q. When you got up there you found the door into the hall open?

A. Yes.

Q. And they were in the room and you stood outside the door?

A. Yes.

Q. And they were quarrelling?

A. They had been.

Q. They were quarrelling while you were there; you told us so?

A. Yes.

Q. And didn't you hear what they were quarrelling about?

A. No, sir.

Q. Didn't you hear your father charge your mother with having been intimate with Devlin while you stood there in the hall?

A. No, sir.

Q. Didn't you hear him charge her with having been intimate with Devlin in this very outhouse; didn't you hear him make that charge against her?

A. No, sir.

Q. How do you explain the fact that if you went up there because you wanted to know what was going on, and prompted with curiosity, that you cannot remember anything you heard them say in the room?

A. I came directly down.

COURT: How long did you remain there after you went up?

WITNESS: A few seconds, less than that.

COURT: Why did you leave so abruptly; why did you go down so soon?

WITNESS: It was none of my business what was going on, so I got out.

COURT: What did you learn was going on so you concluded it was none of your business?

WITNESS: I didn't learn anything at that time.

Q. You had made it your business to the extent of going upstairs to see what your mother was screaming about?

A. Yes.

Q. You had gone there to protect her if necessary?

A. Yes.

Q. You had gone up also to find out what they were quarrelling about, I think you said a moment ago?

A. Yes.

Q. You stayed there a second and turned around and

went downstairs?

A. Yes.

Q. Is that right?

A. Yes.

Q. Your curiosity was then merely sufficient to get you upstairs and keep you there a second, is that it?

A. Yes.

Q. And you went downstairs and you heard no more screaming?

A. No.

Q. How long were they up there together?

A. I don't know.

Q. About how long?

A. I went out of the house; I don't know how long they stayed there.

Q. Did you go immediately out of the house when you went downstairs?

A. Yes.

COURT: Anybody else at home at that time except you and your mother and father?

WITNESS: Yes.

Q. The next day your mother told you what they quarrelled about?

A. Yes.

Q. Your father never did?

A. No, sir.

Q. He never took you into his confidence about that matter?

A. No.

Q. He never tried to poison your mind in any way

about your mother's conduct?

A. No.

Q. You never heard your father's version of this trouble until you heard him testify in this case?

A. No, sir.

Q. And notwithstanding that you never went to him and asked him, did you?

A. No, sir.

Q. And during all these months you felt bitterly toward your father because he made this charge against your mother, and you never even went to your father to find out what his side of the story was?

A. No, sir.

COURT: When were you eighteen?

WITNESS: Last December

Q. You will be nineteen next month?

A. Yes.

Q. After this occasion when they were quarrelling upstairs and after your mother told you what they were quarrelling about, you did hear your father quarrel with your mother later, didn't you?

A. Yes.

Q. On more than one occasion?

A. Yes, two or three times.

Q. At the house?

A. Yes, sir.

Q. And you heard your father charge your mother with having been intimate with Mr. Devlin?

A. Yes.

Q. And your mother made a denial?

A. Yes, sir.

Q. Were you present when these conversations occurred?

A. I was in the house.

Q. Out of their presence?

A. I was out of their presence.

Q. Where did this conversation occur between your mother and father?

A. In the dining-room and kitchen.

Q. Where were you when you heard it?

A. In the sitting-room or dining room.

Q. You were never in the same room with them?

A. No, sir.

COURT: Did they know you were in the sitting-room? When they were talking in the dining room, did they know you were in the sitting-room?

WITNESS: I presume so.

Q. Your mother and your father and your aunts and uncles and cousins frequently went on parties with the Devlins that you didn't attend, didn't they, during the last eight or ten years?

A. I think so, I don't know.

Q. And you say there was a particular occasion when they went down to Bigget's?

A. Yes.

Q. How do you fix the time of that?

A. I should say in June.

Q. Why do you select June for it?

A. I know it was in the summer.

Q. July is in the summer, isn't it?

A. Yes.

Q. Is May in the summer? According to your calendar?

A. Part of it.

Q. Part of May?

A. Yes.

Q. How do you fix this as being June, if May is a part of the summer?

A. I don't know for sure; I said I thought it was June—June or July.

Q. Why do you fix it in June or July any more than in May?

A. Because it was very warm in the summer months, I know it was in the summer.

Q. Don't you have warm weather in May down in Matawan?

A. Yes.

Q. Is there any better reason you can give us for fixing it in June?

A. No, sir.

Q. The only reason why you fix it in June is because you think it was warm weather?

A. Yes, that is right.

Q. Is that the only reason you have for fixing it?

A. Yes.

Q. Why didn't you fix it in July, then, it is just as warm in July as it is in June down there?

A. I think I said June or July.

Q. You first said June.

A. I said June or July.

COURT: He said June first; he said June or July just now.

Q. Did you go to Florida with your mother?
A. Yes.
Q. How long did you stay there?
A. From the middle of December until the latter part of March.
Q. Who paid your expenses while you were there?
A. Father.
Q. Where are you living now?
A. In Matawan.
Q. Where in Matawan?
A. With my mother.
Q. Where is she living?
A. In the same house we have always lived in.
Q. Where is your father living?
A. He lives in what is called the old homestead.
Q. Who pays your expenses now?
A. My mother does.
Q. From money that your father gives her?
A. Yes.
Q. Who buys your clothing?
A. My father has bought some of my clothing.
Q. Did your father get you employment recently in New York?
A. Yes.
Q. And where?
A. First National Bank.
Q. Did you leave that employment?
A. Yes.
Q. After consultation with him or on your own responsibility?
A. After consultation with him.
Q. Did you tell him you were going to leave?
A. I did.

Q. What reason did you give?

A. It was impossible for me to get there on time in the morning.

Q. You couldn't get a train early enough to take you there?

A. Yes.

Q. How early did you have to be there?

A. I could get a train early enough to get me there.

Q. How early did you have to get to the bank?

A. Eight o'clock—seven-thirty, rather.

Q. And that was too hard work?

A. Yes.

Q. Wasn't the real reason why you stopped this employment, that your father had sent you to, the fact that your mother told you not to work?

A. It was not.

Q. Did you talk with your mother about leaving?

A. I told her I was going to leave.

Q. And she approved it, didn't she?

A. She never said so.

Q. Did she approve it?

A. No, she didn't say so, but I suppose she approved it.

Q. Your father didn't approve it, did he?

A. No, sir.

Q. Did your mother and father for many years according to your notion occupy the same room?

A. Yes.

Q. Did they ever stop occupying the same room?

A. I don't know.

Q. You don't know?

A. I do not, no, sir.

Q. As the matter lies in your mind no, they never

stopped occupying the same room, so far as you know?

A. That is it, that is true.

Q. There was no change in their habit of life in that respect?

A. Not so far as I know.

Q. You lived in the same house with them?

A. Yes.

Q. And had a room on the same floor?

A. Yes.

Q. You observed the same condition in the room your father and mother occupied—the same condition all the time down to the time your mother went to Florida?

A. Yes.

Q. No change as far as you are concerned?

A. No.

Q Do you know if your mother ever slept with your sister Elizabeth in her room?

A. I don't know.

Q. You were hoping that your mother in this divorce proceeding would get lots of money, were you not?

MR. APPLEGATE: We object; what difference does it make?

COURT: I will allow it; it may show interest on bias.

Q. That is what you hoped?

A. No, sir.

Q. In your mind, the main thing was for your mother to get plenty of alimony; that was the main thing, wasn't it?

A. No, sir.

Q. Didn't you ever have any such thought as that in

your mind?

A. No, sir.

Q. Didn't you talk that over with your mother? Didn't you give your mother that advice, to go ahead, and the main thing was to get plenty of money?

A. No, sir.

Q. And get alimony?

A. I do not.

Q. Are you sure about that?

A. Absolutely sure.

Q. You cannot be mistaken, can you?

A. No, sir.

Q. Let me show you this letter and ask you in whose handwriting it is? Is that your handwriting?

A. Yes.

Q. Was that letter written by you from Florida to your mother?

A. Yes.

Q. On January 5, 1919?

A. Yes.

Q. You say it was not your hope that your mother should get lots of alimony, and that is the main thing? Let me call your attention to this language of this letter and ask you if you are still willing to make that statement: "I am glad to hear that Mr. Fury is helping you and that everybody it for you. I also hope, of course, that you will make out alright with the case and get lots of alimony; that is the main thing." You wrote that, didn't you?

A. Yes, sir.

Q. And you did tell her that alimony was the main thing, didn't you, in that letter?

A. Yes, sir.

Q. And you told her that you hoped she would get lots of alimony, didn't you?

A. Yes.

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

(Marked Exhibit P 10 for identification.)

COURT: There is no cross petition in this case?

MR. APPLEGATE: No, sir, and no application was ever made for alimony.

COURT: You agreed on that.

Q. The real thought that was in your mind about this whole matter was that—not so much that your mother and father should be reconciled, as that your father should be made to pay; that was the thought that was in your mind?

A. No, sir.

RE-DIRECT EXAMINATION BY MR. APPLEGATE:

Q. What was the earliest train you would have to take in order to reach your place of business on time, from Matawan?

A. 6.10.

Q. Necessitating your getting up in the morning at what time?

A. Five o'clock.

Q. That is, to have breakfast at home, you mean?

A. Yes.

Q. How long had you continued that practice before you stopped work?

A. A little less than a month.

Q. And can you say whether or not that practice had any effect upon you physically?

A. I couldn't get home until 10.30 at night, because I had to work overtime, and of course I was very tired.

COURT: How long had you been working at the bank before you quit?

WITNESS: A little less than a month

Q. Did your hours continue from 7.30 until about 10.30 at night—from 6.10 in the morning until you arrived home at night, until 10.30, during all that time?

A. Yes.

Q. At the time you took this trip, as you say, to Bigget's Park, can you say whether or not school had closed?

A. I don't think it had; it had not.

Q. Can you say whether or not the time was near to the time of commencement?

A. Yes.

Q. And how near?

A. Very near, about that week.

Q. What time was the commencement held at the school in that year?

A. 18th or 19th of June.

Q. How do you fix it; why do you say it was within

a week of the commencement time?

COURT: Were you one of the graduates at the school that year?

WITNESS: No, sir

Q. What is the relation between commencement and the Bigget's Park trip that fixes in your mind that fact?

MR. WILSON: He hasn't said that anything fixed it in his mind.

COURT: That portion of your question should go out; what is there between the commencement and the Bigget's Park trip, if there is anything, is proper.

A. I cannot remember anything.

Q. Would you say that this trip to Bigget's Park took place in June?

A. I think so.

Q. You also said within a week of commencement; was it a week before or week after?

A. A week before.

COURT: He said it was before school closed, about that week. You think it was a week before commencement?

WITNESS: Yes.

Q. This letter that was shown you, in which you spoke of alimony, how did you come to write that?

A. I don't know; I had forgotten I ever wrote it.

RE-CROSS EXAMINATION BY MR. WILSON:

Q. When you were doing business in New York you say you always took the 6.10 train?

A. I took the 6.10.

Q. Or the 6.50?

A. 6.10 on Monday morning; other mornings 6.56.

Q. The rest of the year you took the 6.56 and sometimes 7.03?

A. No, sir, 6.56 every morning.

Q. You took that every morning except one morning in the week?

A. Yes, and morning after holidays and Monday morning.

Q. So that you were mistaken in having said you generally took the 6.10 train?

A. Yes, I was.

Q. You spoke of returning at night at half past ten; you often got home as early as half past five?

A. The first two or three days I got home early.

COURT: And after that?

WITNESS: After that it was at least 7.30 every night.

COURT: And the night it wasn't 7.30, what hour was it?

WITNESS: 10.30, the nine o'clock train from New York. I worked up until nine o'clock and got the nine o'clock train.

Q. When you worked until that late train, you were

paid for overtime at the bank?

A. Paid enough for supper.

Q. Were you paid something in addition to that, for overtime?

A. No, sir.

Q. Usually what time would your banking day end; what time did you quit the bank?

A. Six--thirty or nine o'clock.

Q. Six-thirty to get the 7.30 train?

A. One night to get the 6:30 train and one night to get the nine o'clock train.

Q. And when you started on this business venture your father gave you money to buy your commutation ticket for two months?

A. Yes.

Q. And you didn't even exhaust it for one month?

A. No, not for the full month.

Q. Going back to this trip to Bigget's, you say you went down to Bigget's before commencement?

A. I think it was, yes, sir.

Q. How long before commencement do you think it was, a week or two weeks?

A. During the week of commencement.

Q. Then it wouldn't be before commencement; you said a moment ago it was before commencement; do you wish to say in the week of commencement?

A. Just about a week before commencement, during commencement week.

Q. You mean by commencement then, commencement day?

A. Yes.

Q. Not commencement week; you think it was about a week before commencement day?

A. Somewhere around that time.

Q. Might have been two weeks?

A. It might have been more than a week and might have been two weeks.

Q. How do you associate it at all with commencement; what relation has commencement in your mind with that trip?

A. That I was a Junior.

Q. What year do you refer to?

A. 1918?

Q. Were you a Junior in the High School that year?

A. Yes. Naturally you have different things to do to help out the graduating class.

Q. But this trip to Bigget's hadn't anything to do with the graduating class, had it?

A. No, sir.

COURT: Why do you tie up the commencement in any way with the trip to Bigget's?

WITNESS: Because as near as I can remember we were preparing for commencement exercises at that time.

Q. You were not preparing for the commencement when you went to Bigget's?

COURT: That is what he said.

Q. What preparations were you making when you went to Bigget's?

A. I don't mean that.

Q. You don't know?

A. I don't mean that.

Q. What did you mean?
A. I mean that is the reason I fixed that trip at that time, because as near as I can remember we were preparing for the graduating exercises.

COURT: That about the time of the trip you were preparing for the graduating exercises?

WITNESS: Yes

Q. The trip had nothing to do with the preparation?
A. No.

JULIA WILLIAMS, sworn for defendant.

DIRECT EXAMINATION BY MR. LANE:

Q. Where do you live?
A. Matawan.
Q. How long have you lived in Matawan?
A. Ever since I was a small girl, all my life.
Q. You know Mr. and Mrs. A. J. Cartan?
A. Yes.
Q. And do you know Mr. and Mrs. Devlin?
A. Yes.
Q. Did you have a conversation with Mr. A. J. Cartan with respect to this case?
A. I did, one day in his store.
Q. When was that?
A. Last fall.
Q. The fall of 1919?

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A. Yes.

Q. And where?

A. In his store.

Q. Tell us what you said and what he said to you. Before that had you worked for Mrs. Cartan?

A. Yes, sir, a long while.

Q. When did you work for her?

A. I have been there off and on for ten years at different times, and also a kind of home; when I wasn't working there I would run in, as if it was home, when I worked for someone else.

Q. How old are you?

A. Sixty-five this fall

Q. Tell us about this conversation.

A. Mr. Cartan was saying that he was in trouble; I said, "It is too bad; I am sorry." I said, "Can't you compromise the thing, and look it over?" He said, no, he didn't want to, he couldn't. I said, "It is too bad, but I don't believe anything of the occurrence is true, because I never saw anything in the world but a perfect lady of Mrs. Cartan, and also Mr. Cartan, during my business and doing work there, all my life while I was there; I have been there late and early day and night.

Q. What did Mr. Cartan say to you; did he ask you any questions?

A. He said his wife admitted the adultery she was in; I said, "I don't believe that"; I said "I couldn't believe such a thing as that; I don't think she is that kind of a lady; she was always a perfect lady." He said, "You don't know all things." I said, "That might be, too, but I don't believe it."

Q. Did he ask you anything about what you had seen, if you had seen anything?

A. Yes; I told him I never saw anything.

Q. What did he say to you?

A. He said, "Didn't you see nothing?" I said, "Nothing in my life but a perfect lady."

Q. Did he say anything about your seeing Mr. Devlin there?

A. No, sir, not a word.

Q. Did he ask you any questions as to your seeing Devlin at the house?

A. No, he didn't ask any questions about Devlin whatever.

Q. Did he ask you any questions with respect to your seeing Mr. Devlin in the back yard?

A. No, sir, not a word.

Q. What else did he say to you?

A. He didn't say much; I was buying rubbers and he didn't say much of anything; that is all he said.

Q. Did he talk to you about the couch in the chicken house?

A. There was never a couch in the world there.

MR. WILSON: I move to strike that out.

COURT: Strike it out. Did Mr. Cartan ever say anything to you about a couch in the chicken house?

WITNESS: Never in the world.

Q. When you were talking with Mr. Cartan was anything said about the couch?

A. No, sir.

Q. Had you been in the chicken house; do you know where it is?

A. I was; I can go there with my eyes folded.

Q. Have you been in that chicken house?

A. Yes, lots of times.

Q. During what period of years?

A. About ten years ago.

Q. Did you ever know of any couch being in the chicken house?

A. No, sir, there was none there in the world, not even to a box hardly; a chicken perch was there, to roost on.

Cross Examination by Mr. Wilson:

Q. How long did you ever work for Mrs. Cartan in any steady way?

A. For months at a time I worked there.

Q. When was the last time you worked there months?

A. Eight years ago; maybe nine years ago, but I worked there lots of times and been there.

Q. You haven't worked there for a period of months at a time since eight or nine years ago?

A. I have in a way.

Q. What is the longest period you ever worked there in the last five years?

A. I have worked there, as I said, months, and two or three weeks, and sometimes day's work.

Q. What is the longest time you worked there continuously in the last five years?

A. About three weeks, something like that.

Q. That is the longest time you worked at any one time?

A. Yes.

Q. How often have you worked there in the last five years?

A. Several times.

Q. Two or three times?

A. Yes.

COURT: A year?

WITNESS: No, not by the year.

Q. You worked there two or three times in the last five years? And the longest period you ever worked during the last five years was three weeks?

A. Yes, I worked there for a month through.

COURT: In the last five years?

WITNESS: Yes.

COURT: What year?

WITNESS: I have a poor memory and forgettory, but I have been there; I have been past there.

COURT: You know when this trouble occurred between Mr. and Mrs. Cartan in 1918?

WITNESS: Yes.

COURT: You remember when she went South?

WITNESS: Yes.

COURT: Did you work for her at that time?

WITNESS: I wasn't working there then; I went there the day she went; but she had gone.

COURT: Did you work for her after that?

WITNESS: No.

COURT: How long did you stay there during that year; permanently there?

WITNESS: Yes.

COURT: How long did you stay there during that year?

WITNESS: I would go in and do day's work.

Q. Do you still say the longest time you ever worked at a stretch in the last five years was about three weeks?

A. About that.

Q. And that happened, two or three weeks that you worked there, two or three times in all, during the last five years?

A. Yes. I was taken sick and had to go home.

Q. And your present recollection is that you think you worked there two or three times in the last five years?

A. Yes.

Q. Did you work there in 1916?

A. I worked there eight years ago when my brother was sick.

COURT: Did you work there four years ago?

WITNESS: Yes, I worked there then.

COURT: You said eight years ago, in answer to Mr. Wilson's question. He didn't ask you anything about eight years. You worked there when?

WITNESS: Four years ago, we will say.

Q. You say "We will say"; don't say anything.

A. I say myself personally.

Q. Why is it that you are so willing to have "we say" that you worked there four years ago; do you remember anything about it?

A. Yes, sir, I remember.

Q. What time of the year was it when you worked there four years ago?

A. During the summer time and spring and sometime in the fall.

Q. Sometimes fall, and sometimes spring, and sometimes summer?

A. Yes.

Q. That was so every year?

A. Yes, more or less.

Q. You haven't any distinct recollection of the year 1916, have you.

A. In a way I have, and in a way I haven't; of course my memory is not so good as yours; you are younger and I am older.

Q. Your memory is better than mine because it is sixty--five years old. I want to know if you can tell us how you make sure that you worked for this woman in 1916.

COURT: She hasn't made sure of it.

WITNESS: I haven't made sure; I didn't tell you that. I said I have been often times inside of ten years night and day there.

Q. Do you say you are not sure that you worked there in 1916?

A. I don't say so, but I have been often there.

Q. Will you answer that?

A. I cannot do it; I don't want to tell a story.

Q. Your answer is you cannot be sure you worked there?

A. I said I went there off and on, more or less.

Q. I ask you again, can you be sure that you worked there in 1916? I understood you to say you couldn't be sure about that, you didn't want to tell a lie.

A. That is what I don't claim to do.

COURT: Can you be sure that you worked there?

A. I can be sure I worked there.

Q. What do you say; a moment ago you said you couldn't be sure?

A. I cannot be sure, I say, but I know I have been there lots of times working, but I never saw anything wrong in my life.

Q. When you were there at the house what did you do; what kind of work did you do?

A. I did housework.

RE-DIRECT EXAMINATION BY MR. LANE:

Q. Do you remember any particular year that you didn't work there for a whole year?

A. I do not. As I said, I am often in and out all the time; if I go down town I run in and see Mrs. Cartan and I sit there a while and go home; I might mop the kitchen up or sweep.

RE-CROSS EXAMINATION BY MR. WILSON:

Q. And Mr. Cartan was always good to you, wasn't he?

A. Yes, a perfect gentleman.

Q. And Mrs. Cartan was always good to you?

A. A perfect lady.

Q. And all the time you worked there in that house you never saw anything wrong beaween them?

A. Never in my life.

Q. You never saw her do an unladylike thing?

A. No.

Q. And you never saw him do an ungentlemanly thing?

A. No, sir, he was always a perfect gentleman.

DONALD A. MANSON, Jr., sworn for defendant.

DIRECT EXAMINATION BY MR. LANE:

Q. Where do you live?
A. Long Branch.
Q. What is your business?
A. Commercial photographer.
Q. And did you take six photographs which I show you?
A. That is all my work.
Q. And when were they taken?
A. Tuesday before Christmas, last year; I don"t know the exact date; I didn't put it down. About a week before Christmas in December last.
Q. The photograph which I show you, which has now been marked Exhibit D 2 for identification, is a photograph of what; taken from what point?
A. This is taken from the alley or street—I am not acquainted in Matawan; this house faces the main street, from what I heard in this room, and this view is taken from a street south of that, parallel with Main street.

MR. LANE: I offer that photograph in evidence.

(Marked Exhibit D 2, November 18, 1920.)

Q. The next photograph I show you, which I ask to have marked D 8, is a photograph of what, taken from what point?
A. It is a photograph, I would say, taken from the north side of Main street, looking south, southwest direction, pointing southwest towards this house.

Q. It is towards the Cartan house?
A. Yes.

MR. LANE: I offer that photograph in evidence.

(Marked Exhibit D 8, November 18, 1920.)

Q. The next photograph which I show you (D 9) is a photograph of what, taken from what point?
A. Looking southwest, at a point standing in the ground of the same property.
Q. And the house that appears on the righthand side of that photograph, the back end of it, the front of it shows in Exhibit D 8?
A. Yes.

MR. LANE: I offer that photograph in evidence.

(Marked Exhibit D 9, November 18, 1920.)

Q. Exhibit D 6 of November 17, is a photograph of what?
A. A lot of outbuildings on the rear of this property.
Q. A close-up view from the outbuildings in the yard of the rear of that property?
A. Yes.

MR. LANE: I offer that photograph in evidence.

(Marked Exhibit D 6.)

MR. WILSON: Has he said it?

MR. LANE: I said it, and he acquiesced in it.

MR. WILSON: I suggest it would be better for him to say it.

Q. What do you say?

A. That is a near-by or close-up view of the outbuildings on the rear of the property in question.

Q. The next photograph, marked D 3 for identification, is a view of what, from what point?

A. That was a picture taken from this street which I spoke of running parallel with Main street, looking in a northerly direction, showing the rear of this Cartan house and grounds and outbuildings in the foreground.

MR. LANE: I offer that photograph in evidence.

(Marked Exhibit D 3, November 18, 1920.)

MR. WILSON: There will be some undertaking to show that the conditions were substantially the same.

COURT: That will have to be done.

MR. WILSON: And until that is done, it seems to me they should not be received.

COURT: They are only admitted conditionally.

Q. The photograph which has been marked Exhibit D 5, which I show you, is a photograph of what, from what point?

A. A close-up view of the outbuildings on the rear of the property in question, taken from property on the westerly side.

Q. It shows the rear of the outbuildings?
A. It shows the side of them.

MR. LANE: I offer in evidence Exhibit D 5.

(Marked Exhibit D 5, November 18, 1920.)

Q. The next photograph I show you, marked D 10, is a view of what, from what point?
A. That is a view of the rear of this Cartan house and outbuildings, taken from this back street here, which runs parallel with Main street.
Q. Was that view taken from the back street?
A. Inside the grounds of this other property—west of this Cartan property.
Q. Was it taken closer to the house?
A. Yes, on someone else's property, the adjoining property.

MR. LANE: I offer that photograph in evidence.

(Marked Exhibit D 10, November 18, 1920.)

Q. In the taking of these photographs has there been touching up done?
A. No, sir, nothing has been done with them; they are just as they were taken.
Q. What were your instructions?
A. Mr. Lefferts went with me from his office down there and went in the yard and told me to take certain views.

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CROSS EXAMINATION BY MR. WILSON:

Q. He indicated where you were to put that camera?
A. No, he left that to myself.
Q. What did he indicate to you?
A. He told me to make a certain view this way and that way, and go on the other street back there and make a view of the rear of the buildings.
Q. He was with you when you took them?
A. Yes, when I took the two, and I had my head under the focus cloth, and he disappeared, and when I got through I went back to the office and he had gone; the stenographer didn't know where he was, and I didn't see him for three months.
Q. Who employed you to do the work?
A. Mr. Lefferts.
Q. And your place of business is where?
A. Long Branch.

MARY L. DEVLIN, sworn for defendants.

DIRECT EXAMINATION BY MR. LANE:

Q. You are the wife of Patrick J. Devlin?
A. Yes.
Q. And have been married to him for how long?
A. Twenty-eight years I think.
Q. And have always lived with him as husband and wife?
A. Yes.
Q. In Matawan?

A. Yes.

Q. You first became acquainted with A. J. Cartan and his wife when?

A. I have known Mr. Cartan all my life, but Mrs. A. J. about twenty-eight or twenty-nine years.

Q. Did you become friendly with her and with A. J.?

A. Yes.

Q. During the past fifteen years or for the fifteen years preceding October, 1918, what was the intimacy between you and the Cartans—between the Devlins and Cartans generally.

A. Well, I would say we were almost like brothers and sisters.

Q. What did you do; how did that evidence itself?

A. We travelled around together occasionally and we were in and out nearly every day in each other's homes.

Q. Go to dances together?

A. Yes.

Q. Did you have little private dances of your own?

A. No, not very many private dances of our own.

Q. Have card parties?

A. Yes, other people with us mostly.

Q. What others would be in those card parties?

A. I don't think we ever had any card club, only a Euchre Club, maybe fifteen or sixteen years ago, and I think Miss Midge Foley, and Miss Kate Foley and Mr. and Mrs. Van Brunt—I cannot recall just who else.

Q. Did you have any card parties more recently than fifteen years ago?

A. Well, we played Bridge occasionally.

Q. With others than the Cartans; that is, other friends outside of the immediate families?

A. Yes.

Q. Who?

A. We played Bridge with Mr. and Mrs. Neidlinger and Mr. and Mrs. Worthley; we played that one night.

Q. These affairs that you used to go to, who were there beside the Cartans and Devlins?

A. You mean at the road houses?

Q. Yes.

A. Different people lots of times.

Q. Can you recollect the names of any who have been on these parties beside the Cartans and Devlins?

A. Yes, Mr. and Mrs. Volker and the Van Brunts.

Q. Anyone else?

A. We went out with lots of different people, but I cannot think just now.

Q. I would like to know the names of some different people that you went out with, either to dances or card parties, within the last six or seven years.

A. Mr. and Mrs. Close.

Q. Anyone else?

A. I cannot think just now; Mr. and Mrs. Shock, Grace Carman; that is all I think of just now.

Q. Did you go to theatre parties also in New York?

A. Occasionally.

Q. Were anybody on these theatre parties except the Cartans and Devlins?

A. Yes.

Q. Who?

A. Mr. and Mrs. Van Brunt went with us.

Q. Who else; do you know anybody else who have been on these theatre parties?

A. I cannot think of anyone else now.

Q. Did you observe at any of those theatre parties or dances or dinner parties, or on any other occasions when

you and Mr. Devlin and Mr. Cartan and Mrs. Cartan were together, any intimacy on the part of your husband toward Mrs. Cartan?

A. Never.

Q. Did you ever observe that she or he so arranged it at each one of those theatre parties or most of them, that he or she could sit together?

A. That wasn't so.

Q. Why do you say it wasn't so; what was the fact?

A. Because I know it; I know it to be a fact.

Q. What was the fact; did they sit together?

A. Sometimes they would sit near each other. Many times Mr. Cartan has placed us; he would stand in the aisle and let the crowd go through, and he would sit on the outside. I remember the last time we were out with him he did that very same thing.

Q. When was that, when you had gone out on a theatre party?

A. Yes.

Q. When was that?

A. I don't know whether that was the latter part of May, 1918, or not, but we went to Perth Amboy two nights in succession, and both nights he called me up and invited me to go to Perth Amboy, to the theatre, and I told him that Mr. Devlin had a very bad cold and I didn't know whether he would be able to go or not, and I suggested that he stop in next door and see if he were able to go; which he did, and we went to Perth Amboy, and I remember that he stood in the aisle, Johnson was with us, and I passed through, Mr. Devlin passed through, then Mrs. Cartan and Johnson, and Mr. Cartan on the outside the aisle.

Q. When do you fix that party?

A. Sometime in May, 1918. Mr. Devlin sat next to me.

Q. Were there any other of those theatre parties which you recollect that he himself did the seating?

A. Yes, he very often seated us. I don't know just how we were seated; I wasn't looking for those things.

Q. Did you observe upon any of those theatre parties that your husband and Mrs. Cartan was so especially engrossed in each other's conversation that they didn't pay any attention to anybody else?

A. It wasn't so.

Q. You remember these dances; did Mr. Devlin and Mrs. A. J. Cartan dance together more than any one else?

A. No.

Q. So as to be noticeable to everybody?

A. No, when Mr. Devlin danced with Mrs. Cartan I always danced with Mr. A. J. Cartan.

Q. If Devlin danced with Mrs. Cartan you danced with A. J. Cartan?

A. Yes; many times we didn't dance at all.

Q. At these dinners at road houses and elsewhere, was it so arranged each time or almost every time, that Devlin should sit alongside of Mrs. Cartan?

A. I never noticed that he did sit alongside of her any other place we went.

Q. Do you remember any occasion when you interrupted a conversation between Mrs. Cartan and Mr. Devlin and said, "I am here", or words to that effect?

A. I don't remember it ever happening.

COURT: At the Coleman House?

WITNESS: I don't remember it.

Q. Did that ever happen to your knowledge?

A. Never to my knowledge.

Q. What do you say with respect to your use of the words, "I am here", or that expression?

A. That is a common expression of mine; I very often say it.

COURT: What do you mean by that?

WITNESS: Often of an evening or afternoon, if we are at home and reading, probably we will be reading for an hour or half an hour, and we haven't been carrying on a conversation, and I very often say, "Well, I am here", just joking.

Q. It may be possible, then, that on some occasion when you have been out you have used that expression?

MR. WILSON: Objected to.

COURT: Objection sustained.

Q. Was anything said up until October 1, 1918, to your knowledge, as far as you know, with respect to any undue intimacy between Mrs. Cartan and your husband?

A. Never.

COURT: Before you leave the general incident and conduct; go back to the question of swimming lessons; was she present?

MR. LANE: She wasn't there. She was out on the street.

Q. Do you recollect the occasion when you did go to some place and Mrs. Cartan and your husband went into

a swimming pool?

A. I do. I never went into the water much.

Q. You have no specific recollection of that particular occasion?

A. No.

Q. Did you used to have automobile parties?

A. Yes.

Q. Go out in the automobile together?

A. Yes.

Q. How would you go?

A. I went around really more with Mrs. Bert Cartan and Mrs. Ren Cartan than I did with Mrs. A. J. She had smaller children and she very often, when we asked her to go, never would give a decided answer whether she could go or not, and very often she was left out of those parties; sometimes we wouldn't see Mrs. A. J. for two or three months; then again in a week we would be out together a couple of times.

Q. Did you on occasions go out in the automobile together?

A. Yes.

Q. Who would be on those parties beside you and Mrs. Cartan?

A. Young Johnson, if we went out in A. J.'s car; we usually went in their car because we never had anything but a Ford for the last few years, and of course we never invited people to go out riding in the Ford with us; we used it for business purposes and running around town, and Mr. A. J. said, "Our car is at your disposal and we would be glad to take you", but I never made up any parties; they always came after us.

Q. How would you be seated if you went in the automobile; was there a different arrangement or usually the

same arrangement of seating in the car?

A. Oh, no; in all the crowds mostly I was the older of the crowd, and I was always considered cold, and I would sit in the center; that was a kind of a joke with the crowd.

Q. You sat in the back seat?

A. I was old and I was put in the center to keep warm.

Q. Who were on each side of you?

A. If I were in the crowd in the car with Mrs. A. J. Cartan, I would be mostly in the center; once in a while it didn't happen, but most of the time I was in the center, with Mr. Devlin on the one side and Mrs. A. J. on the other; and the same way with the other ladies; if we were out with Mrs. Bert Cartan, it would be the same.

COURT: Mr. Cartan sat alongside the driver?

WITNESS: Usually, yes.

COURT: His son did the driving?

WITNESS: Yes.

Q. You remember on any of those automobile trips, did you observe any intimacy between Mr. Devlin and Mrs. A. J.?

A. No.

Q. Have you any recollection of any particular party at which you were seated in the back set with Mrs. A. J., with A. J. ahead of you?

A. No.

Q. Or rather with Ren Cartan ahead?

A. No.

Q. And Devlin in the front seat, and Devlin turning around; have you any recollection of that incident?

A. No.

Q. You heard it testified to?

A. No, I should say not.

Q. When was the last time, to your recollection, that you went out in the automobile with the Cartans?

A. June 18, 1918.

Q. And what happened?

A. How I remember the day and date, I had a little friend who graduated from the Grammar Department of the Public School, and I brought her down a little present; she was very grateful for it, and as we came out of the building her mother called a young man and introduced him as her brother-in-law, and the young man was E. I. Brown, from Asbury Park; he was a stepbrother to James E. Voorhees, and as we stood there—I am sort of critical, and this fellow had a cross eye, and I remember comparing the two men.

COURT: What two men?

WITNESS: James Voorhees and the stepbrother, and it passed through my mind about what a better looking man James Voorhees was than the stepbrother; then that afternoon I walked downtown after the exercises, and Mrs. A. J. Cartan was going to Perth Amboy; I dropped in there, and she and Edna were going to Perth Amboy to buy a hat, and I went with her, and we were not over there very long, an hour or so, or hour and a half, and came home, and about half past seven, I presume, they came up to our home,—Mr. A. J., Johnson, Mrs. A. J.,

and we went to Sea Girt.

COURT: Bigget's?

WITNESS: Bigget's, and while we were eating, I saw this young Brown and his wife in the rear of the dining-room, and I drew the Cartan's attention to him; afterwards Mr. Cartan and I were dancing, and the music stopped right at the Brown table, and as we stood there waiting for the music to start up again, I turned and said, "How do you do", to Mrs. Brown; Mrs. Brown was with Mr. Brown in the afternoon at the school, so she gave me the icy stare. I was dressed differently, and I considered it quite a joke, so I went over and introduced myself, I said, "I am Mrs. Devlin of Matawan; I was introduced to you this afternoon"; that is how I remember exactly the date.

Q. Was that the last time that you were out on automobile parties?

A. I think so.

Q. After that were you out at any dances or theatre parties that you recall?

A. Not with A. J. and his wife.

Q. Were you out with Ren Cartan after that?

A. Yes.

Q. And his wife?

A. Yes.

Q. And Mrs. Bert Cartan?

A. Yes.

Q. Do you remember any particular instance of being out with them?

A. Yes, quite a number of times.

Q. What doing?

A. The Fourth of July we had a parade in Matawan, and after the parade Mr. Ren Cartan came to me and asked me if Mr. Devlin and I would join him and his wife to Asbury Park, which we did; we left home about three or four in the afternoon and went down to Asbury Park.

Q. On one of those parties?

A. Yes, and I remember distinctly he wanted us to name the place where we would like to go; I said to Mr. Devlin, "This is his party, let him name the place", quietly; which he did, after a long time; finally we went to Price's and had our dinner.

Q. Do you remember any other instance of being out?

A. During the month of August, Ren Cartan and his wife—Ren called me up and asked me if I would go on a party with some ladies, join his wife to a party down the road, and on two different occasions in August that was, and Mrs. Ren Cartan had a big feed in the car, had a fireless cooker, and had the supper all arranged, which was unusual for her to do.

Q. Was there anything in the conduct of the Cartans—

A. No.

Q. Was there anything in the conduct of the Cartans between May, 1918, and October, 1918, which indicated that there was any trouble or any change in your relations?

A. Not a bit.

COURT: You mean by the "Cartans", A. J. and his wife?

MR. LANE: Any of them.

WITNESS: Mrs. Cartan spent Friday night at my home before she told me this tale, at our house, the Friday night before the October affair.

Q. Was there anything in A. J.'s conduct to indicate any change in your relations?

A. No.

Q. Do you recall any incident when you were out on one of these parties—I have forgotten the place, I think the Coleman House, on that night, the night you had been at the Coleman House, when Mrs. A. J. Cartan went up to Devlin and put his coat together at the neck, at the Bridgewater Inn, and fixed his coat collar?

A. I don't remember it; it might have happened.

Q. Have you ever seen her do that?

A. I cannot say that I did, but I would do it myself many times.

MR. WILSON: I move to strike that out.

COURT: Strike it out.

Q. You were first informed of this difficulty when?

A. October 1, 1918.

Q. Where?

A. I was home, in my own home, of course, and I had a telephone message from A. J.'s store telling me to come to Mrs. Ren Cartan's, and come at once; I had a boy sick with influenza and I didn't go at once; they sent for me about, I should say, three o'clock in the afternoon; I went down about half past four.

Q. Whom did you find there?

A. I went to the side door and knocked at the side

door, and nobody answered, and I walked in and I said, "Whoo, Whoo", no answer; I called, "Edna", no answer; I did that at least four or five times, and I walked to the stairs, through the little hall to the bottom of the stairs, and called "Edna" upstairs; no answer, and about that time she came from the kitchen, I presume, she came right toward me, and she said, "Mame"—

Q. Which Edna is this?

A. Big Edna, Mrs. Ren Cartan—she said, "Mame, I am your friend, and I think so much about you", and she said something about Ray, I said, "Ray, my son in France?" About that time I could see little Edna, Mrs. Bert Cartan, coming across the street, with Joe Cartan, Mr. Jim Carton's brother; she came in the house, the three of us were seated; when she said, "Ray", I said, "Ray; why, Edna, what is the matter; what is the matter?" About that time we were sitting, there were three chairs there, and she said, "Why, Mame, Pat is intimate with Doll"; I said, "What?" She said, "Pat is intimate with Doll." I said, "That is a lie." She said, "It is not a lie; it is the truth; he was twice seen—he was seen in the back yard, and he has been intimate with little Edna"; I said,—little Edna sat there and said, "Yes, Pat and I have had connection", and I said, "You mean to sit there and tell me that you and Pat have had connection?" She said, "Yes", and she looked me right in the eye, and I said, "What have you to say for yourself?" She said, "I was out for a good time."

Q. What else happened; what happened then?

A. Then big Edna said, "Now, Mame, aren't you jealous of Doll?" She said, "Weren't you jealous of Doll?" I said, "No, never." Then there was a commotion upstairs; then Mrs. Ren Cartan said, "That is Rens-

selaer"— her boy, sixteen or seventeen years of age; "I said, "I will consult Mr. Devlin; I will see Mr. Devlin about this." I walked to the dining-room and she followed me to the door and she said, "Mame, remember you have children"; I said, "I will attend to my own business."

Q. What next; did you go home then?

A. Yes, I went home.

Q. You had a talk with your husband?

A. Yes.

Q. What was the next you heard of it from the Cartans?

A. Well, I think the next—about a week after.

Q. Tell us what happened?

A. I went down to the store this morning and I went in the store and Mr. Ren was there.

Q. Which store?

A. The Cartan-Devlin store, and Ren Cartan was there and Mr. Devlin and I don't know, a couple of men in the store, and I said, "I came down to find out what was going on"; I wanted to get this thing from A. J. Cartan; Mr. Ren Cartan took me right by the arm and took me out the side door, and as we crossed the street, his wife met us in the middle of the street, and she said, "Mame, I thought you were angry at me", because I had met her on the street the morning after the Morgan explosion, and so then they took me in their house and they wanted to know if Pat had told me anything, and that he should tell me; let me see—

Q. What next happened? I want to get down to refresh your recollection about an incident when you were at the store with Ren and Mr. A. J.

A. That was later on.

COURT: Anything else that happened in the house that day?

WITNESS: Nothing of importance. I talked of the probability of the affair, and Ren said it was true, every bit of it, and this thing happened; I did talk of the loss of souls, as he said, for anyone who had been guilty of such a thing, of the loss of their soul, and I talked of the improbability of the affair, and he said, "Those things happen every day in the week", and he mentioned—

COURT: She should not mention names which affect innocent people who have no opportunity to meet the situation. If there are any names to be mentioned, I will permit the witness to write them down for the information of counsel, but I don't want them mentioned otherwise. Did you have any occasion to mention names?

WITNESS: No, I didn't want to.

COURT: Did Mr. Ren Cartan in that conversation mention certain names in illustration of what he said, when he said this happened every day?

WITNESS: Yes.

COURT: Don't mention them at this time. Do you want the name?

MR. WILSON: No, sir.

COURT: After he told you that, then what else was said?

WITNESS: I don't know how long—a week or so, maybe two weeks, Mr. Devlin came home and said that—

MR. WILSON: I object.

WITNESS: I went down to the store—

COURT: About a week after October first was this?

WITNESS: This was a couple of weeks, I think; the first time I went to the store was a week, down to the Cartan-Devlin store, and when I went in Mr. Ren Cartan said, "I thought you were going to telephone before you came down, I told Mr. Devlin to tell you to telephone when you were coming." I said, "Oh, I thought I would just come down, it didn't make any difference whether I telephoned or not, I am here." So he then went out and brought in Mr. A. J., and then Mr. A. J. went on to tell me?

Q. Tell us what was said; was Mr. Devlin there?

A. No, I was there alone.

Q. With A. J.?

A. Yes, and he said—Ren was there—he said, "Now, Mame, don't you think I am a good man?" I said, "Yes", and he said, "Haven't I always been very nice to you?" "Yes". "Don't you think I am a good man in my own home and to my children?" "Yes". He talked in that strain, and he went on to tell me about my husband and Mrs. A. J. being intimate, and I said to him, "Did you know the story about little Edna?" And he said, "Yes", and I said, "Well, if she was the right kind of a woman she wouldn't be asking my husband to dance; last month we were out together and she asked him to dance, with

one heel of her slipper off; if she was the right kind of a woman, she wouldn't ask my husband to dance with her", and we talked on in that strain. I think I must have been there about an hour, maybe.

Q. Was that the occasion that Ren left and came back, or was that another occasion?

A. No. Then he came home with me.

Q. Who did?

A. Ren; he came home with me, and Mr. Devlin was chairman of some Drive or something, and when I went home, Mrs. Lloyd was there, and he came in and looked the situation over; he didn't stay there long, he went right on out again.

COURT: Ren did?

WITNESS: Yes.

COURT: Did A. J. Cartan say anything more to you than you have told us in this conversation?

(No answer.)

Q. When was the next time you had any talk with him?

A. Mr. A. J. called me up one afternoon—I don't know just when that was—a week or two weeks; not very long after—and he wanted to know if I would come down to the store that evening—Mr. A. J.; he wanted to talk things over with me; I said, "Yes", but I suited myself about that; instead of going down in the evening, I went down at four o'clock, and I went in the store and I couldn't find him, so I came out and I looked around for

Ren, to see if I could find him; I think it was little Gene Cartan who was in front of the store, and I asked where his father was; he said he was in the store; I presume Mr. Cartan was upstairs, so Ren came in and they took me upstairs in the loft.

Q. Who was there then?

A. Mr. A. J. Cartan and Ren and myself, and Mr. Ren Cartan wanted to know if my husband had told me anything yet, and he said, "You don't believe in divorce, do you?" He said "Johnce wanted a separation"; I didn't make any reply. He said, "You don't believe in divorce, do you?" I said, "No."

MR. WILSON: Which one said that?

WITNESS: Ren, and then A. J. said to him, "Will I read these letters?" He said, "Yes, read them to her", so then the letters were read.

Q. Before the letters were read, did Ren leave?

A. Oh, yes; when he asked me if my husband had told me anything, I said, "No", then he said he would go to Pat and see if he couldn't get him up here; he started out of the back store—I don't know where he went—and then came back, and I really don't know what he did say, I don't remember when he came back.

Q. Then they read the letters?

A. Yes.

COURT: Who had the letters?

WITNESS: Mr. A. J., and he told me he would spend every dollar he had.

Q. Tell us what was said.

A. He said he would spend every dollar he had, and they told me that—

COURT: For what purpose, did he say?

WITNESS: He didn't say, and I didn't ask him; he spoke of the notoriety Mr. Devlin would get; I said, "The Cartans will come in for their share at the same time."

Q. Go ahead; what else was said?

A. I don't know as anything else was said.

Q. Did you have any talk with him on any other occasion about this case?

A. No; he said that he hadn't been well and that for the last six months he was all wrought up, that he wanted to take a vacation, but he said it was A. J. on one side, and P. J. on the other side, but he would stick to P. J. until Hell froze over.

Q. Who said that?

A. Ren Cartan.

Q. Did Ren say that in the presence of A. J. or when A. J. wasn't there?

A. No, he said that in the presence of his wife the first time I was in his house; the first time I was down at the store.

Q. And wasn't said at that time you were at the store?

A. No, this was said at the house the first time I went down to find out what was happening, from A. J.

MR. WILSON: What did he say?

WITNESS: He said he hadn't been very well and he wanted to take a vacation, and that with A. J. on one side and P. J. on the other, he was all wrought up, but he would stick to P. J. until Hell froze over.

Q. Have you had any further conversation with A. J. with respect to this case?

A. No, I told them that day—I said, "If you have a fight on with Mr. Devlin, why torture me?" And I said, "How are you in this; why do they want to bother you; if they have a fight on, let them fight it out." This was to Mr. Ren Cartan I said that.

Q. At that time, on October 1, 1918, who did constitute your family?

A. My son, twenty-one years of age, was home sick with influenza, getting ready to go in the service; my oldest son was in France, Ray, and Frank was home, he was eighteen; Henry, fifteen, and Margaret, thirteen.

Q. During the time of your married life do you remember any occasions when Mr. Devlin has been away from home at nights?

MR. WILSON: Objected to as being immaterial.

COURT: I don't see its particular materiality. He is not said to have been away all night with Mrs. Cartan at any time is he?

MR. WILSON: No, sir.

MR. LANE: There isn't any proof of it. This kind of a charge can only be met by general testimony.

COURT: Of course, if he were guilty of the offence charge, he could have committed it at the time mentioned, without being away all night. If they don't attempt to bring anything in on that end of it, there is no need of your going into it.

Q. Mrs. Devlin, do you remember an occasion which has been testified to, when Mr. Devlin after coming home and going out with his machine to put it away, was lost? Tell us about that.

A. I think it was about nine o'clock, I don't know positively, but we came in from the car—I don't know who was in the party that day at all, but I remember that Mr. Devlin didn't come right in, and I had gone out in the kitchen and I had a new pan, a Universal bread mixer; I had a Polish girl there, and I was showing her how to use that mixer, screwing it on the table; when he didn't come in right away, I think I called one of the boys, I don't know, and I said, "Run down to the garage and see if Pa is there", and they came back and said he wasn't, and then I went down to Mr. Ren Cartan, I think—I am pretty sure I did; I know I did—and he came up to the garage with me and we looked around there, and he said, oh, everything was all right, I need not worry about him; but I was worried, and just about that time, as we came out, Mr. Devlin came up the street; I wasn't on the porch, I was in the house, in the kitchen, all the time.

Q. How long a time was he away, do you know?

A. Fifteen or twenty minutes.

Q. Did you upon that occasion say to him, or on any other occasion say to him, that you can recall, "Why, where have you been; I have been sitting on the porch, you never went by me", or words to that effect?

A. No, sir, I never said that.

Q. Or words to that effect?

A. No, sir, I wasn't on the porch; I wasn't out of the kitchen.

Q. Do you know the location of the lane back of the Cartan house?

A. Yes.

Q. What has been called the lane leading to Broad street?

A. I know Broad street.

Q. Do you know whether there are any houses on the back of that—

A. Yes.

Q. Do you know whose houses?

A. Yes, the Carroll house, Flagg, Lila Waters, a colored woman, and Radl.

Q. Anyone live in those houses who worked for you on occasions?

A. Jessie Flagg occasionally, not very often, once in a while.

Q. What was your habit with respect to who would get the help for you, whether you would get it yourself or Mr. Devlin?

A. We both; while we were tied up, he would bring someone in.

COURT: After Mrs. Ren Cartan told you the story on October first did you have any intimation from your own observation or from what anyone else told you, that there was any intimacy between Mrs. Cartan and your husband?

WITNESS: No.

COURT: Or any impropriety of any kind?

WITNESS: No, sir.

Q. How old are you?
A. Fifty-two.

CROSS EXAMINATION BY MR. WILSON:

Q. Mrs. Devlin, you had no intimation, you say, that Mr. Devlin was paying Mrs. A. J. Cartan any special attention until Mrs. Ren Cartan made this accusation on the first of October?

A. That is right.

Q. You are very certain about that?

A. Positive.

Q. Hadn't you before that time upbraided your husband for being too familiar, too friendly with Mrs. Cartan?

A. Never.

Q. Do you remember an occasion sometime before October 1, 1918, when your husband was attending a banquet at the hotel there in the village—do you remember his attending a banquet on one occasion?

A. I remember his attending banquets, but not on any special occasion.

Q. You remember going there on one of those occasions and calling him out of the dining-room?

A. I never went for him in my life.

Q. Do you deny that you did?

A. I do, positively.

Q. Isn't it a fact that you called him out of the dining-room and told him that you had just learned, and told him where you learned, that he had in fact been intimate with A. J. Cartan's wife?

A. No, sir.

Q. And didn't you go down the very next day and recount that incident, with the details, to which I have directed your attention, to Ren Cartan and his wife?

A. Never.

Q. Didn't you tell them that you had called him out of that banquet room and charged him with that offence?

A. No, sir.

Q. You deny it, do you?

A. I do.

Q. You say you were never at the hotel to call him out for any purpose?

A. I never went to a hotel and called him out.

Q. Were you ever at the hotel when he was attending a banquet?

A. No.

Q. Never in your life?

A. Not that I remember.

Q. Is that as strong as you wish to put it? May you have been there without remembering it?

A. We may have been there to supper on Sunday evening.

Q. I am speaking of a public banquet.

A. No.

Q. You say you have never been there?

A. Not that I remember.

Q. That is as strong as you wish to put it?

A. As strong as I can put it and be truthful about it.

Q. You have fixed the last time yhen you went out

with A. J. Cartan and his wife as June 18, I think?

A. 1918, yes.

Q. What was there that happened on the eighteenth of June that impressed it on your mind?

COURT: Do you want that recited?

Q. You have told us about the graduation gift?

A. Yes.

Q. And about your comparison of the fellow that had a cross eye with the man that didn't have the cross eye?

A. Yes.

Q. And how you ultimately met them that night, just after you were dancing, and one of the ladies in their party gave you the cold stare?

A. Yes.

Q. I don't want to repeat all that, but I do ask you how you fix this whole thing as having been on the eighteenth of June?

A. I remember distinctly of buying this gift for the little girl; my children were in school at the same time; I know it to be the fact.

Q. Couldn't you have bought that on the fifteenth of June?

A. No, because I know positively it was June 18th.

Q. Couldn't you have seen a cross-eyed man on June 15th?

A. I told you that I compared the two men.

COURT: Have you verified the date since that time in any way, as to when the commencement was actually held, what day?

WITNESS: Well, yes.

COURT: What verification did you make of that?

WITNESS: I knew that I had bought that gift for Helen Voorhees the day she graduated, and I went up to ask Mrs. Voorhees the exact date that the exercises took place, and she told me that—she verified my date.

MR. WILSON: I don't think that should be received.

COURT: When did you call on her?

WITNESS: A long, long time ago.

COURT: How long ago?

WITNESS: Three of four months ago.

COURT: And it is on information that she gave you, coupled with your own recollection, that you fix the date?

WITNESS: No, I coupled it up to see when it was that A .J. had taken us out last; I wanted to know when was the last time that he had asked us to go out with him. I didn't think that would come up to day; I didn't know anything about that.

COURT: Whether this was the eighteenth or nineteenth or seventeenth, you are positive it was the day they had the exercises at the school?

WITNESS: Yes, June.

Q. You have no knowledge about when it was in June, except as you got it over the telephone from someone else?

A. I know it was in June.

Q. As to the date in June?

A. I am pretty sure it was June 18.

Q. Have you any knowledge as to the precise date except what someone told you over the telephone?

A. No.

Q. Where did this child graduate?

A. Public School in Matawan.

Q. Where had you bought this present?

A. I don't know.

Q. Why don't you know?

A. I didn't buy it; it was a gold piece I gave her.

Q. Did you just remember that it was a gold piece?

A. Yes, since you drew my attention to it.

Q. When you first told your story, you thought you bought her a present; indeed, you said you bought a present.

A. I gave her a nice gift.

Q. Now you don't think you bought her anything; it was a gold piece?

A. Yes.

Q. Do you recall what the size of the gold piece was?

A. No, I do not.

Q. Who planned the party on this date?

A. I am sure I don't know.

Q. How did you come to go?

A. A. J.'s wife came up there and invited us to go out; I don't know who asked us to go; they came up there in the car.

Q. You had no knowledge or intention of going until they came to the house?

A. Not that I remember.

Q. And A. J. Cartan and his wife came to your house and invited you two to go?

A. Yes, and Johnson.

Q. And invited you two to go?

A. Yes, he came up there and drove up; I don't know which one asked us; they came up there and we talked about going to Bigget's some night, the night we were in Perth Amboy.

Q. I asked you if they came up there without any previous arrangement and simply invited you to go that night?

A. To my knowledge, yes.

Q. Is that your recollection about it?

A. Yes.

Q. And where did you sit in the car?

A. In the center.

Q. After you got down to Bigget's, you remember distinctly about this cross-eyed man and the man who wasn't cross-eyed?

A. Yes.

Q. And the woman who gave you the cold stare?

A. Yes.

Q. You carried that in your mind from then until now without any faltering of your memory?

A. I haven't been thinking about it.

Q. You hadn't thought about it until you were ready to give testimony in this case?

A. No.

Q. Yet when you began to think back on it, you recalled this incident very vividly, did you?

A. The reason that I thought about it—

MR. WILSON: I didn't ask you that.

WITNESS: I wanted to know for my own special benefit the last time A. J. had taken us out; I was interested in it.

Q. You hadn't thought of that until you got ready to give your testimony in this case, had you?

A. Yes, I did.

Q. You mean to say you began to think about that before there was any trouble between A. J. and his wife?

A. Yes, after the trouble started.

Q. I say until the trouble started—

COURT: You said "ready to testify".

Q. When did the trouble start?

A. October 1, 1918.

Q. And you retained all these details in your memory—

A. Yes.

Q. —slumbering, vague, from June, 1918, at any rate, as long as October, 1918, then you began to rake back in your memory to see what you remembered as to the last time you were together?

A. No.

Q. When did you begin to try to think up what happened on the eighteenth of June, 1918?

A. The treatment that the Cartans gave me.

Q. When did you first begin?

A. Right after this affair happened; I couldn't understand why he would change so much.

Q. You mean after the affair happened in October?

A. After Mrs. Ren had told me the story.

Q. That was in October?

A. Yes.

Q. You hadn't thought of this incident that happened, you say, on the eighteenth of June, between June and October, had you?

A. Yes, in a way, it sort of made an impression on me—those two men.

Q. Those cross-eyed men?

A. Yes.

Q. And the woman who gave you the cold stare?

A. Yes.

Q. That impression you say you had been thinking about between June and October?

A. Occasionally.

Q. When did you first learn that A. J. Cartan had knowledge of his wife's alleged infidelity?

A. I think the first time that—when Mr. Ren took me there to the store, something else comes to my mind, if you want me to tell you.

Q. Don't tell me anything but what I ask you.

COURT: That was about a week after Mrs. Ren had informed you?

WITNESS: Yes.

Q. It was then that you learned that A. J. Cartan had learned of his wife's alleged infidelity?

A. Yes.

Q. When did you understand that he got that information?

A. I don't know where he got it.

Q. When?

A. The conversation with Mrs. Ren and Mr. Ren.

Q. When did you understand he had been informed of it? You knew you had been informed of it.

A. I don't know when he had been informed.

Q. When did you find out?

A. I never found out.

Q. And yet having no knowledge as to when he found out when his wife—when he claimed that his wife had been unfaithful to him, you come here prepared to give definite testimony to the effect that A. J. Cartan and his wife were having this social intercourse with you in June, 1918?

COURT: That is a recital on your part.

MR. WILSON: Is that so; is that true?

WITNESS: No, I would say not, if I understand it correctly.

MR. WILSON: Do you think you understand it correctly?

WITNESS: I don't know.

(Question repeated.)

A. No.

Q. What do you mean by "No"?

A. I mean I didn't come here prepared to-day to give testimony of that kind.

Q. You have given that testimony to-day.

COURT: Suppose she has; you are only arguing with her. It is true, she has.

Q. Did you come here not intending to testify to that fact?

A. I came here to tell the truth.

Q. You came here to-day to testify to what happened on June 18, just as you described?

A. Just as I have told.

Q. Just as you have been told?

A. Not in this case, but exactly what was told to me on October 18, in Mr. Ren's house.

COURT: Strike that out.

Q. You came here to-day to testify to what happened on June 18, just as you described, did you?

A. I don't know whether I understand the question.

COURT: He said you came here prepared to-day to testify to what happened on June 18, this trip with Mr. and Mrs. Cartan to Bigget's; did you come here prepared to do that to-day?

WITNESS: In that way, I had that all in my mind, yes.

Q. You had told your recollection about it to counsel in the case?

A. I don't know whether I had or not; I think I did tell Mr. Lefferts day before yesterday.

Q. And when you dug up or refreshed your recollec-

tion as to what occurred on June 18, 1918, you didn't then know when it was that Mr. A. J. first had knowledge of his wife's infidelity, did you?

A. I didn't, I don't know it now, when he first had knowledge.

Q. You don't know it now?

A. No.

Q. You have heard it, though?

A. I cannot say when it was.

Q. You came here prepared to give your testimony as to what happened on June 18, 1918, didn't you?

A. Yes.

Q. Mrs. Devlin, how many children did you say you had?

A. Five.

Q. How old is the oldest one?

A. Twenty-seven.

Q. And is he living at home?

A. Yes, living at Matawan.

Q. This first interview that you had with Ren Cartan and his wife, which you have referred to, you went down there unaccompanied by either of your children?

A. My son was in France.

COURT: The children were not with you?

WITNESS: No.

Q. And these other interviews you had, that you have referred to, you went unaccompanied by any of your children?

A. I went alone.

Q. The first interview you had at Mr. Ren Cartan's

house, were you then told exactly what this alleged offence of your husband was?

A. No.

Q. You have said that Mrs. Ren Cartan said to you that your husband had been intimate with Doll?

A. Yes, she said he had been seen in her back yard.

Q. You made use of the other expression, too, didn't you?

A. That just came to me; that is what she said; she said he had been intimate with her and had been seen in the back yard.

Q. Had been seen in the back yard?

A. No, she said he had been intimate and had been seen in the back yard.

Q. In your first testimony did I understand you to say he had been seen there twice?

A. No.

COURT: I understood it was twice.

WITNESS: I think I corrected myself; I think I said he had been seen in the back yard.

Q. What is your best recollection about it now; did they say twice or once?

A. My recollection is that he had been seen in the back yard.

Q. Was that all the information you had?

A. That is all she gave me.

Q. Didn't you ask for any more definite statement, any more details?

A. I don't think I was able to ask for any more information.

Q. In point of fact you didn't?

A. No.

Q. Why were you not able to ask; were you overcome that day?

A. No, I wasn't overcome.

Q. Were you angry?

A. I was angry, but I was very brief.

Q. And being very brief, weren't you able to ask what the details were?

A. I knew she was a hypocrite—I felt she was a hypocrite.

COURT: Strike that out. Answer the question.

Q. Weren't you able to ask what the details were?

A. I didn't.

Q. Were you willing to stand by and see your husband charged with intimacy with this married woman, as you say this woman said he had been intimate and had been seen in the back yard once or twice, as the case may be, and you didn't ask for any details at all?

A. No, I didn't ask for any details.

Q. The mere fact that they had been seen in the back yard wouldn't imply necessarily that they had been intimate, would it?

A. Certainly not; I didn't think so.

Q. You asked for no details of any kind?

A. Not at all. I had implicit confidence in my husband.

MR. WILSON: I move to strike that out.

COURT: Strike it out.

Q. Who was present when the conversation began?

A. When I first went in, Mrs. Cartan was there alone, and as soon as the conversation commenced Mrs. Bert Cartan came in, and the three of us were seated in the living room together.

Q. What was it that provoked little Edna to say anything?

A. I am sure I don't know.

Q. What led up to her comment?

A. I never could understand it.

Q. She simply blurted out and said that your husband had connection with her?

A. Yes, as I told you.

Q. Was that the expression she used?

A. She told me—

Q. Was that the expression she used?

A. Yes, that is what she said.

Q. Did you ask her when or where?

A. I said, "And what have you to say for yourself? You mean to sit there and tell me that you have had connection with my husband?" And she said, "Yes".

Q. And you didn't ask her when or where?

A. I said, "What have you to say for yourself?" And she said, "I am out for a good time."

Q. You didn't ask for any details from her?

A. Certainly not.

Q. And was there anything else said by any of you on that occasion?

A. No.

Q. Nothing else that you recall?

A. Just as I was leaving I said I would go home and see Mr. Devlin.

Q. Did you go home and talk to Mr. Devlin?

A. Yes.

Q. And he denied it, I suppose?

A. Positively.

Q. And the next time you had any talk with any of the Cartans about was where?

A. Down in Ren's house.

Q. And who was present on that occasion?

A. Mr. and Mrs. Ren Cartan.

Q. Anybody else?

A. No.

Q. What did they tell you that day that your husband had done?

A. That I must go to him; I must go and find out from him; they didn't give me any information.

COURT: Strike that out. What did they tell you; if they didn't tell you anything, say so.

WITNESS: They didn't.

Q. Did you ask for any detail then?

A. Yes, when I went in the store I said I wanted to know from A. J. what there was to this story.

Q. You said that at the store before you went to the house?

A. Yes.

Q. That is when you went out of the store with Ren?

A. Yes.

Q. You told him you had come to learn everything from A. J.?

A. Yes.

Q. You went down to the house?

A. Yes.

Q. Did you learn everything from A. J.?

A. No, they wouldn't give me any information. I don't know what I asked for, but they didn't give it to me.

Q. You don't know if you asked for it?

A. No.

Q. Why didn't you?

A. I don't know.

Q. If you didn't.

A. I don't know.

Q. You had come there to find out all the facts from A. J.?

A. Yes.

Q. Then about two weeks afterwards you had another interview with Ren Cartan and A. J. Cartan?

A. Yes.

Q. Did you get the details on that occasion?

A. No.

Q. Did you ask for them?

A. No, I just went to listen that day and see what they would say to me.

Q. When did you first learn that it was charged that your husband had been intimate with this woman in the outhouse; when did you first learn that?

A. I don't know that I ever heard it until here.

COURT: Until here?

WITNESS: I don't think so.

Q. That was the first time you heard that?

A. Yes.

Q. When you heard the testimony here in this court?

A. Yes.

Q. You feel quite sure about that?

A. Yes.

Q. And you never had the curiosity to ask from these accusing persons what the details were?

A. No, I didn't feel they were friendly towards me, and they wouldn't give me any information.

Q. Didn't you feel that this was rather a grave charge to make against your husband?

A. Indeed, yes.

Q. And you believed that he ought to defend himself, didn't you?

A. I should say so.

Q. You believed he ought to prove his innocence?

A. Yes.

Q. You wanted to help him do it?

A. Yes, I should say so.

Q. Wasn't your first step then to find out what the particular conduct was that they charged against your husband?

A. I didn't believe it.

Q. I know; how could he defend himself; how could you help defend him without finding out what the very thing was that he done?

A. I never thought this thing would become public.

Q. You thought it would blow over?

A. Exactly.

Q. And whether it became public or not, you wanted to vindicate your husband?

A. Yes.

Q. It didn't occur to you that your first duty was to find out these details of this accusing story?

A. How could I find out?
Q. How could you find out; from the Cartans.
A. I thought they were against me.
Q. You didn't think your enemies would give you the details?
A. Yes.
Q. Was that the reason you didn't ask it?
A. Yes.
Q. Wouldn't your enemies be apt to give you the details more promptly than your friends?

COURT: How can she answer that?

Q. Didn't you on the occasion when you were down at the house, after you went down from the store with Ren, when you say you met with Ren and Edna, the day when you say you came there to find out everything from A. J., didn't you say to them then that there were times when you couldn't even bear to have Pat touch you?
A. No.
Q. Didn't you use that expression?
A. No.
Q. Or anything like it?
A. No.
Q. Didn't you tell them that you blamed yourself a whole lot for Pat's trouble?
A. No, never.
Q. Is it not true that three or four days after you heard the accusation that your husband had been intimate with Mrs. Cartan, the time being in the forepart of August, 1918, you had a conversation with Ren Cartan about the matter at the Cartan-Devlin store; that is true?
A. No, I hadn't any conversation with Mr. Ren in

the Cartan store for a couple of weeks, maybe longer.

Q. We will say two weeks; on this occasion, whether it was two weeks or three weeks or four days, didn't you say to Ren Cartan, "Ren, you are my friend and you must help me"?

A. No.

Q. Didn't you ever make any such statement as that to him?

A. I have no recollection of it.

Q. You don't deny that you did it?

A. I might have, but I don't remember.

Q. Didn't you say to him, "You know I am no fool, and that Pat must tell me this story himself"?

A. No, I never made that remark.

Q. Did you not on the same day and later still, at Ren's house, in his hearing and in the hearing of his wife, say, "If I were Johnce I would put a bullet in him", meaning your husband?

A. No.

Q. Did you not say, "I do not see how Johnce can keep from doing it"; did you not say that to him?

A. I have no recollection of it.

Q. Did you not say to them that Pat and Mrs. Cartan should be ridden on a rail up and down town?

A. Never.

Q. Is it not true that on that occasion that Ren then said to you, "How do you come to believe this story right off?" and didn't you reply, "I believed it from the way he had acted"?

A. I never said it.

Q. You never said that?

A. He never asked the question; I never said it.

Q. You never said it?

A. I never said it.

Q. Didn't you say upon that occasion, "I am afraid he will kill himself"?

A. I was afraid that he might do something.

COURT: Did you say that?

WITNESS: I might have said I was afraid, in my own mind.

Q. Didn't you ask Ren to let him go home?

A. Yes.

Q. Saying that you could watch him, and did you not ask Ren at that time to watch him every minute to see that he did not do himself any harm?

A. No, I asked Ren if he could be off for a few days, that my son was going to France.

COURT: Did you ask him that?

WITNESS: No.

Q. Or anything like it?

A. No, I never asked any favor from him.

MR. WILSON: I move to strike that out.

COURT: Strike it out.

Q. Is it not true that a few days after this occasion you had a talk with A. J. Cartan at which Ren Cartan was also present?

A. A couple of weeks after.

Q. Did you not on that occasion ask Johnce if he would overlook the thing for the children's sake, and let the Lord punish him—your husband?

A. No.

Q. Did you ever make use of that expression; about having the Lord punish your husband?

A. Never.

Q. And didn't Johnce say to you on that occasion, "I cannot do it"?

A. No, he didn't.

Q. And didn't he then say to you, "Let me read these letters"; wasn't that what led up to the reading of the letters?

A. No.

Q. What did lead up to the reading of the letters?

A. I cannot just say what led up to it, but I know that conversation never took place, because I would remember it, if it did.

COURT: You had just said what led up to the reading of the letters; Johnce asked Ren if he should read the letters now; that is what you told me.

WITNESS: Yes.

COURT: And Ren had gone out and came back, and that is when he made the request, and then he read the letters to you; is that right?

WITNESS: Yes.

Q. Did you see the letters?

A. No.

Q. Were they read to you?

A. Yes.

Q. Were the letters read here in court?

A. I cannot say.

Q. So far as you can remember, they were the same letters?

A. Yes.

Q. Did he not say to you, "Let me read these letters and you will see why I cannot make up"?

A. I don't remember that.

Q. Wasn't that the reason why he wanted to read the letters to you; he wanted you to see why he couldn't make up as you wanted him to?

A. I don't know.

Q. Didn't he say to you, "Besides my wife don't want to make up with me"?

A. He told me that the first night that I was down in the store with him.

Q. And didn't he then add "It is different with you", referring to your association with your husband?

A. The first night they sent for me at the store, he said to me, "You are all right, you and your husband are all right", and I said to him, "Well, Johnce we are not young any more, we are old, we are getting old, and it is war times", and he went on to tell how Doll had been so mean to him, and that she had turned the children against him, and they hadn't any use for him, and all that sort of thing. I said, "Look here, Johnce"—

MR. WILSON: I didn't ask for that; I asked for a specific matter, and I wish you would say "Yes" or "No", whether that occurred.

COURT: She said it did not at that time.

Q. On either of these three occasions that you have referred to in your testimany, did he say to you, "I cannot do it"; that is reconciling himself with his wife, "Let me read these letters to you"?

A. No.

Q. Referring to the letters which have been offered here?

A. No.

Q. And did he not say, "You will see why I cannot make up, and besides she does not want to make up with me; it is different with you"; did he say that to you in substance and in that connection?

A. I don't remember anything about it.

Q. Is it not true that he started to read the letters, and that Ren interrupted, saying, "Hold up, let me see Pat first"; didn't that happen?

A. No, when he started—he asked Ren if he would read the letters, and he said, "Yes, read them to her."

COURT: Did he read them?

WITNESS: Yes, he read them.

Q. Haven't you already said that Ren went out of the room?

A. He did; he said that he would go down and bring Mr. Devlin up.

Q. That was before the letters were read?

A. As he was reading them, Ren left the place and went downstairs.

Q. Were the letters read while he was gone or after

he came back?

A. I think they were finished before he came back.

Q. You are not clear about that?

A. Not positive.

Q. Is it not true that Ren left the room where you were, upstairs in the Cartan store, and remained away for a short time and came back and said that he couldn't do anything with Pat, and to go ahead and read the letters; wasn't that the way it happened?

A. I don't know; I don't remember that.

Q. Is it not true that the letters were then read to you and before reading them, Johnce said, "These letters will jar you"; you remember his making use of that expression?

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

Q. But did you not reply, "I can stand anything after what I have already been through"?

A. I don't remember saying that.

Q. Did you not finally say to Johnce that if he could not overlook the matter, as you were going to do, there was nothing for you to do but to go home and kill yourself?

A. No.

Q. You never made use of any such statement?

A. No, sir.

Q. You were referring to this occasion when there was a searching by you for your husband after your return from the ride; you went down and asked Mr. Bert Cartan as well as Ren Catran to hunt for your husband that night?

A. I don't think so; I don't remember. I don't think Bert was there, if my recollection is right; I remember Ren, that is all.

Q. And you went and got him?

A. Yes.

Q. And did Ren and his wife start to look for your husband?

A. I don't know whether she came or not; I know Ren did.

Q. You don't know whether Bert came or not?

A. No.

Q. Did they have a lantern?

A. No.

Q. Did you have a lantern?

A. No, not that I remember.

Q. Wasn't there a lantern used by any of you that night?

A. Not that I remember.

Q. You really have no recollection about it?

A. No.

Q. How long were you searching for him before you met him on the street?

A. A couple of minutes, two minutes.

Q. How long a time had elapsed between the time when he went in the house and the time you began to hunt for him?

A. Just three or four minutes.

Q. And then you hunted for him a couple of minutes?

A. I went down to the garage and he wasn't there and I came back to the house, and I went out front to see if he was there. I thought probably he was down to the store.

Q. But how long were you hunting for him?

A. A couple of minutes.

Q. How long were Bert Cartan and Ren Cartan and

you hunting for him?

A. I don't remember Bert being there; I remember going down and Ren came right back.

Q. How long was he hunting for him?

A. We walked to the garage, a little further.

Q. And after you hunted a couple of minutes you came home—three minutes, you began to get anxious and went for Ren?

A. The children went down to look and he wasn't there. I was alarmed; it was a lonesome place in back of the house and I thought possibly someone might have struck him in the head.

Q. But after you had hunted a couple of minutes and waited two or three minutes, you were in a frame of mind where you wanted someone to help you hunt for him?

A. Yes.

Q. And after the duration of about five minutes and he didn't return, you went down and saw Ren?

A. Probably.

Q. And he was hunting how long?

A. We came up and went down to the garage and looked in the garage and then looked back of the garage.

Q. And you met him finally on the street?

A. Yes.

Q. Did you speak to him?

A. Yes.

Q. Didn't you ask him where he had gone?

A. Yes.

Q. Didn't he say he had gone out of the driveway of the house and gone down town to a candy store to get some chewing gum?

A. I think he did, I am not positive.

Q. And didn't you say you had watched the driveway and he hadn't gone out that way?

A. I think I did.

Q. Didn't you say you had been sitting on the front porch?

A. No, I cannot say that, as I remember distinctly being in the kitchen.

EXAMINATION BY THE COURT:

Q. You were interrupted in one answer when you were detailing some conversation which you had with Mr. A. J. Cartan; will you finish your answer?

A. This night when I went in there, he said to me, "You and your husband are all right.". I said, "Yes", and he said that Doll had been mean and had turned his children against him; and I said to him, "Well Johnce, we are old, we are getting old, and it is war times, and Doll will make up with you, everything will be all right; there isn't any reason that you and Doll should not be all right"; "No, she won't be all right"; he dwelt on that; I said, "Let someone go to her"; I said, "Let me go over and talk to her", and I tried to persuade him to let me go over that night, and he said, no, that it wasn't the proper time; for me not to go; that her brother was dead, and that it wasn't the proper time for me to go.

Q. When you told him there was nothing between them, did you regard the charge of adultery as amounting to nothing; didn't you think that was between them; didn't you understand that was between them?

A. No, I didn't think it was so.

Q. It was because you didn't think it was true, that you said there was nothing existing between them, except these minor matters that you mentioned?

A. Yes, he talked about Doll—she had left his room, too, I think he said.

Q. Did he say when she had left?

A. No.

Q. Was anything said on that occasion which you haven't told me?

A. Not that I remember.

Q. Have you any explanation to give why Mrs. Ren Cartan should come over and tell you this story about your husband's relations with Mrs. A. J. Cartan, if the story is not true.

A. Yes, jealousy.

Q. Jealous of whom?

MR. WILSON: I want to enter an objection to the receiving of this testimony.

A. Jealous of everything we had; I had reason to think so.

Q. Of your prosperity?

A. Yes.

Q. Is that the only reason you can suggest?

A. It is the only reason that I can give.

Q. And a desire to break up your home, do you think, through jealousy?

A. Yes.

Q. With an unfounded charge as you regard it?

A. I cannot see anything else. I tried to fathom the thing out, but I cannot understand it.

Q. Then there is only one of two explanations that would occur to you, either that her story was true, or that she was jealous and concocted the story?

A. I thought she was jealous. Two or three things she had said led me to think that. I felt before she had ever told me this tale, that she was jealous.

Q. As a result of the information that she has given you, have you endeavored to find out in any way independent of any of the Cartans, whether it was true or not; whether the story was true or false, from any other source than the Cartans?

A. No, never. Everybody has faith in them, the whole town.

COURT: Strike that part out.

MR. LANE: Is there any way that you know of whether you could ascertain whether it was true or false?

WITNESS: I couldn't find out; I didn't try to find out.

FURTHER CROSS EXAMINATION BY MR. WILSON:

Q. You were willing to accept your husband's denial; you had such confidence in your husband, you were willing to accept his denial?

A. Yes.

Q. Against all persons?

A. Yes.

Q. And, Mrs. Devlin, as a loyal wife, you felt toward him as though you were prepared under all circumstances to defend him against all emergencies and against the

whole world, didn't you?

A. If he is right; if I feel he is right.

Q. And you are willing to assume he is, without any special investigation, if he says he is right?

A. Exactly; I never found him anyway else.

Q. But in this particular matter, without any investigation at all except a denial by him, you concluded he was right?

A. Why would I doubt him; I only know him as a good man.

MR. WILSON: I object.

Q. You concluded he was right on the strength of his denial?

A. Yes.

RE-DIRECT EXAMINATION BY MR. LANE:

Q. Has anything ever been said to you by anyone outside of the persons who have testified on the stand, the Cartans, with respect to anything that your husband has ever done?

A. No.

Q. Anybody in Matawan or elsewhere?

A. No.

Q. And have you ever heard it from any other source except these few Cartans?

A. No, never.

Q. Since October 1, 1918, have you moved among that people that you usually move with?

A. Yes.

Q. As you did before?

A. Yes.

Q. You said that you in your own mind had some idea that it was due to jealousy, and that certain things led you to think that; what are those things?

A. On one occasion after—

MR. WILSON: I would like to object to this.

COURT: I will receive it subject to your objection.

A. On one occasion Mrs. Ren Cartan and Mrs. Bert Cartan and I were in Newark to a luncheon, and after arriving in the home, this Mrs. Henderson and I were in one room—we were in the bathroom and Mrs. Ren Cartan was in the dining-room, across the hall, and we had this new home and had just furnished it, and Mrs. Henderson was very much interested, and she said to me, "Mame, what large pieces did you get for your living room—

COURT: Without going too much into detail, can you tell us what was said?

A. I told her we had these two corner pieces and a secretary, and Mrs. Ren Cartan said, "Six months ago she didn't know what a secretary was."

Q. Was there anything else?

A. I had been to a couple of card parties at Red Bank, and after the parties were over, a week or so, she asked me about it, who I had gone with, and I told her.

MR. WILSON: Who was asking you?

WITNESS: Mrs. Ren Cartan asked me how I happened to be at that card party, and I told her that Mrs. Duncan had gotten up two tables and I was one of the eight ladies, and she said, "Who did you go with?" I said, "Catherine Terhune called me up and invited me to ride with she and her mother", and she said, "And Mrs. Duncan asked you to go to that party", and she said, "That old deceitful Mary Gus."

Q. Who is Mrs. Terhune?

A. One of our prominent people in town.

Q. Anything else that led you to think that there was this underlying feeling?

A. Little things of that kind, it seemed to bother them.

Q. Did you know the feeling of Tice toward your husband?

A. Yes, I heard about it.

Q. Did you hear it from Tice?

A. I heard it from different people around town.

RE-CROSS EXAMINATION BY MR. WILSON:

Q. How long ago was that when Mrs. Ren remarked in a sarcastic way that you didn't know what a secretary was six months ago?

A. I furnished this home in 1917.

Q. You moved into the house then?

A. I furnished this particular room in 1917.

COURT: And bought these articles you mentioned?

WITNESS: Yes.

Q. Where did these card parties occur at Red Bank, where she referred to the deceitful Mary Gus?
A. The summer of 1918.

WILBERT COX, sworn for defendants,

DIRECT EXAMINATION BY MR. LEFFERTS:

Q. You live at Matawan?
A. Yes.
Q. How long have you resided there?
A. Going on twelve years.
Q. Married?
A. Yes.
Q. Have you any children?
A. One.
Q. Do you know Mr. Norman Tice?
A. Yes.
Q. Do you know Mr. Devlin?
A. Yes.
Q. Can you tell us of a conversation that you had with Mr. Norman Tice, and when and where it was?

MR. WILSON: Objected to.

COURT: What is the purpose?

MR. LEFFERTS: To attack the credibility of Mr. Tice as a witness as to facts he stated that he would get square with Devlin.

MR. WILSON: This witness should be asked precisely the question which was addressed to Mr. Tice, and my recollection is that it will be found that the matter is quite different as to many of these persons and incidents.

Q. Did Tice say to you that Devlin had euchred him out of some property, and that he would get square with him, if it took all his life, or words to that effect?

A. I overheard this; he didn't tell me nothing, but I was in the presence—

COURT: Whom did he tell it to?

WITNESS: Mr. Devlin, ten minutes after—

COURT: When was it?

WITNESS: In 1918, in the fall.

COURT: Where did the conversation take place?

WITNESS: In the Cartan & Devlin feed store.

SARAH CARTAN, defendant, sworn.

DIRECT EXAMINATION BY MR. APPLEGATE:

Q. Mrs. Cartan, you don't mind telling your age?
A. No, forty-seven.
Q. Do you know how old your husband is?
A. I think he is about fifty-five.
Q. You have been a Matawan girl all your life?
A. No.
Q. You lived there since your marriage?
A. Yes.
Q. That was in 1892?
A. Yes.
Q. The four children referred to in this suit as the children of you and Mr. Cartan, are who?
A. Helen, Johnson, Gene and Betty.
Q. Betty is the youngest?
A. Yes.
Q. When was she born?
A. She was born six years ago, 1914.
Q. And Gene was born when?
A. He is ten years old.
Q. You were married, I think you said, in 1892?
A. Yes.
Q. Your married life has that been happy or otherwise?
A. Well, fairly, as any other couple would be.
Q. What?
A. Nothing out of the way as I remember, until this last trouble that came up.
Q. You have always loved your husband?
A. Yes.

Q. He apparently you?

A. I thought so.

Q. It has been testified that you and your husband and the Devlins and occasionally some other persons were accustomed to take automobile rides and had card parties, theatre parties and danced and other entertainments together; upon any of those occasions did you display any fondness for Devlin?

A. Never.

Q. Did he, so far as you knew or observed, display any for you?

A. Never that I could see.

Q. Did you ever make it a point to select a seat next to Devlin?

A; Never.

Q. Did he apparently to you select a seat next to you?

A. Never that I knew of.

Q. Did you always sit next to him?

A. I didn't.

Q. And in dancing together, did you dance with persons other than Devlin?

A. I certainly did.

Q. Did you ever make a point of singling him out to dance with him at the different dancing parties?

A. Never.

Q. At any time when you and he was dancing together did he ever embrace you more closely than propriety warranted?

MR. WILSON: I object.

MR. APPLEGATE: It has been so testified.

COURT: I recall it.

A. No.

Q. It has been testified that upon one occasion while you and he were dancing together, that he drew you to him and squeezed you, and when someone observed it of the Cartans, that you turned red in the face; is that true?

A. I never remember such a thing.

Q. Did any incident ever happen?

A. I never remember anything of the kind.

Q. It has also been testified that upon an occasion at Kline's Hotel in New Brunswick, some seven or eight years ago, you and Mr. Devlin were sitting at the table next to each other, and upon that occasion he said to you, or words to this effect, "Doll, you never ought to work; you never ought to wash, you ought to have everything in the world that you want, and if I had all the money that your husband has, I would give it to you"; did any such conversation as that ever take place?

A. I never remember any particular conersation of that kind.

Q. And that immediately afterwards he took from his pocket a twenty dollar bill and passed it over to his wife?

A. I don't remember.

Q. You don't remember it?

A. If I had seen it, I would have remembered it.

COURT: When you say you don't remember, you mean it didn't happen.

WITNESS: No, never to my knowledge; he might have done it and I never saw it.

Q. As far as you know?
A. As far as I know.

Adjourned to Friday, December 3, 1920, at 10 A. M.

IN CHANCERY OF NEW JERSEY

BETWEEN

ANDREW J. CARTAN,
Petitioner,
and
SARAH CARTAN,
Defendant.

Continuation of testimony in the above entitled cause, before Hon. John E. Foster, Vice Chancellor, at the Chancery Chambers, Newark, New Jersey, Friday, December 3, 1920, at 10 A. M., in the presence of counsel as before stated.

COURT: At the last hearing, when I made a ruling in the testimony of Mrs. Devlin, I assumed that I knew the purpose for which Mr. Wilson was repeating what I considered unnecessarily the questions about the trip to Bigget's and other places, in June I believe. I find that I was in error, that I misapprehended the purpose for which the examination was being conducted and being pressed, and I am therefore going to reverse the ruling that I made, and permit Mr. Wilson to continue his fur-

ther cross examination on that matter. Let Mrs. Devlin return to the stand.

MR. LANE: Will you refer to the page of the record where the ruling appears?

MARY L. DEVLIN, recalled for further

CROSS EXAMINATION BY MR. WILSON:

Q. Mrs. Devlin, when you refreshed your recollection as to what occurred on June 18, 1918,—I am referring now to your testimony as to the Bigget's visit—when you refreshed your recollection about that and as to the fact that it occurred on the eighteenth of June, didn't you know at that time that Mr. A. J. Cartan, or did you know at that time when Mr. A. J. Cartan claimed he first learned of his wife's infidelity?

A. I never knew whether Mr. Cartan knew of this. I don't of it yet, but when I was thinking, or when I traced up about the time we were out with Mr. A. J. Cartan, I was wondering why he would do so at that time if he knew of this.

Q. Then you did know, did you not?

A. I didn't know positively, no; I knew he knew something because I had been in communication with him.

Q. You heard?

A. I had been talking to him about this affair.

Q. And had been talking to whom?

A. Mr. A. J. Cartan and Mr. Ren.

Q. And he had told you?

A. Of course he had.

Q. He had told you when he claimed that he first heard of his wife's adultery?

A. No, he didn't.

Q. What?

A. No.

Q. Then what did you mean by saying you had been talking with Mr. Cartan? Had you gotten any information from him about that matter?

A. They sent for me and they had me down in the store.

Q. I ask you again when you refreshed your recollection as to what occurred on the eighteenth of June, did you think that had any special significance in this case?

A. Certainly not, only I couldn't understand why he would take us out, if he knew or believed such a thing.

Q. How do you know when he knew that or believed such a thing?

A. I don't know and never did know.

Q. And you don't know yet?

A. No.

Q. And so that in testifying to the eighteenth of June, the date when you gave your testimony, you didn't give any special significance to that?

A. I knew he had taken us out, and I wanted to find out just when it was.

Q. Isn't it true that when you fixed that date as of the eighteenth of June, you had distinctly in your mind that Mr. Cartan claimed that he had learned of his wife's infidelity some time in the latter part of May preceding?

A. No, when I traced that up I couldn't understand why a man could take us out.

Q. Then is your answer No to my question?

COURT: Do you want the question repeated?

WITNESS: Yes.

COURT: Just repeat it.

Q. Isn't it true that when you fixed the date as of the eighteenth of June, you had distinctly in your mind that Mr. Cartan claimed that he had learned of his wife's infidelity some time in the latter part of May preceding?

COURT: Is that true, that you had that in mind?

WITNESS: Shortly before this trial, yes. I thought it was June 14, and I called up Mrs. Voorhees, to find out positively.

Q. Then your answer is Yes to that question?

MR. LANE: I object to that.

COURT: Can you answer Mr. Wilson's question, that your answer is Yes or No to the question?

WITNESS: I don't know whether I understand it.

COURT: Listen to the question, which will be read to you, and don't interrupt until you understand it, and if you can answer it, answer Yes or No.

Q. (Next to the last question repeated.)

A. I didn't have that in mind.

COURT: Then it is not true?

WITNESS: No.

RE-DIRECT EXAMINATION BY MR. LANE:

Q. Did you know, Mrs. Devlin, that A. J. Cartan claimed that he had discovered his wife, or been told of his wife's infidelity in May, 1918, until he testified here on the stand?

A. No, I didn't.

COURT: Did you hear him testify to that on the stand?

WITNESS: I think I did.

FURTHER EXAMINATION BY MR. WILSON:

Q. You had heard it before that time?

A. Not positively; they talked to me, they used such language that I couldn't understand it; they never came to a point; I had to guess at half of what they were saying to me.

Q. The question is whether you had heard that Mr. Cartan claimed that he got his own knowledge in the latter part of May; had you heard that before you gave your testimony here?

COURT: Before she heard any testimony here?

MR. WILSON: Before she heard any testimony in the case.

A. Mr. Cartan had told me at the store.

COURT: Had you heard it before the hearing in this case?

WITNESS: No, I don't think so.

Q. You remember being asked this question when you were last upon the stand: Q., And when you dug up or refreshed your recollection as to what occurred on June 18, 1918, you didn't then know when it was that Mr. A. J. first had knowledge of his wife's infidelity, did you?

A. I didn't I don't know it now, when he first had knowledge.

Q. You don't know it now?

A. No.

Q. You have heard it though?

A. I cannot say when it was."

Q. Do you remember being asked those questions and giving those answers?

A. I don't know that I know.

SARAH CARTAN, recalled for further

DIRECT EXAMINATION BY MR. APPLEGATE:

Q. Mrs. Cartan, it has been testified here in this suit, both by Mr. Ren Cartan and Mrs. Cartan, that upon one occasion you came into the room where they were and said the P. J. Devlin had kissed you in the telephone booth, and that his wife, Mame, would be as mad as the devil if she knew it. Did P. J. Devlin ever kiss you in a telephone booth?

A. Never.

Q. Did he ever kiss you at all?

A. Never that I remember.

Q. Did you ever say any such words as I have just repeated?

A. I never did.

Q. That Mame would be mad as the devil if she knew it, or any such thing; did any such incident ever take place?

A. Never.

Q. It has also been testified to that on one occasion, at Bridgewater Inn, you were so engaged in conversation with P. J. Devlin with your back turned to Mrs. Devlin, that she became annoyed and said, "I am here", or words to that effect.

MR. WILSON: There is no evidence that her back was turned.

Q. They were sitting at the table with her back to Mrs. Devlin; did any such incident ever take place?

A. Not that I ever knew of.

Q. And also it has been testified that at the Bridgewater Inn, I think upon the same occasion, as you were getting ready to leave, that you pinned Mr. Devlin's coat collar; did that happen?

A. I don't know that it did.

COURT: Do you recall?

WITNESS: I don't recall anything of the kind.

Q. Upon any of these occasions did you display any fondness for Devlin?

A. I did not.

Q. Did you have any fondness for Devlin?

A. I did not.

Q. Did he display any toward you, that you observed?

A. I never observed any.

COURT: On those occasions or generally?

WITNESS: On no occasion whatever; I never noticed anything of the kind, never. I never have noticed any of these affections that they talk about.

Q. Did you ever go to New York with Mr. Devlin alone?

A. No.

Q. It has been testified that sometime in November, 1914, you were seen going towards the station, and upon that occasion you made some sort of a signal to Mr. Devlin, and shortly afterwards he left the store saying he was going to New York to buy a suit of clothes; did

you go to New York with Mr. Devlin?

A. I never did.

Q. Was it your practice to salute Mr. Devlin as you passed his store in a suggestive manner?

A. Never in a suggestive manner any more than I salute anyone else. I always had the habit of raising my hand to everyone that I saluted in any way, if I didn't want to call them.

Q. It has also been testified as to a swimming incident in the pool at Asbury Park, that upon that occasion Mr. Devlin was very intimate with you and place his hand upon your body, under the pretence of teaching you how to swim. Did that ever take place?

A. No, sir.

Q. Did he ever place his hand on you?

A. He never had his hands on me in his life.

Q. It has also been testified to that upon an occasion in the automobile, driving home, Mr. Devlin and his wife, and you and your husband and your son Johnson, that Mr. Devlin reached his hand over the back of the front seat on which he was sitting and took hold of your leg; did that ever happen?

A. Never.

Q. It has been testified that the Devlins and Cartans had parties of various kinds—card parties, dinner parties, automobile parties, on an average of once a week; did you attend those parties?

A. Sometimes I would.

Q. Did you attend parties on an average of once a week with them?

A. Never.

Q. Were those parties frequent or only occasionally?

A. They had them very frequently, but I couldn't at-

tend, because I had small children. I never could go as often as the rest could.

Q. Your oldest child was twenty-seven?

A. Yes.

Q. And Johnson, the next, is what?

A. Eighteen.

Q. A difference of nine years?

A. Pretty near.

Q. And the next is what?

A. Ten.

Q. And the next?

A. Six.

Q. So you have always had a baby on your hands?

A. Pretty nearly always, yes.

Q. Why couldn't you leave, or why didn't you leave your children in the care of Helen?

A. I never thought she should be bothered with the younger children; she had her own amusements; I didn't want to tie her down with the smaller ones.

Q. Did you have a maid?

A. No, I never had a maid but just a few months at a time; they never would stay. I was alone most of the time.

Q. When you didn't go to these parties did Mr. Cartan go alone?

A. No.

Q. He didn't go either?

A. No, very seldom.

Q. How long a period of time would intervene between the parties which you attended?

A. Sometimes weeks, sometimes I wouldn't see the whole lot of them for months, two or three months.

Q. Why not?

A. Sometimes I would be home for two or three months; I would be ill, and the children would be sick, I would be home and couldn't go out, and other times it would be probably I would go out maybe two weeks hand-running, probably twice in one month, and then months after I wouldn't be out at all.

Q. In regard to the dancing parties, did you dance more frequently with Devlin than with anyone else?

A. No.

Q. Did you care to dance particularly with Devlin? 10

A. No.

Q. Why not?

A. He is a very poor dancer.

Q. Did you dance more with Devlin than you did with your husband?

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

Q. Was your husband a good or indifferent dancer?

A. He is better than Devlin, but he isn't much at that.

Q. It has been testified, Mrs. Cartan, that your husband, A. J. Cartan, learned of the alleged intimacy between you and Mr. Devlin sometime in May, 1918, and he has testified that after he learned of this alleged incident, that you and he never went out again with the Devlins on these parties; did you after May, 1918, go out with the Devlins? 20

A. I did.

Q. And your husband?

A. My husband went with us.

Q. And when and where? 30

A. We went to Bigget's that night that they talked about.

Q. What night?

COURT: When do you fix that trip?

WITNESS: On the day of the school commencement.

Q. At Matawan?
A. Yes.
Q. And what date was it?
A. As near as I can find out, it was on the eighteenth.
Q. Of what?
A. Of June, 1918.
Q. Where did you go?
A. I went to the entertainment in the afternoon, the commencement, and then Mrs. Devlin and I drove to Perth Amboy that afternoon.
Q. Who drove you there?
A. Johnson, and coming home we thought we would like to go out that night—I don't know which proposed it, but we made up a little party and asked A. J. if he would go, and he said Yes, and that night we drove up to Devlins and took them down.

COURT: Who were in the party?

WITNESS: Mr. and Mrs. Devlin, A. J. and myself and my son Johnson.

Q. What did you do after you got to Bigget's; what was the nature of the entertainment?
A. We had supper and danced among ourselves.
Q. What time did you get back?
A. It was late, around one or half past one o'clock at night.

Q. Will you say whether or not the relations between Mr. Cartan and Mr. Devlin upon that occasion were the same as they had been in the past?

A. I didn't notice any difference.

Q. Any unpleasantness whatever?

A. Not that I could see.

Q. Did you go out upon any other occasion with your husband and the Devlins after May, 1918?

A. I went down to the Close's to a party.

Q. Charles Close?

A. No, Gus Close.

Q. What was the nature of that party?

A. All the Cartans were there and the different people—I forget just who was there.

Q. What was the occasion of the party?

A. A little card party and supper, nothing much.

Q. With whom did you go?

A. With A. J.?

Q. You went alone with him?

A. Yes.

Q. And Devlin didn't accompany you to the party?

A. No, they were there.

Q. Did you mingle with the Devlins after you got there?

A. Yes.

Q. Did you see your husband talking to the Devlins?

A. Yes, he and Mr. Devlin.

Q. What was his attitude toward him at that time?

A. He seemed very friendly; they were all up in the room talking to gether, Ren and Mr. A. J. and Mr. Close and Mr. Devlin; they were all talking politics up in one end of the room together; they seemed to be all right

Q. Was there any other occasion after May, 1918,

when you were all out together?

A. I don't remember any now.

Q. You don't remember any others?

A. I don't now.

Q. It has been testified, Mrs. Cartan, that you endeavored to estrange your children from your husband, their father; is that true?

A. That is not.

Q. By word or action did you ever attempt to do such a thing?

A. I never did.

Q. Did you ever commit adultery with P. J. Devlin or any other person?

A. No.

Q. Did you ever have any desire to be alone with him?

A. I did not.

Q. It has been testified that in May, 1916, you were seen going along the side of your house toward the garden in the rear, in the night time, and that there you met a man, who is said to be P. J. Devlin, and that the two of you entered an outhouse or chicken house and remained there some little time, and then came out and went your different ways; did that ever happen?

A. Never.

Q. Did you ever meet P. J. Devlin by appointment at that chicken house or in the back garden or any other place?

A. Never.

Q. Did you ever meet him there, by appointment or otherwise?

A. Never; never any way.

COURT: Any way?

WITNESS: Never anywhere or any way. I never met the man.

Q. Have you ever been in that garden at night?
A. I have.
Q. More than once?
A. Many times.
Q. For what purpose?
A. For the purpose—I would go around there and see that everything was all shut up; I would go around and shut the cellar doors and go down to the chicken yard and close the chicken yard gate, or close the chicken yard door, if we had chickens.

COURT: Do you recollect if you kept chickens in May, 1916?

WITNESS: I don't recall if it was that year; I had ducks after that, but whether it was that year or not, I cannot say.

Q. Did you keep ducks or chickens in the chicken house after May, 1916?
A. I kept ducks there.
Q. After May, 1916?
A. Yes.
Q. When you were in that garden at night did you ever see Mr. Devlin there?
A. Never.
Q. Did you ever see a man around there?
A. Never; I never did.

Q. It has been testified upon the night in question and the morning after when it is said that you and Devlin were seen to enter this so-called chicken house, that there was a chair and wicker couch there; was there ever a chair or wicker couch in that outhouse?

A. There has never been such a thing in there since we have ever lived there.

Q. What was it used for at that time in May, 1916?

A. Nothing but throw junk in there; we would throw old wheels of Gene's, the little boy, which he would leave around the yard. He would throw all his old traps in there which he used to play with.

Q. What sort of a floor did that have?

A. Earth floor, ground floor.

Q. Was there anything in there that one could sit upon or recline upon?

A. No.

Q. In the way of furniture of otherwise?

A. No, no furniture in there.

Q. It has been stated that it was used at times for a playhouse for your children?

A. Since the chickens haven't been there they cleared it out and used the place now within the last two years—it is not two years; I never would allow them in there, it was too dirty.

Q. But in 1916 was it used as a playhouse?

A. No, they used to jump around on top of the house, but I forbid them going inside, it was too dirty.

Q. What was it used for particularly?

A. For chickens and ducks.

Q. When you didn't keep chickens and ducks?

A. We would throw all trash in there.

Q. By trash you mean what?

A. Wheels that Gene would have lying around the chicken yard, and would make him throw them in there.

Q. Did you keep any tools in there?

A. Garden things, rakes and hoes and such things as that.

Q. You and your husband lived happily together up until he accused you of infidelity?

A. Well, we had some differences over Helen's affairs; we didn't get along very well on that.

Q. When did those differences begin?

A. I don't know exactly, it was that summer of 1916; he didn't want her to go with Sam Van Marter, and we had some arguments over that. We didn't feel very pleasant toward each other that way.

Q. You say he didn't want your daughter to go with Sam Van Marter?

A. Yes.

Q. How did you feel about it?

A. I thought she ought to satisfy herself; she was of age, and could make up her own mind; she had gone with him so many years, I didn't see why he should make a fuss at this late day, and that is what I told him, that if he had any objection to Sam coming there, why didn't he say it years ago and not let him come there for all this time and then make a fuss.

Q. So far as you knew was there any real objection to the intimacy between your daughter and Van Marter?

A. Not that I knew; he was a little wild, but there are lots of boys that way, but I didn't see why they should be broken up then.

Q. When did your husband first come to you and accuse you of any undue intimacy with Mr. Devlin?

A. The first week in October, 1918.

Q. Before that time had he ever cautioned you in regard to any intimacy between you and Devlin?

A. Never.

Q. Had he ever taken you to task because of any fondness, real or apparent, for Devlin?

A. No.

Q. Had he ever said anything to you about Devlin at all?

A. He never said anything about Devlin in his life until he came in that first week of October and told me about that.

Q. When he talked with you that first week in October, had you at that time received any letter from Devlin?

A. No.

COURT: What did he tell you when he told you in October about Devlin?

WITNESS: He called me upstairs, and of course he was awful wild, and I don't remember every word that he said, but what I could distinguish what he said in his wild way he went at it, waving his arms around his head, and going round and round the room like a wild man, I got out of him, he said, "You have been intimate with Pat Devlin?"

COURT: Did he specify when and where?

WITNESS: No, he didn't say when and where.

COURT: Or how long you have been intimate?

WITNESS: Yes, he said, "You have been at this a good long while", and I sat and looked at him, and I was so amazed that I could hardly believe what he was telling me; I couldn't understand it, and I said, "Johnce, you are crazy"; he said, "No, I am not crazy, you have been intimate with Pat Devlin", and I said, "It is not so."

Q. Can you relate the rest of the conversation?

A. After he had accused me a few more times, then I started for the door.

COURT: On the same occasion?

WITNESS: Yes. I started to go out of the room, and he headed me off and pushed me down on the bed, and choked me down there, and said, "You say it is so; you know it is so", and I said, "I wouldn't"; then I called for Johnson, and I heard him come up on the stairs, but he didn't come in the room, and after he had told me that half a dozen times and held me down there, then I managed to get up, and I got out of the room and he went out.

Q. Told you what half a dozen times?

A. That I had been intimate with Pat, and I said, "No, it is not so." He said, "It is, you know it is"; that is all that was said, and he went out and I went out of the room and went down and told Johnson.

Q. Did he tell you how he knew you had been intimate?

A. No, I said, "You are crazy, you don't know what you are talking about." He said, "I am not."

Q. Did he tell you at that time, or has he at any time, told you when this intimacy occurred?

A. No.

Q. Did he ever tell you about the so-called chicken house incident?

A. I never knew that until it was said here on the stand, and in the paper that he served on me, he said in the outhouse, or something like that, I don't know just how it was.

Q. That was the first you knew of it?

A. That is the first he told me of what I was accused.

Q. After this incident in the bedroom that you have related, what next occurred between you and your husband in relation to his charge?

A. We had many fights over it.

Q. Tell us the next time.

A. I don't remember just exactly what days it was, until I got the letter.

Q. Did you have any more conversation with your husband in regard to this matter before you got the letter?

A. Yes, two or three, because we would have these heated arguments.

Q. Where would they take place?

A. Right in the house.

Q. What did he say?

A. He said, "You are guilty, you know you are", and no matter what I said to the contrary, he said, "You know you are", and he would walk out, and I said, "No, I am not." When I got the letter—

COURT: What letter?

WITNESS: The first letter.

COURT: From Devlin?

WITNESS: Yes, that big Edna brought in to me.

Q. What happened then?

A. I read it and tore it up, and then I went down there as soon as I could leave the children; they were eating their supper—

Q. When you read this letter, you say you tore it up; did it mean anything to you?

A. I couldn't; I couldn't understand why Mr. Devlin should put himself in my affairs in any way, shape or form; I didn't know why he should write that letter, and I was mad and tore the thing up.

Q. Then what did you do?

A. I went down to big Edna's and asked them—

Q. By "big Edna", you mean Ren's wife, Mrs. Ren Cartan?

A. Yes, and I asked her what there was about this letter.

Q. Who else was there?

A. Ren—and she said, "Why, don't you know?" I said, "No, I don't know what it means, and that is what I came down here to find out", and there were lots of things said, I of course cannot remember all, but among other things, she said to me, "Why Doll, don't you know that Pat don't care that for you (snapping her finger)"; I said, "Edna, I don't care what Pat Devlin cares for me; that has nothing to do with me whatever; I don't care anything for Pat Devlin, and I don't care whether he cares anything for me; what has that got to do with it; I cannot understand it at all; I don't know what all this business means", and then Ren came in the room, and I

said to him, "Ren, do you know anything about this letter business?" And he said, "Yes", and I said, "What are you doing in it?"

Q. What did he say?

A. He didn't say anything but looked at me; I said, "What business has a man of your character and your caliber and done what you have done, and you know what you have done, to sit there and tell me—or try to make any trouble between my husband and myself?" I said, "You are the last man that should ever open your mouth."

Q. What else took place or was said?

A. Edna wanted to know what is was all about; I said, "Ren, do you want me to tell before Edna what I mean?" and he looked at her and said, "Well, yes." I said, "I will tell exactly what you are; you have been seen out with women that was not your wife, women that you had no business out with"; he said, "Sam Van Marter is a damn liar." I said, "Sam Van Marter has never said a word about you to me. Sam Van Marter never told me anything about that. I never opened my mouth to Sam Van Marter. For that matter Sam was not in the long lane; there were others that saw you."

Q. What else was said and done?

A. Edna wanted to know all about it, and he tried to explain to her, and then of course he explained the best he could to her how the thing happened, and it was the proprietor's wife he was dancing with. I said, "Yes, and the same afternoon I suppose that same proprietor's wife followed you over to another place and you danced the same afternoon with her." He said, "All right." He didn't know what to say to that, and then we got back on our own affairs again, and I said, "I cannot under-

stand why they came to me", and big Edna said, "Well, Doll, don't you know that it was little Edna that Pat was after?" Then I said, "Why under heavens are you coming after me then; why don't you go to Bert?" "Oh, well", she said, "there is nothing between Bert's wife and Pat." I said, "There is nothing between Pat and I either." I said, "This thing has got to be sifted through", and she said, "Johnce will never be satisfied with only a divorce." I said, "I don't care what he brings up, he can bring any kind of proceedings he wants, but I will see the finish of this."

Q. Did anything else occur?

A. I don't remember; I came on home.

Q. It has been testified that upon that occasion Ren Cartan said to you, in answer to your inquiry as to whether he knew about the letter and what was in it, 'Yes, you would think so if you knew what a time I have had with Pat all the week", and that you said in reply, "That is the way with Pat; that is just like a man. Why didn't you bring it up before the children got so old. What can Johnce prove; you must be within ten feet to prove anything." Did you say anything like that?

A. No.

Q. Or anything like it?

A. I said to Edna, when she said those things to me, "Why, Edna, you cannot say those things about people and not know that they are so. There is nothing between Pat and I, and you know it, and you cannot accuse people of it unless you see them done; you never saw anything wrong with me, and you know it." And she did make the remark, she said, "We don't have to see that, we know"; I said, "All I want you to do, bring it out, if you know them things; that is what I am waiting

for."

Q. At that time, upon that occasion, did either Ren Cartan or Edna tell you what they knew?

A. No.

Q. In relation to your alleged intimacy with Mr. Devlin?

A. No.

Q. Did they tell you anything about this outhouse incident?

A. Never.

Q. Did you demand to know what they did know?

A. I asked what it was I was accuse of, and no one would tell me, not any of them; nobody that I went to; they wouldn't even tell me who was back of the thing; I wanted Johnce to tell me many and many a time; I said, "Who is back of all this?"

Q. By Johnce, you mean your husband?

A. Yes, A. J., and he would say to me, "I cannot tell you, because I have got to take care of those that are taking care of me." I said, "They are taking care of you all right, they are taking care of you, and when they get through with you, there won't be much left of you."

Q. And upon the same occasion, when you were at the house discussing the letter in question, did the following conversation take place, Ren saying, "I know you did wrong; go to A. J. for your own sake and the children's sake and beg him to forgive you"; did he say any such thing as that, either he or Mrs. Cartan?

A. I don't remember just the words, but I think that day that I was in there they said, "Why don't you make it up with Johnce?" I said, "I have nothing to make up."

Q. Did you say in reply, "No, and have him throw it up at me forever afterward", or words to that effect?

A. No.

Q. After this letter incident at Mrs. Ren Cartan's house, then what took place; you received a second letter?

A. I received a second letter.

Q. How long after?

A. I don't know just how many days intervened.

Q. I believe Mr. Devlin's son intervened?

A. No, his brother.

Q. What did you do with the letter?

A. I tore that up, too.

Q. Did you read it?

A. I did.

Q. Did its contents mean anything to you?

A. Not anything particular; I couldn't see why they should be bothering with it.

Q. Bothering with what?

A. With my affairs. I couldn't understand why they had Pat in it at all. I didn't understand what they were trying to do.

Q. What did you do upon the receipt of that letter?

A. I tore it up.

Q. Then what?

A. Burned it up.

Q. When did you have your next conversation with your husband in regard to the subject?

A. I don't know; there were so many that I don't remember just when the next one took place.

COURT: You lived at home with him from the time he first made his disclosure to you in October until you made your trip to Florida?

WITNESS: Yes.

COURT: A matter of some weeks?

WITNESS: Weeks; it was from the first of October until the fourteenth of December.

COURT: Was this a matter of daily conversation?

WITNESS: Sometimes there would be a day go over, and sometimes we would have it every day, and other times we would go two or three days and there would be nothing said; he would come in and out of the house; I would feed him and do for him the same as I always had, and he would eat with us.

COURT: And would talk about ordinary matters?

WITNESS: Talk about every ordinary thing, and maybe something would bring this matter up, and the next day we would have a big time over it.

Q. Did you ever admit to your husband or did you ever say to him that you had been guilty of any intimacy with Devlin?

A. No.

Q. Your husband has testified that in the spring of 1918 he talked with you in regard to your fondness, or alleged fondness for Devlin; did he ever accuse you of any intimacy with Devlin before October?

A. Never.

Q. He has testified in regard to the so-called Sam Van Marter incident; will you tell us about that, when

your husband came in the house and found Sam Van Marter in the house?

A. As near as I can—

Q. When was it?

A. I don't know just exactly when, but I know that afternoon late, it was around supper time, I think he came from New York, Sam Van Marter did, and he came up from the station and came in the house to wait for the boy to come from the garage after him; he had telephoned from the station for him to come down.

Q. Where did he live?

A. At Marlboro, and he had a boy up around the garage that he phoned to come down after him; he sat in the house waiting for the boy, and little Johnson and I had been talking earlier in the day about going to Amboy to the Burleys, and it began to get late, and I had no one to stay with the children, so I said, "Johnson, go over to the store and tell your father to close the store early, and you and he go to the Burleys if you want to; don't bother about me, because I have no one to stay here." So Johnson went over and told him and I don't know where Johnson went after that, probably up town, but anyhow Sam still sat there by the window, and I don't know for what, he went over on the other side of the house, in the parlor, and was moving around in there, and I thought it was time the children were coming in, and I went out in the hall, and stepped to the door where Sam was, and looked in to see what he was doing, and just about that time A. J. came up on the stoop, tearing in; I knew there was something wrong; I didn't know what was the matter; he came in sort of flustered, but he didn't say anything and I walked out to meet him, to the door, and I said, "Did you see anything of the children; it is

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time they came in", and he said nothing, but went right on up the stairs, and in the meantime, while I was looking for the children Sam came out of the parlor and got his hat and went on out the door to meet the boy that was to come for him, I suppose. I saw no more of him after that, and then Johnce came down, and he said, "What the hell were you doing in the parlor with Sam alone?" I said, "What is the matter with you? I wasn't in the parlor with Sam." He said, "Yes, you were, and that is the reason you want me to go to Amboy to the show." I said, "You are crazy; he is nothing but a boy; what are you talking about?" That is all there was to it, until afterward he told Helen many and many a time, "Your mother thinks more of Sam than you do", and he tried many and many a time to get Helen to go against me on that one account. He said, "Your mother thinks more of Sam than you do. He comes here to see her instead of you."

Q. Did he ever refer to this Van Marter incident to you again?

A. Not directly, no.

COURT: When the trouble arose about Devlin, did he ever make any reference to the Van Marter incident?

WITNESS: Not in connection with that.

COURT: In any way?

WITNESS: No.

Q. Did he ever speak of the Van Marter incident again to you?

A. No, I don't think so.

Q. Or your affection for him?

A. No, he only tried to get Helen to give him up, and told her that was the reason he wanted her to give him up.

Q. What was the reason?

A. That he thought more of me than he did of her.

Q. How long had Van Marter been a visitor at your home?

A. Six or seven years.

Q. Before that?

A. Yes.

Q. Can you fix the time approximately of that Van Marter incident, whether it was in the spring, summer or fall of 1918?

A. It was warm weather.

Q. You say your husband accused you of intimacy with Devlin in October, 1918; how long before October was this Van Marter incident, a matter of weeks or months or days or what?

A. You mean the Van Marter incident in October?

COURT: No, this day when he was in the room, when your husband found him in the parlor and accused you.

WITNESS: That was probably a month and a half or two months before he spoke to me about Devlin in October.

COURT: Sometime in August then?

WITNESS: It must have been August; Sam went away in September; he went away to the other side.

Q. Did your husband ever endeavor to get you to sign a paper of any kind?

A. Yes.

Q. When?

A. That was somewhere around in November, I think.

Q. How long before you left for Florida?

A. About a month before.

Q. Whereabouts did it take place?

A. In the kitchen.

Q. Tell us about that.

A. He came in and he said—

Q. Day or night?

A. In the daytime, I was ironing—and he said, "I would like to ask you about a little matter concerning our differences", and I said, "What is it?" He said, "Well, I would like you to sign a little paper." I didn't know what he meant by a little paper; I said, "What do you mean by a little paper?" "Well, just a little slip of paper that I would like you to sign", and he said, "I will give you $2,000 right in your hand, if you will sign it"; I said, "I don't understand you at all; I don't understand any signing, what do you mean me to sign it for, and what does the paper say?" "Well", he says, "you will say that you have had improper conduct with P. J. Devlin." I looked at him, to see if he was in his right mind or whether I was dreaming or what, and I said, "Do you mean to tell me, that me, the mother of four children, and you stand there and try to bribe me"; I said, "You never had five cents to spend on me before in your life, for pleasure or anything else, and what do you want me to do with the $2,000?" He said, " You can have it for pin money." I said, "I never had any pin money be-

fore in my life, and I don't know why you should give it to me now." I said, "You are willing to send me South and pay $450 for a house and then give me $2,000 for pin money?" I said, "I cannot understand it at all. " I said, "I am willing to go South all right; I am glad to go, I like the trip and all, I know it will do me good", because I was all worn out; I was glad to get away.

Q. Did he produce the paper at that time?

A. No; I told him I wouldn't sign any such paper; why would I sign such a paper like that for him?

Q. Did he show you any money?

A. No, he said he had it. I said I wouldn't take it if it was $10,000; I wouldn't do such a thing as that.

Q. Did your husband and you live together as man and wife after May, 1918?

A. Yes.

Q. He has testified that in January, 1918, you left his bed without any reason, is that true?

A. I had a reason; I was sick.

Q. What was the trouble?

A. First I had appendicitis and I had an abscess form after that and I had to sleep alone.

Q. Where did you sleep?

A. Over on the other side of the house, in the back room, on the opposite side of the hall from him.

Q. And you continued to occupy that room?

A. I did, yes.

Q. Did he ever come into your room?

A. He did.

Q. For what purpose?

A. He came in there to see me.

Q. I am speaking now of a time after May, 1918.

A. Yes.

Q. And what time would he come in there, at nights or mornings?

A. Sometimes he would come in at night and sometime in the morning and kiss me and cover me up and go on down stairs; I never got up very early because I wasn't well.

Q. How long did that continue?

A. Up until the time almost that he told me this affair.

Q. In October?

A. Yes.

Q. During all that time did he treat you with fondness and affection?

A. The same as usual most of the time, except when we would have our little differences over Helen's matters.

Q. Generally speaking?

A. Yes.

COURT: The same as he had formerly treated you?

WITNESS: Yes.

Q. Between May and October did you and he cohabit as man and wife?

A. Yes.

Q. And in this room to which you withdrew in January, or in both rooms?

A. Yes, and in his room.

Q. Which?

A. And where he slept, in the big room.

Q. Did you go there voluntarily or at his request?

A. Sometimes I would go over there myself and sometimes he would ask me.

COURT: When was the last occasion?

WITNESS: I cannot exactly fix the time.

COURT: But in relation to the time when you say he first spoke to you about Devlin, before or after that?

WITNESS: About six weeks before that.

COURT: That was the last occasion?

WITNESS: Yes, about six weeks before his first disclosure about Devlin was the last occasion when he called me over into his room.

COURT: When you had intercourse you mean; was that the last occasion?

WITNESS: Not that time, but shortly before that.

Q. But you did not cohabit after he accused you of intimacy with Devlin?

A. No.

Q. And the last time was about four or six weeks before that?

A. Yes.

COURT: She said about six weeks.

Q. Can you tell us about what occurred upon the last occasion that you occupied the same bed?

A. He called me over there and he got talking to me; he said I didn't love him any more and all this, and want-

ed to know where my love had gone, and of course I couldn't tell him, because it hadn't gone anywhere, and he said I didn't act towards him as I should; I said, "whatever coolness you think has happened, it is your own self has done it; I don't know what you mean", and I cried and left the room and I didn't go back again.

MR. WILSON: You left the room?

WITNESS: I left the room after he talked to me; I left the bed.

Q. And didn't go back again?

A. No.

Q. And you and he after that occasion did not cohabit?

A. No.

Q. Even after you ceased cohabitation did you and he continue to dress and undress in the same room?

A. Yes.

Q. How late did that continue?

A. Up to the morning I went away South.

Q. Did he make any objection to that?

A. No, we always dressed and undressed in the same room; there was no other place to keep my clothes and I always had to use that room, because that was the only closet we had, and I never saw any occasion to go out of there with my clothes; I never had any reason not to go in there.

Q. What was your practice in regard to keeping a light in the hall?

A. We always kept a light all night.

COURT: Between the last occasion you referred to, when you say you left the room because he accused you of not having any love for him, and the time he made the first disclosure about Devlin in October, how did you and he get along; did you talk to each other and live as formerly?

WITNESS: Yes, just the same.

COURT: Any change in that relation whatever in those few weeks?

WITNESS: There was a little coolness on that account; I felt bad, anybody would.

Q. Coolness on what account?

A. He told me that I didn't think anything of him any more.

COURT: I am talking about before the Devlin disclosure, and six weeks before that, when he accused her of having given her love to someone else.

WITNESS: He had been acting queerer; Helen and I were talking about how queerly he was acting. He used to come in the house all hours of the day and go upstairs and go in every room in the house.

COURT: Was that unusual?

WITNESS: Yes, there was no occasion for it.

COURT: Had he done that formerly?

WITNESS: No.

Q. When did that start?

A. After that Sam Van Marter affair, and he would come in all times of the day. He would go upstairs and go in every room in the house and go in the bathroom and come downstairs and go in the cellar, and he would go over to the store, and he would repeat that two or three times a day; I didn't think he was right; I said, "Your father is acting queer; there is something wrong with him."

COURT: Strike that out.

Q. When did your husband first say anything to you about getting a divorce?

A. After he accused me of that in October, in different times he talked to me about it, he said, "I am going to get a divorce and name Devlin."

Q. What did you say?

A. I said, "Why name Mr. Devlin or anybody else? If you are not satisfied with me, why don't you go by yourself; why don't you live your own life and let me live mine, and not bring such a disgrace on the children now at this time of life?" He said it was no disgrace on the children; I said, "I don't see why it is not; it will be a disgrace on them as long as they live. If you harbored all this in your heart against me all these years, as you say you have, why didn't you come to me with it before?"

COURT: What did he say he harbored in his heart?

WITNESS: He would say different times, "I have

known this thing for years", and I said, "Why didn't you come to me with it before; why did you wait until now to come to me with it?"

COURT: What did he say to that?

WITNESS: Nothing.

Q. Your husband testified that in one of the conversations he had with you, you said that you had had intimate relations with Pat, or P. J. Devlin, some time ago; you also said that it was one of the foolish things that women do sometimes, and that "I think a lot of Devlin and he thinks a lot of me." This took place, he says, in the kitchen; did any such conversation ever take place?

A. No.

Q. You never said any such thing?

A. No.

Q. Or words to that effect?

A. No, sir.

Q. He also stated that you came to him and asked him to make up, even for a short time, is that true?

A. Yes, I offered to fix things up for the children's sake, we could live it down, if he would.

COURT: How do you mean "fix it up"?

WITNESS: To look over everything and anything, that had happened between us, and any differences that we had had, and I said, "For the children's sake I am willing to do the best I can."

Q. What did he say?

A. He couldn't say anything until he had seen Ren.
Q. Did he say that?
A. No.

MR. WILSON: I move to strike out the previous answer.

WITNESS: He said he couldn't tell me; I said, "Why not?" He said he couldn't; I asked him Friday night when I was home from the South for five weeks, it was one of those times; I had been down to see Jim and Mr. Applegate and it was a Friday night, and I said, "Why can't you tell me now?" he said, "I cannot."

COURT: Tell you what?

WITNESS: Whether we would make up or not, or let it go, and I didn't say anything more that night, and all day Saturday he walked up and down the street; Ren wasn't home and he couldn't talk to him, and Sunday they had one of their family conferences, as usual, and the whole business were over at little Edna's house.

Q. How did you know?
A. Because I could see every move they made. I saw every move they made from the start; they all went over there and had their little conversation, and that night I waited for him to say something, whether he intended to come back with me, and he said nothing. Monday morning I said, "What is the verdict; have you made up your mind what you want to do?" He asked me what did I mean; I said, "You mean to tell me you don't know what I was talking to you about Friday night?" "Oh, well, yes, I believe there was something concerning the

reconciliation, but", he said, "there is nothing to that". 'Oh," I said, "isn't there? Then,"I said, "that settles it; you go ahead and do whatever you want to."

Q. In this talk Friday night or any other time, did you say or intimate that you had been guilty of any intimacy with Devlin?

A. I did not.

Q. And it was that you wanted him to forget?

A. No. I just said "whatever the differences we have had I am willing to look over and do the best I can."

Q. He also testified that you kept asking him, "Why don't you sue for a divorce; why don't you sue for a divorce?" Is that true?

A. No. He kept telling me that he was going to get a divorce, and that these proceedings were going on, and of course that was hanging over my head all the time. I was naturally anxious to know what he was doing about it. I was doing for him every day of my life; he come in the same as usual; I was fixing his clothes and darning his socks and feeding him the same as usual, and I wanted to know what he was doing; I would ask him at night; we would sit there and he would be reading the paper; I said, "What have you done about this matter?" And sometimes he would mention it himself; he would say, "Concerning this little trouble we are having"—it didn't seem to be any more to him than a business transaction, and he would say, "this little affair of ours, I am attending to it, and it is progressing as fast as it can, and I intend to serve you with papers", but the papers never came, and I was anxious to know what he was doing about it, and when they were coming, and I was thinking about going South and I wanted to go.

COURT: What made you think about going South?

WITNESS: I wanted to get away.

COURT: Who first suggested that?

WITNESS: I did.

COURT: When?

WITNESS: One day at the table.

COURT: In October or November?

WITNESS: I think the early part of November.

COURT: Tell me about that incident; what was said about it?

WITNESS: We were eating at the table, and of course when I sat opposite him at the table every meal and knew he felt towards me as he did, it made me feel pretty sore to think that I was working for him and doing for him just the same as I always had done, and still he lived there; I asked him how he could do it; he said it was his home; I said, "It is your home, but it is my home, too. I am sick and tired of these things", I said one day, "I wish I could get away." I always wanted to go South, and he said, "Well, after a while maybe we can fix it so you can." That is all that was said that day, and later it was mentioned again, and he said well, maybe if he could get a house—"Why don't you ask Mrs. Worthley if she knows of any houses?" So we asked Mrs. Worthley to

write to this party she knew there, and he sent the letter to her that we could have the house for a certain price. That is how I come to go. I was glad to get away.

Q. Had you ever asked to go South before that?

A. Yes, lots of times.

Q. Did he ever permit you to go?

A. No, he never could afford it, he said.

COURT: Any suggestion contained in your trip to the South, that while you were there, these divorce proceedings could be started and conducted quietly?

WITNESS: He said to me one day in one of our talks, "Now, if you don't fight this thing and you let me get the divorce, you can name your own price; you can have anything you want."

COURT: When was that, before your trip to Florida?

WITNESS: Yes, that was before we had settled to go. I said, "I don't know what you mean by 'naming my own price'; I never had a price for anything; I don't know what you are talking about."

Q. How long did you purchase your tickets for the South before you actually left?

A. Just, I think, the day before I went—no, it was a few days before, I went to New York and got the tickets.

Q. Your husband gave you money to get them?

A. Yes.

Q. Did he know when you were going?

A. Not the date, until I came home with the tickets, because I couldn't tell until I got the reservation.

Q. He knew before you actually left when you were going?

A. Yes.

Q. How long before you actually left did he know that?

A. The day I came home with the tickets.

Q. How long was that before you actually left?

A. A few days.

Q. Two or three?

A. Yes.

Q. When were you first served with the papers?

A. The night before I went South.

Q. Where were you served?

A. Right in my own home.

Q. Who was present?

A. Helen.

Q. Your husband there?

A. No.

Q. What time of the night was it?

A. Right after supper.

Q. Were your trunks packed at that time for your trip?

A. They had gone; I had been down to the station that afternoon before supper time and locked the trunks and they had gone.

Q. Did your husband or anybody else tell you that you were to be served with the papers that evening?

A. No, I kept thinking all the time that when he didn't serve them, that probably he was just talking and that he didn't mean to serve me with the papers.

Q. Did you have any knowledge before they were actually served, that they were going to be served?

A. Only from what he said.

Q. Of the time, I mean.

A. No.

Q. Having been served with the papers, you started nevertheless the next day—

COURT: You say this was about supper time when you were served?

WITNESS: Yes.

COURT: Did Mr. Cartan come home to supper that night?

WITNESS: Yes, he was in the room after it was served and asked me if anyone had been there with the papers.

COURT: Did you tell him about the service?

WITNESS: Yes.

COURT: What conversation did you have?

WITNESS: We had not much to say; I felt so bad I couldn't say very much, but my sister was there, and she had plenty to say to him.

COURT: What did he say about it?

WITNESS: He said it would all turn out all right; he told my sister, "This thing will all come out all right."

COURT: Did you have supper together in the family?

WITNESS: Why, sure.

COURT: Did he have supper wtih you?

WITNESS: Yes.

COURT: Where were the papers?

WITNESS: Not until after supper did they bring them.

COURT: Did he remain home with the family that evening?

WITNESS: He was in there while my sister was talking, but I don't remember, I think he went out again.

COURT: Did you see him when he retired that night?

WITNESS: I knew when he went to bed; I was on the other side.

COURT: What time did you leave the next morning to go to the station?

WITNESS: I don't remember what time; I think around the nine o'clock train?

COURT: Did he say good-bye?

WITNESS: Oh, yes, and he asked me that morning if I wanted him to go to New York and see me off on the train with the children. I said, "Do you think it would look nice after serving me with the papers last night?"

COURT: What did he say?

WITNESS: He didn't say anything.

COURT: Did he come down to the station with you?

WITNESS: No.

COURT: How did you get down to the station?

WITNESS: We walked.

COURT: What children went with you?

WITNESS: Johnson and the two little ones?

COURT: Helen remained at home?

WITNESS: Yes.

Q. When you were served with the papers, or afterwards, did your husband advise you as to what to do with them?

A. No.

Q. Or give you any advice upon the subject at all?

A. No.

Q. Tell you to confer with a lawyer?

A. No.

Q. Tell you what your rights were?

A. No.

Q. You went South the next day and remained there how long?

A. Two weeks.

Q. Then you came back to Matawan?

COURT: Why did you return?

WITNESS: I got to thinking it over; all the way down I read that paper; I guess I read that paper fifty times on the way down.

Q. The papers served on you?

A. Yes, and I got to thinking it over, and I thought well, since he has been so mean as to serve me with the papers and wait until the last minute, I don't see why I should not start my side of the affair and have some advice and some sort of a lawyer; I didn't know what to do, so Helen wrote me that she had asked Elmer Geran; I had already seen a lawyer down there, and she said, "Elmer thinks you had better come home."

Q. It was part your own suggestion and part a suggestion from Helen which brought you back?

A. Yes.

COURT: Strike out what Helen wrote.

WITNESS: I went to a lawyer down there.

Q. You came back home after two weeks' absence?

A. Yes.

Q. When you got back home, you consulted me?

A. Yes.

COURT: She had been consulting you before she left?

WITNESS: No, that was during the five weeks I was

home I had been consulting Jim and Mr. Applegate.

Q. When you came back from your Florida trip, where did you go?

A. That night I stayed at Fury's Hotel, the first night.

Q. Then where did you go?

A. Down home, and stayed there.

Q. Did you see your husband before going home?

A. No.

Q. Did he ask you to come there or did you go there voluntarily?

A. I went there.

Q. And after you got there what did you do; did you make that your place of abode?

A. Yes, only we took our dinner and supper at Fury's Hotel.

Q. Who is "we"?

A. Helen and I and Gene. Gene was home with me.

Q. You continued to stay at the homestead, then, did you, for five weeks while you were North?

A. Yes.

Q. Did your husband live there at that time?

A. He didn't sleep there nights, but he was in and out there all hours of the morning and stayed there until about eleven o'clock at night.

Q. Doing what?

A. Reading or going in or out.

Q. Were you sitting in the same room?

A. Yes.

Q. Reading, too, there?

A. Yes.

Q. Describe how you were seated.

A. Our sitting room had a table under the gas, and we had a gas light, and he would sit one side of the table and I the other.

COURT: The same as you usually did?

WITNESS: The same as we had always done.

Q. Did he converse with you?

A. Sometimes.

Q. Sometimes conversed with you about the divorce matter?

A. Yes, sometimes.

Q. About other matters?

A. Yes, ordinary affairs, sometimes you would never know there had been anything the matter.

Q. Did that continue during your entire stay North?

A. Yes.

Q. During that time did he have any further conversation with you in regard to the divorce? Letting you get a divorce, or anything of that sort?

A. No, I don't remember, only one time when I wanted money to go back South with the children, I thought then that I wouldn't stay, probably, and he said, "Want money to go back?" He said, "We are not going to send you back and forth South whenever you feel like it." I said, "We; who is 'we'; who sent me South, You or Ren or the rest of the Cartans, or who, or who will?" He said, "I, if that suits you any better." I said, "Yes, but you said 'we'; that is what you meant; first you said the truth; it has been 'we' right from the start."

COURT: As a result of that conversation did he give you any money to go South?

WITNESS: He did not.

Q. You did return?
A. I did; I borrowed the money.
Q. Did he know you were going to borrow it?
A. I told him all heaven and earth couldn't keep me from going back for the children; he said, "Let Johnson bring Betty back here." I said I took them down and I would go down after them, and for that matter I didn't see any reason why I should not stay there, the house rent was paid; was he willing to let that go; he said that didn't matter; let it go, he could rent the house; I said, "the season is too far gone to rent it."

COURT: During the four or five weeks you were up from the South, did you continue to dine at Fury's?

WITNESS: Dinner and supper.

COURT: Why didn't you have the other meal at home? Any suggestion made about resuming housekeeping?

WITNESS: When I started I didn't think I would be home but a few days; Helen was eating up there, and I said should I eat up there, and he said, yes, it would be all right; he told Mr. Fury to take care of us, it would be all right.

COURT: Did he pay your board or did you pay it yourself?

WITNESS: He paid it; I suppose he didn't pay it in the end; he brought a bill against Mr. Fury for more than our board.

COURT: Did you pay your board bill?

WITNESS: No.

COURT: While you were there?

WITNESS: No, I had nothing to pay with. I came back from the South and had three dollars when I got here.

Q. Did he ever complain about your coming back from the South?

A. He complained to Helen.

Q. To you?

A. Not to me.

Q. Did he ask an explanation of why you returned from the South?

A. The next morning he was in the kitchen—I told him I had taken advice, and he said, "What, you have had advice?" I said, "Yes; I think it is no more than fair." He said, "You told me you had two or three or four lawyers, four or five, if you wanted them", and I said, "I think it is the proper thing that I should have one."

Q. Did you tell him at that time during your trip North that you were going to contest his suit for divorce?

A. I told him that morning I was going to start my defence; I didn't see any reason why I should not.

Q. What did he say?

A. Nothing.

Q. Mrs. Cartan, can you tell me what Mr. Cartan's

practice was in regard to his home life, whether he spent his time with you and the children or whether he was away from home frequently?

Q. You mean his whole life or just—

Q. Going back a period of eight or ten or twelve years.

A. He spent a good part of his time over at the store and talking to his people; he would spend hours and hours.

Q. Who do you mean?

A. Ren and Bert,—with any of them.

Q. Where would he spend his evenings?

A. Sometimes at home, but often he wouldn't come in until near bed time; he would be down talking with them.

Q. Was he home more frequently than he was away?

A. Only long enough to eat.

COURT: But his evenings, Mr. Applegate is speaking of.

WITNESS: No.

Q. Where did he spend his holidays and Sundays?

A. He spent his Sundays home, around home; we would go out riding, after we had the automobile; before that we never used to see him very much, he would be around the store, but after we got the car, he always went to ride in the afternoon.

Q. Did he spend any great portion of his time at the Cartans, his brothers?

A. Yes, I thought he did.

Q. Did he, and if so, who?

A. I would see him come out of there, and he would

stand for hours talking to them; probably on Sunday I would have dinner all ready and send the children after him; he would be down there a couple of hours after the dinner would be all ready; I cannot understand why he had so much to talk about.

Q. Was this some years before?

A. Yes, he has always been a family man.

COURT: The Cartan family man or your family man?

WITNESS: No, Cartans.

Q. Who took care of the household?

A. I did.

Q. Did you have any regularly employed maid?

A. When I could get one, I did.

Q. Who did the sewing; did you make your own clothes?

A. Yes.

Q. Who did the washing?

A. I had a washwoman when I could get her; and when I didn't, I did it myself.

Q. And the cooking and ironing?

A. I did.

Q. Who did the housekeeping?

A. I did.

COURT: Did he furnish you with any tailor-made suits?

WITNESS: I would buy them.

COURT: He would furnish the money?

WITNESS: Yes.

Q. Did you have any regular allowance?

A. No.

Q. Did you ever have any spending money or pin money?

A. Only when I went to him for every cent that I had, just as I needed it.

COURT: Did he ever refuse you?

WITNESS: Sometimes he would make me wait, he didn't have it, if I wanted to go to New York.

COURT: But he never actually refused you?

WITNESS: No.

Q. Did you ever meet with P. J. Devlin and talk over the subject matter of this suit?

A. I never saw Mr. Devlin only on the street that one morning.

Q. Have you ever met Mr. Devlin in any of the conferences in relation to this suit?

A. I have not.

COURT: When you met him that one morning, when was that?

WITNESS: That was after I got that letter; I went to the store after him.

Q. The first or second letter?

A. The first letter; I went down to the feed store and he wasn't there yet, and they told me that he hadn't come down yet, but they thought he would be on his way, so I walked up the street and I met him between Eskensen's and the house next, nearly opposite Dr. Ervin's.

Q. Did you speak to him?

A. I did.

Q. What was said?

A. I said, "What is all this letter writing about; what does all this mean?" He said, "Doll, there is so much to it"—and he seemed to be worked up—"there is so much to it, I cannot tell you." I said, "Pat, who told Mame all this stuff about me?" He said, "Big Edna." Well, it took me so that I couldn't think hardly; I said, "Why did she tell her; why did she tell her anything?" He said, "I cannot tell you, because there is too much to it", and he said, "Why don't you try and make up with Johnce?" I said, "Pat, you don't know Johnce; I have got to see this thing through", and with that he went on down the street.

Q. What did you think that Devlin meant when he said, "Why don't you make it up with Johnce"?

A. I don't know; I didn't know what making up; I don't know what I had to make up.

Q. When you made your reply did you have any criminal intimacy with Devlin in mind?

A. No.

Q. Which you were going to smooth over with your husband?

A. No.

Q. Is that the last time and the only time you ever saw Devlin?

A. That is the last time I ever spoke to him.

COURT: Have you ever communicated with him in writing?

WITNESS: I have not.

Q. Since then?
A. No.
Q. Has he ever written you other than these notes involved in this suit?
A. No.
Q. Do you know his handwriting?
A. No.
Q. Did you know his handwriting when you received the note from Mrs. Ren Cartan?
A. No, I didn't know whether it was his writing or whose?
Q. Have you ever met him clandestinely?
A. No.
Q. Or carried on a clandestine correspondence?
A. I have not.

COURT: Who is enabling you to employ counsel; to employ Mr. Applegate and pay for his services.

WITNESS: I suppose Mr. Cartan will have to pay it.

COURT: You haven't paid him?

WITNESS: No.

MR. APPLEGATE: There has been no formal order, but I took an order, or rather an application, and my recollection is, and I think it was served, and Mr. Wilson ac-

knowledged service, and then he said, or someone said, that there is no use of going to court about this matter, this can be arranged without a formal order, with the result that $100 was paid me at that time; two or three weeks ago, I think the last hearing, November 18, $300 was paid me.

COURT: Has Mr. Devlin contributed anything towards Mr. Applegate's fee, as far as you know?

WITNESS: Not that I ever knew. I have never had any dealings with Mr. Devlin in this matter.

MR. APPLEGATE: I can answer that, as far as I am concerned if you want me to.

MR. WILSON: Mr. Applegate's statement as to how the matter of counsel fee was adjusted is in entire accord with my understanding.

COURT: It was done without a formal application to the court?

MR. WILSON: And the question of the lady's alimony pending this litigation was disposed of in the same manner.

MR. APPLEGATE: $50 a week alimony is now being paid for her support.

MR. WILSON: My understanding is that she lives in the former homestead and she receives $50 a week in cash, and Mr. Cartan has made some independent provision for the son, as to his clothing and things of that kind.

COURT: Were the other two children and Mrs. Cartan to be supported out of the $50 for their table, and the home is furnished there?

MR. WILSON: Yes.

WITNESS: Our bill at the store comes out of that $50 before it is handed to me.

COURT: The provisions you may buy at the store are charged up against the $50, and you receive the difference?

WITNESS: Yes, and Johnson's clothes have a few times been paid, but lately I have bought them and given him his spending money out of that, too.

Q. Is there any fact concerning which I have not asked you that you would like to state concerning the issues involved in this suit; if so, please do so.

A. I don't think of anything.

COURT: I would like to ask a question or two before you cross examine.

EXAMINATION BY THE COURT:

Q. You remained South after your second trip how long?

A. Until I think May.

Q. Then you came home with the children?

A. Yes.

Q. And went to your home?

A. Yes.

Q. Was Mr. Cartan living there at that time?

A. He was, until the day I came home.

Q. And then on the return of yourself and children to the home, did he move out?

A. Yes.

Q. Have you seen him since then to talk with him?

A. Yes.

Q. Where, at the home or otherwise?

A. I think I talked with him since; I am not sure.

Q. Since you came back from the South, I am trying to find out if you and he have had any conversation on any subject?

A. I cannot recall any now; he has been in the house lately.

Q. How lately?

A. He was in there night before last.

Q. What was his object in making that visit?

A. He didn't tell me; he came in the door and went upstairs and looked around and I asked him as he came through what he wanted; he same in and I said, "Can I get you anything?" He said, "No, I want to go upstairs", and he walked around and went down and out.

Q. Has he left his wearing apparel there?

A. There are some old things there, but nothing he uses. Night before last when he was in there again with Mr. Heuser, he went upstairs and made plans of the house. He had Mr. Heuser there the week before; he said he went up to finish up the work.

Q. You made some reference in your testimony to Mr. and Mrs. Ren Cartan as being responsible for this

trouble, in this way, that would be the inference I would draw from the way you have referred to it. Can you tell me anything about your friendliness or unfriendliness, if any, with Mr. and Mrs. Ren Cartan prior to this trouble?

A. I never have said anything before, but I always have felt that there was a sort of antagonism in the family against me, but of course you can feel those things in the family but you don't like to come out and have any open breach about that.

MR. WILSON: Do you think we should take her feeling?

COURT: It is on the record and I am endeavoring to get her explanation. I am endeavoring to get an explanation for her charge on that occasion against Mr. and Mrs. Ren Cartan, if it was due to friendliness or unfriendliness between them.

Q. Had there been any unfriendliness up to that time between Mr. and Mrs. Ren Cartan?

A. No, nothing particular, but I would like to tell you something which came in my mind that he said the day I was down there to see about the matter.

Q. Who said?

A. Ren, after I had told him that I didn't think he was the proper kind of a man to step in between a man and wife; I said, "Ren, I suppose it is because you are his brother that you are doing this thing, you are upholding him." He said, "No, Doll, blood is thicker than water." I said, "I know that, but if you still continue to do this thing and try to get him away from me, I will tell everything I know about you, and I won't be afraid who I tell it to." "Well", he said, "then if you do that against me,

I will go the limit against you." I said, "Go to it", and I went out. Those were the words we sep—

MR. APPLEGATE: One question I overlooked.

FURTHER DIRECT EXAMINATION BY MR. APPLEGATE:

Q. Just describe the location of the rooms and the hall in your house, will you please, and where your bedroom was?

A. The house is square and there are two rooms on each side, two front rooms.

COURT: You are describing the downstairs?

WITNESS: No, upstairs, where we sleep, and then there are two back rooms.

Q. Two front rooms face on what street?

A. On Main street.

Q. Separated by a hall?

A. Up as far as the front of the house, then there is an alcove from the big room, with a door opening out into the hall, so the hall doesn't extend to the front of the house, but all four doors to the four bedrooms are opposite one another, except the one that goes in to the alcove, that makes five doors, and right alongside of the door which goes in the big front room, is a bookcase, and Helen's room was in the front.

Q. Which room was opposite the room of your husbands?

A. Johnson's where he went into his room right directly opposite, but my room was catacornered.

Q. The room you occupied after January?

A. Yes.

Q. Where was the gaslight in the hall?

A. On the side that I slept on.

Q. How near the door that led into A. J. Cartan's room?

A. On the opposite side of the hall, but the hall isn't very wide.

Q. How near to the doorway?

A. I should say six or eight feet.

Q. Standing in the hallway opposite or in the doorway that led into Johnson's room, and looking into the room of your husband in the night time when the gas was lit, is it possible to see persons in bed in A. J. Cartan's room?

A. Not standing way over in the door, but as you go over to go to the bathroom, you would have to go close to the door where Johnce slept, because you had to go over near the door to get in the bathroom.

Q. Are there certain points in the hallway from which one can see into A. J. Cartan's room?

A. Yes.

Q. And see the bed and occupants in the bed, if any?

A. Yes, when you pass over, going to any of the other rooms, you have to pass that room and you could see in.

Q. What was your practice as to leaving the door open?

A. We always left all of the doors open; in the middle of the winter we might shut them in the daytime, but at night the doors were always open.

Q. Have you made any recent effort to see whether or

not one could see from the doorway to the bed in A. J. Cartan's room?

A. Yes, since these things have been talked about, only yesterday Dora Hopkins and I were upstairs and we have tried it; we stood out in the hall and you can see from the hall over by the gas jet, or anywhere from the hall you can see right in on the bed.

Q. And are the conditions there of the hall, the hallway and the rooms, the same as they were in the months of June, July and August, September, October and November, 1918?

A. Yes.

Q. There has been no change whatever?

A. No.

COURT: Either in the location of the doors or beds or anything else?

WITNESS: No, the doors are all the same and the beds are just the same. There is no place to put the bed but the one spot; there are all doors and windows in the rooms, but the one place.

CROSS EXAMINATION BY MR. WILSON:

Q. Which side of the hall is the door that goes into Helen's room? I understand there is an upstairs hallway; as you go up and go down the hallway towards Helen's room, which side of the hallway is the door to her room?

A. On the lefthand side as you go up the stairs.

Q. And that is the same side of the hallway that the

door of your husband's room is on?

A. Yes.

Q. And about how wide is the hallway upstairs?

A. I should image about five or six feet; I don't know exactly.

Q. As far as from me to you?

A. No, much shorter than that.

COURT: About five or six feet; that would be less than the distance from you to Mr. Wilson.

WITNESS: I don't think the hall is much wider than this platform. (Indicating.)

Q. A width of about five or six feet?

A. Yes, not over that.

Q. Is the gas light in the hall immediately opposite the door of your husband's room or cat-a-cornered?

A. Cat-a-cornered.

Q. And why did you make this experiment with this lady you mentioned a moment ago to see how much you could see in the hallway as you passed the door; why did you do that?

A. We had been talking it over and it was sort of a question whether you could see in the room, and we thought we would try it.

Q. You were rather in doubt as to whether you could see in the room, so you made the experiment?

A. I wasn't in doubt, but I wanted to prove to Dora that you could.

Q. She was in doubt?

A. I don't know.

Q. Who was in doubt; you said you weren't in doubt;

whom did you mean was in doubt?

A. I probably don't mean that exactly, but we were talking the matter over and I said—

Q. Then the use of the word "doubt" was a mistake so far as you were concerned; you didn't mean to use the word "doubt"?

A. No, there was no doubt in my mind whatever about the matter.

Q. Do I understand you to say that in passing in front of your husband's door you can look in and see the whole bed?

A. You can see the occupants of the bed.

Q. You can see the whole bed?

A. You might not see one corner in it, but you can see who is in it. It sets right alongside of the door.

Q. Which is the head part of the bed; does the occupant of the bed as it was when your husband was living there and occupying the bed, was his head next to the wall?

A. Head towards the wall, by the door; it is only about that far from the door (indicating about eighteen inches).

Q. And the bed you already said was in the same position now as formerly?

A. Yes.

Q. You say that one passing in the hall could see the face and head of the person lying in the bed?

A. I don't say you could see his face, but his body.

Q. How much of his body could you see?

A. Pretty near all of it?

Q. How much of it, half of it?

A. Yes, more than that.

Q. Three-fourths of it?

A. Yes.

Q. You could see everything but the face?

A. You could if you wanted to; you could see the face, too, if you looked.

Q. Just in passing the door?

A. Yes.

Q. You thought it wise to make this experiment after hearing Miss Helen testifying that she went by the door and looked in and saw her father and you in bed; that was when you made up your mind to make this experiment?

A. I hadn't made up my mind to anything.

Q. You had made up your mind to make this experiment sometime; when did you make up your mind to do that?

A. We just happened to be upstairs, Dora and I, in talking over the matter, and we went out in the hall and looked around.

Q. Was it night time?

A. Near night.

Q. Did you have the gas lit?

A. Yes.

Q. Was there any light outside on the street?

A. It was early in the evening; in the house you have to light the gas.

Q. Do you recall whether there was a light in the street; was there any daylight outside at the time?

A. No, just at dusk.

Q. But not night yet?

A. No.

Q. So that there was some light that came in from the windows of the room from the outside?

A. No.

Q. Wouldn't that be so if it was only dusk?

A. In the hall there are no windows so no light can reach the hall.

Q. In your husband's bedroom?

A. It wasn't light enough to see anything in it from outdoors.

Q. You could see something but you couldn't see anything much?

A. No.

Q. It didn't occur to you to make the experiment at a time of night when it was dark outdoors and no light, but the light in the hall; you didn't make it under those conditions?

A. No.

Q. These family parties of which you spoke, you say they were quite infrequent between the Devlins and Cartans?

A. The Devlins and Cartans frequented their houses and those parties a great deal more than I did.

Q. What you mean to say is, that they had the parties frequently, but that often you didn't attend them?

A. That is right.

Q. And you didn't attend them because you stayed home with the children?

A. Yes, and lots of times I was sick.

Q. You stayed home with the children because, while Helen was able to care for them, you didn't want to put that burden on her?

A. No.

Q. And so you denied yourself the social companionship of these occasions in order that you might take care of the children?

A. Yes.

Q. That is your explanation?

A. Yes.

COURT: She also added that she was sick on some of those occasions.

MR. WILSON: Yes.

Q. You were sick from time to time?
A. A great deal.
Q. But the Cartan and Devlin families used to meet every week or every two weeks, every ten days?
A. I never kept track of every time, but I know they met very often.
Q. And about how many times in the last ten years would you say that in your opinion they met for social purposes when you were kept away by reason of illness; not very many, was it?
A. Oh, yes.
Q. How many?
A. They would be down at either big Edna's—
Q. About how many times in ten years?
A. Oh, Lord, I cannot tell you that; hundreds of times, I suppose.

COURT: That you have not been there?

WITNESS: Yes, that I have not been there.

Q. I asked when you were kept away by reason of being sick; there were hundreds of times when you were not there because you were sick?
A. Yes, and when I was sick and didn't have anyone to stay with the children.

Q. How many times do you think you have been kept home in the last ten years because you were sick?

A. Fully that number of times.

Q. What number of times?

A. You said a hundred times; I said Yes.

Q. You said one hundred?

A. I mean that in the last ten years.

Q. Have you had any serious illness except the illness you spoke of in January, 1918, when you had appendicitis; have you had any serious illness during the last ten years?

A. I never was very strong.

Q. You had no serious illness which you recall?

A. Yes, I had erysipelas that year.

Q. That was the same year you had appendicitis?

A. No.

Q. What year was that?

A. In 1917 that was.

Q. What other ailment did you have?

A. I have had different ailments all my life; I haven't been well.

Q. Are you well now?

A. Better than I have been in years.

Q. You have also fixed the time of the Bigget's party as being about commencement time at the High School in June, and what year?

A. 1918.

Q. And how do you fix it as being about commencement time?

A. I know I was to the commencement exercises that day.

Q. The day you went on this party?

A. Yes.

Q. Do you remember that the children had measles that year?

A. No, I don't remember, but I know they had had.

Q. You remember that the two younger children had measles in the year 1918 and that they were sick, and sick in bed as early as the tenth or fifteenth of June, and continued to be sick until the fifteenth of July?

A. They were not.

Q. Do you deny that is true?

A. I do.

Q. Did they have measles that year?

A. I don't know if they had them that year, but I know it wasn't at that time of the year.

Q. When did they have the measles, what time of the year was it that they had them, if they had them at all?

A. They had them in colder weather than that; I had to keep them warm and in the house.

Q. You would have to do that anyhow if they had measles, no matter what time of the year it occurred?

A. The day I went on that party my children were out in the yard playing.

Q. You say they didn't have measles?

A. No.

Q. You are clear about that?

A. Yes, not at that time; that was in June.

Q. And you are perfectly clear that the time when they were most ill with the measles was not between the fifteenth of June and the fifteenth of July; you are certain about that?

A. I am positive they didn't have them in warm weather.

Q. Won't you please answer that question?

COURT: Can't you answer it more definitely? Are you positive that they didn't have them between June and July 15th of that year?

WITNESS: I wouldn't say it wasn't that year; it might have been in that year sometime.

COURT: But not in that period?

WITNESS: No, not in that period.

Q. Then you wouldn't say that they didn't have them during that period?

A. I will have to think.

COURT: Think before you answer; he wants the fact from you.

WITNESS: I know they didn't have them on that date, because I remember the children being out in the yard when I left.

Q. Are you positive that between June 15 and July 15 they did not have the measles?

A. They might have had them in July; they have been sick so much, I cannot tell you the date.

Q. If it should appear that that was the date they were sick, between June 15 and July 15, with measles, would you still think that you went down to Bigget's on the eighteenth of June on this trip; would you still think that was the date?

A. I know they didn't have them.

COURT: If they did have them; assume they did have them on the fifteenth of June, would you have gone on the eighteenth to Bigget's?

WITNESS: I wouldn't if they had been sick, I never left them when they were sick.

Q. Directing your attention to this party at Mr. Close's, when was it?

A. That was after the Bigget party, I am not positive.

Q. When was it, a few weeks after?

A. A few days or few weeks, I cannot tell you how many days.

Q. After or before the Bigget party?

A. After.

Q. And before you had received these letters from Mr. Devlin which you have referred to?

A. Yes, there were no letters then.

Q. It was before you had gotten the letters?

A. Yes.

Q. And before your husband had accused you of anything improper?

A. Yes.

Q. Who first suggested going to the Close party, you or your husband?

A. I think I did.

Q. Were you anxious to go?

A. I liked to go out once in a while when I had a chance to go.

Q. You were not sick that day?

A. No.

Q. Wasn't he rather reluctant about going?

A. Yes.

Q. Didn't you have to coax him a little?

A. Yes.

Q. When you coaxed him to go to the Close party, weren't you expecting to see Mr. Devlin there, wasn't that one of the reasons why you wanted to go?

A. I said Mrs. Devlin was going and the Cartans would be there?

Q. You told him that?

A. Yes.

Q. And when you told him that Mrs. Devlin was going to be there didn't you think that Mr. Devlin was going to be there also?

A. I didn't think anything about it.

Q. Wasn't your real purpose in urging your husband, with whom you were not upon very friendly terms at that time, the thought that you would see Mr. Devlin there?

A. It was not.

Q. You deny that you sought to estrange the children from your husband?

A. I certainly do.

Q. That isn't true at all?

A. It is not.

Q. But you don't deny that you advised your daughter Helen not to obey your husband in respect to her companionship with Mr. Van Marter; you admit that?

A. No, I don't. I won't admit it one way or the other.

Q. I thought you said you told her—

A. I told him that.

Q. Didn't you give her any advice at all?

A. I did not.

Q. Didn't you tell her she ought to obey her father?

A. No.

Q. Why not?

A. I thought she ought to know her own mind.

Q. How old was she then?

A. Twenty-six years old then.

Q. And living under her father's roof?

A. Yes.

Q. You didn't think that he ought to exert any influence or control over her in the matter of her companionship with a man whom she might ultimately make her husband; you thought that was a matter of none of his business?

A. No, I did not.

Q. What did you think about it?

A. I thought he should have made interference before if he had any objection to him; that is what I told him.

Q. Then he failed of a right to influence her because he had kept silent so long?

MR. APPLEGATE: That is argument.

COURT: I will receive it.

Q. So that your idea of his attitude in the matter was, that inasmuch as he had refrained from making any complaint for so long a time, he ought not now to make any complaint?

A. That is it.

Q. Did you tell Helen so?

A. I didn't.

COURT: But you told him so?

WITNESS: Yes. I didn't tell Helen anything.

Q. When did the outhouse first begin to be used as a playhouse for the children?

A. Just this last year and a half or two years.

COURT: During 1919?

WITNESS: Yes.

Q. Beginning about 1919?

A. Yes.

Q. Never until then?

A. Only put their old things in there.

Q. When was this outhouse first used as a playhouse or rendezvous for the children?

A. About two years.

Q. I mean by playhouse, when did they first begin to go in and come out of the outbuilding for the purpose of play?

A. Since we got rid of the ducks; I think that was in 1918.

Q. And never before that?

A. Not to play in there, no.

COURT: Did they throw these wheels and things in there?

WITNESS: Yes, they threw those things in, but I never let them play in there.

Q. And long before that time, however, you say that it had been used as a place to throw trash and junk, and

things of that kind, is that true?

A. Yes.

COURT: And to store hoes, and rakes and things of that kind?

WITNESS: Yes.

Q. Wasn't a part of the junk that was in there a sofa —a cane sofa?

A. No.

Q. That had a broken head to it?

A. No.

Q. You never saw either a chair or a sofa in there?

A. There has never been such a thing in there.

Q. It couldn't have been in there without your knowledge?

A. It could not.

Q. Do you remember when Helen's room was furnished?

A. Yes.

Q. Furnished in wicker ware?

A. Not altogether.

Q. Willow ware?

A. She had a willow couch and chair.

Q. How many years ago was that?

A. Quite a number of years ago.

Q. How many, about?

A. Six or eight years ago.

Q. Do you remember that the willow couch to which you have referred when it came was broken and that she refused to have it in her room, do you remember that time?

A. No.

Q. You don't say that didn't happen?

A. I don't remember its being broken.

Q. Do you remember that there was a willow couch that came for the furnishing of her room and for some reason she wouldn't have it in her room?

A. She had it in her room for quite a while.

Q. And taken down to the store?

A. No.

Q. Where was it taken?

A. In the garage.

Q. Is it there yet?

A. No.

Q. How did it get out of the garage?

A. We carried it down.

Q. Where?

A. In the sitting-room.

Q. Is it there now?

A. It is.

Q. Is that the only wicker sofa that there was in the house?

A. That is the only one we ever owned.

Q. And that isn't broken?

A. It is not.

Q. This matter of Helen's companionship with Mr. Van Marter, was that a matter of constant quarrelling between you and Mr. Cartan?

A. Not constant, no.

Q. You would have arguments about it every few days, wouldn't you?

A. Once in a while.

Q. Wasn't it more frequently than once in a while?

A. No.

COURT: You had no serious trouble or difference between yourself and Mr. Cartan and Mr. Van Marter until this incident in August, when he found you in the parlor?

WITNESS: That is the time he began to object to his coming to see Helen.

COURT: Before that there had be no serious difficulty between you and Mr. Cartan?

WITNESS: No, nothing was said about him coming there before that; he never made any objection whatever.

Q. Do you know what it was that stirred him up especially about Mr. Van Marter?

A. After he accused me of that—

Q. What did he accuse you of?

A. He accused me of thinking more of him than Helen did.

Q. Was that because he found you in his company one night?

A. I suppose so.

Q. He did find you in his company one night?

A. He was in the house.

Q. I mean in the house.

A. Yes.

Q. You heard Mr. Cartan's testimony about that?

A. Yes.

Q. And did it happen substantially as he said it did?

A. No.

Q. How different?

A. He said I was in the room with him and I was

not.

Q. Where were you?

A .I was out in the hall.

Q. And where was he?

A. Over in the parlor?

Q. Didn't your husband say that you came out of the parlor when he came in?

A. He said I did, but I didn't.

Q. How did you come out in the hall?

A. I walked from the sitting-room, and the parlor door is right opposite the sitting room.

Q. After your husband came in?

A. No, just as he was coming up the stoop.

Q. Did you go out to meet your husband?

A. No, I was going out after the children.

Q. At any rate, after that episode he felt very bitter towards Mr. Van Marter?

A. I suppose he did, I don't know.

COURT: Did he indicate it in any way?

WITNESS: He started his queer actions.

COURT: His objections?

WITNESS: Yes.

Q. And it was then that he began to prevent Helen from having his companionship, wasn't it?

A. Yes.

Q. Hadn't he objected before that time?

A. No.

Q. And that continued to be a source of bickering

between you and your husband down to the time when things were made still more—by his having charged you with improper conduct with Devlin in October?

A. Yes.

Q. You say that your husband had never intimated to you in any way that he thought that you were too friendly with Mr. Devlin or he too friendly with you, until this time about the first of October, when he charged you with this intimacy?

A. No.

Q. Is that true?

A. No.

COURT: You mean it is true he had never done so?

WITNESS: Yes.

Q. So that when he charged you about October 1, 1918, with this improper association with Mr. Devlin, you were greatly surprised because that was the first intimation you had ever had that he thought there was anything wrong between you?

A. Yes.

Q. Didn't you know at that time that he was jealous of Mr. Devlin?

A. Not of Devlin, no.

Q. Not of Devlin; is there any significance in that answer; does that mean that he might have been jealous of someone else?

A. He always was of a jealous disposition from the time I ever knew him.

Q. Who else was he jealous of?

A. No one particularly that I knew, but he never

liked it if I danced with different ones.

Q. Did he like it when you danced with Devlin?

A. I don't know.

Q. If dancing with someone would have made him jealous, why didn't your dancing with Devlin make him jealous; you danced frequently with Devlin in all these years?

A. I didn't dance frequently with Devlin.

Q. You did dance with him?

A. Sometimes.

Q. How did he show his jealousy of Devlin or anyone else?

A. After we would go home from a dance he would be mad.

Q. Mad about what?

A. Because I danced with other men, I suppose.

COURT: Did he say anything or indicate why he was angry or that he was displeased?

WITNESS: No, but you can tell that a man is angry without his coming right out and having a big fuss over it.

COURT: By his manner?

WITNESS: Yes.

Q. You could tell by his manner that he was angry because you had danced with someone at a party?

A. Different times, yes.

Q. It wasn't necessary for him to say so, you could tell that by his manner?

A. I could read him pretty well.

Q. You could read him so well that that was the thing that he was offended with?

A. Yes, it was always that way from the time I knew him.

Q. It never occurred to you that he might be offended because you danced with Devlin?

A. No.

Q. You know the Foley sisters?

A. Yes.

Q. Do you recall an occasion, some years ago, when you told them that your husband was very jealous of you because of your conduct with Pat, and that he had made a row about it?

A. No.

Q. You deny that, do you?

A. Yes.

Q. You deny that any such conversation ever occurred or that you ever told them that your husband was jealous of Pat?

A. Yes.

Q. You deny that, do you?

A. Yes.

Q. They are here as witnesses for you in this case?

A. I think one of them is sick; they have been here, but I don't think there are here today.

Q. Coming down to the occasion when you told him or he told you early in October, that he charged you with being intimate with Mr. Devlin and he made that charge against you, when you were downstairs in the kitchen or when you were upstairs in your room?

A. He called me upstairs.

Q. When he called you upstairs, just what did he say

to you?

A. I told that before; he said, "You have been intimate with Pat and had misconduct with him", and I cannot tell you all the things that he did say.

Q. You said before that he said you had been intimate with Pat for a good while?

A. He did say that, too; he said, ' This thing has been going on a good long while."

Q. Did you ask him when and where and how you had been intimate with him?

A. I was so taken back that I couldn't ask him much; I just sat and looked at him.

Q. Then you didn't ask him?

A. No, I don't think I did; I just said, "You are crazy, it is not so."

Q. He was very much excited, I think you said?

A. Yes.

Q. He was throwing his hnads around?

A. Yes.

Q. And I think he was acting like a wild man?

A. He was.

Q. And he charged you flatly with having been intimate with Mr. Devlin, and by that you thought he meant that you had been sexually intimate with him?

A. That is what I inferred.

Q. That is what you thought he meant?

A. When he said I had had improper conduct with him, what else would I think?

COURT: Is that what you did think?

WITNESS: Yes.

Q. Did he say you had had improper conduct with him or had been intimate with him?

A. He said both.

Q. In your direct testimony you said only that he said you had been intimate with him; he said both; at any rate, he made it clear to you that he was charging you with improper sexual association with Devlin, didn't he?

A. Yes, sir.

Q. And you permitted that interview to terminate without having asked him when and where and how this occurred, did you?

A. I don't remember asking him, but I was so upset and taken back with what he told me, that I don't remember what I said.

Q. But you remember what he said?

A. Undoubtedly I did.

Q. Didn't you deny it?

A. I did.

Q. You denied that?

A. I remember saying it was no such thing.

Q. If you remember that you denied it, wouldn't you be apt to remember that you asked him for particulars of it?

A. No, I wouldn't.

Q. And finallly you say that he grabbed you by the throat and he said, "It is so, you know it is so"?

A. Yes.

Q. That happened, did it?

A. Yes, he pushed me down on the bed.

Q. And then you screamed, did you?

A. Yes.

Q. And then your son came upstairs?

A. He came up as far as the landing, but he didn't come in the room.

Q. And that is substantially all that happened on this first interview?

A. Yes.

Q. How long were you together up there in this room?

A. I should say fifteen or twenty minutes.

Q. And have you told us all that passed between you?

A. All that I can recall.

Q. And what you recall wouldn't take more than a moment to talk over between you?

A. Yes, it would; he went over and over that same thing fifteen or twenty times. He went round and round.

Q. You told us, at any rate, all you can remember?

A. That is all I can remember.

Q. After you had many fights with him about it?

A. Yes.

Q. And how frequently would they occur?

A. Two or three times a week.

Q. You were always strenuously denying that there was anything improper in your relations with Devlin?

A. Yes.

Q. And he was persistently charging you?

A. Yes.

Q. And when did you first ask him what the particulars of his charge were?

A. I asked him from the start, the very next time we had anything to say, after he told me that much, I said, "Who told you this business, and what do you accuse me of?" He said he couldn't tell me.

Q. And he never did tell you?

A. He never did tell me.

Q. Do you want us to believe, then, that you repeatedly quarrelled about it and you repeatedly asked him what the particulars were and he wouldn't tell you, and that it got down to a point where he told you that he was going to make application for a divorce?

A. Yes.

Q. And that you went off to Florida under the conditions which you have described and had never learned from him what the particulars of his charge were?

A. I hadn't until he served me with the papers; that was the first time I knew; that was the first particulars I knew.

Q. What particulars were there in the papers? You mean the papers he served the night before you went away?

A. Yes.

Q. And from that paper did you get the particulars?

A. As far as I could, but I didn't know any more than was said on the paper.

Q. What did it say on the paper, so far as you remember?

A. I cannot remember; I was accused of being intimate with P. J. Devlin in various places in New York and in some outhouse.

Q. Did it say that in the original paper—anything about an outhouse in the original paper which you got the day before you went to Florida?

A. I think it did.

Q. And at any rate, if it was in the paper, that was the first intimation you had that you were charged with anything improper in the outhouse?

A. Yes.

Q. Coming back a moment to the letter which you

received from Mr. Devlin, that letter was the first intimation that you had that your husband knew about this matter?

A. No, he had told me.

Q. He told you before that, had he?

A. Yes.

Q. About how many days before that had he told you?

A. I don't know; just a few days.

Q. And when you got this letter were you surprised to get it?

A. Yes.

Q. What did it mean to you?

A. I cannot tell you what it meant.

Q. Why didn't you go and ask Mr. Devlin what it meant?

A. He wasn't there; it was Sunday night.

Q. But you met him afterwards on the street; why didn't you ask him then?

A. I did.

Q. You didn't testify to it this morning?

A. Yes.

COURT: She did in answer to my question. I asked her to state the conversation.

WITNESS: I said, "What does all this mean; what is this letter business?"

Q. What did he reply to that?

A. He said, "I cannot tell you here, there is too much to it."

Q. And then you asked him who told Mame?

A. Yes. I said, "Did anyone go to Mame; who told Mame all this stuff?" He said, "Big Edna."

Q. And then did you ask him why did she tell it?

A. No.

Q. Didn't you ask him that?

A. I don't remember that I did.

Q. Didn't you say a moment ago, today, when you gave your testimony on direct examination?

A. I don't remember exactly the words I said.

Q. Wasn't it a fact that you said to him, "Why did she tell it"?

A. I said, "Why did she tell all this stuff", probably; I don't remember what I said.

Q. And then he said to you, "Why don't you make it up with Johnce?"

A. Yes.

Q. What did you say to that?

A. I said, "You don't know Johnce; you don't know what kind of a man he is; I have got to see this thing through."

Q. What was it he wanted you to go to Johnce and make up?

A. I don't know.

Q. Why didn't you ask him?

A. I didn't have time. I was only on the street about two or three minutes with him.

Q. You could have stood on the street with him as long as you pleased?

A. Pat was in a hurry and left me standing there.

Q. Did you seek any further explanation from him?

A. No.

Q. You received that letter and you never after that had any further communication with him by word of

mouth or letter?

A. That is right, but I never saw him to speak to or write to him, except the second letter.

Q. You only received two letters?

A. Yes, those are the only things I ever had from him, and I didn't know they were from him then.

COURT: Except as his name was signed to them?

WITNESS: Yes.

Q. Why didn't you ask him why he had written to you, "For God's sake, go to Johnce and ask him to forgive you for everything"; why didn't you ask him what he meant?

A. I didn't have time.

Q. Why couldn't you take the time; you were together on the street?

A. He seemed to be in a hurry to get down to the store and I didn't say any more to him.

Q. And this was in October?

A. Yes.

Q. And you stayed there until December?

A. Yes.

Q. And he was there in town all that time?

A. Yes.

Q. And you never asked him that question?

A. I didn't go to him or anybody else.

Q. Why didn't you ask him why he was writing to you to promise your husband you would do anything on earth that a woman could do for her husband for the rest of your life; why didn't you ask him why he was urging you to do that?

A. I didn't have time.

Q. And didn't you have time in all that period that elapsed between October and Devember, did you?

A. I didn't think it my place to go to Mr. Devlin or Mrs. Devlin or anybody connected with it; I thought the Cartans should tell themselves what all this was about, and they wouldn't tell me.

Q. And they wouldn't tell you?

A. No.

Q. And yet with this accusation hanging over your head, you made your preparations to go to Florida?

A. I did.

Q. And bought your tickets?

A. Yes.

Q. And still when the next morning after you had been served with the paper that you say gave you the particulars—

A. Yes.

Q. —you made no attempt to see Mr. Devlin after you got this second letter, did you?

A. No.

Q. Were you angry at Ren's wife for having told Devlin's wife?

A. I was.

Q. Had you told Mr. Devlin so on the street?

A. I didn't tell him so; I told Mr. Cartan so.

COURT: Which Mr. Cartan?

WITNESS: Mr. A. J.

Q. Didn't you say anything to Devlin about that the day you met him on the street?

A. No, only I asked who told his wife; I wanted to get at the bottom of it.

Q. In this letter of October 8 which you say you received, "Please don't have any ill feeling toward Ren's wife for telling Mame; she had the best motive and did it to prepare Mame for what was coming", what did you think that meant?

A. I didn't know what was coming.

Q. And didn't you ask Mr. Devlin to tell you what was coming?

A. No, I didn't.

Q. You asked him for no further explanation as to the contents of this letter?

A. No, I went to Mr. Cartan about that.

Q. You didn't ask Mr. Devlin?

A. I did not.

Q. Mr. Cartan had not written either of these letters; Mr. Devlin had written to you; why didn't you go to him for the explanation?

A. I didn't know who wrote them.

Q. Oh, yes, you knew who wrote them.

A. I knew whose name was on them.

Q. Didn't you know his handwriting?

A. No, sir.

Q. When you met him that day on the street he admitted that he had written the first one?

A. He said so, yes.

Q. And the handwriting of the second letter was just like the handwriting on the first letter?

A. I didn't look at it long enough to see what the handwriting was.

Q. You were willing to assume it was written by the same person?

A. Yes.

Q. Yet you never went to him for any explanation?

A. No, sir, I did not.

Q. I think you said in explanation about the inquiry of your counsel, that these letters didn't mean anything to you; is that right?

A. They didn't mean anything in connection with Mr. Devlin, but they meant a whole lot to me, because I couldn't understand why they were written.

Q. What did you mean by the expression that the letters didn't mean anything to you?

A. Was there anything wrong between Mr. Devlin and I, and I didn't have that thought.

Q. Didn't you think the letters implied there was something wrong?

A. Yes.

Q. What do you mean by saying the letters didn't mean anything to you?

A. I didn't put any faith in them whatever, because I knew there hadn't been anything.

Q. Wouldn't you be disturbed by even a false accusation?

A. I was disturbed.

Q. Then what did you mean by saying they didn't mean anything to you?

A. There was no truth in them; nothing that I could see that was anything to them; I don't know; I didn't know what they meant.

Q. It didn't mean anything to you that you had been accused, either falsely or truely, in these letters, by inference?

A. Whatever they inferred was false, of course.

Q. If false, then it would mean something to you?

A. Yes.

Q. If there was anything to it?

A. Yes.

Q. You say you were in doubt as to whether Mr. Devlin should be mixing himself up in your affairs by writing these letters?

A. Yes.

Q. Why didn't you ask him?

A. I didn't have time.

Q. You had time when you met him on the street?

A. I didn't.

Q. You had from October until December, when you went to Florida, to ask him and you never did?

A. No.

Q. When you went over to Ren's house after you had received this first letter, were you angry?

A. I certainly was.

Q. And what had made you angry?

A. Getting the letters.

Q. Why didn't you go to Devlin and express your anger?

A. Because I knew Edna brought it, and I wanted to know why she brought it, and what it was about.

Q. And when you found that out, why didn't you express your anger to Mr. Devlin?

A. Because I didn't want to go to him.

Q. You didn't feel you knew him well enough, I suppose?

A. Yes, I knew him well enough.

Q. Wasn't he the man who insulted you; he had written these two letters that had reached your hands; why hadn't you gone to him for an explanation?

A. I cannot give you any reason, any more than I

didn't want to.

Q. When he wrote you in the first of those letters to ask your husband to forgive you, what did you think he meant by that?

A. I supposed it meant to what Johnce had referred to, that we had been intimate. He had told me that before I got the letters.

Q. And been intimate with Devlin; you thought it meant that?

A. Why, yes.

Q. Didn't it seem to you rather strange that the man that your husband said you had been intimate with should be writing you a letter and asking you to go to your husband and ask him to forgive you; didn't that seem to you rather strange?

A. Yes.

Q. And very insulting?

A. I felt very provoked about it.

Q. And by implication a statement on his part that you had been guilty?

A. No.

Q. But at any rate, while you thought it contained that insinuation against you, you never sought any explanation from him?

A. No, I didn't.

Q. When you got over to Ren's house that day after the first of these letters had been received, you said to them, "You cannot accuse people of wrong unless you see it?"

A. Yes.

Q. You said that to them?

A. Yes.

Q. Didn't you add that you had to be as near as ten

feet?

A. No.

Q. Nothing said about ten feet?

A. No, not that I know of.

Q. You are not very clear about that?

A. I don't remember anything about any feet.

Q. But you did say that you cannot accuse people of wrong unless you can see it; you said that to him?

A. I said, "You should not accuse people you have never seen; you have never seen me do anything wrong, and I never have."

Q. Didn't I understand you to say that you said to them that you couldn't accuse people of wrong unless you can see it; didn't you say that in your testimony; didn't I understand you to say that in your testimony today?

A. I guess I did.

Q. And if you said that what did you mean?

A. I cannot say just what I said.

Q. And you were referring to your own alleged conduct?

A. They told me that I had been intimate with Pat.

Q. And your reply to the accusation was—a part at least—"You cannot accuse people of wrong unless you can see it"?

A. I said, "You cannot accuse people of wrong unless you see things; you cannot accuse people just on hearsay"; and Edna said right on the back of it, "We don't have to see, we know."

COURT: What she meant to say was, not that they couldn't accuse people, but that they shouldn't accuse people.

WITNESS: Probably I should have used those words, they should never accuse people of things they never seen; I said, "You have never seen me do anything wrong in my life."

Q. Did you ask them for any particulars of your alleged conduct?

A. I think I did; I asked them who told Johnce this stuff and who was at the bottom of it, and they wouldn't tell me.

Q. Did you ask them what the particulars were of your alleged intimacy with Mr. Devlin?

A. I think I did.

Q. Do you think you did or know you did?

A. So much went on, I don't remember.

Q. You are not even sure you asked?

A. No.

Q. And whether you asked or not, they didn't tell you?

A. No.

Q. You had no intimation from any source that you were charged with this improper conduct with Mr. Devlin in the outhouse until the night you went to Florida, and you got that from the papers that were served?

A. That was the first I ever got the particulars.

Q. Let me refresh your memory a little; can't you remember that you did ask him who were making these charges against you that night?

A. I might have asked him, I don't know; there was so much talking, I don't remember all that was said.

Q. At any rate, after this incident, you asked your husband for details?

A. I did, many times.

Q. And he didn't give them to you?

A. He said he couldn't.

Q. And he said that he was taking care of people that were taking care of him, and gave that as the reason?

A. Yes.

Q. And your reply was that "when they get through with you there won't be much left of you"?

A. Yes.

Q. What did you mean?

A. I meant he wouldn't know who he was or what he was. He didn't seem to know his own mind; that is what I thought; he didn't seem to know anything only what they told him; he couldn't answer me a question; he couldn't do a thing unless he went down and consulted with his family first before he gave me an answer to anything I asked him.

Q. What did you mean by saying to him, that when he got through there wouldn't be much left of him?

A. I meant he wouldn't have any sense or anything else; he would be completely out of his mind, that he wouldn't know what he was doing.

Q. That is what you meant by saying there would not be much left of him?

A. Yes.

Q. Didn't you mean this, that when you and the Devlins got through with him, that you would ruin him?

A. I did not.

Q. Didn't you say you would?

A. No.

Q. Didn't you on this first occasion when you referred to in your testimony, tell him that you were going to raise Hell with the Cartan family, and didn't you make

use of that very expression?

A. I might have.

Q. Didn't you say to him that it wouldn't be very pleasant, and something would turn up that he would never get over; didn't you say that to him?

A. I don't know as I used those words.

Q. That in substance?

A. I don't know what you mean, about he wouldn't get over it; what do you mean by that?

10

COURT: Did you make use of any such expression?

WITNESS: No.

Q. Didn't you say to him that before you got done with them, Bert would lose his job in the bank?

A. No, sir

Q. You are quite sure of that?

A. I never said such a thing about Bert and the bank.

Q. Bert was working in the bank at that time? 20

A. He has been for a long time.

Q. He was there at that time?

A. I think so.

Q. Mr. Devlin was a director in the bank?

A. Yes.

Q. Didn't you tell him that "before we get through with this business Ren will be out of the Cartan-Devlin business"?

A. I did not.

Q. Do you deny you said that? 30

A. I never said such a thing in my life.

Q. Do you deny that the Cartan-Devlin business was referred to at all?

A. I don't think it was referred to in any way; the Cartans as a family were referred to.

Q. And you admit saying you would raise hell with them?

A. I do, and I expect to yet.

Q. You are trying to do it yet?

A. I am, to the best of my ability.

Q. Didn't you tell your husband that he would lose his business before he got done with this?

A. I said, "You are losing it now."

Q. No, didn't you tell him he would lose it completely before he got done?

A. No, I said, "You will lose your trade."

Q. "Losing it now"?

A. Yes.

Q. Because his charge against you was unpopular?

A. I thought from what I heard around town that people didn't approve the way he was acting.

Q. Didn't you say to him as a conclusion of that interview, "I will tell you what I will do, give me this house and lot in which we live, and I won't blow on the bunch"?

A. I said that when I was talking about Ren.

Q. You said that to your husband?

A. Yes.

Q. What did you mean by blowing on the bunch?

A. I knew a good many things about the family, the whole business of them, and I told him that; I just wanted to see how he felt towards me and the children before I went South, and to try him out; I said something about where would we live when we came back; what would be the conditions if I went South; I didn't want to go South with my children and come back and not have a home over my head. I said, "I will tell you

what I will do"—I wanted to see how he felt toward me—I said, "You give me this house and lot back as far as Ren's lot, and I will say nothing about Ren and the family that I know, and I will keep my mouth shut."

Q. And you wouldn't "blow on the bunch"?

A. I don't know as I used the words, but that is what I meant.

Q. Have you blown on the bunch?

A. Yes.

Q. And told all you know about them?

A. No.

Q. You told something else?

A. Yes.

Q. You think it is favorable in this case?

A. Yes.

MR. WILSON: Then I suggest you tell it.

WITNESS: I won't.

Q. He didn't give you the house and lot, did he?

A. No, he didn't.

Q. He invited you to blow on the bunch, if you knew anything?

A. No, he didn't; he never said a word.

Q. At any rate, on this occasion and various other occasions when you asked him for the particulars of your alleged adultery with Mr. Devlin, he wouldn't tell you?

A. He would not; he always said, "That will come out later."

Q. And during the period from the time he first made known to you his knowledge or pretended knowledge and his accusation, you quarrelled every two or three

days about it?

A. Yes.

Q. What about this confession that he tried to exact from you; when did that occur, as near as you can fix the time, when he offered you $2,000?

A. That, I think, was somewhere around November; I cannot say exactly, it was sometime quite a few weeks before.

Q. What led up to that Mrs. Cartan?

A. I don't know; he came in the kitchen where I was working.

Q. What did he say?

A. He came in and said he wanted to talk to me about the affair, and I said, "What was it?" and he said, "I want you to sign a paper"; he didn't have it in his hand, but he said, "I want you to sign a paper, a little paper"; I said, "What do you call a little paper?" A little piece of paper, he called it, and I said, "I don't know what you mean", "Well, just a little piece of paper". He kept going over and over it; I said, "I don't understand about a little piece of paper"; I said, "What is there on the paper you want me to sign?" And he said, "I want you to sign this, saying you have had improper conduct with P. J. Devlin"; I said, "I will sign no such thing; I have never had any improper conduct with Mr. Devlin; why should I sign a paper like that?

Q. You told him that repeatedly, didn't you?

A. Yes.

Q. You told him that the first of October when he first charged you?

A. Yes.

Q. And from that time you quarrelled about it every day or two from that time on?

A. Yes.

Q. Until November?

A. Yes.

Q. And notwithstanding the fact that you told him almost every day you quarrelled about it, and you quarrelled every few days, that you were not guilty, he came into the kitchen and told you he wanted you to sign a paper in which you said you had been intimate with him?

A. That is what he wanted me to sign.

Q. He said he would give you $2,000 if you would sign it?

A. Yes.

Q. None of the children were there at the time?

A. No; in fact, when I was talking about the $2,000, I said, "How is it that you have $2,000 to give me for pin money", after he said it was for pin money, "when you never had five cents to give me for pleasure before?" He said money didn't count in this thing, I said, "All right, if money don't count, you never had any money for me before, for pleasure or anything else."

Q. Your husband always took care of you and the family all the time you lived with him, didn't he?

A. In his way, yes.

Q. Was his way any better than your way?

A. I suppose he considered it better.

Q. Was it any better than the way in which your neighbors lived?

A. In some respects, yes.

Q. You have gone around Matawan and said he didn't take care of you, he was mean and didn't take care of you and the family during the pendency of this divorce suit?

A. No.

Q. When he was paying you at the rate of $200 a month?

A. I never said a thing since this suit started.

Q. Never said it to anybody?

A. No.

Q. I understand you to say that you stopped sleeping in your husband's room in January, 1918, and that is because you were ill?

A. Yes.

Q. And you continued to sleep in this room known as Elizabeth's room, across the hall, until you went to Florida?

A. Yes.

Q. You occupied that as your room?

A. Yes.

Q. That is where you slept nights, and whenever you went back to your husband's room it was an occasional affair?

A. Yes.

Q. He kept his clothes in this closet between Helen's room and his room?

A. Yes.

Q. And you kept your clothes there?

A. Yes.

Q. And did he sometimes come in the room where you slept with Elizabeth?

A. Yes.

Q. You occupied the same bed with Elizabeth?

A. Yes.

Q. You don't claim he cohabited with you in that room?

A. No, Elizabeth didn't always sleep with me, not until after he had accused me of this.

COURT: Not until after October?

WITNESS: No.

Q. Whether she did or didn't, you don't claim there was any cohabitation that occurred in that room?

A. Yes, I say there had been in that room.

Q. And when?

A. I cannot tell you exactly.

Q. How recently?

A. Before this incident that I told you in his room.

Q. The last occasion in his room was about six weeks before October?

A. Yes. Before that he had been in my room.

RECESS

Q. Mrs. Cartan, you say your husband cohabited with you after he accused you in October?

A. No.

Q. Not after that?

A. No.

Q. The last time was sometime before the first of October?

A. Yes, about six weeks before.

Q. When you came back from Florida, you consulted counsel at ance, did you?

A. Yes.

Q. Whom did you consult?

A. Mr. Applegate.

Q. Was he the only attorney whom you consulted?

A. I talked with Mr. Geran.

Q. Before you talked with Mr. Applegate?

A. Yes, but not as a counsellor, just as a friend.

Q. As a friend and neighbor?

A. Yes.

Q. And how soon after your return did you consult Mr. Applegate?

A. I think it was only a few days, a day or so.

Q. And you employed him, you retained him to make your defence in this case?

A. Yes.

Q. And you gave him the facts upon which he filed his paper in the case?

A. Yes.

Q. And you told your story to him as fully as you have told it here today, I suppose?

A. Yes.

Q. Directing your attention to this outbuilding—after this divorce suit was instituted you put a padlock on the door, didn't you?

A. I did not.

Q. Was one put on the door?

A. I don't know.

Q. Did you ever go out there afterward and see a lock on the door?

A. I have never seen a lock on there, unless the children put it on there.

COURT: Have you seen one there?

WITNESS: Sometime early; I have since the children have been playing there.

Q. I asked you, after the suit was started did you put a lock on the door; you say you didn't?

A. I have seen a lock on there since the children have been playing there.

Q. How recently have you seen a lock on there?

A. The last year.

Q. By the children, whom do you mean?

A. My little boy and little children that play with him in the yard.

Q. Your children I supposed you referred to when you said the children had put a lock on the door.

A. Gene.

Q. How old is Gene?

A. Ten.

Q. How old is the youngest child?

A. Six.

Q. You mean they put the lock on the door?

A. Gene did, I suppose.

Q. Do you know who did?

A. I don't know exactly, no.

Q. What sort of a lock was it?

A. I don't know; I never examined it.

Q. Isn't it true that you put the lock on the door to prevent Mr. Cartan and those whom he might bring there, to get into the building?

Q. It never had been locked before?

A. I don't know that it ever had.

Q. Not to your knowledge?

A. Yes, I think years ago when we had the chickens I used to lock it up once in a while.

Q. What sort of a lock was it? A padlock?

A. An ordinary lock; it has two little keys with it.

Q. Where did the lock come from?

A. The store, A. J. Cartan's store.
Q. Who got it?
A. Some of the children; I don't know who.
Q. With your knowledge?
A. I don't remember.
Q. Do you know how they got it at the store?
A. That is where we got everything.
Q. Did they ask your permission to get it?
A. No.
Q. At Ren's house—going back to the occasion when you went over there, immediately after the receipt of your first letter, you said to him that he was not a man to make an accusation against you, being the kind of a man that he was, and bearing in mind what he had done; you said something of that kind to him?
A. Yes.
Q. And his wife was present when you said that?
A. Yes.
Q. And do you remember that Mr. Ren Cartan said to you, "My wife is here, tell it"?
A. After I asked him if he wanted me to tell, then he said it.
Q. He said, "My wife is here; tell it"?
A. Yes.
Q. Did you tell him?
A. I told him what I had to say.
Q. What was it that you understood he invited you to say in the presence of his wife?
A. I told him before he had been out with women that he should not be out with.
Q. Is that all you said?
A. I don't remember all I said.
Q. He said, "My wife is here, go ahead and tell it"?

A. After I asked his permission; I said, "Do you want me to tell it to Edna", and after he looked at her, he said, "All right, go ahead and tell it."

Q. And then you asked him if he was going to stand by his brother, and he said, "Blood is thicker than water"?

A. Yes.

Q. And then you said, "I will go my limit."

A. No, he said that.

Q. What did you say?

A. I said, "Well, then, if you persist in working against me, Ren, and trying to separate Johnce and I, I will tell all I know about you."

Q. Didn't you at that time say, "you were going to raise hell with the whole Cartan bunch?

A. No.

Q. Or words to that effect?

A. No.

Q. I think you said on that occasion after you made the statement that Edna had been with Pat?

A. What Edna?

COURT: She didn't say that.

WITNESS: No, I didn't. Big Edna told me that it was always little Edna that Pat was after.

Q. And what did you say?

A. I said, "What difference does that make to me; it had nothing to do with me; why don't you go to Bert; why are you coming to me?"

Q. In the spring of 1918 you noticed that there was something wrong with your husband, didn't you?

A. In the summer, long after he had that talk about Sam Van Marter.

Q. You mean mmediately after?

A. Yes.

Q. Didn't you notice something wrong with him before that?

A. No.

Q. And when was it he had this talk with Sam?

A. I don't remember just exactly.

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COURT: You mean talk about Sam, not with Sam.

WITNESS: With me about Sam.

Q. Do you remember having a talk with Mrs. Ren Cartan early in the spring, in which you told her that there was something wrong with your husband; do you remember going over and saying that to her?

A. No.

20 Q. He didn't act right?

A. No.

COURT: You don't remember, or he didn't say it?

WITNESS: I don't remember that.

Q. Do you remember having communicated that fact to Mrs. Ren Cartan at any time?

A. What time of the year?

30 Q. In the spring.

A. Before May?

Q. The spring would imply it was before May, yes.

A. No, I never remember talking with her about

Johnce.

Q. Do you remember talking with her after May and telling her that?

A. No, the only time I ever remember talking with her was when he was ill and had to go to the hospital.

Q. When was that?

A. The same year, 1918; it was when he was sick.

Q. When was it he first said to you after that year that your love for him was gone?

A. That was, I should say, in August.

Q. Sometime in August?

A. I think so.

Q. And that is when he said to you that you didn't love him any more?

Q. Yes.

Q. And that your love for him was gone?

A. Yes.

Q. And didn't you go over after he had said that to you and tell Mrs. Ren Cartan that incident?

A. I did not.

Q. And wasn't it then that you said to her that there was something wrong with your husband, he didn't act right?

A. No.

Q. And when he made this charge against you that you didn't love him any more and wanted to know where your love had gone, he wasn't acting the same then as he had acted before, was he?

A. Why, no, not right at that moment, no.

Q. I mean along about that time, he wasn't acting in the same way?

A. That was after we had had the talk about Sam.

Q. I don't care whether it was before or after; but

after he said that to you, he didn't treat you the same, did he?

A. Not exactly the same, no.

Q. I think you said that after you had the trouble about Sam, that he wasn't the same, that there was a change, and that he came in the house and you fed him?

A. Yes.

Q. That is all you did for him?

A. No, it was not.

Q. Why did you make use of that expression that you fed him, as though he was some sort of an animal?

A. I meant as a servant; I was no more than a servant in the house; he came in and out and I did for him the same as I always had done; I mended his clothes, I mended everything he had before I went South. I got him all in good shape before I went, and he even handed me out his old pants to cut off. I did all that.

Q. You think in mending his clothes that was a hardship as a wife?

A. With all the household duties, I had plenty to do without him handing me out such things to do.

Q. This occasion when he asked you to sign this paper, he told you that he would give you $2,000 for pin money if you would sign it?

A. Yes.

Q. You told him that money didn't count?

A. No, he said that.

Q. Why should he have said it?

A. Because I asked him why he was giving it to me; I said, "You never had money to give me before for pin money or any other things, pleasure or anything else, and why do you hand me out $2,000 for signing a paper which I won't sign?"

Q. Was it then he said that money didn't count?
A. Yes, "in fact, money doesn't count in this matter."
Q. And yet he was offering you $2,000?
A. Yes.
Q. You thought money did count?
A. It always had seemed to in my whole life.
Q. And it had counted with you when you offered if he would give you the house where you lived and the lot next to it, that you wouldn't blow on the bunch, money counted with you then?
A. I wanted to know if I was going to have a home to bring my children back to.
Q. Were you willing to be reconciled with your husband after you came back from Florida?
A. Yes.
Q. Did you come back with that idea in mind?
A. Not with that idea in mind.
Q. When did you conceive the idea that you ought to become reconciled to him?
A. After I had talked a good many times with Mr. Applegate and come to the conclusion that I would try my best to make everything all right, if he was willing.
Q. For the benefit of the children?
A. Yes, and both of us; I thought it was—
Q. After you had reached that conclusion you went over to Red Bank and had a conference with Jimmie Carton?
A. I did.
Q. You went over there with the idea in your mind that for the sake of the children you wanted to work out some kind of a reconciliation?
A. If I could, yes, sir.
Q. Didn't you tell Mr. James Carton on that occasion

to which I have now directed your attention, you proposed to raise hell with the Cartans; didn't you make use of that statement to him on that occasion?

A. I don't know as I said "raise hell", but I asked him first who it was that was backing Johnce in this thing; I asked him in particular every name; I said, "Is it Ren?" He said, "No." "Is it big Edna?" "No." Is it Norman Tice?" "No." "Is it little Edna?" Well, he believed little Edna did have something to tell concerning Mr. Devlin's character.

Q. This is Mr. James Carton?

A. Yes; he told me this, and I said, "Do you mean to sit there and tell me, Jim Carton, that none of the Cartans have anything to do with this?" I said, "That is what A. J. has been telling me all the way through. You sit there and tell me the Cartans have nothing to do with this?" I said, "I am going to find out; if it takes me to the last day I live, I am going to find out."

Q. And wasn't it in that connection that you said you were going to raise hell with the Cartans?

A. Maybe I said that, I don't know.

Q. You said that in substance to him?

A. I did.

Q. That is the way you went over to work out this reconciliation with your husband?

A. After Jim refused to tell me any more than the rest of the Cartans had, I said, "Well, if they won't tell me, I am just as much in the dark this minute as to why I am being persecuted and done this thing by, and if he isn't willing to be the man to tell me, I will go the finish, I will see the end of it."

Q. What did you want him to tell you that he didn't tell you?

A. Who was back of it; who started it.

Q. Wasn't it clear your husband was back of it?

A. I know it wasn't his own mind.

Q. Didn't you think he had enough mind to start it?

A. I don't think he had enough left.

Q. He didn't have enough mind to—

A. He never lifted his finger to prove it; he believed his family from the beginning; he wouldn't believe one word I said, or give me a chance to say it wasn't so, half the time. He said, "It is so, you know it is so", and that is all there was to it.

Q. You had said it wasn't so?

A. Yes, but he wouldn't believe it; he believed his own people.

Q. You wanted to know who was backing him?

A. Yes, I knew, but I wanted him to tell me in person.

Q. Didn't Mr. Carton wind up this interview by saying, "Madam, it is perfectly clear that you don't want to be reconciled, you want to fight"; do you remember his saying that to you?

A. He didn't say it in those words; he said, "Doll, I see there is no use trying to get you two together."

Q. Do you deny that he said to you as a termination of this interview, "You don't want to be reconciled; you want to fight"?

A. I deny it.

Q. Do you remember when you came back from the South, saying to your husband, asking him if he got cold feet in the divorce matter?

A. I don't remember it.

Q. You deny that you said that to him?

A. I don't remember ever saying it.

Q. You deny that Mr. Applegate, your counsel, wrote you a letter in which he called your attention to that statement; you remember getting a letter from Mr. Applegate?

A. I don't remember; I had quite a few letters from Mr. Applegate, but I don't remember what was in them.

Q. Why did you return after you had gone to Florida the first time?

A. I came back to see what I could do about the matter.

COURT: The suit?

WITNESS: Yes.

Q. Why didn't you stay and see what you could do about the matter when the papers were served?

A. I was so broken up and tired and sick of the whole business, I was glad to get out of the way for a little while.

Q. Didn't you say this morning—did I understand you to say this morning that going down on the train you read the papers over?

A. Yes.

Q. You began to think that he had treated you so mean you thought you would come back?

A. I didn't think much of it at that time going down on the train.

COURT: She said she read it over fifty times on the train.

WITNESS: Yes.

Q. You did read it over on the train?

A. Yes.

Q. Wasn't it on the train you made up your mind he treated you so mean you would come back?

A. I didn't make up my mind on the train; I read the thing over and after I got down there, I read it over and over.

Q. You read it over before you started?

A. Just once.

Q. What was there about it that was so mean, about the papers?

A. I thought all those things he accused me of, being intimate with him, in the town of Matawan, and State of New York and in New York, somewhere, and different part of New Jersey; I couldn't get that through me.

Q. You knew that before you started; you read that in the paper before you started?

A. Just once that night; I didn't look at it the next morning until I got on the train.

Q. And then when you got down there you read it just once?

A. No, many times after I got down there.

Q. And when did you say you read it once?

A. The night before.

Q. And you read it many times after you got down there?

A. Yes.

Q. Then you thought he had treated you so mean you would come back?

A. Yes, I consulted a lawyer down there.

COURT: She said as a result of what she thought and

what a lawyer had said and what her daughter had written, she concluded to come back.

Q. Your husband refused to give you the money to go back?

A. Yes.

Q. Was there any real need of your going back?

A. Yes, I had my baby there, and Johnson was over to the house—

Q. Johnson was big enough to bring the child back?

A. I don't think he was a fit person to start all the way—that was a long way to travel.

Q. How old is she now?

A. She is six now, and that was two years ago.

Q. And the house was practically rented at that time, wasn't it, the Florida house?

A. I had paid half the rent on it.

Q. But re-rented?

A. No, it was not.

Q. Hadn't there been any effort to re-rent it after you left?

A. No.

Q. Hadn't your son attempted to re-rent it?

A. No, he lived there; he stayed there all the time I was home.

Q. He was entirely willing to bring the child back, wasn't he?

A. I didn't ask him.

Q. Didn't he volunteer to bring the child back?

A. No, not that I know of.

Q. You might refresh your memory about those inquiries by having you read that telegram; you received that telegram from your son, didn't you? (Witness shown

telegram.)

A. I don't know.

Q. Read it, and see. "People were at house last winter might rent it now. Is $250 satisfactory price? Think I shall come home and bring Betty. Answer my letter immediately". You got that telegram, didn't you?

A. I suppose I did.

Q. That telegram brought home to you the knowledge that there was a possibility of renting the house?

A. Yes, but I found out afterwards the people wouldn't take it.

Q. How did you find that out afterwards?

A. Through Mrs. Worthley.

Q. When did you go down again when you went?

A. About five weeks after I started from there I went back again.

Q. When did you come up from there?

A. I was there two weeks, it must have been around two weeks I came back.

Q. This telegram, you observe, is dated January 22; haven't you made some miscalculation in speaking of your five weeks a moment ago?

A. I don't know how many weeks I was home. I thought it was about that time.

Q. Wasn't the only reason that brought you back from Florida, the primary reason, to insist upon some method by which you were to get some permanent maintenance or alimony? Wasn't that the real thing that brought you back?

A. No.

Q. Wasn't that the plan you talked over with your son and with your daughter, that you would make Mr. Cartan put up a large sum of money for your mainten-

ance?

A. No.

Q. Wasn't that matter ever suggested to you by your son?

A. We have talked over the money question; I didn't have enough money when I went South to live in the proper way, and in the letters that we wrote back and forth it was concerning the money that I should have.

Q. Did your son write to you that the chief thing was to get alimony?

A. I think he did.

Q. And what did you think he meant by that?

A. He thought I ought to get money to keep me.

Q. And how was that the chief thing?

A. That is the chief thing in living; you cannot live without money.

Q. And you don't want to live humiliated as an adulteress either, do you?

A. No, I don't.

Q. And when he wrote you that the chief thing was alimony, when you were charged with adultery, what did you think he meant?

A. We were talking about our living expenses; we were not talking about adultery.

Q. What did you think he meant when he made that statement in the letter?

A. I thought he meant I should have more money to live on.

Q. And that that was the chief thing?

COURT: What difference would it make; how is she bound by it?

MR. WILSON: If the matter was discussed between them—

COURT: I cannot see how she is responsible for his expressions.

Q. When you were rooming in Elizabeth's room—

A. I don't see where we get Elizabeth's room; that wasn't Elizabeth's room until after he accused me of that thing and I took Elizabeth over there with me.

COURT: It has been called so in this case.

WITNESS: Elizabeth slept in the room with her father all the time I was sick, in the crib.

MR. WILSON: I am only identifying the room.

WITNESS: That was the first time I ever heard it; that was my room alone until after he accused me; then I took Betty in there with me.

Q. We will call it your room; in this room which you call your room, was that the room in which the washing that came from the laundry was brought, while you were occupying the room? The clothes were brought up there?

A. Not necessarily; they were set anywhere they pleased.

Q. Were they put in that room?

A. Not all of them; some were; sheets and some of the clothes.

Q. Were there clothes put in that room, such clothes as your husband was wearing from time to time?

A. Nothing that belonged to him came in that room.

Q. It didn't come up in the basket and go in that room?

A. It might have in the basket, but I put away everything.

Q. Did you ever see him come in there and take things out of that basket while you occupied that room?

A. I don't remember.

Q. Was there another hallway that this room led into, this room which you occupied, led into, other than the main hallway?

A. Yes.

Q. The back hallway?

A. Yes, the back stairs, right by the head of my bed.

Q. Was there a wardrobe in that back hall?

A. There was once, yes.

Q. And did Mr. Cartan keep his clothes in there?

A. He did not.

Q. He never did?

A. No.

Q. And if he had, and wanted to get to it in this back hall, he would go through your room?

A. No, he would not.

Q. How would he go in?

A. Right from the main hall, right into the back hall, there is a door right opposite his door goes into that hall, and Johnson's room was off of that little back hall.

Q. And while you were there he never came into that room to go into this back hall to get the clothing?

A. His clothes were not in there; mine were.

Q. He never did?

A. No, there is nothing in there belonging to him.

Q. Directing your attention once more to the occasion

when you went to Ren's house, after the first letter was received, did you say this, in the hearing of Ren and his wife, "I am going to get square with Pat; I am going to tell Mame what he is; I know someone else he has been intimate with"; did you say that to them?

A. I never did.

Q. Or anything like it?

A. No.

Q. Did you say there will be more divorce trials?

A. I said there should be.

Q. What proposed trials did you refer to, or did you have in mind when you made that statement?

A. The immediate Cartan family.

Q. Including whom?

A. Ren and Bert.

Q. You thought they ought to be brought in the divorce case, too?

A. If the truth were known, I thought some of them had.

Q. But you didn't have Mr. Pat Devlin in mind as being the victim of a divorce case?

A. No.

Q. Did you say on that occasion that he cared nothing for you now, but "what happened between us was a long time ago"?

A. No.

Q. Did you ever make any such statement as that?

A. No.

Q. Did you say that "Mame knows something else that happened some time ago and always knew it, but did nothing on account of the children"?

A. No.

Q. Did you make that statement?

A. I never said such a thing.

Q. Or anything like it?

A. No.

Q. Didn't you tell your husband after you talked with Pat Devlin on the street, that Pat wanted you to make up with him, if only for a week, so as to save both your children?

A. I don't remember that.

Q. You don't remember whether you did or not?

A. No.

Q. And didn't you in the same connection say, "To hell with the Devlins and the Devlins' children, if anything comes up, let them suffer"?

A. No, I didn't.

Q. You remember that you didn't say that?

A. I never said such a thing about anybody.

Q. Who did you say gave you the money to go back to Florida?

A. I never said yet.

Q. Will you say?

A. Yes.

Q. Well, who?

A. I borrowed some from Fury and my sister went on my note for the rest.

Q. How much did you have to have to get back to Florida?

A. Mr. Fury let me have $50, and my sister let me have $100; I thought when they were talking about me the money I had received—I didn't get $50 a week down there, as he has given you the impression I had $50 every week from the start.

Q. How much did you have?

A. I had $40 while I was in Florida to live on.

Q. You had two children with you?

A. Three children there, Johnson and Gene and Betty, and one home, but of course he was giving her money home; I didn't include her.

Q. How much did he give you when you went to Florida?

A. $40, and when Johnson came back he took $10 off for Johnson; that left me $30 to live on in Florida.

COURT: Mr. Wilson's question is, when you made the trip first to Florida, what lump sum did he give you?

WITNESS: He didn't settle on any amount.

Q. What did he give you?

A. He bought the tickets.

Q. Did he give you money for the rent of the house?

A. Yes.

Q. How much was that?

A. $450.

Q. How much did he give you in addition, any money?

A. I don't remember; he gave me the money for the tickets and I don't remember what money I had.

Q. You had some additional money?

A. I had a little, and he said if I wanted more money to send back for whatever I wanted, but when I came North the thing was all broken up.

Q. Didn't he give you a thousand dollars altogether for rent and anything else?

A. For my clothes I bought before I went down, which did amount to that.

Q. He gave you money and not the clothes?

A. Just the money.

Q. In this conversation that you had with your husband, which you have already referred to, which occurred in October, when he accused you, didn't you tell him you could get all the backing you wanted?

A. When was that?

Q. In October, in your first talk you had about this trouble ?

A. Not that first day.

Q. Did you the next day you talked about it, the next time?

A. I don't know whether I did or not.

Q. When was it you told him that?

A. I don't know when it was.

Q. Did you ever tell him that?

A. I don't know if I did or not.

Q. Was there ever any time, from the time he accused you in October to this moment, when you wanted to become reconciled with your husband?

A. Yes.

Q. When you really wanted to become reconciled?

A. Yes, the day I offered to go back with him, I really meant it.

Q. When was that?

A. When I was home that few weeks.

Q. And when was it you made that offer?

COURT: After your return from the South?

WITNESS: Yes, after my return.

Q. How long have you been home?

A. I had been home probably a week or so.

COURT: Prior to that trip to Florida, had you been willing to be reconciled to him?

WITNESS: He wouldn't give me any chance to.

Q. I am talking about your own frame of mind.

A. I would if he had given me a chance, but he wouldn't listen to anything.

Q. The matter of the divorce had been talked over between you and your husband on several occasions before you went South, hadn't it?

A. In the course of our talks, yes, he would say he would get a divorce.

Q. He said he was going to get a divorce?

A. Yes.

Q. And did you ask him not to?

A. A number of times I asked him why he didn't go live by himself if he didn't want to live with me.

Q. That isn't the question, did you ask him not to get a divorce?

A. Probably not in just so many words that way, I said, "Why don't you go live by yourself and I will live by myself, and we will fight the thing out that way."

Q. Didn't there come a time when you complained that he had kept you in suspense and you wanted him to start ahead with the divorce?

A. No, I said I would like to know what he was going to do, that I didn't want to stay there—

Q. That he was keeping you in suspense?

A. It was a great suspense, not knowing what was going on, whether he meant to serve the papers on me; I had a right to ask that.

Q. He told you he intended to bring this action for

divorce?

A. He had said so.

Q. Do you remember any occasion when you volunteered to say that if he brought the action you didn't propose to defend; did you ever say that to him?

A. I felt so bad sometimes, I may have said that.

COURT: Do you recall saying it?

WITNESS: I don't know one time I said it.

Q. Or only one time?

A. I don't know of any time I said it, but I might have in our talks, I was pretty sore.

Q. Don't you remember any occasion when that was said, when you said to him that you didn't propose to fight it, and that he said to you that he was going to make his application whether you fought it or not; don't you remember his saying that to you?

A. No, I don't remember it.

Q. You say you don't remember it?

A. I don't remember his saying that.

Q. He may have said it?

A. He might have; he said so many things at different times, I wouldn't know.

MR. APPLEGATE: There is a question which I want to ask, which I overlooked.

RE-DIRECT EXAMINATION BY MR. APPLEGATE:

Q. You said on cross examination the first you knew about the outhouse incident was when you read it in the papers that had been served upon you?

A. Yes.

Q. During recess I showed you the petition and you read it over?

A. Yes.

Q. Is there anything in there about the outhouse?

A. No.

Q. Do you wish to correct your testimony?

A. Yes, I do; I was mistaken in that.

Q. When did you first see the outhouse incident?

A. In the bill of particulars that you gave me.

Q. When was that?

A. That was after we started the suit.

Q. And where was it that I showed it to you, where were you?

A. I think down at your office

Q. You were asked a few moments ago whether or not you said that you were going to get square with Pat and tell Mame, or words to that effect, which you say you didn't say, what have been your relations with Mrs. Devlin?

A. Very friendly always.

Q. And since this suit was started what have been your relations?

A. Just the same.

Q. The same as they were before?

A. The same as always.

RE-CROSS EXAMINATION BY MR. WILSON:

Q. Then it is not true that when you went to Florida you knew that you had been charged with intimacy with Mr. Devlin in this outhouse; you didn't know that?

A. Not the outhouse, no.

Q. You didn't know where it was said you had committed this adultery?

A. No.

Q. And you knew none of the particulars about it?

A. No, that is what I tried to get out of them, but they wouldn't tell me.

Q. You knew none of the particulars until the bill of particulars was served upon your counsel?

A. No.

Q. And that bill of particulars was not served until on or about the twenty-sixth day of October, 1919; you didn't know until that time, did you?

A. No, I didn't.

Q. The divorce started in December, 1918, and you didn't know until October, 1919?

A. No

COURT: When did you first consult with Mr. Applegate?

WITNESS: When I came home

COURT: The first time or second?

WITNESS: The first time.

COURT: Did he ask you when you and Mr. Cartan had

ceased having relations as man and wife?

WITNESS: Yes.

COURT: Did he ask you that the first time, or when did he ask you?

WITNESS: Among the first talks we had; I don't know just exactly.

COURT: Do you remember telling him when you last had relations?

WITNESS: Yes.

MR. LANE: I will call Mr. Applegate.

COURT: Has the amendment actually been made of pleading condonation?

MR. APPLEGATE: No, sir, it has not, but it will be made pursuance of the application made.

JOHN S. APPLEGATE, sworn for defendants.

DIRECT EXAMINATION BY MR. LANE:

Q. You are a counsellor at law, Mr. Applegate?
A. Yes.
Q. And you represent Mrs. Cartan?
A. Yes.

Q. When was the first time that she consulted you about it?

A. I cannot give you the exact time, but it is the time that the Answer was drawn. It was during—right after she came back from Florida the first time, a few days after her return.

Q. Did you go into the details of the story at that time when she first consulted you?

A. Yes.

Q. Did she tell you the facts with respect to cohabitation?

A. She did.

Q. At that time?

A. She did.

Q. Will you explain why it was that there was the delay in the filing of the answer.

COURT: Was there a delay?

WITNESS: Yes. I explained that to the Court already.

COURT: I had forgotten it.

A. A reconciliation was—we were trying to effect a reconciliation, and by consent of counsel the answer was not filed, it finally was filed as within time.

COURT: Long after the time?

WITNESS: Yes, several months; long after the time had expired in which to file the answer.

Q. The omission of the defense of condonation from

the answer, is that up to you if it is up to anybody?

A. Entirely so. I considered it mighty poor tactics as a solicitor to plead condonation at that time, knowing that at least possibly with the indulgence of the Court, I could apply for an amendment most any time and make that plea.

COURT: And not give the adversary too much notice of it?

MR. WILSON: I submit that if that was the real purpose, I wish to have this appear upon the record, that—with your Honor's consent, I submit that if that was the real purpose of counsel in filing the answer in such a way as to suppress this detail of defence, that the defence ought now to be stricken from the record.

COURT: Why should I deprive this woman of a defence if it is true, regardless of what counsel may have done? I will let it stand; this woman will have every defence.

MR. WILSON: I would like it to appear that I make the motion.

COURT: I don't care what counsel did, the party is goingto have the benefit of every defence she has in the case. That will apply to Mr. Cartan just as well, if you have omitted anything, as it does to Mrs. Cartan.

WITNESS: I should like to say in that connection that that wasn't the real purpose, but in view of the protestations of innocence on the part of Mrs. Cartan to me at

the time that answer was being prepared, I considered it a very unwise thing to plead condonation.

CROSS EXAMINATION BY MR. WILSON:

Q. Mr. Applegate, did you read the answer to her after you had prepared it?

A. I don't know whether I read it or whether she read it herself.

Q. But one or the other?

A. Yes.

Q. You told her that you had omitted this reference to condonation?

A. I don't think I did; I don't think I told her that.

Q. You told her, I suppose, it was poor tactics to plead it?

A. I don't think I told her, or gave her any reason why I didn't plead it.

Q. You took the liberty of suppressing that very substantial element of her defence, without any explanation?

A. If you call it deliberately, I did.

Q. At any rate, you did?

A. I did.

Q. And without informing her that you had suppressed it, or intended to suppress it?

A. Yes.

Q. You took entire responsibility?

A. Yes.

COURT: There isn't doubt in your mind that she did disclose to you her defence, in her first interview?

WITNESS: Not the slightest.

MR. APPLEGATE: We rest.

MR. LANE: We rest.

A. J. CARTAN, recalled in rebuttal

DIRECT EXAMINATION BY MR. WILSON:

Q. Mr. Cartan, your wife has said that on the day when you asked her—that there was a day when you asked her to sign a confession and that you offered to give her $2,000 if she would do so; do you recall the occasion to which she refers?

A. I do.

Q. What occurred at that time?

A. She was after me all the time to start my suit for divorce, and I told her if she would—she continually was after me all the time, and I said if she would sign this paper that I would go ahead with my suit.

Q. Did you have a paper at that time?

A. No.

Q. Did you tell her what kind of a paper?

A. I told her I wanted her to sign a paper saying she had had improper relations with Pat Devlin.

Q. What did she say?

A. She said she wouldn't do anything of the kind, that I would bring it up before her all the balance of her life, and throw it up to the children, and that she didn't want to be made a bad woman before her children all the

balance of her life, but she wanted me to go right on with my suit, and after the suit was over she was going to raise hell with the Cartan family.

Q. Did she understand that you were going to bring your suit—that you contemplated bringing your suit, charging her with adultery with Devlin?

A. Yes.

Q. She says you offered her $2,000 to sign such a paper?

A. I did not.

COURT: Did you make any offer of any amount?

WITNESS: I did not.

Q. Did you make—did you offer any inducement to sign any such paper?

A. No, sir.

Q. She says that you told her that "if you didn't fight"—referring to the divorce case—"naming your own price"; did you make any such offer as that to her?

A. No, sir.

Q. Directing your attention again to the so-called outhouse, do you know where the sofa came from that you say was in it?

A. Yes.

Q. What is the history of it?

A. It was bought for my daughter's room about ten years ago, and it came to us with a broken—the head was broken down and my daughter wouldn't have it.

Q. The head of the sofa itself?

A. Yes, it was damaged a little, it pushed down a little, and she wouldn't have it, and I put it in my store, and

it was up there for about a year, and then it was taken over to my house.

Q. When you had it at your store was it in use there or in stock?

A. Just in stock.

Q. Then it was taken over to the house?

A. Yes.

Q. And what place, if any, did it occupy there?

A. It was used in different rooms around there for a couple of years, and then the next time I saw it, it was down in the outhouse in the back yard.

Q. When was that outhouse built?

A. About ten or eleven years ago or twelve years ago.

Q. What was it built for primarily?

A. Chicken house.

Q. How frequently were chickens there?

A. Only now and then.

Q. How frequently were chickens kept there?

A. Only now and then.

Q. Going back to 1916, when it is said there was this meeting between your wife and Devlin, do you recall to what purpose it was being devoted at that time?

A. Yes, sir, playhouse for the children.

Q. Is that sofa in the playhouse now?

A. No, sir.

Q. How long ago did it disappear?

A. About four or five years ago, about four years ago.

Q. Do you know where it went to?

A. I do not.

Q. Do you know whether broken furniture and articles of that sort were removed from your house from time

to time?

A. Yes, sir, they were.

Q. And under whose direction?

A. My wife's.

EXAMINATION BY THE COURT:

Q. Was that removed before the suit was started?

A. Yes, sir.

Q. How long before?

A. I don't know exactly; the last time I saw it there it was about four years ago.

Q. Was it there at the time you were informed of this charge of intimacy between Mrs. Cartan and Devlin?

A. No, sir.

Q. It had been removed at that time?

A. Yes.

Q. Can you recall how long before that information reached you, you had last seen this sofa in the outhouse?

A. About two years before that time.

Q. Do you understand my question?

A. Yes, before the information reached me; the information reached me in May.

Q. May, what year?

A. 1918; about four years ago.

Q. That you got that information?

A. That I saw it there.

Q. You think it had not been in the outhouse for two years prior to the time you received the information?

A. It might have been—

Q. As far as you recall it?
A. Three or four years.
Q. From this time?
A. Yes.

FURTHER DIRECT EXAMINATION BY MR. WILSON:

Q. It has been testified to that you went into the room that your wife occupied after she left your room in January, 1918, and she has testified that you cohabited with her there; is that true?
A. In her room?
Q. In her room or in your room, after January, 1918, and if so, down to what time did the cohabitation continue?
A. I have not cohabited with my wife after the time that Ren told me the story; I had no cohabitation with her.
Q. That was in the latter part of May, 1918?
A. Yes.
Q. Prior to that time you cohabited with her?
A. Yes.
Q. After you received this information from Ren did you ever go in that room occupied by your wife, and if so, for what purpose?
A. I went in there to get underclothes and handkerchiefs.
Q. Where were they?
A. They were in the clothes basket. The clothes basket was returned from the washerwoman and was left with the clothes undistributed, and I would go in there

and get my underclothes and handkerchiefs and socks, and I often passed through the room into a door that leads into the hall that runs across the house.

COURT: Is that the back hall?

WITNESS: The back hall, the hall between my wife's room and Johnson's room, and I have often stopped there in the hall to pick up a suit of clothes or pair of pants or my hat.

Q. You are speaking in the back hall?
A. Yes, from the wardrobe closet.
Q. What sort of clothes did you keep in there?
A. My outer clothes.
Q. It has been testified to by witnesses in this case that after October, 1918, you occupied the bed in your room with your wife, is that true?
A. After October?
Q. I mean after October, 1918, after you got this infromation from your brother Ren?
A. I occupied the bed in my room with her?
Q. Yes, with her?
A. No, sir.
Q. Which side of the bed were you accustomed to sleep in?
A. On the side towards the door.

COURT: Was your bedroom door left open?

WITNESS: Yes.

COURT: That has been a practice in the family?

WITNESS: Yes, all of them.

Q. How near was your bed to the door?
A. I think about three feet, as near as I can tell.
Q. From the door frame?
A. From the door frame, yes, sir.

COURT: Could anyone walk down the hall with the gas lighted and see into your room and see the form of a person lying in bed?

WITNESS: They might see the form of one, but not the form of two.

COURT: Why do you say that?

WITNESS: That is my opinion; I have tried it.

Q. When did you try it?
A. A few nights ago.

COURT: Mr. Wilson wants to know whether there was anybody in the bed when you made your experiment?

WITNESS: No.

Q. This light in the hall, when turned on at full blast, is there still a shadow on the bed?
A. Yes.
Q. In the dark?
A. Yes.
Q. Where does that shadow cut across the bed; your wife has said that you could see everything in the bed,

you could see every part of a person in the bed except the head.

A. You cannot see either of the heads in the bed where that shadow is.

Q. About where does that shadow cut across the bed?

A. I wouldn't say it was in the center; it runs across about the footboard on the other side of the bed cat-a-cornered to the footboard, on the other side of the bed.

Q. Did you ever make any honest effort to reconcile yourself with your wife; after you had learned of her conduct from your brother Ren, did you make an effort to be reconciled?

A. No, sir

COURT: Did you understand Mr. Wilson's question?

WITNESS: I didn't make—

COURT: I don't think he understands your question

Q. Your wife says that when she came back from Florida and had been home a short time and went to you and tried to make up things with you and tried to become good friends and get reconciled, what effort, if any, did sh make in that direction?

A. She didn't make any effort.

Q. What did she say or do about that feature of the thing?

A. She didn't say anything to me; I asked her if her counsel said anything to her about it one day, and her answer to that was, "Now, you are getting cold feet." I said, "No, I am not getting cold feet; my trial is going right on; I am going right on with this suit."

Q. Did you know of her having gone over to talk with your cousin James Carton at Red Bank?

A. Yes.

Q. Did she tell you what occurred on that occasion?

A. No, she didn't tell me.

COURT: Do you know what the purpose of her conference with James D. Carton was?

WITNESS: I understand it was to see if there couldn't be a reconciliation brought about; she made the meeting, if I understand right; she said she wanted to see Mr. James D. Carton, to meet him over in Mr. Applegate's office.

Q. Was that on her return from the South?

A. I think it was. It was while she was home—that month she was home.

Q. After you learned of your wife's conduct from your brother Ren, did you try to straighten out that matter with her, and try to get reconciled with her; did you make the effort?

A. No.

Q. And she made no effort?

A. She made no effort, no.

Q. When was it you said to her that her love for you was dead; when did that conversation occur?

A. I have said that to her a number of times in the last four or five years.

Q. What response would she make?

A. She didn't make hardly any response; she said, "No, it is not." I said,, "I would say yes it is, your love has gone from me; it is blanked out, and I don't under-

stand it",and never could get any response from her at all; it seemed to me as if somebody had stolen her away from me, and she had gone away from me. She never wanted to make up with me, and didn't want me; that was her attitude.

Q. Did Mr. Carton when you went down to see him after you had learned this story from Ren, did he advise you to continue to live there with her?

A. Yes.

Q. I think you have already told us what he said about condonation; what passed between you about that, about cohabitation; whose suggestion was it that Mr. Carton should see your wife with a view of trying to effect a reconciliation; who made that suggestion?

A. I don't know how that was brought about, but my understanding was that my wife wanted to see Mr. James Carton.

Q. Did Mr. Cartan tell you that that request had been made of him?

A. He did.

Q. And did you approve of his meeting her?

A. I did, yes, sir.

COURT: Did you ever give Mrs. Cartan the particulars of the charge that was made against her, where she was said to have committed adultery with Devlin?

WITNESS: The day I accused her, I told her where it happened,—down in the outhouse.

Q. And the circumstances?

A. Yes, sir, I told her all about it.

Q. Mr. Cartan, this matter of the presence of the

sofa in the outbuilding, are you able to say with any definiteness whether the sofa was there in May, 1916?

A. Yes, sir.

Q. How do you fix that?

A. I fix it by the time I last saw it in my house. It was in my house about six years ago, and the next time I saw it, it was down in the outhouse in the garden, which was about a year later.

Q. Did you see it there more than once?

A. Oh, yes.

Q. Were you in the habit of going out there often?

A. Yes.

Q. For what purpose?

A. I used to look after the garden a little bit, and used to go in this outhouse and see where the children were around there playing, and I had been down there to fix a pile of sand for them, down there in the yard, and I was around there all the time every day, in and out.

COURT: When was it, Mr. Cartan, you first noticed the loss of affection on the part of your wife for you?

WITNESS: It looked to me as if it was slipping away all the time.

COURT: How far back can you recall?

WITNESS: Five or six years.

COURT: Before the birth of the last child?

WITNESS: About the time.

COURT: Of the birth of the last child?

WITNESS: Right about that time, along about that time.

COURT: How did that manifest itself in your mind; what was there in her action or treatment of you?

WITNESS: She didn't seem to want to go out in the car with me every Sunday; I couldn't get her to go out in the car with me. I used to go down the back street and wonder what in the deuce was the matter with her.

COURT: Was she ill at the time?

WITNESS: Nothing particular.

COURT: Was there any other way that she manifested this loss of affection for you?

WITNESS: She didn't seem to want to be with me at all. At dances she never seemed to want to associate herself with me; she seemed to want to get with the others, and her home life , it was not very pleasant; she didn't talk with me and care whether I was around the house or not when I came in.

COURT: Was she centering her attention on the children then?

WITNESS: I cannot say she was any more than I was; I always liked the children.

Q. Mr. Cartan, your own treatment of this wife of yours, was it kind and considerate or otherwise?

A. I always tried to be kind and considerate to her; I always tried my best to straighten her out.

Q. What about your treatment of those children?

A. I always treated them good and looked after them.

Q. Your daughter has said that she asked money from you once after this trouble began and that you refused it; what was there about that?

A. The only time I refused her was when she was up in Trenton, and was up there among the Fury and Devlin people, and I didn't think she ought to be there at that time while these things were happening, and it provoked me; that is the only time I ever refused her a cent in my life.

Q. How did she ask you for this money?

A. She wrote to me from Trenton.

Q. What did she ask you for?

A. She asked me to send her money for a pair of shoes, and send her money to keep her end up with the people she was visiting in Trenton; she said they would think funny about her being there and not having any money to spend, and she wanted me to send the money as I always did.

Q. What did you do then?

A. I didn't send her money; I sent her fare to come home; she called me on the phone and wanted to know if I sent the money, and I said, "No", then she said, "Send me my fare", and I did, and I sent her enough to cover the fare, $5 possibly; always before that I gave her everything she wanted, whenever she asked for it.

Q. What have you done for this boy of yours, Johnson?

A. I have done everything in the world I could, everything any man could do for his son.

Q. Did you get him a place in New York?

A. Yes.

Q. Where was it?

A. First National Bank; he stayed there three or four weeks. When the boy was taken South with his mother, he got tired and come home, and wrote me a personal letter, asking me if I wouldn't send him $75 to come home with, and I did; I sent him $75, and sent him some money to pay for shoes extra, and have given him money extra ever since this trouble has been going on.

Q. How have these children treated you since this trouble came on?

A. The older children have been kind of cold toward me, but the younger children, they are not old enough.

Q. The older children espoused the mother's cause?

A. Yes.

CROSS EXAMINATION BY MR. LANE:

Q. Mr. Cartan, this conversation you had with your wife with respect to this piece of paper—do you think your wife really wanted you to bring your suit?

A. Sure she did; she was after me every day.

Q. Did you think at that time that your wife really wanted you to bring your suit?

A. Yes.

Q. For what purpose did you think she wanted you to bring your suit?

A. I couldn't really tell.

Q. Did you think she wanted you to bring a suit so you might be divorced from her?

A. Yes.

Q. And she was therefore, you thought, urging you to bring this suit, which you thought she wouldn't defend?

A. She was urging me to bring this suit; I didn't know about the defence.

Q. What did you think your frame of mind was, that she wanted this decree of divorce to go against her; is that what you thought she meant?

A. She told me she didn't care at that time whether I brought the suit or not; she was after me every day to bring it.

Q. You thought from what she said at that time and what she had previously said, that she wanted you to bring this suit, so as to get a decree of divorce against her?

A. Yes.

Q. And notwithstanding that, she said that after you got the decree she would raise hell with the Cartans?

A. Yes.

Q. And notwithstanding that, she refused to sign this paper?

A. She refused to sign the paper?

Q. Yes. You told us that if she would sign the paper you would start your proceedings?

A. That is what I told her.

Q. And she had been after you to start the proceedings.

A. After me all the time.

Q. Did she tell you why it was that she wanted these proceedings started, and if you would bring the suit if she signed the paper, that she didn't sign the paper, or

wouldn't sign?

A. She didn't tell me.

Q. You can't explain why it was, from anything she said at that time, can you?

A. I cannot, no, sir. I know that she was after me all the time to bring the suit, continually after me.

Q. Was there any talk of $2,000 being paid to her at any time?

A. No.

Q. Or talk of any money being paid to her at any time?

A. No.

Q. Did she ask you for $2,000?

A. No, she asked me for the house and lot.

Q. Did she ask you for any sum of money?

A. She asked for money during her life.

Q. With respect to the bringing of this suit?

A. The only thing she asked me for was the house and lot.

COURT: When you asked her to sign the paper, was anything said in case you got a divorce as to what was to become of her and the children?

WITNESS: No, sir, I told her I was always going to support those children; at that time I remember saying that to her.

COURT: Was anything said as to what was to become of her, and how she was to be supported?

WITNESS: I think not

COURT: At that time or at any time when you had discussions about this suit?

WITNESS: No.

Q. Had you such a paper prepared?
A. No.
Q. Had you talked about such a paper with anybody else?
A. No, sir.
Q. On this occasion that she wanted you to bring your suit, how did you come to say to her, "If you sign this little piece of paper, I will bring the suit"?
A. I just asked her to sign this paper; it come to my own mind; it was my own make-up.
Q. This paper—what paper?
A. Just what that stated, her paper showing she had improper relations with Devlin.
Q. Did you have such a paper?
A. No, sir.
Q. And you hadn't talked about such a paper with anyone?
A. No, sir.
Q. So that that just popped into your mind, when she asked you upon this occasion whether you hadn't brought your suit?
A. That was my own make-up.
Q. You never had such a paper prepared ready for her to sign?
A. No, sir.
Q. Did you ever prepare such a paper?
A. No, but I would have prepared it if she had signed it.

Q. Have you ever prepared such a paper?

A. No.

Q. No such paper is in existence or ever was in existence?

A. No.

COURT: How do you fix that time, in your own mind, when you last cohabited with your wife?

WITNESS: I know I never cohabited with her after I knew this story; I knew it would be detrimental to me in any suit or anything.

COURT: Did you know that before James Carton had told you that?

WITNESS: I had always known that. I always understood that to be so. There was no cohabitation with this woman, never, after my brother Ren told me this story.

COURT: Did you leave her room that same night he told you the story, or were you not occupying the same room at that time?

WITNESS: The night he told me the story—she had left my room and gone into her own room.

COURT: She had been sleeping apart from you prior to that time?

WITNESS: Yes.

Q. But you had been cohabiting with her.

A. I did, I went to her room, as I swore here, a few times, but not after my brother told me the story.

Q. You had been having cohabitation with her notwithstanding the fact that you occupied separate rooms. up to the time that your brother told you the story, hadn't you?

A. Not after that.

Q. Up to that time?

A. A while before that, a little while before.

Q. How long before?

A. It might have been a few days before.

Q. How did you explain to her your cessation of sexual intercourse at that time?

A. I didn't have to explain it; she was so cold towards me, she didn't want me at all.

Q. There was nothing said between you and she?

A. It wasn't necessary to explain it to her.

Q. There was nothing said, and no reason given by you for the cessation of what you had been theretofore doing?

A. No.

Q. Not a word until October, 1918?

A. No.

COURT: Then she didn't know between May and October why you did not have intercourse?

WITNESS: No.

Q. Do you remember whether there were any chickens kept in this outhouse in 1916?

A. No, sir, there were not.

Q. Do you know whether ducks were kept there in

1916?

A. There were a couple of ducks there, but that is five or six years ago.

Q. In 1916?

A. I don't think there was.

Q. Do you know or don't you?

A. No, there wasn't.

Q. Do you know whether there were any chickens or ducks there in 1917?

A. No, there wasn't any.

Q. When was this house first used as a play house?

A. About seven or eight years ago, and off and on while we had chickens there, it was used as a play house, the last ten or twelve years.

Q. When was the last time you had chickens or ducks in this outhouse?

A. From now? Fully five or six years ago. Six years ago, anyhow.

Q. You haven't had chickens or ducks in this outhouse since the time it is said this adultery was committed there?

A. No, sir.

Q. Have you been around the outhouse since then?

A. Yes.

Q. Quite often?

A. Yes.

Q. In the day time or night time?

A. Both.

Q. As late as nine and ten o'clock at night?

A. Yes.

Q. Doing what?

A. Looking around there to see what was going on there.

A. During the past five or six years?

A. Sure.

Q. Nothing unusual for you to be back there?

A. No, nothing unusual.

Q. Mrs. Cartan back there during the day and night time; you saw her go out there occasionally?

A. I never saw her there.

Q. You never saw her back there?

A. I have seen her down there in the daytime.

Q. Did you or didn't you?

A. I have seen her around there in the daytime.

Q. Have you seen her around there at night?

A. No, sir, I haven't.

Q. Then, you never know of an occasion when she has been down there in that outhouse, or seen her around that outhouse in the garden at night, is that right?

A. Unless she went out there to—

COURT: You don't know of any occasion?

WITNESS: No.

Q. Would there be anything unusual in her being back there, in your mind?

MR. WILSON: I submit that is not a proper question.

COURT: We will have to draw our own conclusions as to that.

Q. What distance is this outhouse from the rear of your house?

A. It extends 25 feet. I should say it was 75 feet to

the first end of it.

Q. What is the distance from the nearest point of the outhouse to the nearest point to your house?

A. Fifty to sixty feet.

Q. And between the nearest point and the house is there anything to obstruct the view of the house from the outhouse or from your dwelling house?

A. Nothing.

Q. Is it a closed yard or lawn?

A. No, an open yard.

Q. Used for no purpose?

A. No purpose.

Q. With respect to what you call the shadow on the bed that is thrown by the light from the hall, when you look in on the bed at night, you say that shadow, as you call it, cuts diagonally across the bed, from the head to the foot?

A. You mean where it starts from and where it ends?

Q. Yes.

A. It starts about, I should judge, three feet from the head of the bed and goes to the footboard on the other side.

Q. And in a diagonal direction?

A. Yes

Q. You mean to say that the darkness that is not eliminated by that beam of light thrown into the room is so intense that you cannot see a form lying on that bed?

A. On the dark side?

Q. Yes, on the dark side of the bed.

A. While passing by there, making the casual observations? No, sir, you cannot.

Q. I am talking about walking past that room and looking through that door, I want to know whether that

dark spot that is left outside of the beam of light is so intense that you cannot see that there is a person there?

A. I don't understand your question. You cannot, unless you went right in the door and looked in.

Q. Then the darkness which is left—

A. I am talking about the dark side.

Q. The dark side is the dark side left in the room, there is no shadow there?

A. Yes.

Q. What throws the shadow?

A. The door; the light runs cat-a-cornered and there is a shadow across there, and there is a dark and light spot in the bed.

Q. Take the dark spot, is that so intense that you cannot see a form lying on that bed on that dark spot?

A. By passing that door, no, you cannot.

Q. When did you make the experiment?

A. This week.

Q. Is that the only experiment you made?

A. I made two experiments this week.

Q. How was that made? Who was with you?

A. I was alone the first time.

Q. Who was with you the second time?

A. Mr. Heuser.

Q. What time was the first time?

A. Night before last was when Mr. Heuser was with me; I think I was in there Monday night and Wednesday night; Monday night alone and Wednesday night with Mr. Heuser.

Q. When did you ask her if her counsel had said anything about a reconciliation—Mrs. Cartan I mean?

A. I think that was in January, after Mr. Applegate became her counsel. I think in January, 1919, my recol-

lection is.

Q. How did you come to ask her that?

A. I heard that there had been some movement made towards reconciliation, and she never said a word to me.

Q. You were not anxious for a reconciliation, were you?

A. I wanted to get her state of mind.

Q. (Question repeated.)

A. Not at that time, no, sir.

Q. At any time after Ren told you?

A. No.

Q. How was it you came to ask her about it?

A. I understood that there had been some movement made, and she said nothing to me about it, and I asked her the question.

CROSS EXAMINATION BY MR. APPLEGATE:

Q. In regard to the testimony you have given as to endeavoring to get your wife to sign a confession; you told her that you would start your divorce right away if she would sign it?

A. Yes.

Q. You intended to start it?

A. Sure.

Q. Why did you tell her that?

A. She was after me all the time, and she would continue after me, and she provoked me a little that day, and I asked her if she would sign the paper and I would start it.

COURT: Why didn't you start it before that?

WITNESS: I was held off by my cousin.

COURT: James Carton?

WITNESS: Yes.

COURT: In his efforts to effect a reconciliation?

WITNESS: Yes.

COURT: I don't quite reconcile that. I will give you the opportunity. You have answered Mr. Lane that you had no desire at that time, after Ren had disclosed the story to you, for a reconciliation. I am curious to know why you delayed beginning your proceedings from May until December, if you had no desire for a reconciliation?

WITNESS: If she had come to me in the right way, or come to me—

COURT: What right way? Maybe it is not too late for you to go back yet, if it is the right way. That is what you two people ought to do, if she is not guilty. You have four children; what do you mean by the right way? I am not asking this question out of idle curiosity; I have a purpose in my mind. What delayed this thing and what was your frame of mind? Tell us how you felt about it.

WITNESS: Mr. Carton had held me off.

COURT: James?

WITNESS: James Carton.

COURT: With the idea of a reconciliation?

WITNESS: Yes, and I expected her—I waited for her to come to me, and she didn't come to me, and I asked her if her counsel had said anything to her about it, and she said, "You are getting cold feet", and words along that line, and that stopped the thing right away.

COURT: You were both standing on your pride in the matter?

WITNESS: I don't know about that.

COURT: You said you wanted her to come to you. What did you want her to do; acknowledge her guilt, or beg your forgiveness?

WITNESS: Yes, say something about it.

COURT: She protested her innocence.

WITNESS: She said she was innocent, but I thought she was guilty.

COURT: Did you want a woman who had professed her innocence to come and untruthfully acknowledge she was guilty in order to be reconciled?

WITNESS: I thought she would do something along that

line.

COURT: Will you tell me what she could have done that would have satisfied you at that time?

WITNESS: I hardly think she could have done anything.

COURT: That would have satisfied you of her innocense?

WITNESS: I am afraid not.

COURT: That seems to be the unfortunate situation. He says he is afraid he hardly thinks she could have done anything that could have satisfied him of her innocence at that time.

CROSS EXAMINATION BY MR. LANE:

Q. Mr. Cartan, let me ask you this; you had been told by Ren this entire story in May, 1918?

A. Yes.

Q. You had all of the facts?

A. Yes.

Q. Will you tell me why it was that you told your wife—you assumed, of course, that Ren and the others were telling the truth?

A. Yes.

Q. You had a perfect case against Mrs. Cartan?

A. Yes.

Q. There is no question in your mind about that?

A. No.

Q. And there was no question in the mind of your counsel, at least communicated to you, was there?

A. I think not.

Q. Why was it that you said to her that you would start the suit if she would confess, if you had a perfect case against her?

A. Well, the only reason I can give is, she seemed to want this divorce; she seemed to be crazy to have it, and I told her if she would sign this paper showing she had improper relations with Devlin, I would start the suit.

MR. WILSON: May I withdraw this witness for the present?

SELDEN HARDY, sworn in rebuttal for petitioner

DIRECT EXAMINATION BY MR. WILSON:

Q. Where do you live?

A. Matawan.

Q. Who is your father?

A. Henry Hardy.

Q. How near do you live to the A. J. Cartan property?

A. Three quarters of a mile.

Q. How old are you?

A. Seventeen.

Q. Were you in the habit of going to the Cartan place?

A. Not lately.

Q. Going back four or five years ago were you in the habit of going there?

A. Yes.

Q. For what purpose?

A. Playing with the children.

Q. With the Cartan children?

A. Yes.

Q. With which of them?

A. Gene and the little girl.

Q. How old are you now?

A. Seventeen.

Q. What about playing with the older boy?

A. I never played with him.

Q. When were you in the habit of going there?

A. After school.

Q. You went to school at Matawan, did you?

A. Yes.

Q. Were you in the habit of going there in 1916 and 1917?

A. Yes.

Q. How long ago were you in the habit of going there to play?

A. Four years ago.

Q. Do you recall this outhouse which was back of the main house?

A. Yes.

Q. Did you ever go in it?

A. Yes, I played in it.

Q. How frequently have you been in it?

A. Well, sometimes every night after school.

Q. Did you ever see a sofa in there?

A. Yes, sir.

Q. What kind of a sofa was it?
A. A willow.

COURT: Wicker or cane?

WITNESS: Wicker.

Q. Was it broken in any way, as you observed?
A. The back sagged a bit.
Q. How long was it in there, to your knowledge?
A. About a year.
Q. Did you see it in there often?
A. Yes.
Q. Can you remember where you were living at the time you saw that sofa?
A. Over Cartan & Devlin's feed store.
Q. You mean your family were living there? Renting?
A. Yes.
Q. Do you know what years it was when you were living over the feed store?
A. 1915—I think 1915 and 1916.
Q. Two years?
A. Yes.
Q. Who found you as a witness in this case; who asked you to testify for Mr. Cartan?
A. Mr. A. J. Cartan.

CROSS EXAMINATION BY MR. APPLEGATE:

Q. You work for Mr. A. J. Cartan?
A. No, sir.

Q. Did you ever work for him?
A. No, sir.
Q. Whereabouts did Mr. Cartan find you?
A. He didn't find me.
Q. Who did find you?
A. My father.
Q. When was that?
A. About a week ago.
Q. What did he say to you?
A. He asked me if I remembered about a chair and sofa being in the outhouse on Mr. Cartan's property.
Q. And your father works for Mr. A. J. Cartan?
A. No, sir.
Q. This is the first time you have been here attending any of these hearings?
A. Yes.
Q. When was the last time that you saw this couch, as you say, in the outhouse?
A. Four years ago.
Q. From now?
A. Yes.
Q. That means 1916?
A. Yes.
Q. That was the last time that you ever say it there?
A. Yes.
Q. And what fixes that time in your mind; how do you know it was four years ago? Why do you say four, and not six or five?
A. Because I know it.
Q. How do you know it?

COURT: What was the date?

New Jersey State Library

WITNESS: 1916.

Q. How do you know?

A. I remember back that far.

Q. What fixes it in your mind; what is there that helps you to remember?

A. I remember playing there, that is all.

Q. Is that the only reason you can give for remembering that the last time you saw the couch there was in 1916?

A. Yes.

Q. You played there in 1915, too?

A. Yes.

Q. Then why didn't you fix that year?

A. That is the last I saw it.

Q. When was the first you saw it?

A. The first I saw it was about—well, a few days after we moved there.

MR. WILSON: You moved where?

WITNESS: Over Devlin's store.

Q. When was that?

A. About the latter part of 1915.

Q. And so according to your story, you saw it there about a year?

A. Yes.

Q. You didn't see it before 1915 and you didn't see it after 1916; what time in 1916 was the last time you saw it?

A. I don't remember.

Q. You don't know what time of the year; all you

can say is that it was sometime in 1916?

A. Yes.

Q. It might have been the first part of the year for all you know?

A. Yes.

Q. And by the first part of the year you mean January, I suppose?

A. About April.

Q. So April, 1916, is the time you fix as the last time you saw the couch there?

A. No.

Q. That is the last time you saw it; it is or isn't it? What time do you fix; a moment ago you said April. 1916; what date do you fix; what month?

A. I cannot tell you; I don't remember what month.

Q. It might have been the first part of the for all you know?

A. It wasn't the first.

Q. When was it?

A. About the last of the year.

Q. What time do you call the last of the year?

A. About October.

Q. A little while ago you said you didn't know if it was the first or last?

A. I remember when I moved out and that was the last I saw it; I remember when we moved away, and that would be the last I saw it.

Q. And that is the only reason you give?

A. That is all.

Q. You don't know whether you played there the last part of the year or not?

A. I never played there after I moved out of over the store.

Q. You don't know when you did play there last, do you?

A. No, sir.

Q. What else did you see there?

A. A chair and a few pictures on the wall.

Q. Of what?

A. Pictures out of a paper that we put up there ourselves. We played there.

Q. You put them there?

A. I didn't alone, the other boys.

Q. You are now seventeen?

A. Yes.

Q. And four years ago you were thirteen years old?

A. Yes.

RE-DIRECT EXAMINATION BY MR. WILSON:

Q. You lived in the neighborhood, over the Cartan feed store for two years?

A. Yes.

Q. Do you remember what part of the year you moved away?

A. No, sir.

Q. Was it during the two years you lived in the neighborhood, over the store, that you were in the habit of going there to play?

A. No.

Q. You didn't go over there before or after that time?

A. No.

Q. You moved out of town quite a distance after

that, or moved away from the neighborhood?

A. Yes.

Q. And your recollection is that you saw this sofa when you were living over the store?

A. Yes.

Q. And while you went over there to play?

A. Yes.

Q. And your habit was to go over there how often?

A. After school, from half past three until about five o'clock.

Q. How often would you go; would you go there two or three times a week or how frequently?

Q. About two or four times a week.

Q. What are you doing now?

A. Firing in Matawan.

Q. What does your father do?

A. He is an engineer in the same place.

Adjourned to December 15, 1920, at 11 o'clock.

Continuation of testimony in the above entitled cause, before Hon. John E. Foster, Vice Chancellor, at the Chancery Chambers, Newark, New Jersey, on Wednesday, December 15, 1920, at 10 A. M., in the presence of counsel as before stated.

ANDREW J. CARTAN, recalled for complainant in rebuttal.

FURTHER DIRECT EXAMINATION BY MR. WILSON:

Q. It has been said that you went with your wife and

Devlin and his wife to Bigget's on some sort of a dinner party after the latter part of May, 1918, when you learned of your wife's infidelity; when do you fix the time of that Bigget's party?

A. Some two weeks before my brother told me the story.

Q. You fix it some time in the latter part of May and before you heard the story?

A. Yes.

Q. It has been testified to here that the very night of the party, the very day of the party was the eighteenth of June; are you able to tell where you were on the eighteenth of June?

A. Yes, I was attending a Building and Loan meeting, an annual meeting of the Building and Loan Association that night, and I was attending this meeting.

Q. How do you establish that date, the meeting as being upon that night?

A. From the minutes of the Building and Loan.

Q. What particular thing in your mind refreshed your memory?

MR. APPLEGATE: We object; we are entitled to the minutes.

COURT: Have you them here?

Q. Have you the minutes here?

A. I have a copy of them here.

MR. WILSON: I will introduce the original later.

COURT: I will let this examination proceed; there is

one witness at least and probably some odds and ends to be cleared up before Mr. Bindseil and that can be done also on the other side of the case; this examination can proceed, and when the examination before Mr. Bindseil takes place you can produce the original minutes. This will be taken subject to Mr. Applegate's objection.

Q. What memorandum in the minutes did you find that refreshed your memory, and how?

A. There was an election of officers there that night, and I always attend the annual meeting.

Q. You recall that you did attend?

MR. APPLEGATE: I object and we ask that it be stricken out.

COURT: I will let the first part of his answer stand, that there was an election of officers on that night.

Q. Do you recall whether or not you attended an election of officers at the Building and Loan for that year 1918?

A. I did.

Q. Was there anything else in the minutes that served to refresh your recollection?

A. Yes, a loan made to a Mrs. Wilson on Broad street, and I remember being present and voting on the loan.

Q. Were you a member of the Loan Committee?

A. Yes.

Q. And a member of the Board of Directors?

A. Yes, and also the Building Committee.

COURT: Were you any officer other than a director?

WITNESS: Only director.

COURT: Was Mr. Devlin also a director of the association?

WITNESS: He is Vice President.

Q. Was he in that year?
A. Yes.
Q. What occurred in your family as to sickness among your children at or about that time, in 1918?
A. The two smaller children had the measles from June 15 to July 15.
Q. How do you fix that date?
A. I have it in a diary that I kept.

COURT: Did you have a physician attend them?

WITNESS: No, I think the doctor—no, they didn't have any physician; they got medicine from Dr. Ervin at the time.

Q. Was he consulted?
A. Yes.
Q. And you recall that they had the measles?
A. I do.
Q. And were ill during a period of about how long?
A. About a month.
Q. You found this entry in your diary?
A. Yes.

COURT: From June 15 to July 15?

WITNESS: Yes. I have it in my diary from June 15 to July 15, 1918.

COURT: When did you make the entry in your diary?

WITNESS: At that time.

Q. Which time, in July or June?

A. In June—I mean at the end of the time, about that time I made it.

Q. Did you make the entry when they were taken with the measles or make it when they recovered?

A. No, I made the entry at the end of the sickness when they recovered, from June 15 to July 15.

Q. Mr. Cartan, your wife has said that many of the parties where the Cartans and Devlin families met for social purposes, she did not attend, and she made the statement that there were hundreds of times in the last ten years when she was prevented from attending those social intercourses by reason of illness; is that true?

A. No, that is not true.

Q. During the last ten years how much, if at all, has she been ill?

A. She was ill in the two years, in the winter of, I think, 1917-1918 and the winter of 1918—no, 1916-1917 and 1917-1918.

Q. Those winters?

A. Yes.

Q. How long did those illnesses continue?

A. I would say possibly three or four weeks.

Q. You mean in each of those years or altogether?

A. No, not that much.

Q. Was there anything about her health except for the occasions which you have indicated, which would prevent her from attendance upon such family parties as you had?

A. No, sir.

Q. She says that the day when you accused her of having been intimate with Mr. Devlin, that up in the bedroom you grabbed her by the throat and threw her upon the bed; is that true?

A. That is not true.

Q. Mrs. Devlin has said that she was not informed by you or anybody else as to where and under what circumstances this alleged adultery with your wife—between your wife and Mr. Devlin occurred; do you remember having a conversation with her in the A. J. Cartan store after the first of October, 1918?

A. I do—in the Cartan-Devlin store.

Q. Do you recall having told her then anything about the particulars of this alleged defence?

A. I do, yes, sir.

Q. What did you say to her and what did she say to you on that occasion?

A. I told her that it happened over in the outhouse.

Q. How did the conversation arise, what started it, and what did she say and what did you say?

A. She wanted to know from me how they could—or when they had planned to do anything of that kind, and I told her they had plenty of time, that it always happened as a rule on Saturday night, when I was tied up on my business, and she was playing cards, and it happened over in the outhouse in the back yard of my own lot,

on my property.

Q. You told her that, you say, at the conference in the Cartan-Devlin store?

A. Yes.

Q. How long was that after the first of October, 1918?

A. About two weeks, I should judge.

Q. In your cross examination you were asked if there was anything that shut off the view between your house and this outhouse, and I understood you to say No; was there not, in point of fact, an arbor that ran from the house down to the outhouse?

A. Yes.

Q. That would serve in part to cut off the view?

A. Yes, and there was a rose bush, alongside of the arbor.

Q. And this arbor is correctly shown in Exhibit D 3, is it?

A. Yes.

COURT: Anything growing in there at the time, in this yard?

WITNESS: There is a rose bush right on this side of the arbor.

Q. Were there grape vines there?

A. Yes, on the arbor.

Q. You have said that you did not cohabit with your wife after you learned this story from Ren; I ask you whether you occupied the same bed with her, whether in your room or in her room or anywhere else?

A. I did not; it was a repulsive thing for me to do.

I didn't cohabit with her after the time when Ren told me the story; it was an unpleasant thing even before that.

Q. Some mention has been made of the Close party; did you attend the Close party in September, 1918?

A. I did; my wife coaxed me to go to this party; she was after me several times to go, and asked me to go, and we were invited there and I thought that the easiest way was to go, or I would have to make some excuse for not going; so as to avoid making an excuse, I went.

Q. That was before you had accused her?

A. Yes.

Q. But after you had learned the story?

A. Yes.

Q. Mr. Devlin has said that you attended a directors' meeting of the bank after May, 1918, when you learned of this trouble, and that you had some casual conversation with him about going down the street together, and that you went down the street together, is that true?

A. No, when I went into the bank meeting he was in another end of the corridor, and I was in a chair; I didn't go anywhere near him; the meeting only lasted a few minutes and he left before the meeting was over; when came out, he was gone.

Q. You didn't walk down the street with him?

A. No.

Q. And had no such conversation with him?

A. No, sir.

Q. It has been testified to that you have been seen in the room that your wife occupied with Elizabeth, undressed or partly undressed; what have you to say about that; have you been in there in that condition?

A. Yes, I went in there to get some clothes; I started

to dress myself and found out I wanted some underclothes and I went in there to get them out of the basket. She often left them there after they came home from the washerwoman for two or three days at a time, and I have also gone in there to get shirts out of a dresser in there.

Q. What about the linen, the towels that were used in the bathroom?

A. I often went in there to get towels when I wanted to take a bath, when I was in a hurry to go away somewhere—to get towels out of the washstand drawer in which she kept them.

COURT: In that room or in the back hall?

WITNESS: No, in her room.

Q. Where was the dresser?

A. In her room, where I got the shirts out of.

Q. Martha Smock, a witness, testified in this case; did you see her?

A. Yes, I did. I sent for her one day and I asked her in Mrs. Bert Cartan's house in the presence of Mrs. Bert Cartan, if she ever saw a willow couch and chair in the outhouse in the back yard of my home.

Q. Was this after the divorce suit was begun?

A. Yes.

Q. What did she say?

A. She said that Mrs. Cartan asked her the same question that I "had it in the papers that there was a couch and chair in this outbuilding, and she asked me if I ever saw this couch and chair in this outhouse, and I told Mrs. Cartan"—

Q. She didn't ask you?

COURT: He is telling what this woman told him.

WITNESS: This woman told me that Mrs. Cartan asked her if she ever saw this willow couch and chair in this outbuilding, and Martha Smock said, "I told Mrs. Cartan I didn't remember."

Q. What did she tell you?

A. She told me the same thing.

Q. You were asked upon the stand why it was that you asked her to sign this paper in which it was proposed that she should admit her guilt;do you desire to make any further statement in respect to that matter?

A. Only that she admitted to me that she was guilty—

MR. APPLEGATE: I object.

COURT: Strike that out and tell what she said.

MR. WILSON: This incident so far as it is of value is one which has some relation to his conduct. He has been asked why he sought to get this paper.

COURT: He can tell it all, bus he cannot characterize it as an admission. He can say what she said.

WITNESS: She told me she was guilty, and she was after me almost daily to start my suit for divorce.

COURT: When you say she was after you, that doesn't tell me anything. Tell me what she said, and I can deter-

mine.

WITNESS: She said, "I want you to have your divorce", and I felt if I had it down in black and white—

COURT: Not what you felt, but as a result of this occurrence—

WITNESS: As a result of this occurrence I felt if I had it down in black and white—

COURT: Strike it out. Don't use the word "felt".

WITNESS: I told her if I had it down in black and white that then that might avoid the notoriety of divorce proceedings.

Q. How could you do that by having it in black and white? What was your idea?

A. I thought if I held this paper over her, that she would never come back after me for any demand or make any demands upon me.

Q. Demands for what?

A. For maintenance or for support; I always told her and said that I was going to support the children and take care of them, but I didn't want to take care of her, and I felt if I had this paper, that if she should come to me and make any demands I could then show her this paper.

Q. You didn't contemplate getting a divorce if you got this paper?

A. I don't know what would come up; my cousin was holding me off daily, and I felt this was the best thing

to do at that time.

Q. How long did the Smock and Williams women work in your place; first, the Smock woman?

A. I found a little memorandum where I made a little charge to her in April, 1917.

Q. Which one?

A. The Smock woman, and she worked there at that time about a month in my house; previous to that she was there some two years before that, and probably worked there three or four weeks at that time, and I noticed her around there this summer working for Mrs. Cartan, in 1920.

Q. Going back to 1916, she says that in 1916, as I recall it, she was familiar with the outhouse and its contents; my question is, did she work for you, according to your best recollection in 1916?

A. No, not in 1916.

Q. You say you found a memorandum; what kind of a memorandum?

A. A little charge I made to her for something she got, and she didn't pay me for it.

Q. Did she trade at your store?

A. She come in and got little things or notions.

Q. Did she have an account at your store?

A. No, she was working for me, and I intended to take this little account out of her pay when I settled with her, but I failed to do it.

Q. Have you got that account?

A. I have it at home; I didn't bring it with me, but I have got it.

Q. What about this Williams woman; when was she at your house working?

A. She only came in every now and then; she hasn't

worked for us in the last five years..

Q. Your daughter Helen says that you refused to give her money because she wouldn't side with you; is that true?

A. That is not true.

Q. Helen has said that she went up in your room the morning after your wife returned from Florida and told you that her mother was back and that you exclaimed, "Mother is back; oh, why did she do that?" What was there about that?

A. I didn't make any exclamation; she came in the front of the house downstairs; I was up in my room and she hollered up through the stairway, she said, "Mother is up at the hotel; do you want her to come down?" I said, "She can if she wants to."

Q. Is that all that occurred between you?

A. Yes.

Q. Did she come to your room to make the announcement?

A. No, she hollered upstairs.

Q. Mrs. Devlin has said that upon these various social occasions between the two families, that it was your custom to seat the party in the automobiles and at dinners and elsewhere, is that true?

A. That is not so.

Q. You were not the social director of those meetings?

A. No, sir, I think the other man was the director.

COURT: You mean Mr. Devlin was the social director?

WITNESS: Yes, or my wife.

Q. Mr. Cartan, did you have a conversation with Mrs. Devlin in the A. J. Cartan store some time after these letters were sent on the first of October, 1918; do you recall her being there?

A. Yes.

Q. Did she on that occasion ask you if you would overlook the thing, referring to this trouble?

A. She did.

Q. For the children's sake?

A. She did.

Q. And did she add, "and let the Lord punish him"?

A. Yes, sir.

Q. And did you reply, "I cannot do it; let me read these letters to you (referring to letters which have been offered in evidence)"?

A. I did.

Q. And say to her, "You will see why I cannot make up; besides she does not want to make up with me; it is different with you." Did you have such a conversation?

A. Yes, sir.

Q. Is it not true that on that occasion you then started to read the letters, and that Ren was present and said, "Hold up, let me see Pat first"; is it not true that he then left the room where you were, being then upstairs in the A. J. Cartan store, and is it not true that he remained away for a short time and then came back and said that he could not do anything with Pat and to go ahead and read the letters; did that occur?

A. Yes, sir.

Q. Is it not true that the letters were then read by you?

A. Yes.

Q. In her hearing?

A. Yes.

Q. And is it not true that before reading those letters, you said, "These letters will jar you", and did she not reply, "I can stand anything after what I have already been through"? Did that happen?

A. Yes, sir.

Q. Did she not finally say to you that if you could not overlook the matter as she was going to do, that there was nothing for her to do, but to go home and kill the children and blow her brains out; did she make that statement?

A. She did.

Q. And is it not true that shortly after that, upon another occasion, either in the A. J. Cartan store or in the Cartan-Devlin store, you had a conversation with her, and that upon that occasion she asked you if you wouldn't overlook the thing (referring to the conduct of her husband with your wife), and did she not ask you to overlook the matter for the children's sake and let the Lord punish him?

A. She did.

Q. And is it not true that upon that occasion you said you couldn't do it; that occurred, did it?

A. Yes, sir, that occurred.

Q. There has been some reference to an occasion when Mrs. Cartan asked you to give her a house and lot. Won't you tell the Court what occurred on that occasion?

A. She said to me, "You go on with your divorce suit, but I will raise hell with the Cartan family before it is over; Bert will lose his job in the bank; Ren will be out of the firm of Cartan & Devlin, and I will lose my business.

COURT: That is, you would lose your business?

WITNESS: Yes, she said, "I will tell you what I will do; you give me this house and lot in which we live, and I won't blow on the bunch; I won't blow on the bunch and you can go on with your divorce trial."

Q. When was it she said that to you?
A. That was along in October, I think, after—
Q. After the fuss began?
A. Yes.
Q. Where was it?
A. In my home.

CROSS EXAMINATION BY MR. APPLEGATE:

Q. Mr. Cartan, where are the minutes of this meeting of the Building and Loan Association which you say you attended on the evening of June 18, 1918?
A. They are in the possession of the secretary.
Q. Why didn't you bring them here?
A. I didn't know whether they would be needed or not.
Q. Didn't your counsel advise you whether to bring them here or not?

MR. WILSON: I didn't.

MR. APPLEGATE: Why didn't you?

MR. WILSON: I didn't advise him to.

Q. When did you inspect them?
A. A few days ago.
Q. Who is the secretary?
A. William G. Bedle.
Q. Where is the copy of the minutes you say you have?
A. In my envelope.

MR. APPLEGATE: We would like to see them, please.

(Witness produces copy of minutes and hands them to Mr. Applegate).

Q. Did you make the copy?
A. Yes, I did; it is in my handwriting.
Q. This copy doesn't show who was present?
A. No, sir.
Q. Wasn't that the reason you didn't subpoena the secretary?
A. No, sir.
Q. So that when you say you were present you are simply depending upon your best recollection?
A. I remember a loan was made there that night.
Q. That is the reason you say you were present, because you were always present at the annual meetings.
A. Yes, and I remember a loan made that night.
Q. Was there a record of the loan in the minutes?
A. Yes.
Q. Did you remember the loan before you saw the minutes, or was it the—
A. I refreshed my memory on reading the minutes, and I remember being present when this loan was made, and know about it.

Q. Where do you say this meeting was held?

A. In A. J. Wooley's store or C. A. Geran, it is just the same store.

Q. (By the Court) Is that the usual place of meeting?

A. Yes.

Q. Who were present at that meeting?

A. My recollection is the whole board was there.

Q. Who were they?

A. Van Winkle, Alfred Hardy.

Q. Daniel Van Winkle?

A. Yes.

Q. Who else?

A. A. J. Cartan; D. E. Van Winkle.

Q. Was that the same as the first?

A. There is only one, D. E. Van Winkle, W. W. Hobrough, William L. Van Brunt.

Court: Was Mr. Devlin there?

Witness: I think he was.

Q. Who else of the officers?

A. Mr. Geran I think was there; Mr. Bedle was there.

Q. C. A. Geran?

A. Yes, he is president; Mr. William G. Bedle, secretary, and my brother Bert Cartan, who was treasurer.

Court: Is that the regular monthly meeting night as well as the annual meeting?

WITNESS: Yes.

Q. When you say that those persons were there, do you know positively that they were there, or are you simply saying they were there because they usually attended the meeting?

A. They usually attended the annual meeting.

Q. That is the reason you say they were there?

A. That is to the best of my recollection they were there.

Q. Do you remember what time that meeting adjourned?

A. Probably it was ten o'clock that night.

Q. Do you remember?

A. It was after ten o'clock, because the Board of Directors never meet—

COURT: Just answer the question.

WITNESS: After ten o'clock.

Q. The reason why you say it was after ten o'clock was because the Board of Directors always—

A. The Board of Directors don't meet until after the collection of dues, and they meet about nine or nine-fifteen, and that meeting was probably of an hour's duration, and we were there no doubt until ten or half past ten.

Q. And that is the reason for saying that —

A. Yes, that is the way it always it, no other way.

Q. This loan to which you referred, what was the name of that?

A. Wilson.

Q. Was that carried through?

A. Yes, it was referred to the Building Committee; all loans are.

Q. Was it referred to the Building Committee at that same meeting?

A. Yes.

Q. Was it decided by the Building Committee at that same meeting?

A. No, sir, they generally decide those after.

Q. At a different date?

A. The Building Committee generally get together and make up their mind.

Q. You mean at a different date?

A. Yes, sir, as a rule.

Q. At a subsequent meeting?

A. No, not a particular meeting; we often did decide separate from the meeting.

COURT: You meet informally and talk it over?

WITNESS: Yes.

Q. For instance, upon this occasion did the Building Committee meet on the same evening or some subsequent evening?

A. Some subsequent time—met formally.

Q. I am talking about dates; did the Building Committee meet at this same meeting, June, 1918, and recommend this loan, or meet at some subsequent meeting and rcommend the loan?

A. Some subsequent date, afterwards.

Q. How is it, according to your copy which you have, that they met the same evening, June 18?

A. The Board met that night and the loan was passed that night and referred to the Building Committee, and the Building Committee get together and make up their mind whether they want to accept the loan or not.

Q. But it says here that the Building Committee approved the loan and recommended that it be granted; you said a moment ago that they didn't do it at that same meeting.

A. Not always.

MR. APPLEGATE: That night he said.

MR. WILSON: All right, he did say so.

Q. Are you a member of the Building Committee?

A. Yes.

Q. So you ought to know just what you are talking about?

A. Yes.

Q. I think you said that Mr. Devlin was there at this meeting?

A. I think he was.

Q. And was he a member of the Building Committee?

A. Yes, sir.

Q. And a member, therefore, of the committee that passed upon this loan which you have referred to?

A. Yes.

Q. You referred to your children having had measles from June 15 to July 15, 1918; you fixed that date according to your diary; where is your diary?

A. Right on the desk there, the black book.

Q. May we look at it?

MR. WILSON: I see no impropriety in looking at this particular item.

COURT: That is the only thing he is to see. Turn to the item you refer to.

(Witness does so. Entry shown to Mr. Applegate.)

Q. When does this diary commence, as to date?
A. Right there (indicating).

COURT: What is the first date?

WITNESS: March, 1918.

Q. What date?
A. There isn't any particular date; here comes the dates, May 15, June 7, June 8, June 15, July 7, July 17 and so on down.
Q. You don't keep it from day to day?
A. No.
Q. You didn't keep it from day to day then?
A. No, not every day, no, sir.
Q. You have something crossed out just preceding the measle item?
A. I see that.
Q. When was that crossed out?
A. That was crossed out at that time.
Q. At what time?
A. Right after it was made.
Q. Why did you cross out of the diary an entry in the diary?
A. I didn't know but what someone might see that

diary and there might be something in there I didn't want them to see.

Q. Was that something in there you didn't want them to see?

A. I think possibly it was.

Q. Did you cross that out after this suit started or before?

A. At the time.

Q. At the same time you made it?

A. Right after I made it.

Q. Why put it in, if you are going to cross it out?

A. It was something I put in there I didn't want anybody to see; I thought probably I might show that diary to someone sometime and it wouldn't be well for them to see it.

Q. Do you find any other erasures in this diary?

A. No, sir, I don't know of any; there might be some along there.

Q. Is there any other diary you kept prior to this one?

A. No.

Q. This is the only one?

A. Yes.

Q. And this commenced when?

A. March, 1918.

Q. The last entry is what?

A. I think there is an entry here October 25, 1919.

Q. Will you read that, please? Read the date of each entry in this diary.

A. This first item here I haven't dated; the next item is dated November, 1915.

Q. I thought you said it began—

A. There was a happening in 1915.

Q. When did you make the entry?

A. In 1918.

Q. Under what date?

A. I haven't got any particular date.

Q. So what you call a diary is a book containing entries which in some instances were made two or three years after they actually occurred, that is true?

A. No, it is not true.

Q. Isn't it true as to the first item?

A. Yes.

10

COURT: What else were you going to say—it is not true as to what? You were asked if it was not true that you made entries in the book three years after the date.

WITNESS: Some of these are.

Q. What is your next date of entry? They follow in order as they are?

A. There isn't any date on this; this is something
20 that happened before.

Q. When did you make that entry without date?

A. In 1918 I started this diary.

Q. You made that in 1918? It refers to a happening occurring when?

A. November, 1915.

Q. The next?

A. The next is the same thing.

Q. It refers to something that happened two or three years before?

30 A. Yes.

Q. And the next?

A. The same way.

Q. And the next?

A. The same thing.

Q. The next item is dated March, 1918; is that when you made it?

A. Yes.

Q. So you made no entry in your diary between what dates? Between March, 1918, and what was the previous date?

A. These were made in March, 1918, and this here commences the time it was made.

Q. What is "this here"? 10

A. An item I have in there.

Q. What does it refer to? Any date?

A. No.

Q. It is an item in relation to what?

A. Something about this case.

Q. Is the page numbered?

A. No, the pages are not numbered.

Q. But that is on the third page?

A. Yes.

Q. What other dates follow that entry which you say 20 relate to this case?

A. There isn't any date then until May 15, 1918.

Q. What is after that?

A. June 7; June 15 to July 15.

Q. All those dates that you are referring to relate to matters connected with this suit?

A. Yes, sir.

Q. And is that true, also, of all the following incidents?

A. Yes, sir. 30

Q. And the last entry is when?

A. October, 1919. t

Q. So that when you made your entry in this so-

called diary in regard to the time your children had the measles, which was in reference to this suit, this suit was pending when you made the entry?

A. Yes—the suit wasn't started yet, no.

Q. The differences between your wife and yourself?

A. That is it.

Q. In other words, it was after October or after May, 1918?

A. Yes.

Q. Have you any other reference in your diary to any illness of your family?

A. I don't think so.

Q. That is the only one?

A. I don't remember any other; none that I can remember.

Q. Have you any recorded reference in that diary of any matters not connected with this suit?

A. I don't think so, no sir.

COURT: What connection did you think the illness of your children with measles had with this suit in 1918, so as to cause you to include it in your diary?

WITNESS: I didn't know at that time.

COURT: Why did you put it in, what did you have in mind?

WITNESS: I had in mind at that time to keep a diary but I didn't keep it very accurate, but at random; I made this memorandum at that time when my children were sick and I didn't know but I might need it.

COURT: How could you possibly have any use of an entry relating to the illness of the two younger children with the measles in connection with this case?

WITNESS: I didn't think it had any connection with this case at that time, no, sir.

COURT: You leave your answer on the record, in answer to Mr. Applegate's question, that all the matters entered in that book to relate to this case?

WITNESS: That particular item—all those items don't.

COURT: That is what you have already said.

WITNESS: I didn't mean to say that. I made that as a matter of fact.

Q. You stated, Mr. Cartan, on your direct examination, that your wife was ill in the winters of 1916-1917 and 1917-1918?

A. She was ill two winters.

Q. Is there any reference in your diary to the illness of your wife in 1918?

A. I don't think so.

Q. Why wasn't there; you made a reference there to your children's illness?

A. I don't know.

Q. Is there any reference in that diary as to your attending this so-called meeting at the Building and Loan on the evening of June 18?

A. No.

Q. Why not?

A. No reason for that.
Q. You say you were there?
A. I was.
Q. Why didn't you put it in your diary?
A. I didn't think it was necessary.

COURT: If you thought it was necessary to put in the book about the children having the measles, why didn't you think it was necessary to put in where you were on the night of the Building and Loan Association meeting?

WITNESS: I have no reason for that at this time.

Q. Mr. Cartan, in regard to the paper which you testified that you endeavored to get your wife to sign, stating that she had been intimate with Mr. Devlin, you say the reason why you asked her to sign that paper was so that you might hold it over her, in case she came back to you and demanded maintenance, or money, or something of that sort?

A. Yes.

Q. And you were more or less concerned, then, with some demand that she made upon you?

A. Yes, sir.

Q. The matter of divorce was of secondary importance, wasn't it?

A. I don't know as it was. My cousin was holding me off; I was advising with him at the time, and I thought that was the best thing I could do; that was a matter of my own.

Q. You were of age and had a mind of your own?

A. Yes.

Q. You knew at that time whether you wanted a

divorce, didn't you?

A. Yes.

Q. Did you?

A. Sure I did.

Q. Why did you state your reason for wanting this paper, was so you might have it to hold over her head in case she came back and demanded maintenance?

A. My attorneys weren't doing anything for me, and my brother and attorneys were holding me off and she made that remark to me and I made up my mind that was the best thing I could do at that time.

MR. APPLEGATE: That is your answer to my question?

COURT: That is the answer he has given.

CROSS EXAMINATION BY MR. LANE:

Q. I understand that your relations with Devlin completely changed after May, 1918, that is true?

A. Yes.

Q. And your relations with your wife completely changed after May, 1918, that is true?

A. Yes.

Q. And there was no reason either asked or given, that is true?

COURT: Asked by Mrs. Cartan?

MR. LANE: By either Devlin or Mrs. Cartan or by anybody; that is true, isn't it?

WITNESS: How is that again?

Q. There was no reason either asked of you or given by you for this complete change in your relation with either Devlin or Mrs. Cartan, or both; that is true, is it?

A. I complained about my wife leaving my room.

Q. That was before May, 1918, wasn't it?

A. Yes.

Q. After May, 1918, when this complete change in your relations occurred, both with Devlin and your wife, there was no reason either asked or made or given by you?

A. Well, we were fighting all the time and bickering; she all the time wanted a divorce and kept after me. There was no particular reason.

COURT: Between May and October was there any reason asked or given?

WITNESS: No.

Q. The answer it No?

A. No.

REN CARTAN, recalled in rebuttal for complainant.

DIRECT EXAMINATION BY MR. WILSON:

Q. Some reference has been made to a check for $200 that was sent to you while you were sick in Atlantic City by Mr. Devlin; did you receive such a check?

A. He gave me a check and I went to Atlantic City that morning. I was sick, and he came out and gave me this check. He said, "You go ahead and take it, you will need it", and I did take it, and I went to Atlantic City, and I came back in two weeks, and I went back to him and asked him if he wouldn't take the check back.

Q. When was that you went to Atlantic City and he gave you the check?

A. I think on the 14th or 10th of August, 1916.

Q. Were you ill at that time?

A. Yes.

Q. What had made you ill?

A. This trouble had made me ill; when it come to a showdown and I knew about it as a real fact, then I didn't know what to do about it, and it was in my mind constantly, and what to do I didn't know.

Q. Had you any purpose or any of your relatives, as far as you know, of injuring Mr. Devlin in this business, or getting him out of business as an incident of this divorce proceeding?

A. No, sir, never.

Q. The business has been progressing ever since?

A. Yes, sir.

Q. And been running efficiently?

A. Yes.

Q. Now, you said what you told Mr. Devlin when he offered you that check; when in point of fact did you use that check?

A. I never used the check until almost two years afterwards, in June, 1918.

Q. Have you got the check?

A. Yes.

Q. Let me see it.

COURT: Is it a firm check?

MR. WILSON: A firm check. Cartan & Devlin check it appears to be.

Q. And dated August 14, 1916, made to the order of Rens Cartan, $200, and on the back is stamped "June 25, 1918"; was that stamp put there by the bank?

A. Yes.

Q. And that was the time when you used it?

A. Yes, I deposited the check.

Q. And stamped "Paid"?

A. Yes.

Q. Why did you hold that for nearly two years before you used it?

A. I felt that he gave me that check—I was afraid that he might have seen me the night I followed him out Broad street, and he gave me that check to sweeten me up, and that is why I wouldn't use it; I never did use it until about seven or eight months later; when I came back from Atlantic City, I went back to him and asked him if he wouldn't take that check back, and he said he wouldn't. And I said, "I want you to take your part back, and I will keep the estate's part"; he said "No, I won't take any of it back." A few months later he had a fight on— a political fight on, where he spent a lot of money. I said, "You have spent a lot of money and I want to give you a check to help you out", so I went and gave him this check for $200—our estate's check for $200, dated January 11, 1917, to the order of P. J. Devlin, signed by the Cartan Estate.

Q. And that appears to have been paid; was it paid?

A. Yes.

Q. Endorsed by him and paid?
A. Yes, right away.

COURT: Did you actually give it to him to help him out, or give back this $200?

WITNESS: I gave that check to him not to help him out, no, but it was an excuse for me to hand him the check. After I had given him this check I could go ahead and use the other check, which I did.

COURT: Why did you use the other check in 1918?

WITNESS: I didn't use it until 1918 because I felt he—

COURT: Why did you use it?

WITNESS: After I had given him this $200 check I felt that I really was giving him his money back, so I used it.

Q. Then you were getting it back again by this?
A. No.
Q. When you used the check?
A. No; when I gave him our check for $200, he wasn't giving me anything.
Q. But my recollection is this, you gave him your check—the estate's check in January, 1917?
A. Yes.
Q. You had had his check ever since August, 1916?
A. Yes.
Q. And you didn't use his check, however, until June, 1918?
A. Yes.

Q. You waited a year and six months nearly after you had made restitution to him, before you used this check?

A. I couldn't make up my mind to use it.

Q. And what finally concluded you about using it?

A. This case was on then, and I said, well, since the case was on and everything was up like that, I might just as well use it and have it.

Q. What do you mean by the case being on; it wasn't on in June, 1918?

A. The trouble was on.

Q. You told your brother at that time?

A. Yes, I told my brother about it, and we were in trouble; I knew that; we were all in trouble.

MR. WILSON: I offer these checks in evidence.

(Marked Exhibits P 1 and P 2, December 15, 1920.)

Q. Mrs. Devlin said she never gained from you or your brother any information as to where it was alleged her husband had offended with Mrs. A. J. Cartan; do you recall a conversation in the A. J. Cartan store or Cartan & Devlin store where such information was given to her?

A. Yes.

Q. Which store was it?

A. The information, where it happened, was given in Cartan & Devlin's store.

Q. And about when did it occur?

A. A couple of weeks after October first.

Q. What occurred on that occasion?

A. She said, "How did they get any chance to do

anything like that?" And Johnce said, "They had plenty of chance." He said, "It always happened on Saturday night when I was tied up and you were out playing cards", and he said, also, "It happened right in my own property, down in the outbuilding, right on my own property."

Q. Do you recall an occasion when she came to the Cartan & Devlin store after the first of October, when she said to you, 'Ren, you are my friend, you must help me; you know I am no fool; Pat must tell me this story himself"?

A. Yes, sir.

Q. Did she make that statement to you?

A. Yes.

Q. Was that in the Cartan & Devlin store?

A. Yes.

Q. Did she at your house on that day or shortly thereafter and in your hearing and in the hearing of your wife, say, "If I were Johnce, I would put a bullet in him (meaning Devlin); I do not see how Johnce keeps from doing it. Pat and Mrs. Cartan should be rode on a rail up and down town"; did she make that statement?

A. She did.

Q. Did you then ask her why, you or your wife, either of you ask her how she came to believe the story right off, and did she reply, "I believed it from the way he acted; that as soon as I say a word to him, he goes all to pieces"?

A. Yes.

Q. Did she make that statement to you in substance?

A. Yes, I asked her and she said that.

Q. Did she also say, "I am afraid he will kill himself", and ask you to let him come home, saying she

would watch him, and did she ask you at that time to watch him every minute to see that he didn't do himself harm?

A. Yes.

Q. Do you remember an occasion after October first, at A. J. Cartan's store, when she asked Johnce if he would overlook the matter for the children's sake and let the Lord punish him"; did she say that to you?

A. Yes.

Q. Did Johnce on that occasion say, "I cannot do it; let me read these letters to you (referring to the letters which have been offered in evidence) and you will see why I cannot make up, besides she does not want to make up with me. It is different with you." Did that conversation occur between you?

A. Yes.

Q. Is it not true that on that occasion that he started to read the letters, and that you interrupted him, saying, "Let me see Pat first", and is it not true that you left the room where the were, they being upstairs in the A. J. Cartan store, and is it not true that you remained away for a short time and then came back and said, "You cannot do anything with Pat; go ahead and read the letters"?

A. Yes, sir.

Q. Is it not true that the letters were then read to her by Johnce?

A. Yes.

Q. And before reading them, Johnce said, "These letters will jar you"?

A. Yes, he said that.

Q. And did she in reply say, "I cannot say anything further after what I have already been through"?

A. Yes.

Q. Did she finally say to Johnce that if he could not overlook the matter, as she was going to do, there was nothing for her to do but to go home and kill herself?

A. Yes, blow out the brains of her children and then kill herself.

Q. You remember this boy Hardy, who was a witness here in the case?

A. Yes.

Q. Was his father ever a tenant over the Cartan & Devlin store?

A. Yes, he was.

Q. And during what period?

A. From April, 1916, to July, 1917.

Q. Did the boy live there with his father?

A. Yes, that is an entry that is on our firm's ledger.

Q. Covering the period of tenancy?

A. Yes.

Q. That ledger isn't here?

A. No, I only have a copy of it here.

Q. The ledger is at Matawan?

A. Yes.

Q. You will produce it, if requested to do so?

A. Yes, I have a copy of it here.

COURT: At the time this trouble occurred in May, 1916, or at any subsequent time, was there any trouble or difference between the Cartan & Devlin firm, or the members of it, or those interested in it?

WITNESS: No, sir, not the slightest.

COURT: Have there been any differences since that

time about the business, or any suggestion made as to its dissolution, or winding up of its affairs?

WITNESS: No, sir.

COURT: Or severence of your respective interests in it?

WITNESS: No, sir.

COURT: Business being conducted there just the same?

WITNESS: Yes.

COURT: And quite as prosperously as formerly?

WITNESS: Yes, sir.

Q. Do you and Mr. Devlin have to have conferences in regard to the management or conduct of the business?

A. Of course, we don't have much talk with one another.

Q. I am talking about the firm business.

A. We talk a little about business.

Q. You have to, to carry it on, don't you?

A. Yes, but not as much as formerly.

COURT: It is peculiar to me that this relation continues during all this period. I am mentioning it for the information of counsel, so it may be cleared up, if it is of any importance I am curious as to why it continues.

Q. Have you separate things to do in the firm; you

attend to one thing and he attends to another?

A. We have a certain work to do, and if we get busy we jump in and help one another.

COURT: You alternate on nights?

WITNESS: Yes.

Q. Is that the way you continue to do?

A. Yes, and do that now.

Q. What is the particular thing you give your attention to?

A. Getting the stuff out, getting the orders out.

Q. Make deliveries?

A. Yes.

Q. What does he give special attention to?

A. I do some of the buying and he does some of the buying, and he takes care of the books and looks after the accounts and does the buying.

Q. Collecting the accounts?

A. Yes, and I do some of that, too.

Q. Do you have conferences as to what you shall buy and deal in?

A. No, because he buys whatever he thinks necessary, and I do the same; he buys certain things and I buy certain things.

Q. Has that been your practice?

A. Yes.

Q. And there is no change in that respect?

A. No.

COURT: Has there been any suggestion made since this trouble occurred about a dissolution?

WITNESS: No.

COURT: He is equally interested in the concern?

WITNESS: Yes.

COURT: And the Cartan Estate has an equal interest?

WITNESS: Yes.

Q. Do you recall an occasion when Mrs. Devlin came to see you and your wife just after there had been a banquet at the Fury Hotel?

A. Yes.

Q. And did she on that occasion tell you and your wife that she had learned from the Foleys that Doll had told them that Johnce was jealous, about Pat, and that they had a row about it, that is, she and her husband had a row over it, and if Johnce didn't stop complaining about Pat she would have to go away; did she make that statement to you?

A. Yes, she made that statement to us, and she also stated that Mrs. Cartan said that Johnce had followed her down to the railroad station to see if Devlin didn't go to New York with her at that same time.

CROSS EXAMINATION BY MR. LANE:

Q. Is this check of January 11, 1917, by the estate to the order of Mr. Devlin, supposed to be in payment of the $200 which he gave you?

A. That check I gave him.

Q. I ask you whether it was or not?

A. In payment of the check?

Q. That he gave you?

A. No, but I gave it to him, so I could use the other check.

Q. What had that to do with your use of the other check?

A. I didn't want to take the check; I thought he gave me that to sweeten me up. There wasn't anything coming.

Q. What had the check of January 11, 1917, to do with your use of the check of Cartan & Devlin?

A. It had this to do with it; I felt I had covered whatever he had given to me, and I could go ahead and use the check.

Q. How had you covered it?

A. That covers it.

Q. It is for $200, is that why it covered it?

A. Yes.

Q. So the identity of the amount is what you say covered it?

A. Yes, you can figure it out that way.

Q. What is your idea?

A. I figured that he wasn't giving me anything when I handed him this check.

Q. You figured you were giving him $100 more than you ought to?

A. No.

Q. Why not?

A. I didn't think of it in that way.

Q. Why not?

A. I don't know.

Q. Half of the money belonged to the estate, didn't it?

A. Yes.

Q. $100 of it belonged to the estate, didn't it?

A. Yes.

Q. You didn't owe, or the estate didn't owe Devlin anything, did it?

A. No.

Q. In a political way or otherwise?

A. No.

Q. Why did you double up to Devlin the amount that he gave you of his own money?

A. I cannot tell you why, but that is why I did it.

Q. Wasn't there a great deal more simpler way of getting rid of this $200 check by simply tearing the check up?

A. I cannot tell you about that; that is the way it happened.

Q. Was there a simpler way by tearing the check up?

COURT: Did it occur to you?

WITNESS: No.

Q. You wanted to give back this money?

A. Yes, I tried to get him to take it back.

Q. You offered him the check, didn't you?

A. Yes.

Q. You held the check out to him and said, "Here is my check, I don't want it"?

A. I asked him to take his part of the check back, and I would use the estate's part.

Q. Why didn't you say you didn't want it, to him?

COURT: Did you give any reason why you didn't want it?

WITNESS: No, I told him my reason,—the only reason I made, I knew it was coming to me, and I didn't want it.

Q. You didn't think of tearing it up?
A. No.
Q. But you preferred to hold it?
A. That is what I did.
Q. Is it unusual for you to hold checks for some length of time before you deposit them?
A. I don't know what you mean.

COURT: Do you carry checks some time before you use them or deposit them?

WITNESS: No, that is the only check I ever remember holding.

Q. Having carried it around until January 11, 1917, why did you wait until June 25, 1918, before you cashed it?
A. Even then I didn't like the idea of using it, even after I had given him this money I didn't like the idea of using it, and I hung on and then I knew this fuss was on, and I didn't care then.
Q. How did the fact that the fuss was on—and the fuss you refer to was merely the fact that you had told your brother; that is all the fuss there was?
A. Yes, I suppose so.
Q. How did the fact that the fuss was on, what did

that have to do with your use of this check?

A. That is the way it was, and that is exactly why I used it, and how it happened. I have explained it the best I can. That is why and how it was exactly.

Q. I show you this letter, Exhibit D 7, will you read it to yourself? (Witness does so.) This letter D 7 was written by you with reference to the $200—

A. That is the letter thanking—

Q. Wait a minute—with reference to $200 which you thought at that time you wrote the letter, that Devlin gave you in order to sweeten you, is that right?

A. Yes.

MR. LANE: It is dated August 17, 1917, and written while he was in Atlantic City.

Q. So the statement which you made in this letter, "All I can say is, I thank you from the bottom of my heart, and these words seem so tame, that I feel like tearing up the letter when I read it, for the spirit of the gift means thrice more to me than the check does," you didn't mean that at all, did you?

A. No, sir, I did not.

Q. And the following words, "as it makes a fellow feel good * * * and makes him think after all life is worth while"; you didn't mean that either, did you?

A. No, sir, I didn't mean that to him.

Q. Will you tell me why you put it in there if you didn't mean it?

A. That was a letter thanking him for it; he didn't know there was anything that I knew. I didn't know that he knew it, and that was a letter thanking him for it, and that is all there was to it, but as soon as I came back I

tried to get him to take that check back.

Q. Why were you so effusive in your thanking him?

A. That is my way of doing; that is also his way of doing.

COURT: Is he also effusive in his letters?

WITNESS: Yes.

Q. Have you any of those effusive letters?

A. I think I have one, probably in answer to that one.

MRS. REN CARTAN, recalled in rebuttal for complainant.

DIRECT EXAMINATION BY MR. WILSON:

Q. Do you recall an occasion when Mrs. Devlin came to your house and had a conversation with you and your husband about a banquet at Fury's Hotel?

A. Yes, sir .

Q. And did she on that occasion tell you that she had learned from the Foleys that Doll had told her that Johnce was jealous about Pat, and that she had had a row with her husband, and that if Johnce didn't stop complaining about Pat she would have to go away; did she make that statement to you?

A. Yes.

Q. In the presence of you and your husband?

A. Yes, sir.

Q. Do you recall an occasion in October, and after the delivery of these letters, one or some of them, that Mrs. Devlin came to your house and had a conversation with you and your husband?

A. Yes.

Q. Did she on that occasion say that "if I were Johnce I would put a bullet in him (meaning Mr. Devlin) I do not see how Johnce keeps from doing it. Pat and Mrs. Cartan should be rode on a rail up and down town"; did she make that statement in substance?

A. She did.

Q. Did your husband then ask her "How did you come to believe this story right off?" and did she reply, "I believed it from the way he acted; as soon as I say a word to him, he goes all to pieces"; did that occur in substance?

A. Yes.

Q. Did she also say that she was afraid he would kill himself, and ask Ren to let him come home, saying that she would watch him, and did she not ask Ren to watch him every minute, to see that he didn't do himself any harm?

A. She did.

EXAMINATION BY THE COURT:

Q. Throughout the case there have been several references to the parties that were held by the Cartans and Devlins; do you remember such references?

A. Yes.

Q. Will you give me in full the names of all who

attended those parties or any of them?

A. Yes. If I could explain—we had different parties, but had our own family parties, where Mr. Cartan—he was working nights at that time, and my husband, and they couldn't all get off; if Mr. Devlin was off, my husband couldn't get off, but when we had family parties, there would be no one outside—that is, parties we have mentioned, Mrs. Devlin and I, Mrs. Bert Cartan, we attended a great many card parties and other parties.

Q. I refer more particularly to the parties where you noticed these evidences of attention or affection passing between Mrs. Cartan and Mr. Devlin; who were present at those gatherings?

A. Mr. and Mrs. Norman Tice, Mr. and Mrs. Fred Wilson—my sister-in-law and her husband, and Mr. and Mrs. Bert Cartan, Mr. and Mrs. Devlin, Mr. and Mrs. A. J. Cartan, and my husband and myself, that would be a large party.

Q. That comprises all of them?

A. Yes. And once some years ago—of course we had a little Euchre Club, I think these Foley girls belonged to this same club, once in a while we would be invited as guests, we were not friends with the Foleys, this Cartan family, and occasionally we would be invited, but that was very rare; that was just when they would invite us as guests, when it would be their turn.

No cross examination.

RENSSELAER CARTAN, sworn in rebuttal for complainant.

DIRECT EXAMINATION BY MR. WILSON:

Q. You are the son of the lady who just left the stand?

A. Yes, sir.

Q. How old are you?

A. Eighteen.

Q. You live at Matawan?

A. Yes.

Q. Been there all your life at Matawan?

A. Yes.

Q. Did you know the Hardy boy who testified as a witness here in this case?

A. Yes.

Q. Were you here the other day he testified?

A. Yes.

Q. You know that boy, do you?

A. Yes.

Q. Did he live for a time over the Cartan & Devlin store with his father?

A. Yes.

Q. During that time was he in the habit of playing on the A. J. Cartan property?

A. Yes, sir, he was.

Q. Were you over there with him?

A. Yes, sir.

Q. Do you remember that outhouse?

A. Yes, I do.

Q. Was there a sofa in it?

A. Yes, sir.

Q. And a chair, to your knowledge?

A. Yes, sir.

Q. What occasion had you to go to this place?

A. I used to go there with my air rifle and go up in the tree and shoot birds from the top of the tree, and on the outhouse, and would go in the outhouse, too.

Q. Do you recall whether or not that sofa and chair were there during the time that the Hardy boy was playing there with you?

A. Yes, it was.

CROSS EXAMINATION BY MR. APPLEGATE:

Q. How old are you?

A. Eighteen.

Q. Did you go to the Cartan property for the purpose of playing with the children?

A. Yes, with my air rifle up in the tree.

Q. What children did you play with, Betty?

A. I played with all the children, and the Tice children, too.

Q. Did you play with Gene?

A. Yes.

Q. How old is Betty?

A. She is about eight or nine, maybe younger

Q. You played with her four or five years ago?

A. Yes, I did at various times; I never made a practice of it.

Q. She was then five or six?

A. Yes; she was a good deal younger than I was; so was Gene.

Q. You used to go over there with your air rifle?

A. Yes, that is the reason I went over there mostly; there was a large willow tree by this outhouse.

Q. You didn't have to go in the outhouse?

A. No, but I was on top of it and all around in the yard and in the outhouse.

Q. When was your attention first called to this so-called couch and chair?

A. Overhearing people speak about it, about three weeks or a month ago, and I told them I remembered about it.

Q. Overhearing who speak about it?

A. My father and mother.

Q. When did you last see the couch and chair?

A. Three or four years ago.

Q. Where?

A. Up in the outhouse.

Q. Can you be any more definite than that, as to what time of the year?

A. All through the spring and summer.

Q. Of what year?

A. 1916.

Q. Are you sure about that?

A. Yes, I am.

COURT: What condition was the couch in?

WITNESS: It was broken, old and disused.

Q. It couldn't be used?

A. It wasn't fit to be used in the house.

Q. Did you ever see it in Mr. Cartan's house afterwards?

A. No.
Q. Do you know if it were repaired?
A. No, sir.

CROSS EXAMINATION BY MR. LANE:

Q. Do you know what happened to it?
A. No.
Q. As to where it went?
A. No, sir.

FURTHER CROSS EXAMINATION BY MR. APPLEGATE:

Q. What color was it?
A. Kind of reed or willow color.
Q. What color?
A. Light color.

COURT: Do you know when it was taken out of the outhouse?

WITNESS: No.

COURT: When were you last in the outhouse?

WITNESS: Around 1916.

COURT: When you were last there, was the couch and chair there at that time?

WITNESS: Yes, sir.

COURT: What kind of a chair was it?

WITNESS: Like the sofa was.

COURT: Wicker or willow?

WITNESS: Yes, on that order.

COURT: Was that in good condition or broken?

WITNESS: It was a straight back chair.

COURT: Did you ever use to sit on it?

WITNESS: Yes, I sat all around there.

COURT: What time in 1916 did you last see these two pieces of furniture, about?

WITNESS: In the middle of the summer.

COURT: And that was in the outhouse?

WITNESS: Yes.

RICHARD HEUSER, recalled in rebuttal for complainant.

DIRECT EXAMINATION BY MR. WILSON:

Q. You have already stated you were a surveyor living in Matawan?

A. Yes.

Q. Did you go up in the upper story of the A. J. Cartan house with a view of ascertaining what one could discover in passing the hallway of the house, as to arrangement and persons in the room said to have been occupied by Mr. A. J. Cartan?

A. Yes.

Q. And with whom did you go?

A. With A. J. Cartan?

Q. And when did you go?

A. I went up on November 30 and December 10.

Q. And at whose request did you go?

A. At your request.

Q. Directing your attention to what you observed November 30, did you ascertain how far the bed was from the doorway?

A. I did.

Q. And you found it to be what?

A. Twenty-seven inches.

Q. Did you observe the location of the gas jet in the hall?

A. I did.

Q. And with reference to the door, is the gas jet opposite the door or how is it located?

A. No, it is not opposite, it is diagonal. It is nearer the front of the house.

COURT: The gas jet in the hall?

MR. WILSON: Yes.

Q. Is the gas jet on the same side of the hall as the door that goes into Mr. Cartan's room or on the opposite side?

A. On the opposite side.

Q. And what sort of a gas jet was it?

A. An ordinary jet, a kind of a yellow light.

Q. Did you make your observations at night on the 30th of November?

A. Yes.

Q. Did you make the observation when the gas light was turned on full?

A. Yes.

Q. Did you also make it when it was turned partly down, as Mr. A. J. Cartan said it usually was at night?

A. Yes, sir.

Q. Did you have located for you the room which was said Helen occupied?

A. Yes, sir.

Q. And that was a room located on the front of the house?

A. Yes.

Q. And at the corner of the house?

A. Yes.

Q. And immediately in front of the room that it was said that Mr. A. J. Cartan occupied?

A. Yes.

Q. Now, where was the stairway with reference to the hall that led up to the second story?

A. The stairway was at the end of the hall in the rear

of the house.

Q. Furthest away from the street?

A. Yes.

Q. Assuming one to pass up this stairway and to pass along the hallway for the purpose of entering Helen's room, the room said to have been occupied by Helen, and assuming that the door of the A. J. Cartan room was open, what, if anything, would one passing along the hall, and fronted toward Helen's room—what would one see, if anything, of the bed or the occupants of the bed in the A. J. Cartan room in the journey through the hall?

A. They would see nothing, unless they turned around to look.

COURT: That is, walking from the stairway to the front?

WITNESS: Yes.

Q. Assuming that the journey be made by the assumed person the other way, assume that someone should come out of Helen's room and pass down the hallway to have access to the bathroom—you had shown to you the location of the bathroom, did you?

A. Yes.

Q. What would one observe as to the occupants of the bed passing that room, in the bed, in the position in which you saw it that night; what would one observe under the conditions which you have recited?

A. Well, I could not determine how many occupied the bed.

Q. What was the difficulty, Mr. Heuser? Which side of the doorway was the bed located on, the side of the

doorway furthest away from Helen's room?

A. Yes.

Q. And was the bed turned back against the wall?

A. Yes, right against the wall. The head of the bed was against the wall.

COURT: Would you see the pillows?

WITNESS: No.

Q. What prevented you from seeing the pillows?

A. The hall partition between the bedroom and hall.

Q. Did the light from the gas jet go in on the bed?

A. Only a part of the bed.

Q. And which part of the bed?

A. It cut diagonally and it struck the bed about two feet from the head of the bed on one side, and on the other side it was about eight inches up from the foot of the bed.

COURT: That is, line of light?

WITNESS: Yes.

Q. The line in shadow or darkness, was that so pronounced that you couldn't see anything on that portion of the bed?

A. Very little.

Q. Was anyone occupying the bed or anything in the way of a dummy to represent a person occupying the bed at the time you made your inspection?

A. Not at the time I made the inspection from the hall.

Q. In your opinion, Mr. Heuser, would one passing along the hall from Helen's room to the bathroom, looking into the room, have identified the two persons in that bed, under the conditions which you have described, that is to say, with the light full tilt and with the light turned down as Mr. A. J. Cartan said it was turned down?

MR. APPLEGATE: I object as not a matter calling for expert testimony.

COURT: It is his experience. I will receive it for what it is worth.

A. There is very little difference between the light turned down and the light full tilt. I should say one could not.

Q. And in order to have gotten a view of the persons in the bed, whether the bed was occupied or not, what was it necessary to do in passing that door, to stop or to keep on going?

A. I would say that in order to determine whether that bed was occupied by one or two persons—

COURT: Or occupied at all?

WITNESS: Yes—a person would have to stop and look into the door.

COURT: That is, put your head inside the door frame?

WITNESS: Yes, to determine.

Q. Did you also make observations under these same

conditions premised when you were in the closet which is said to connect the two rooms, Helen's room and A. J. Cartan's room?

A. Yes.

Q. In making this observation you were confronted, I suppose, by the same shadow, were you?

A. Yes.

Q. Did you put someone in bed, to see what you could observe?

A. Yes, I did.

Q. And who served that purpose?

A. A. J. Cartan.

Q. And standing in that closet and looking out upon the bed, assuming that the examination was casual and not one requiring the special attention of standing in the door and looking, what was it possible to see, as to the identity of persons occupying the bed, or whether the bed was occupied by one or more persons? Tell us in your own way.

A. I asked Mr. A. J. Cartan to lie on the bed, with his face towards me; I stood in the closet where I could see the whole bed.

COURT: What distance were you then from the bed?

WITNESS: About 12 or 15 feet.

COURT: How large is this room?

WITNESS: I think the room was about somewhere about 16 x 18—maybe a little larger. I was in the closet.

COURT: Standing in the doorway of the closet?

WITNESS: Yes.

COURT: That was about 12 or 15 feet away from the head of the bed?

WITNESS: Yes.

Q. Tell us what you have to say.
A. From that position I could not identify Mr. Cartan.
Q. A light burning in the hall as you described?
A. It was burning high at this particular time.

COURT: Could you distinguish that there was anyone in the bed?

WITNESS: He was on top of the bed, and then I walked over to the bed, and stood right up against the bed, and still I could not identify him.

COURT: Because his face was in the shadow?

WITNESS: His face was in the shadow. Then I bent over and I did not identify him until my face was within about a foot of his.

COURT: It was so dark?

WITNESS: Yes, that was the actual fact.

Q. Let us assume that there were two persons occupying the bed, and still directing your attention to the view point in the closet, were you able under the condi-

tions which you have premised, by your casual looking out of the closet would you have been able to ascertain whether the bed was being occupied by one or more persons?

A. No, sir, I would have to go there for the purpose of ascertaining.

COURT: Of ascertaining whether there was anyone in the bed?

WITNESS: Oh, no.

COURT: And if there were anyone, could you tell whether there were one or two in the bed?

WITNESS: No answer.

Q. Under the conditions which you described as you looked out from the closet, was it possible for you to have distinguished whether there was one person in the bed or two persons in the bed?

A. I thought I answered that question before.

COURT: Answer it again. I don't think you had the same question presented to you. What would your answer be; could you distinguish whether there was one or two persons in the bed, standing in the door of the closet?

WITNESS: If I went there for the purpose of determining that question, I could.

Q. And fasten your attention intentionally upon it?

A. Yes.

COURT: If you passed the door casually?

WITNESS: No, I could not.

COURT: And why couldn't you?

WITNESS: Well, if I went there for any other purpose —suppose I went in there to take a garment down in the closet, I would get a glimpse of the bed—a part of it, and I would have to follow that up to determine whether there were really two persons in the bed.

COURT: What sort of a bed is this, a solid footboard or one with bars or rods on it?

WITNESS: I think it is solid.

COURT: Would that interfere with your view?

WITNESS: Oh, no, not at all.

Q. Because your point of view was above the footboard?

A. Yes, it was kind of from the side of the bed, diagonally across.

Q. Assuming that there were two persons in the bed, how much would the form of the person in the bed furthest from the door of the room be obscured by this shadow of which you spoke?

A. Whatever part would be below—12 inches or so.

Q. 12 inches from the foot?

A. Yes.

COURT: Not over that?

WITNESS: It would depend on how near the edge of the bed they lie. The edge of the shadow of the eight inches from the foot board.

COURT: At the extreme back of the bed?

WITNESS: Yes.

Q. And it would depend, too, wouldn't it, upon how close they lay together in bed, I suppose?

A. Yes.

Q. You went there again, you say, on the tenth of December?

A. Yes.

Q. Why did you go on the tenth of December; why didn't you exhaust yourself on the thirtieth of November?

A. I went there on the thirtieth—the purpose was to find out whether I could identify anyone in the bed.

Q. And when you then asked to go back on the tenth of December and ascertain whether you could see whether there were two persons in the bed?

A. Yes.

Q. Was that why you went back on the tenth?

A. Yes.

Q. Did Mr. Cartan go with you on that occasion?

A. Yes, both.

CROSS EXAMINATION BY MR. LANE:

Q. What point in the bed with reference to the distance between the head and the foot did the shadow cross at the middle line—what point along that middle line, between the head and the foot, did the shadow cross, one-fourth down or midway down or what?

A. It crossed over half way down.

Q. How much over half way down?

A. I cannot say.

Q. Did you measure that point?

A. No, I did not.

CROSS EXAMINATION BY MR. APPLEGATE:

Q. When you were in the hallway making these observations—not in the closet—calling your attention to the closet—calling your attention to the hallway, could you not tell whether there was more than one occupant in the bed, irrespective of identification, merely whether there was more than one?

A. You could see so little—

Q. Answer my question Yes or No.

A. I am trying to answer it. I will answer it then right off; No.

Q. But at that time when you made those observations there was no one in the bed?

A. No.

Q. Why, then, are you so positive?

A. Anybody passing that doorway, if they saw what they thought was two persons in that bed, they couldn't

be positive of the fact that there were two in there; it would be impossible.

COURT: They couldn't see that there were two persons in the bed?

WITNESS: No, they could see the covers all right, and while you might think there were two persons in there—

Q. This is regardless of what you might think.

A. You wouldn't know whether there were two persons in there or not; the part covered by the shadow was three-fifths.

COURT: How wide is the door?

WITNESS: 32 inches.

COURT: And the door frame is what distance from the light?

WITNESS: I would have to give that approximately.

COURT: Did it have a globe on it?

WITNESS: No, nothing.

COURT: An uncovered flame?

WITNESS: Yes. When it was turned up full tilt, it seemed to have a blue cast to it, and I should say it didn't appear to give much more light than when turned down.

Q. How far do you say one would have to get in the doorway before one could tell whether there was more than one occupant in the bed?

A. I would want to see their heads.

Q. In order to tell whether there were two people, you could only tell by their heads?

A. I would want to see—

Q. Is your testimony given on that theory, in order to tell whether there were more than one you would have to see their heads?

A. No, it is not on that theory.

Q. Then why do you say that you would have to see their heads in order to tell whether there was more than one person in the bed?

A. I would want to see more than what you can see by passing by.

Q. I now direct your attention—suppose you want to stop in the doorway, how far would one have to go in the doorway to tell whether there was more than one person in the bed?

A. In fact when he gets in the doorway he is in his own light; that throws more shadow on the bed.

Q. Then the farther that you get in the doorway, the less you could see?

A. The more darkness there is.

Q. And the more darkness, naturally the less one can see?

A. Yes.

Q. So the nearer one approached the bed after having passed the doorway, the less he could see?

A. I don't say the darkness is so great—I am not saying that the darkness is so great that you cannot see, if you get accustomed to your light long enough.

COURT: Was there any light from outdoors in the room when you made your experiment?

WITNESS: No.

COURT: What time did you make it?

WITNESS: Around eight o'clock.

COURT: The closet that is between Helen's room and this room where this bed was, opens into both rooms?

WITNESS: Through the closet.

COURT: Was there a light in Helen's room at the time you made the experiment in Mr. Cartan's room?

WITNESS: No.

COURT: Did you light the light in her room?

WITNESS: No.

COURT: To see what effect it would have in illuminating A. J. Cartan's room?

WITNESS: No.

COURT: How wide is this closet?

WITNESS: About four feet.

COURT: Are the door leading into Helen's room and the

door leading into her father's room—

WITNESS: Exactly opposite.

COURT: So if both doors were open, and there were a light in her room there would be some illumination cast into A. J.'s room?

WITNESS: If the light was in the right position.

COURT: Where is the light in that room?

WITNESS: Somewhere along the front of the house.

Q. There are a couple of windows in the room the experiments were made in?

A. I think there are in the rear.

Q. Are they in the rear? There are two windows on the side of the bed?

A. No, the bed was up against the partition between the room and the hall.

COURT: Are there windows at the foot of the bed?

WITNESS: I think there are.

Q. Two or one?

A. I wouldn't be positive; I know there are two in the back of the house.

Q. Were your experiments made with the window shades down or up?

A. I don't know whether they were down or up, I didn't notice.

Q. You don't know whether they were down or up?
A. No.

MR. LANE: May I recall A. J. Cartan for a moment and ask him a question on cross examination which I omitted?

ANDREW J. CARTAN, recalled for further

CROSS EXAMINATION BY MR. LANE:

Q. Will you let me see that diary of your for a moment and refer to the first entry, which I think was in March 1918? (Witness does so.) That entry was made, as I understand it, at the time of the happening of the event, or wasn't it?
A. That was made in March.
Q. Was it made in March, 1918?
A. Yes, sir.
Q. You are sure of that?
A. Yes.
Q. Did you keep any other diary?
A. No, sir.
Q. That is the diary you referred to on your direct examination, isn't it?
A. Yes.
Q. And referred to in your examination before when you were on the stand, several days ago?
A. Yes.
Q. And that memorandum was made in March?
A. Yes.
Q. You knew of no difficulty—you didn't know of

wife's adultery until May, when you got it from your brother?

A. No, I didn't.

Q. And you testified, on page 253 and 255 of the testimony, that you didn't have that diary or start to keep it until after you learned of your wife's adultery, a month or two after May; which is correct?

A. No, this diary was started in May, 1918; I made these notations back the dates these happenings occurred.

Q. Then you were wrong when you testified this morning, and you were wrong when you testified a few minutes ago, that the entry made in March was made at the time, weren't you?

A. Yes, sir, this diary started in May.

COURT: Listen to his question; you were wrong with respect to that?

WITNESS: Yes.

Q. And yet you were sure of it a few minutes ago?

A. I thought I was sure; I thought I was right about it.

Q. What is the first entry in that diary that was made at the time of the happening of the event?

COURT: Can you turn to it?

WITNESS: This one here in May—May 15, 1918.

COURT: That was made at the time of the happening of the event it records?

A. Yes.

WITNESS: Yes.

Q. That was the first one that was made after the happening of the event?

A. Yes, that is the first one I made in this diary.

COURT: You undertake to answer a question he hasn't asked you.

Q. (Last question read.)

A. This memorandum here, May 15, was made that day.

COURT: Do you understand the question? What is your answer?

WITNESS: My answer is that this diary was started on May 15, 1918.

COURT: He asked you if that is the first entry of the event at the time the event happened.

(Last question repeated.)

WITNESS: The first entry at the time of the happening of this event that is stated here?

COURT: Of any event that is stated in the book?

WITNESS: Yes, that is the first entry.

Q. And the entry of June 7th, is that the second?

Q. Will you read that entry to yourself?

A. Yes.

Q. Will you tell us what that had to do with the adultery of your wife?

A. That didn't have anything to do with it.

Q. Nothing at all to do with it?

A. No.

Q. And had it to do with your daughter Helen?

A. Yes.

Q. And an entirely different matter?

A. Yes.

Q. And yet you kept this diary solely for the purpose of your divorce suit?

A. I did not, no, sir.

Q. Are you sure of that?

A. This diary was a diary at random; there wasn't anything particular about this; it was about my divorce case, true enough, but it was about other things, too.

Q. Didn't you keep that diary for the sole purpose of this suit?

A. For purposes leading up to the suit.

COURT: For the sole purpose?

WITNESS: No, sir.

Q. You testified on page 255 of the record, 'What was your purpose in preparing it?", and you answered, "I wanted to keep a little diary of the suit." "Q. To refresh your recollection? A. Yes." Is that right?

A. Yes.

RECESS

JOHN GRANT, sworn in rebuttal for petitioner.

DIRECT EXAMINATION BY MR. WILSON:

Q. Where do you live?
A. Matawan.
Q. Whom do you work for?
A. Cartan & Devlin.
Q. How long have you worked for them?
A. I will say that I have worked for them steady for the last ten years, and for a couple of years longer off and on; but I have been there steady for ten years.
Q. What kind of work do you do for them?
A. Labor.
Q. What kind?
A. Unloading feed.
Q. Do you remember an occasion when you saw Mrs. Ren Cartan and Mr. Devlin talking in the store?
A. I do.
Q. Do you remember noticing whether or not Mr. Devlin was crying?
Q. I saw him; yes, he was crying.
Q. And when was that, about how long ago?
A. I would say—it was during the month of the Morgan explosion.
Q. About that time?
A. About that time, I should judge.
Q. About how long ago was that?
A. About two years ago, I guess.
Q. And where were they when you saw them?
A. Across the way from the main store where we put the paper.
Q. Was it in a room?

A. Yes.

Q. And was the door of the room open?

A. The door of the room was open.

Q. Where were you so you could see them?

A. After unloading the feed, I moved the wagon up so the other wagon could come in, and as we moved the wagon up, Mr. Cartan and Mr. Devlin were both in there together, and Mr. Cartan pulled the door shut so I couldn't—

Q. When the door was open what was Devlin doing?

A. He was crying.

Q. Was he sitting down?

A. No, he was standing up, and Mr. Cartan had him by the shoulder, and he was like this (indicating) sobbing.

Q. Like this—you are putting your hands up to your face?

A. Yes.

Q. And was he crying at that time?

A. He was.

Q. Do you know a colored lady named Williams?

A. I do.

Q. Do you see her in the court room?

A. Yes.

Q. Did she tell you anything about there being a sofa in this outbuilding on the Cartan property?

A. Why, yes, she did say so to me at one time.

MR. APPLEGATE: We object to that. No foundation has been laid for it in the first place.

MR. WILSON: I think that is a proper criticism?

COURT: I will permit her to be recalled for the purpose of laying the foundation. This witness can step aside for a moment.

JULIA WILLIAMS, recalled for petitioner in rebuttal.

FURTHER DIRECT EXAMINATION BY MR. WILSON:

Q. You know that gentleman who just left the stand?
A. That is my son-in-law.
Q. You remember talking with him about their being a sofa in the outhouse?
A. Never in my life.
Q. Never had any talk with him?
A. No, sir.

MR. WILSON: That is all.

JOHN GRANT, recalled for further

DIRECT EXAMINATION BY MR. WILSON:

Q. You heard what your mother-in-law said?
A. I did.
Q. Did you ever have any talk with her about that sofa in the outbuilding?
A. Yes, she was talking to me about it.

Q. What did she say?

A. She said that she remembered the time that there was a sofa out there, the kids used to play there. That has been two or three month ago, three months ago, I will say.

Q. Where was she when she told you that?

A. She was up to my house.

Q. You and she good friends?

A. Yes, sure, that is my mother-in-law, she ought to be.

Q. That might or might not mean anything; you are good friends?

A. Certainly.

Q. She comes to your house?

A. Yes.

Q. And you go to her house?

A. I do.

No cross examination.

MRS BERT CARTAN, recalled in rebuttal for petitioner.

DIRECT EXAMINATION BY MR. WILSON:

Q. You remember an occasion when Martha Smock, a colored woman, who has testified in this case, came to your house and had some talk with Mr. A. J. Cartan?

A. Yes, sir.

Q. What did she say on that occasion?

A. He asked her did she remember a couch over there in the outhouse, and she said No—that Mrs. Cartan had

asked her that same question, and she said it was in the papers that were served on her, but she told her she didn't remember it.

Q. She told you that she told her, is that it?

A. Yes, that she didn't remember it.

Q. Do you remember an occasion when Mrs. Cartan came to your house and made some comment to you about the way in which her husband acted?

A. Yes.

Q. And when was that occasion; when was the time, about?

A. I think it was about the first of September, 1918.

Q. Did she on that occasion say to you—begin by asking if you knew what was the matter with Johnce now; that Sam Van Marter had gone to camp for several weeks and "Johnce is not anything different than he was before; do you know what is the matter with him?" Did she make that statement to you on that occasion?

A. Yes, sir.

Q. And had Sam Van Marter, as a matter of fact, gone to camp at that time?

A. Yes, sir.

CROSS EXAMINATION BY MR. LANE:

Q. When was this conversation that you had with the Smock woman?

A. Last year, the day before Thanksgiving.

Q. And it was November, 1919?

A. Yes.

Q. And what did the Smock woman tell you?

A. Mr. Cartan asked her did she remember a couch in the outbuilding, and she said, "Why, Mrs. Cartan has asked me that same question, and said it was named in the papers that were served on her", but she didn't remember it, and she told Mrs. Cartan she didn't remember it.

Q. As nearly as you can recall, I want the exact language that the Smock woman used with reference to what Mrs. Cartan had told her, what it was that she told you Mrs. Cartan had told her.

A. She said Mrs. Cartan had asked her did she remember a couch in that outbuilding, that it was named in the papers that were served on her.

Q. Is that all she said, it was named in the papers that were served on her?

A. Yes, as much as—

Q. What?

A. Yes, sir.

Q. Nothing else was said with reference to what Mrs. Cartan had said?

A. No.

Q. Just that it was named in the papers that were served on her?

A. Yes.

Q. Did you understand what that meant?

A. I supposed it was the papers that had been served on her; I didn't know.

Q. You didn't have any further talk with the Smock woman about it?

A. No.

Q. As to what she meant?

A. No.

MR. WILSON: We rest.

MR. LANE: I offer that entry in the diary that has been referred to, of June 17, I think, the one that has nothing to do with this case.

COURT: Which you say related to Helen?

MR. LANE: Yes.

MR. WILSON: Does your Honor feel that the entire book ought to go in?

COURT: I don't see the necessity for it. It is only pertinent now in the present examination to the statement made by Mr. Cartan himself, that he refreshed his memory as to the illness, at the time when the children were ill with measles, the reference he had in his diary to that event, and then he was also asked, or volunteered the statment in one of his answers, that everything in the book related to this case, and then he corrected that, that there were some other features, and then I think Mr. Lane directed his attention to this item.

MR. WILSON: Which item?

MR. LANE: June 7, "Told Helen broke with Sam".

MR. WILSON: You want that in the record?

MR. LANE: Yes.

COURT: What is the purpose?

MR. LANE: To show that his quarrel at that time with Helen was over Sam, and nothing to do with his wife at all. It had reference to Helen's relations with Sam Van Marter, to which he objected.

COURT: I don't think that is contradicted or disputed.

MR. LANE: It is; it is his contention at that time was that he was having quarrels with his wife with respect to her relations with Devlin, and here he is entering entries in his book which he considers of importance with respect to the quarrel he had with his daughter Helen.

COURT: There isn't any doubt that he had a quarrel with his daughter Helen over Sam Van Marter, and had a quarrel with Mrs. Cartan also.

MR. LANE: And putting it in the book.

COURT: I don't attach any more significance to it because it is in the book. Do you want the book marked; I don't care to have the record encumbered, unless it has some particular reference.

MR. LANE: I object to the offer of the book unless I knew what was in it.

MR. WILSON: I don't offer the book.

COURT: Do you wish to offer the entry of Mr. Cartan about the measles? Read it in.

MR. WILSON: 1918; under that date in the book, "June

15 to July 15 Betty and Gene sick measles". That seems to be all the item.

COURT: It appears from Mr. Cartan's testimony, that he made the entry at the termination of the illness rather than at the beginning.

MR. A. J. CARTAN: That is right.

MR. LANE: Is that so?

COURT: I have just asked him, and he said so again.

ANDREW J. CARTAN, recalled for further

CROSS EXAMINATION BY MR. LANE:

Q. When was it that this entry of June 15 was made—the entry which has been read?

A. June 15 to July 15.

Q. When was that entry made in that book?

A. It was made during that time, during June 15 to July 15.

Q. When with reference to the time; when was it made?

A. At the end.

Q. Made July 15?

A. Yes.

Q. Are you sure of that?

A. Made at the end.

COURT: Take your time before you answer.

MR. WILSON: The question is as to the very time that you wrote that entry, the time when you did the writing.

COURT: Whether yesterday, today or two or three days ago; give us your best recollection about it.

WITNESS: My best recollection is that it was made at the ending of the sickness.

Q. That would be on July 15?
A. Yes.

MR. WILSON: Does he mean by that after the ending of the sickness or on the very day?

Q. Do you mean by that on the day the sickness ended, which apparently, was July 15, or a day or so after?

COURT: Have you any recollection as to when it was made?

WITNESS: No, I haven't exactly just what date it was made on.

COURT: Was it made after the sickness terminated?

WITNESS: About the time the sickness was going on.

COURT: Was going on or had finished? You say in so many words that it ended July 15?

WITNESS: Yes.

COURT: You couldn't have written it before July 15th?

WITNESS: No.

COURT: So you must have written it on that day or after?

WITNESS: About that time or after.

COURT: Was it a long time time after or short time after?

WITNESS: No, I think it was a short time after; about that time.

COURT: Shortly after July 15th, at least.

Q. Will you tell me then, if that is true, how it is that that entry precedes an entry of July 5th?

A. There is no doubt I had little notes about these things, and then entered them up in this diary; there is no doubt about that.

Q. Then the entries in this book are not made after the first of May, as the events took place, were they?

COURT: They were copied from other pieces of paper?

WITNESS: Yes.

COURT: Where are they?

WITNESS: I don't know; I suppose I destroyed them.

Q. At the time you copied them into the book?
A. Yes.
Q. How often would you get your papers together and make these entries?
A. Every once in a while.
Q. Where would you keep these slips of paper?
A. Sometimes in my pocket and sometimes at home, or in the office in a drawer.

COURT: You didn't satisfy me today; I will ask you again, will you tell me why you made that entry about the children being sick, in that book?

WITNESS: I haven't any particular reason why.

Q. There is also in this book, following the entry of June 15 to July 15 with respect to measles, an entry of July 4, isn't there?
A. Yes. I think you will find the dates are right along in order after that.

CROSS EXAMINATION BY MR. APPLEGATE:

Q. How did you know that the illness began June 15?
A. I must have made a little note of it and put it in my pocket, or knew about it; I was at home, I ought to know about it, at that time.
Q. There was no trouble to tell within two or three

weeks?

A. When they were sick and when they weren't.

Q. So if you made this entry at or about the time the illness ended, you had no difficulty whatever in fixing in your mind that it began June 15?

A. Yes.

Q. That actual date?

A. Yes.

Q. How did you know it began June 15?

A. I evidently had a memorandum of it in my pocket.

Q. Did you make a memorandum when the illness began?

A. I must have.

Q. Why didn't you put that in the diary; you said you copied it from the memorandum?

A. Yes.

Q. Why didn't you put that in the diary then?

A. No reason for that at all; any more than I thought that was all that was necessary.

Q. Necessary for what?

A. I didn't want any further diary of the sickness than just as stated in there.

Q. There is no memorandum in there of any lilness of your wife?

A. No, sir, there isn't.

MR. WILSON: We rest.

COURT: You want to examine a witness who is sick?

MR. WILSON: Yes, sir. I assume I have offered the various pieces of documentary evidence.

COURT: If they have not been marked, they will be.

MR. WILSON: I have one reservation to make. There is one question I desire to ask Mr. James Carton—perhaps more than one question (but one very brief matter, and in particular as to what occurred in the meeting in Mr. Applegate's office, when a reconciliation is said to have been sought between Mrs. Cartan and her husband. The inquiry will be very brief, and one other witness, as well, whose examination will be very brief. His name is Brown; he lives in Matawan, and that can be taken before Mr. Bindseil.

MR. LANE: What will he testify to?

MR. WILSON: Substantially his testimony is this, as I remember it, or understand it, that the sofa, such as has been described as having been in the outbuilding, the one that had the back or head of it broken, was in the store, having been put there in stock, with a view of having it sold, or brought over from the house, and then was taken back again to the house. Just that disconnected fact. The witness is ill, and too ill to appear. With those reservations I rest.

COURT: Yes, I would allow that testimony to be taken, and also any testimony that you might desire, before the Master at the same time, if you (Mr. Lane and Mr. Applegate) notify Mr. Wilson what you desire to have taken at that time; that is, in case you haven't the witness here today in order to close the matter.

MRS. FRANK B. TERHUNE, sworn in rebuttal for defendants.

DIRECT EXAMINATION BY MR. APPLEGATE:

Q. Mrs. Terhune, you live in Matawan?
A. I do.
Q. How long have you lived there?
A. All my life.
Q. And you know Mrs. Cartan?
A. I do.
Q. How long have you known her?
A. Since she came to Matawan as a bride; I don't know how long that has been.
Q. Are you familiar with the house in which she and her husband has lived for some time past?
A. I was born there and lived there until I was married.
Q. Have you been in that house more or less recently?
A. Quite recently; not within two years.

COURT: You will have to show by Mrs. Cartan that there has been no change in that house in that time. Is there any question about that?

MR. WILSON: None that I know of.

MR. APPLEGATE: In the structure of the house, rooms, hallway and gas jets.

MR. WILSON: Mr. Cartan says there has been no particular changes.

Q. The second floor, will you describe that, please?

A. As you go up the stairway, the front stairway, on the landing—

MR. WILSON: I think we are entitled to know upon what theory it is that this is a reply to our case as made.

MR. APPLEGATE: On the theory, in view of the testimony given by one who poses more or less as an expert, we are putting Mrs. Terhune on the stand now to contradict that testimony.

COURT: To show that it was possible from the hallway to get a fair view of the bed and bedroom, to determine if it is occupied or not by one or more persons?

MR. APPLEGATE: Yes.

MR. WILSON: May I remind your Honor, the witness for the defendant lady went on the stand and said that she observed her mother and father in bed, in passing and repassing that door.

COURT: The boy said the same thing.

MR. WILSON: Yes. It seems to me that it was incumbent upon them at that time to exhaust all their proof in that respect. That was an affirmative undertaking on their part, and it seems to me the orderly way, the witness could have shown not only that she did see, but she could see. Does your Honor think that it is a proper contradiction for them to go on and prove that this witness could see what she said she saw? Isn't it a part of their affirmative case?

COURT: At the same time you haven't limited yourself to the same class of positive proof that you attempt to limit them. These two witnesses, as I recall, and only two, the son and daughter, testified that they found it possible to see who the occupants of the bed were, whether occupied or not. To meet that situation you come in with the positive denial by Mr. Cartan that no such condition exists. You come in and again demonstrate by the testimony of Mr. Heuser and one other witness at the last hearing, that it is not possible, that experiments have been made, and that it is not possible for these two children to see what they swear they did see in that bed, because of the physical condition of the floor—the partition, the gas jet, the shadows and shade cast by the light and so on—I don't know how far, and probably it will have to be confined within a certain limit, within the knowledge of this witness, as to whether it is possible or not to see into that room. I don't think they should be permitted to go and experiment with some other witness, but I think it should be a personal history and experience in the home. Up to what time did you live there?

WITNESS: I lived there until I was married.

COURT: About what year was that?

WITNESS: Twenty-five years ago.

COURT: And your last occasion for being there was about two years ago?

WITNESS: It was longer ago than that, that I was upstairs.

Q. How much longer would you say?

A. I haven't been upstairs in some time, but I have inquired and I understand that there have been no changes since I left there.

Q. When were you last upstairs, would you say?

A. Ten years ago.

COURT: Is there any question that there have been any important or material changes on that floor, the structure of the house, in the last ten years?

WITNESS: None that I know of.

Q. You were describing the second floor; will you continue?

A. Every room upstairs connects with the other.

Q. How many rooms are there?

A. Three large rooms with a door connecting each room, and also a door connecting each room with the hall; the doors are large, and we had when I lived there, a gas jet put in the hall.

Q. Are the doors in the rooms that open on the hall opposite each other?

A. Some are, yes.

Q. There are two rooms opposite each other, are there?

A. Yes.

Q. And the doors of those two rooms, are they opposite each other?

A. Of which two rooms?

Q. That open on the hall, and of the two rooms that are opposite each other?

A. The room that opens on the hall from the room

which I understand was Mrs. Cartan's, there is no door opposite.

Q. What room is that?

A. That is the big room.

COURT: There is no door where?

WITNESS: Just opposite that, but one must pass that going to the bathroom or going downstairs, as the bathroom is on the first landing as you go upstairs, and one must pass that room, and in fact, the other room, too, the one back of the room where Miss Helen sleeps.

Q. Which is the room which has been described as Elizabeth's room?

A. With her mother.

Q. Which room is that?

A. The first as you come upstairs from the bathroom.

Q. Is that the room you just referred to as Mrs. Cartan's room?

Q. Which is the room which you know as the room of Mr. and Mrs. A. J. Cartan?

A. That very room, I understand.

Q. That room opens on the hall?

A. On the hall.

Q. Is there a gas jet in the hall?

A. In the hall, which we had put there to light every room, which would be convenient to light every room.

COURT: By leaving the door open, did you get sufficient illumination from this one jet?

WITNESS: Yes.

Q. To light each room?
A. Yes.
Q. For what purpose, so one could see to retire?
A. For convenience.

COURT: You could retire without lighting the jet in your own room?

WITNESS: Yes, you certainly could.

Q. Assuming that the bed in the room which you refer to as Mrs. Cartan's room, the head of the bed is against the partition, with the hall light or gas jet lighted, in your experience in living in the house, is it possible to see whether or not there is more than one occupant in the bed as a person paesses the door in the hall?

MR. WILSON: I object. It doesn't locate the bed, except as against the partition. Obviously the distance of the bed from the door makes all the difference in the world.

COURT: I think the criticism is well founded.

Q. With the head of the bed against the partition and the back of the bed against the hall wall?

MR. WILSON: That is open to the same objection.

Q. Whether it is possible, under those circumstances and conditions, to see whether or not there is more than one occupant in the bed?

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MR. WILSON: The difficulty is that the distance of the bed from the door is a controlling factor.

COURT: My suggestion that the back of the bed being up against the wall, the head of the bed being against the partition, as I understand the location to be, the bed is back as far as it can be put back from the door.

MR. LANE: The head of the bed was against the wall which separated the hall from the room.

COURT: That is the way I understand it. And the partition of the room separating that from whatever else may be on the other side is what I call the back of the bed, the bed pushed to the extreme of that wall, and the extreme partition separates the hall—

MR. WILSON: In the corner of the room, if that is what he means.

COURT: In the corner of the room with the head towards the door, is it possible to see whether that contains an occupant or more than one?

WITNESS: I consider it very possible, and that you could see the bed perfectly, and if there were one, two or three occupants in the bed, I think you could see very plainly.

Q. Where was the bed in that room when you lived in that house?

MR. WILSON: Objected to.

COURT: I will receive it.

A. The foot of the bed was facing the door at that time. I understand it is now.

COURT: Did you ever notice the shadow or the extent of the shade cast by the door form or door jamb?

WITNESS: I never did. The rooms are so open and it is so plain to see in those rooms, so perfectly plain, that I was going to say it is almost like one big room, the hall and all these rooms; it is like one big room all connecting and all open, and it is very possible to see even where the closet—

Q. Let me ask you another question.

COURT: Where the closet is located?

WITNESS: I was going to—

COURT: Finish your answer.

WITNESS: There is a closet connecting two rooms, the front and back room, and one doesn't have to be in the closet to see in those rooms; it is open.

Q. Where would you have to be?

A. You could be in one room and look right through the closet to another room, and to the next room.

Q. If you stood half way in the closet, could you see into both rooms?

A. Very plainly.

Q. And the bed and the occupants?

A. Very plainly.

Q. Would that be so if the gas were burning and turned down low?

A. It certainly would; it is a very open house; you can see from one room to another very plainly and you don't have to strain your eyes at that.

Q. Will you say, standing in the bedroom in question, with the light in the hall turned down, whether one can see the face of another person in the room without being a foot distance away?

A. One could.

COURT: That is with ordinary eyesight?

WITNESS: Yes.

Q. And how far away would one have to be to identify the features of another person in that room?

A. I should say a good ways off.

Q. How many feet, one or—

A. Three feet, perhaps; I am guessing at that.

COURT: If you were standing in the closet, for instance, between the two rooms, at that position could you tell and recognize a person lying in bed with the light burning dimly?

WITNESS: I think I could.

Q. In either room?

A. I think so.

Q. And if you were passing along the hall and going to the bathroom, from the front room could you by a

casual glance recognize whether there was anyone in the bed?

A. I could.

Q. Without stopping to investigate?

A. I could.

CROSS EXAMINATION BY MR. WILSON:

Q. Mrs. Terhune, in the questions you have been asked, you are assuming that the bed is in the corner of the room furthest away from the door that goes into the room, aren't you?

A. No, I am not, because they told me it was not that way. It used to be when I slept there, but they tell me it is not there now. I am assuming that the head of the bed is against the partition that connects the next room.

Q. And then how far are you assuming that the head of the bed is away from the door—the head of the bed from the side of the door?

A. Two feet, perhaps. I am guessing at that.

COURT: That is where I placed it in my own mind, in my questions, two or three feet.

WITNESS: I think so.

COURT: If that were the door (indicating), this would be the head of the bed (indicating)?

WITNESS: Yes.

Q. You have said, I think, that you think you could see with the same degree of accuracy if the bed were in the corner of the room?

A. Yes.

Q. Away from the door?

A. Yes.

Q. And with the head up against the partition between the room and the hall?

A. I do.

Q. And the side of the bed against the back wall of the room?

A. I do.

Q. You haven't been upstairs in the house in how many years?

A. Several years, perhaps ten. I am guessing at that.

Q. And never been up there to make any experiments as to how much you could or couldn't see?

A. Never. My mind is perfectly clear on that.

Q. You are speaking from your recollection of conditions as they were ten years ago?

A. Yes.

DORA HOPKINS, sworn in rebuttal for defendants.

DIRECT EXAMINATION BY MR. APPLEGATE:

Q. You live in Matawan?

A. I do.

Q. Where do you live in relation to Mrs. Cartan's residence?

A. Our homes are about four feet apart.

Q. You live side by side?

A. Side by side.

Q. How long have you lived there?

A. All my life.

Q. You know Mrs. Cartan and her husband?

A. Ever since she came to Matawan to live, which was about nineteen or twenty years ago.

Q. Are you familiar with the inside of the house, the interior of the house?

A. I have been; I know every part of it.

Q. You have been in it how many times?

A. Many, many times.

Q. Have you been upstairs as well as down?

A. Yes.

Q. How many times would you say you have been upstairs?

A. So many times I cannot tell you.

Q. When were you upstairs last?

A. Night before last. I am there every day almost.

Q. Did you recently make an experiment or observation as to whether or not one was able to see into the bedroom, standing in the hallway; did you make such an observation?

A. Since then I have noticed particularly.

Q. When did you notice particularly?

A. Only just lately; this week, night before last.

Q. What time of the night did you make it?

A. In the evening, about nine or half past nine, the last time.

Q. Was there a gas jet in the hallway?

A. There was.

Q. Was it turned up or down?

A. It was turned down a little.

Q. Was there any other light there.

A. Not then.

Q. I mean at that time.

A. No.

Q. Any light in any of the rooms?

A. No.

Q. Do you know the room which has been referred to as Mrs. Cartan's room; do you know the bedroom which has been referred to as Mrs. A. J. Cartan's room?

A. Yes.

Q. Did you ever try to see how far you could see into that room from the hall, with the gas turned down and lit as you said?

A. You can see the bed and every part of the room.

Q. Could you see whether or not there was more than one occupant in the bed?

A. I have never been past there when—

Q. Were you able to see, if there had been more?

A. Anyone could see a form; I was in there when little Betty was in the bed, and as I passed the room door, I could see a child's form.

COURT: Could you see her face?

WITNESS: Her little head, but I couldn't see the face exactly, because it was late at night, and she was asleep, and I didn't know the child was in the bed.

Q. You stated you were able to see that there was one occupant in the bed; are you able to say whether there was more than one occupant in the bed?

A. I would say you could.

Q. You didn't make the test under those conditions?
A. No, but you certainly can see the bed very plainly.

COURT: Could you see this was a child and not a grown person?

WITNESS: I could see it was a child's form.

Q. Did you stop to look in?
A. I passed by the door, close up.
Q. As you passed the door, did you stop or keep on passing?
A. I walked past.
Q. Did you stand still and look in the room?
A. No, but as I passed, I said, "Is Betty asleep?" and she said, "Oh, yes."

COURT: She saw the child lying in the bed as she passed; that is the way I understand her answer.

Q. You are familiar with the premises?
A. Yes.
Q. The yard and the garden?
A. Yes.
Q. Have you had occasion to go there?
A. Many times.
Q. Do you know the outhouse that has been referred to?
A. I do.
Q. Can you say whether or not you were in the outhouse in 1916 and 1917?

MR. WILSON: I think this is part of their affirmative case.

COURT: Don't you think you are going too far? You went into that fully on your main case.

MR. APPLEGATE: I didn't know that this lady knew about the couch, otherwise I should have called her at that time.

COURT: I will let it in under those circumstances.

Q. Will you say whether or not you had occasion to see inside of this outhouse, so-called, in 1916 and 1917?

A. I can see in there every time I go by and down my garden path.

Q. How many times did you go down your garden path?

A. Every day.

Q. Was that so in 1916 and 1917?

A. Yes.

Q. Could you see clearly inside this outhouse?

A. I can see from my own yard, and I can see from their yard, and many times—

Q. Have you ever been in it?

A. Yes.

Q. What took you in it, what did you go in there for?

A. I went in there once with Mrs. Cartan when she had a hen setting.

Q. Have you been in there at any other time, any time that she didn't keep chickens there?

A. Yes.

Q. Did you ever see a couch in there?

A. I never did.

Q. Or a chair?

A. I never did.

COURT: Or any other furniture.

WITNESS: No, I never did.

COURT: Can you see this outhouse from the rear of your house?

WITNESS: It is up right on the line of our property.

Q. Can you see it from the rear of your house?
A. Yes, I can see their yard.

CROSS EXAMINATION BY MR. WILSON:

Q. You went up there in the Cartan house to see how much you could see, didn't you, in going along the hall?
A. No, I didn't go up there to see how much I could see, for I am in there almost every day of my life.
Q. I am speaking about your observations upstairs night before last; you went up there to see whom?
A. I went in there to see how she was that day; Mrs. Cartan was not very well.
Q. Where was she, in bed at the time?
A. She was not in bed; Miss Helen was upstairs, or she had just come in, and I said, "Can I go up and see her?" That is why I was upstairs.
Q. Didn't you go unstairs to make some observations?
A. I did not, not for that purpose.
Q. You were asked to make some observations, were you not, up there?

A. No.

Q. Didn't you and Mrs. Cartan go up there for that purpose?

A. Mrs. Cartan wasn't with me upstairs.

Q. She was with you upstairs one night before our last hearing?

A. One night, a long while ago.

Q. Is this the first time you have been here?

A. No.

Q. Were you here the last time?

A. Yes.

Q. And just before the last day didn't you go upstairs with Mrs. Cartan for the purpose of seeing and making observations in that room?

A. I was upstairs, and she said, "Now, you look."

COURT: To see what?

WITNESS: To see if I could see the object, and what I thought, and you see very plain.

Q. Then you went up, you say, two nights ago?

A. Yes.

Q. And Betty was sick in the bed?

A. She wasn't sick, she had retired for the night. Her mother had put her to bed.

Q. And you think that in passing the door you could have enough light to look in and see a person in the bed; you have no doubt about that?

A. I have no doubt whatever.

Q. And suppose the bed were pushed over in the corner of the room, the furthest corner of the room from the door, but on the same side of the room as the hall, could you still see?

A. It never was pushed over in the corner.

Q. I know you say so, but supposing it had been over there, could you see just as well?

A. You can see every part of the room, but I don't know as you could see just as well.

Q. You could see every part of the room in passing the door?

A. Yes.

Q. That was your observation?

A. I looked, yes.

Q. About this couch, your observation about this outhouse has covered a period of a number of years, I suppose?

A. Yes.

Q. And you don't recall anything different in that outhouse in 1916 than in 1917 or 1918?

A. No.

Q. It is the general recollection about it?

A. Yes.

Q. You went in the outhouse for the purpose of looking at a setting hen?

A. I didn't go in for no purpose whatever; I said I was in there with Mrs. Cartan.

Q. Didn't you say something about a hen?

A. She had a hen setting and she wanted to look after it; I went in with her; I was in there.

Q. Do you recall any other time you ever went in there?

A. Yes.

Q. For what purpose?

A. I was down there when they used to take little Betty down there to look at the ducks, and you could see in.

Q. When you went down, you went down to look at the ducks and chickens?

A. I had the child.

Q. And those were the times you went in it, you say?

A. Not always.

Q. What were the other times you were in it?

A. I don't know as I was in it every time I went down there, but you can see in there just as well.

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RE-DIRECT EXAMINATION BY MR. APPLEGATE:

Q. I show you a photograph marked Exhibit D 10; do you recognize that house?

A. Yes.

Q. What house is it?

A. That is Mrs. Cartan's house.

Q. Where is your house in relation to Cartan's house?

20 A. Right here (indicating).

Q. To the left of the picture?

A. Yes.

Q. Immediately adjoining?

A. Yes, and our properties are right down this line.

Q. In order to get to your garden how do you go?

A. Right down the path this way (indicating).

Q. You are indicating now what?

A. At the foot of the photograph.

30 COURT: Is there a path goes along the lane?

WITNESS: Not exactly, but just a little ways from the line.

COURT: How far does that go; down past the outhouse on Cartan's property?

WITNESS: Yes.

COURT: Way back in the yard?

WITNESS: Yes.

Q. How near to the outhouse does the path go?
A. I suppose, as near as I can judge, eight or ten feet.
Q. So in going to the rear of your property and using that path, you would pass that outhouse?
A. Every time.
Q. Could you see into the outhouse?
A. Why, yes, sir.
Q. As you passed?
A. Yes.

COURT: Did the outhouse always have the windows on your side?

WITNESS: Always.

MR. APPLEGATE: I rest.

PATRICK J. DEVLIN, sworn in rebuttal for defendants.

DIRECT EXAMINATION BY MR. LANE:

Q. Have you any recollection whatever with respect to this meeting of the Building and Loan on the eighteenth of June, or supposed to have been held on the eighteenth of June?

A. 1918?

Q. Yes.

A. No, I have not.

Q. Were you a member of the Building Committee of the Building and Loan?

A. Yes.

Q. Do you recall the loan which has been referred to this morning, that particular loan?

A. No, I do not.

COURT: Wouldn't the minutes of that meeting, if properly kept, show who was in attendance?

MR. WILSON: I will offer the minutes, but they do not show who were present.

COURT: Is there any compensation paid to members of the Board for their attendance at meetings?

WITNESS: No.

Q. Is there any way by which it can be determined, that you know of, except by testimony, as to whether certain members were present?

A. I do not.
Q. You know of no way?
A. I do not.
Q. You have no recollection with respect to that at all?
A. None.
Q. Or with respect to that loan?
A. No.
Q. Or with respect to whether A. J. Cartan was there or wasn't?
A. No, I have not.

COURT: Did that loan have any peculiar features that you recall?

WITNESS: No, sir, not that I recall.

COURT: You know the property?

WITNESS: Really, I don't know which loan it is.

Q. Do you know what loan they have been referring to?

COURT: It is called the Wilson loan in the minutes. Loan made to Mrs. Wilson for $2,000.

Q. It is a loan to Florence Wilson for a mortgage loan of $2,000 on the Geran property on Broad street.
A. I cannot recall it, Mr. Lane.
Q. Were there meetings of this Building and Loan at which Mr. Cartan was not present?
A. Oh, yes.

COURT: Were there meetings at which you were not present?

WITNESS: Yes.

Q. When was the annual meeting of the Association?
A. Always in June. The first meeting in June—the meeting in June.
Q. What night in the month do you meet?
A. The third Tuesday of each month.
Q. And the annual meeting is on the third Tuesday in June?
A. Yes.
Q. There has been a check here shown, drawn to your order by the Estate of Cartan; do you know what that was for?
A. Really I do not; I cannot recall what that was for.
Q. The first intimation is what you heard of that check today?
A. That was the first intimation I had along those lines.
Q. Have you any recollection at this time what that check was for?
A. I have not.

COURT: It is said to have been made ostensibly for a political contribution; do you recall anything about that?

WITNNESS: That might be so.

Q. Is that possible?
A. It is possible.
Q. Why is it possible?

MR. WILSON: What difference does it make?

COURT: It is an actuality according to Ren Cartan's testimony.

Q. I show you the check, Exhibit P 1 of December 15, 1920, and ask you whether you can now say whether you have any recollection with respect to this check.

A. I haven't any recollection as to this check.

Q. Do you recall any occasion at which Mr. Ren Cartan endeavored to give back to you the Cartan & Devlin check for $200?

A. He never did.

COURT: Did you know he hadn't used the check?

WITNESS: I know it wasn't used right at the time, but I cannot tell just when it was used, because our bank books are not written up not more than once a year, and sometimes not more than once in two years.

COURT: How did you know it wasn't used at the time?

WITNESS: Because when the bank book was written up the first time after the check was given, it didn't appear in the returned vouchers.

COURT: Did you speak to him about it?

WITNESS: No.

COURT: Why not?

WITNESS: There wasn't any particular reason why I didn't.

Q. With a check of $200 out of your bank account, why didn't you inquire about it?

A. $200 in our bank account didn't make much difference.

Q. Is it an unusual thing to have checks held out?

A. Not for any length of time. Every time our bank book is written up there are a few checks outstanding that are then taken into account, of course.

CROSS EXAMINATION BY MR. WILSON:

Q. This check seems to have your endorsement on the back; that is your endorsement?

A. Yes.

Q. You have no doubt you got the money on that?

A. I have no doubt.

MR. LANE: That is all.

COURT: Did the Cartan Estate owe you $200 at that time?

WITNESS: No.

Q. What explanation did he make for giving you $200?

A. I cannot recall the transaction at all.

Q. You said it might have been a contribution towards—

A. It might have been.

COURT: Do you remember asking Ren Cartan or anyone else why he gave you that $200 check?

WITNESS: I do not; I cannot recall the transaction.

RE-DIRECT EXAMINATION BY MR. LANE:

Q. Is it possible that it may have been given as a political contribution?

A. It might have been; that might have been.

Q. Why do you say it might have been; what is there in your relations, if anything, which would make it possible that he should pay a political contribution?

A. I made personal expenditures in a political way, and often or nearly always for the benefit of the concern, and they might have reimbursed me for a portion of it.

COURT: Had they ever done so before?

WITNESS: I cannot recall any particular instance.

RE-CROSS EXAMINATION BY MR. WILSON:

Q. Were you postmaster at the time this check was given to you in January, 1917?

A. Yes.

Q. And you were hoping to continue as postmaster?

A. Yes.

Q. And at that time Mr. Scully was running for Congress?

A. I don't know—January, 1917?

Q. Just preceding that, in the fall, Mr. Scully had been running for Congress?

A. I think so.

Q. And Mr. Scully had been largely responsible for your appointment as postmaster; he helped you?

A. Yes.

Q. You were anxious to make a good return for him?

A. Yes.

Q. And to that extent you were anxious to help him in his—

A. Yes.

Q. And that particular political activity, then, would have been for your benefit, rather than the benefit of Cartan & Devlin, wouldn't it?

A. But he wasn't the only candidate.

Q. I am speaking about that particular phase of it.

A. Yes.

Q. You were postmaster and you wanted to continue to be postmaster?

A. Yes.

COURT: Receipts from your position as postmaster didn't go to the credit of the firm; that was a personal matter with you; that is so?

WITNESS: Yes.

COURT: And personally you wanted to do something complimentary for Mr. Scully for his having done some-

thing for you in procuring for you this office?

WITNESS: Yes.

MR. LANE: We rest.

RICHARD HEUSER, recalled in rebuttal for petitioner.

DIRECT EXAMINATION BY MR. WILSON:

Q. How far is it, do you think, according to your best judgment, from the door of this room of A. J. Cartan to the extreme wall of this bed room on your left as you enter the door, about what is the distance between that wall that I have thus designated and the door of the room as you enter?

A. The part of the door nearest the wall?

Q. Yes, sir.

A. From the jamb of the door nearest the wall, about two feet.

Q. If we assume that the bed, the bed that you saw, was in that corner of the room, the side of it against the wall of the room to your left as you enter, as described, and the head of it against the partition wall, between the hall and the room, could one passing in the hall have seen the bed at all?

A. I think not.

COURT: What do you say the size of this room was, about?

WITNESS: 14 or 15 feet—about 14 x 15, maybe more than that.

CROSS EXAMINATION BY MR. LANE:

Q. You couldn't have seen any part of the bed and wouldn't have known that there was a bed in that corner?

A. It might be possible that you might get a glimpse of the lower corner of it; I wouldn't be certain about that.

COURT: When you made your experiment, where was the bed, in that corner?

WITNESS: No.

Q. It was up near the door?

A. It was twenty-seven inches from the door.

Q. And that would leave about what space on the other side of the bed?

A. About six feet, I guess.

Q. Between the bed and the wall?

A. Yes.

Q. And how much space between the bed and the other partition, or the door?

A. Just about the width of the door, thirty- two inches.

Q. And twenty-seven?

A. And twenty-seven and then the casings of the door.

Q. To your satisfaction, if there were—there appeared be under the covers two forms in that bed, would you desire any other proof that there were two people in the bed, for your own satisfaction?

A. If there appeared—

COURT: Why should he want satisfaction if it appeared so to him?

MR. LANE: In his direct examination today he rather indicated, to me, that he would require more than the ordinary man would.

WITNESS: I wouldn't think I had absolute proof.

Q. You wouldn't think under those conditions you had absolute proof?

A. No.

Q. And that is the way in which your testimoy has been given on direct examination?

A. If it appeared to me that there were two, I wouldn't want—

Q. You wouldn't want to swear that there were two people there?

A. No.

COURT: If it appeared that there were two people there, you wouldn't be satisfied to say there were two?

WITNESS: No, not to go on the stand and swear to it.

MR. WILSON: Does your Honor understand that when he made the observation the side of the bed nearest the door was twenty-seven inches from the door jamb?

COURT: Yes.

MR. LANE: And the back of the bed about five or six feet from the wall.

COURT: Yes.

MR. WILSON: That is where you are at fault.

COURT: That room is fourteen or fifteen feet wide; where did the bed stand, in the center of the room or up against the wall when you made your experiment?

WITNESS: It stood up against the wall; the head of the bed was against the wall.

COURT: Where was the side of the bed?

WITNESS: The side of the bed—

Q. The front of the bed is the part that would be near you as you came in from the hall?

A. Yes.

Q. How near to the wall was the other side?

A. About six feet.

COURT: I understand that with the exception of taking the testimony of James Carton and also the testimony of Mr. Brown of Matawan, the case is closed?

MR. WILSON: Yes.

IN CHANCERY OF NEW JERSEY

BETWEEN

ANDREW J. CARTAN,
Petitioner,
and
SARAH CARTAN,
Defendant.

On Petition for Divorce

AFFIDAVIT OF CHARLES P. BROWN.

STATE OF NEW JERSEY
COUNTY OF MONMOUTH } ss.

CHARLES P. BROWN, being duly sworn according to law, on his oath saith:

I reside at Matawan, Monmouth County, New Jersey. I am now ill and unfit to attend the trial of the above stated case. Prior to two years ago I was in the employ of A. J. Cartan for about fourteen or fifteen years. I worked in his store at Matawan as salesman and clerk. About two years ago I stopped working for A. J. Cartan. Seven or eight years ago a willow couch was brought to the store. It was damaged. The head part had been broken. I heard Mrs. A. J. Cartan say that she would not have it in the house for that reason. It was put in the store and in the general stock, but was not sold. It was taken to A. J. Cartan's house after it had been in the store about a year. My recollection is that it was taken there by his son; if not, by some of the clerks who worked around the store.

Sworn and subscribed to before me this 23rd day of December, A. D. 1920.

CHARLES P. BROWN

THERON BEDLE, Notary Public for New Jersey.
(SEAL)

IN CHANCERY OF NEW JERSEY

BETWEEN

ANDREW J. CARTAN, *Petitioner,*
and
SARAH CARTAN, *Defendant.*

On Petition for Divorce

AFFIDAVIT OF WILLIAM G. BEDLE. OFFERED FOR PETITIONER

STATE OF NEW JERSEY
COUNTY OF MONMOUTH } ss.

WILLIAM G. BEDLE, being duly sworn according to law, on his oath saith:

I am Secretary of the Matawan Building and Loan Association, and have in my custody the minute book of the said Association. The following is a true and complete copy of the minutes of a meeting of the Directors of said Building and Loan Association and of the stockholders of said Building and Loan Association, both held at Matawan on the evening of June 18th, 1918:

"Matawan, N. J., June 18th, 1918.

Meeting Matawan B. & L. Assn. held in store C. A. Geran at 7:30 p. m. Dues—Int.—fines & Ent. fees in the sum of twenty three hundred and seventeen and 60|100 dollars were collected and turned over to B. Cartan, Treas. ($2317.60).

Geo. A. Pulis applied for an additional stock loan of $25. On motion same was granted.

Florence Wilson applied for a mortgage loan of $2000.00 on the Geran property on Broad St. On motion same was referred to the Building Committee and if approved by them to be granted.

Matawan, N. J., June 18, 1918.

Meeting Matawan B. & L. Assn. held in store A. P. Woolley at 7.30 p. m. Dues Int. Fines & Ent fees amounting to $2, 317.60 collected and turned over to B. Cartan, Treas.

Following the regular meeting a stockholders meeting was held and the following officers elected for the coming year:

Pres., Chas. A. Geran;
Vice Pres., P. J., Devlin;
Secty., W. G. Bedle;
Treas., B. Cartan;
Sol., E. H. Geran;
Director 3 years, D. E. Van Winkle;
" " " Alfred Hardy.

Following the stockholders meeting the Board of Directors met and voted the salary of the Secty $175.00, Treas., $50.00, Escort $6.00, and appointed as local auditors S. C. Thompson, Theo. H. Sickels and Koert C. Wyckoff.

There being no other business meeting adjourned.

WM. G. BEDLE, Secy."

Sworn and subscribed to before me this 20th day of December, A. D. 1920. } WM. G. BEDLE.

J. E. VOORHEES, Notary Public.
(SEAL)

EXHIBIT C 8, NOVEMBER 17, 1920

Letter head:
Our Prices Are As Low as the Lowest
Telephone Call 102-Matawan
Office of
CARTAN & DEVLIN
Wholesale & Retail Dealers in
Flour, Feed, Grain, Meal, Lumber, Lath,
Nails and All Sizes of Coal
Steam Saw Mill

Matawan, N. J., Oct. 8, 1918

Dear Doll:

Am very sorry you are offended because Edna told Mame. A good friend of mine persuaded her very much against her will, to go to Mame as Johnse was determined to go to Mame with the story. It was thought best to induce Edna to tell Mame first and tell her in such a way that it might not be so hard for—

EXHIBIT D 7, NOVEMBER 17, 1920

Postmark on envelope of letter: Atlantic City, N. J., Aug. 17, 3 P. M., 1916.

Addressed to: Mr. P. J. Devlin, Matawan, N. J.

Letterhead of: Hotel Bothwell, Virginia Ave. and Beach J. & N. R. Bothwell, Props. Open all year. (View of hotel.)

Atlantic City, N. J., Aug. 17, 1916

Dear Pat:

Since arriving here have been trying very hard to call words to express my gratefulness for that gift, but I swear I can't do it, all I can say is I thank you from the bottom of my heart, and these words seem so tame that I feel like taring up letter when I read it for the spirit of the gift means thrice more to me than the the check itself as it makes a fellow feel good & starts him off right & makes him think after all life is worth while for I know well I don't deserve it and there is nothing coming to me. Well I am just beginning to get used to it here and learning how to enjoy it, it takes a few days to get accustomed to the change. We have a nice place and we should enjoy every minute of it. Was sorry to load you up with so much work. I know you know how to get away with it but that is not the thing, but I couldn't seem to see how to help you. Just had to let you work it out yourself. Remember me to Mame, Ray & all hands. Yrs.,

REN.

EXHIBIT P 6

Pat:

Mame came to Edna's party & treated me like a dog. I understand she also called me a *Little Whore* in speaking of me & this I will not stand for. She better stop & think what her husband is & put the blame where it belongs.

You annoyed me with your persistent attentions & tried in every way to win my affections from my hus-

band, which I thank God you did not do.

You always assured me you were lucky & could get out of anything. A man of your standing & your years to keep on in your beast like manner trying to win me & make my life miserable at every chance you get.

I will not stand for your wife feeling this way toward me. I was young & not the aggressor & your wife should have the same pity for me she has for you.

The reason I had thought it best not to let my husband know was because he is a *man,* every inch a *man* & has never done a harmful thing to anyone in his life but himself.

I want you & yours to understand I am thought just as much of in this town as you are and have never done any real *wrong,* only what *you* have done to me. I can face anyone at any time.

I have been in constant fear of you for years & ever since you changed your counter in the store & I came to telephone you tried to force me in the back of the store.

Since my husband has been attending Building Loan meetings you have made excuses to come to my house to see if I was alone. I never intended telling this story to your wife but her usage of me yesterday forces me to do it. And after all I have suffered from you, I do not expect to be treated this way by *no* one. I am sending a copy of this letter to your wife.

EXHIBIT P 3

Oct. 6, 1918

Dear Doll:

For God sake go to Johnse and ask him to forgive you for everything—promise him you will do anything on earth that a woman can do for her husband and that for the rest of your life you will do your utmost to make him happy and contented.

Yours very truly,
P. J. Devlin.

EXHIBIT D 6

Oct. 8, 1918

Dear Doll:

Please don't have any ill feelings towards Ren's wife for telling Mame. She had the best motive and did it to prepare Mame for what was coming. Please don't blame her and try to do what I wrote you few days ago. I know you would be doing the noblest thing that any person on earth can do. Please Doll do this and I am sure you will never regret it. For I know positively somebody else was going to her and tell her. Yrs.,

P. J. Devlin.

EXHIBIT P 5

Oct. 8, 1918

Dear Doll:

Am very sorry you are offended because Edna told Mame. A good friend of mine persuaded her very much against her will to go to Mame as Johnse was surely going to her with the story and felt that Edna would tell her in such a way that it might not be so hard. Yrs.,

P. J. Devlin.

EXHIBIT P 10

Postmark on envelope of letter: Palm Beach, Fla., Jan. 6, 6 P. M., 1919.

Addressed to: Mrs. A. J. Cartan, Matawan, New Jersey, Box 105.

Palm Beach, Jan 5, 1919.

Dear Mother:

I just got your letter a little while ago after enjoying a nice chicken dinner at Mrs. French's. I will cash the money order tomorrow and pay my board. My hands are so cold, I can hardly write. It's been awful cold yesterday and today. When I got up this morning the thermometer in my room read 42, but it was about ten o'clock so I thought it best to get up. I have been eating, living, reading and everything except sleeping, in the kitchen with all three burners going in the oil stove. The oil heater, I have been using in my bedroom but I have it along side me at the desk just at present. I got that big quilt

off Jean's bed and put it on mine and it keeps me plenty warm enough. Mrs. W. has her oil stove in the dining room and her oil heater in her sitting room and these together make her house very warm. I often go in there to read. Betty is getting along fine with Ella and Mrs. W., also with Ella's dog. I am glad to hear that Mr. Fury is helping you and that everybody is for you. I also hope, of course, that you make out all right with the case and get lots of *alimony,* that's the main thing. Hope you can come back soon and bring Helen with you. I hear that the "flu" is coming back up there. Well, I hope it isn't as bad as it was the other time.

The colored lady took the wash home and did it over because they had stood in the tub so long. She brought the clothes back Friday afternoon and they are O. K. She said that work amounted to two days considering the cleaning up of the house the day after you left. I told her Mrs. W. would settle with her but she said that it would be all right for her to settle with you when you came back. She is going to wash what clothes there are, every week. Well, thanks for the money, and remember me to Helen, Bess, Jeanette and Bub.

Johnson.

A. J. sent Xmas cards to you, Jean, Betty & myself. I have them here, swell ones, too.

EXHIBIT P 2, DECEMBER 15, 1920

FARMERS AND MERCHANTS NATIONAL BANK 55-412

Matawan, New Jersey, August 14th, 1916. No.8809

Pay to the order of Rens Cartan.....$200.00

Two hundred and 00|100 .....Dollars

Cartan & Devlin.

Safe Deposit Boxes For Rent

Endorsed, Rens Cartan, and stamped June 25, 1918.

Perforated by bank: "PAID"

EXHIBIT P 1, DECEMBER 15, 1920

No. 358 Matawan, N. J. Jany. 11th, 1917

FARMERS' AND MERCHANTS' NATIONAL BANK 55-412

Pay to the Order of P. J. Devlin

Two Hundred 00|100 .....Dollars

$200.00

Estate of Lawrence Cartan.

By A. J. Cartan.

Ex.

Endorsed: P. J. Devlin.

Perforated by bank: "PAID"

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New Jersey Court of Errors and Appeals.

BETWEEN

ANDREW J. CARTAN,
Petitioner-Appellant,

AND

SARAH CARTAN,
Defendant-Appellee,

AND

PATRICK J. DEVLIN,
Intervening Defendant.

On Petition for Divorce.

On Appeal from Chancery.

POINTS AND BRIEF FOR PETITIONER ON FINAL ARGUMENT.

I.

INTRODUCTORY STATEMENT.

This is an appeal from a decree in the Court of Chancery denying an absolute divorce sought by Andrew J. Cartan, petitioner, against Sarah Cartan, his wife, one of the above named defendants. The decree was advised by His Honor John E. Foster, Vice Chancellor.

Andrew J. Cartan of Matawan filed his petition for divorce against his wife, Sarah Cartan, on or about the 12th day of December, 1918. The defendant answered on the 18th day of June, 1919. The delay in filing this answer has been satisfactorily explained. Bill of particulars was demanded shortly prior to the 21st of April, 1919, and furnished on the date just named. The paramour named in the original petition was Patrick J. Dev-

lin. He did not seek to intervene until the 6th of October, 1919, on which date he filed his petition asking to be made a defendant. Shortly thereafter an order responsive to the prayer of his petition was made. Upon his formal demand he likewise was furnished with a bill of particulars. Both defendants in their respective answers denied the acts of adultery charged in the petition. On the trial of the case and after considerable evidence had been taken, the defendant, Sarah Cartan, by leave of the court, was permitted to interpose condonation as an additional defense, claiming that after her husband had definite knowledge (by his own admission) of her alleged adultery, he cohabited with her. *This amendment was applied for and made fifteen months and more after her original answer had been filed.* The issues under the pleadings and proof stand thus:

The petitioner charges adultery and the proof is directed especially to an offence which he says occurred on or about the 27th of May, 1916, in an outbuilding on the premises then owned and occupied by him and his family in the Borough of Matawan.

The wife and the alleged paramour stoutly deny this charge, and the wife, in addition, sets up, as already indicated, the defense of condonation.

This brings us to a consideration of the facts.

II.

EVIDENCE RELATING TO ADULTERY.

The facts, circumstances and probabilities which relate to the charge of adultery will now be examined.

It appears from the evidence of A. J. Cartan, the husband, Rens Cartan and his wife, and the evidence of Edna Cartan, wife of Bert Cartan, a brother of the petitioner, that for a considerable period prior to the beginning of the present suit,

Devlin and his codefendant manifested a marked preference and attachment for each other. Their association in a social way was constant and intimate. The Devlin and Cartan families had known each other for years and had been closely associated in a business way. It appears that the families met for social intercourse continually and at brief intervals; that on these occasions the two defendants sought companionship in a marked way; that they danced together with conspicuous frequency, contrived to sit next to each other when playing cards, dining, at theaters, and also when riding in automobiles with others who accompanied them. These parties were not occasional, but occurred almost weekly during a series of years, and the mutual preference shown by the defendants was observed and commented upon. Mrs. Cartan told the wife of Rens Cartan that sometime ago Devlin had kissed her in a telephone booth. See page 41. This appears to have been in the early stage of their intimacy. Rens Cartan testifies that on a certain night when the Cartans and Devlins were returning from Princeton in an automobile he saw Devlin take liberties with Mrs. Cartan's person under a robe that covered her lap. Mrs. Rens Cartan testifies that she saw Devlin commit a similar offence when she and others, with the Devlins, and Mrs. A. J. Cartan were occupying a swimming pool at Asbury Park. It appears from the testimony of several witnesses that at these family parties Mrs. Cartan and Devlin were accustomed to monopolize each other for the purposes of conversation, and that upon one occasion this became so marked as that Mrs. Devlin, who was sitting at dinner with them, exclaimed, addressing her husband, "I am here." It was the habit of Mrs. Cartan in passing the store of Cartan & Devlin, which was upon the main street in Matawan, to wave her hand in a familiar way to Mr. Devlin, if he were in sight. She admits this in her own testimony, and does

not pretend that she employed a similar greeting in passing or meeting relatives or other friends. Mrs. Bert Cartan testifies that several times she saw Devlin and Mrs. Cartan, when sitting next to each other playing cards, "push and rub their knees together in an immodest way." Pages 299, 300, 301. There is evidence that when family parties were in contemplation Mrs. Cartan was insistent and successful in her attempts to insure the attendance of Devlin. The proof would seem to establish that on one occasion Devlin and Mrs. Cartan made the journey to New York together, Devlin having gone on the pretext of buying new clothing, which he, in fact, failed to buy. Devlin was in the habit of passing into the Linzmeyer Lane and the Ervin Lane, both of which afforded easy access to the rear of the premises occupied by A. J. Cartan. The Cartan homestead was located on Main Street. Parallel with Main Street, and lying some 300 feet back of it there was a lane or street which was intersected by the Linzmeyer and Ervin Lanes. Several witnesses saw Devlin pass into Linzmeyer Lane and the Ervin Lane at night and under conditions which were entirely consistent with his covert and clandestine approach to the A. J. Cartan property. He was seen by Mrs. Bert Cartan on a number of occasions to go into the Linzmeyer Lane at night. This was an indirect, circuitous and unnatural method of reaching his own home. On a certain night some years ago she saw Devlin close the store and go across the street and enter Linzmeyer's Lane. She at once went to the back yard of the Cartan property. She saw Devlin go up from the lane into which Linzmeyer's Lane led, and then "into A. J.'s back lot, and just as he did I (the witness) heard Mrs. A. J. Cartan call to Mrs. Rens something about its being a hot night, and I (the witness) heard Mrs. Rens voice back to her. He then left the yard hurriedly." See pp. 305, 306; also pp. 307, 308, 311, 312. These jour-

neys into Linzmeyer's Lane were "mostly on Saturday night." P. 309.

The incident in respect to the failure of Devlin to return from the garage on a certain night is significant. Members of both the Cartan and Devlin families had been riding in an automobile. The petitioner was not with them, but his wife was. Devlin was driving his own machine. When the party returned to Matawan, they alighted from the car at their respective homes, and Devlin took it to the garage in the rear of his own premises. His wife watched for his return to the house. According to the testimony of Mr. and Mrs. Rens Cartan, she sat on the stoop of her home located next to the driveway which gave access to the garage. Her husband did not appear. She became alarmed, sought to find him and could not, and then asked the assistance of Rens Cartan and his wife. They procured a lantern and searched the premises, but did not find him. After a considerable interval he was met on the street by those who were making the search. When asked for an explanation, he said that he had left the garage by the lane and had gone down town to buy some chewing gum. There is evidence also that he did not leave the garage by the driveway, but by the rear of the premises, and reached the main street by an indirect method. Mrs. Bert Cartan saw him come out of the lumber yard and go across the street. She came from her own house and stood on the sidewalk and watched his movements. He entered Linzmeyer's Lane and turned the corner into the back street that runs parallel with Main Street, and entered the Cartan back yard, and then passed beyond her vision. See pp. 311, 312, 313. This visit to the Cartan home more satisfactorily explains his absence when being searched for by his wife than the somewhat ludicrous suggestion that he had been engaged in buying chewing gum. When met by the searching party, he was coming "up the

street" from the direction of the A. J. Cartan house. See pp. 55 and 420.

Mrs. Cartan denies that she attended these family gatherings except occasionally. She stated that she had been detained "hundreds of times in ten years" by reason of illness. This denial, in view of what her husband and others have said, and the surrounding probabilities, is too reckless and sweeping to be convincing. See p. 857.

There is much testimony touching this phase of intimacy which it seems unnecessary to detail. We think the evidence discloses sufficient to make it clear that each of the defendants manifested a marked preference for the other, which is sufficient, coupled with other circumstances in the case, to establish such inclination as equity regards as the prelude to opportunity and criminal acts. See evidence of A. J. Cartan, p. 155 and pages following; Rens Cartan, p. 41 and pages following; Mrs. Rens Cartan, p. 394 and pages following; Mrs. Bert Cartan, p. 300 and pages following.

There is direct proof of a meeting between the defendants on or about the 27th of May, 1916, which is tantamount to direct evidence of an adulterous relation. The evidence of the petitioner touching this particular occurrence, if believed, conclusively establishes guilt. Let us examine it briefly.

On the night in question Mrs. Rens Cartan was sitting on her porch. This was Saturday night. It is the admitted fact that Rens Cartan and Devlin, who were associated in business, took turns on Saturday nights in conducting the store. On this particular Saturday night, under this arrangement, Devlin was free from his usual duties. Mrs. Rens Cartan saw Mrs. A. J. Cartan leave the stoop of her house and go across the street and speak to Devlin, who was leaving the store and passing up Main Street. They were engaged in conversation for a few moments, and Mrs. A. J. Cartan came

back to her home. Mrs. Rens Cartan, suspecting that an assignation had been arranged, went to the store and so informed her husband, and asked her husband to pass into the Ervin Lane with a view of ascertaining whether or not Devlin came to the Cartan premises. She asked Norman Tice, whose sister was the wife of Bert Cartan, to also watch the A. J. Cartan premises. Both Rens Cartan and Tice responded to this suggestion, and Mrs. Rens Cartan went to her own home, intending to watch also. It appears that Rens Cartan passed into the Ervin Lane and stationed himself at a place where he could see the rear of the A. J. Cartan premises. He saw Devlin and Mrs. Cartan meet in the yard of his brother's house. The place of meeting was at a gate in a wire fence that partly surrounded an outhouse which had been used, according to the evidence, for the housing of chickens and later as a playhouse for the children. He saw them distinctly. He was then in the Hopkins lot, which was immediately adjacent to the Cartan garden. He was concealed behind a smaller outbuilding located on the Cartan premises, and only a few feet removed from the larger outbuilding, which has just been referred to. He recognized them both distinctly. It appears that the street lighting (augmented by light from the A. J. Cartan store) at the point in question was such as that his vision was rendered accurate and discriminating. This is sworn to by all the witnesses who have given testimony touching the events of this night, and is not denied by either of the defendants or their witnesses. He saw them pass into the gate of the fence, and then through the door that led into the larger outhouse. He was able to observe their entrance because there was inserted in the side of the outhouse nearest him a large window. Looking through this window, he saw both defendants. The location of the street lamps in Main Street and in the alley parallel to Main Street was such

as that both defendants were within the path of this illumination when they entered the door. The door was then closed, and in consequence he did not see what occurred in the house. He remained in the immediate neighborhood, and after an interval of half an hour or more, he saw Devlin come around the corner of the outbuilding farthest from Main Street and pass into the lane. Devlin was then in full view. He followed him down the lane and saw him pass under the street lights at VanBrunt's barn, and thence finally into Main Street.

Mrs. Rens Cartan, while sitting on her porch and shortly after she observed the meeting between Devlin and Mrs. A. J. Cartan, and after she had communicated with her husband and Tice, saw her leave the stoop of her house, pass down the side of the house in full view, then into the arbor which was immediately back of the house, and disappear. The witness at once stationed herself in the vacant lot between the A. J. Cartan house and her own home and watched. Some half hour later she saw both Devlin and Mrs. Cartan. Devlin was coming around the corner of the fence that surrounded the outbuilding, and Mrs. Cartan was passing up by the side of the house toward the stoop. She was able to distinctly identify both Devlin and Mrs. Cartan at the points just indicated.

Norman Tice located himself in the A. J. Cartan garden in a kneeling posture, and immediately opposite the outbuilding. He saw the approach of Devlin. He said that Devlin jumped over the wire fence at a point near the rear of the outbuilding, and then passed up in front of the outbuilding, and between the outbuilding and the wire fence already referred to. He saw Devlin meet someone at the gate and saw them pass into the gate and into the outbuilding. He did not distinctly recognize either Devlin or Mrs. Cartan before they passed into the outbuilding. They remained in the outbuilding "half an hour or a little better." He saw them at

the gate of the fence that surrounded the outbuilding. Devlin came toward him and out into the lot, entered the roadway or driveway in the Cartan lot that leads down into the lane parallel to Main Street. Devlin was in full view and clearly recognized. Shortly after he saw Rens Cartan follow Devlin up the lane. He then discontinued his observation, and went back to the house of Rens Cartan. See evidence of Mrs. Rens Cartan, p. 55 and pages following; evidence of Rens Cartan, p. 403 and pages following; and evidence of Norman Tice, p. 339 and pages following.

The conclusion seems inevitable (if this recitation of fact is accepted as a verity) that the guilt of the wife has been conclusively established.

Both she and her paramour deny that they met under the circumstances just detailed, and deny that they were ever guilty of adultery or any conduct which was immoral or indecorous. The denial must be examined and weighed in the light of all the evidence and suggestive circumstances. The conduct of the wife after the husband accused her and the conduct of the paramour after he knew the accusation had been made and after the suit was brought, as we will elsewhere seek to show, was more consistent with guilt than with innocence.

It will be urged, doubtless, by way of answer to the petitioner's claim, that this direct or circumstantial evidence (according as the court may regard it) is gravely impeached by certain circumstances. It will be said, perhaps, that the place of assignation was unsuitable and unlikely by reason of its location and appointments. It should be borne in mind that this woman was living with her husband and four children, three of whom were then of tender years. They constantly required her attention. Her social activities and the business activities of Devlin precluded a convenient and safe place of assignation removed from the premises occupied by the wife. In a certain sense,

she was always under the surveillance of her husband and her children. If absent from the home, her absence might have been hard to explain. If the intimacy was in the house itself, detection, by reason of the presence of the children, was certain. We think that the place selected was a natural and necessary one, in view of all the controlling circumstances.

It will be said that it was unlikely that the wife would approach the place of meeting by going outside of her own home and passing through the yard where she might be observed; that if there were a guilty purpose, it would be most secretly and safely consummated by reaching the outbuilding from the back door of her own home. The answer seems obvious. It was the spring of the year. The weather was warm. It was, in fact, the 27th of May. In consequence, she had been sitting on her porch. We must assume that if she had reached the place of assignation by passing through the house and through the back door of the house, her failure to return to the porch or to the living rooms (if her absence had been of any duration) would have been noticed by the children, who were doubtless in the house at the time, and her whereabouts would probably have been sought. It was this consideration which prompted her to leave the porch, where she believed her absence would not have been observed, or, if observed, accounted for upon the theory that she had made some neighborhood call, and thus reach the place of assignation. The course which she pursued would seem, under the circumstances and from her point of view, to have been more natural and safer than to have passed through the back door of the house, and thence by way of the arbor to the outbuilding.

It will be said that the testimony of the eye-witnesses is false. This sweeping charge means, of course, that each of these three persons has

deliberately committed perjury. It will be said also that the truth of the charge can only be sustained upon the theory that the wife and the paramour have committed perjury. But the circumstances are such as render this theory, in our opinion, more than probable. They have a most vital interest in the controversy. The wife is accused as an adulteress. We can conceive of no higher motive for wilful perjury than that which is always present in an attempt of a guilty wife to save herself from the ignominy and shame of misconduct. The vital and controlling interest of the paramour is the same in character and quality. Even though he has adopted a code for suggested licentious conduct which would not permit him to commit perjury in the defense of his victim (a doubtful virtue which he claims for himself) he is still under tremendous pressure to relieve a faithful wife and infant children from the shame and reflected disgrace which would overwhelm them if his own guilt were established. This observation is but a recognition of the policy adopted by courts of equity of giving little or no credence to such denials as may be made by intervening defendants charged with adultery.

But again:—If these eye-witnesses have deliberately committed perjury, it follows, of course, that what they have said is wholly fabricated. If fabricated, let us inquire why the inventing parties fixed the time of meeting and the adulterous act at a period so remote from the date when the petitioner learned of her alleged conduct, and so remote from the date of the filing of the bill. The disposition and ability to fabricate would have prompted them to have fixed a time near to the date when the injured husband learned of her infidelity and sought redress. If fabricated, why *did not* Mrs. Rens Cartan say that she saw Devlin approach or pass into the outbuilding, and also that she knew that there was a sofa and chair

within the building? See pp. 410-411. Why did she not, with the reckless abandon of perjury, declare that she knew of the presence of the sofa and chair, and that she both saw and recognized Devlin; and why, upon the same theory, do we find Tice testifying that he could *not* recognize the woman whom he saw, and knew nothing of the contents of the building? See pp. 354-355 and 346. If fabricated, why do not some of these witnesses (notably Rens Cartan) leave the door of the outbuilding open, according to the details of the story, and thus put themselves in a position where with sufficient light they could have seen the act of adultery with complete details, and not leave the conduct of the guilty parties to inference and presumption? If we assume the ability and disposition to fabricate, why are not the accused parties put in adulterous relation on more than one occasion? If the occurrences of May 27th, 1916, were born in perjury, why have not these same persons by reiteration, under similar circumstances, and on other dates, sought to establish the immoral conduct of the accused? If there was the ability and disposition to fabricate, how explain why Rens Cartan immediately after the occurrence in May, 1916, details the full story to James D. Carton, but withholds it from his brother until May, 1918, under the advice of Mr. Carton? If it be said that Rens Cartan and his wife originated this evidence as a prelude to divorce and with a view of wreaking some sort of vengeance upon Devlin, how was Rens Cartan induced to withhold the fabricated story from A. J. Cartan for a period of two years? These inquiries and others equally obvious lead us to conclude that the theory of fabrication is unsupported.

Again:—We inquire what motive prompted all the witnesses who have established the controlling facts in behalf of the petitioner to invent and fabricate this grave accusation? Perjury is an odious

and infamous crime. Men and women who have even a semblance of moral consciousness shrink from it instinctively. What, then, was the motive? This, we think, is an important and pregnant inquiry. The court with characteristic diligence sought to discover a motive by making a searching examination of Mrs. A. J. Cartan, Mr. Devlin and Mrs. Devlin. These were the three persons who could throw light upon an evil motive, if, indeed, such motive were present. When Devlin is asked to suggest a motive, he makes no reply which is either satisfactory or suggestive. He admits his business and other relationship with the Cartan family had been pleasant and free from difficulty. When pressed by the court to "give *any reason* for Rens Cartan and his wife and Tice and these people coming here and accusing you of this offence," he answered, "I cannot give any reason for it."

> "COURT: Have you had any trouble or difficulty with any of them?
> "WITNESS: No, not that I know of." See p. 550.

He afterwards mentions some property trouble with Tice occurring six or eight months before. This difficulty, however, appears to have been satisfactorily adjusted. Moreover, if we assume that for any reason Tice's attitude was so hostile and resentful as to destroy his moral consciousness, even this leaves unexplained the motive which would have induced Mrs. Rens Cartan, A. J. Cartan, and Rens Cartan to swear falsely. Later in his testimony, when again interrogated by the court, he characterized the letter which Mrs. Bert Cartan wrote to him and to his wife as a "frame up," and in this connection declares that she was in a "conspiracy to ruin him." See p. 554. The court then inquired, "What reason should she or anyone else have to ruin you? Tell me all you know about it."

> "WITNESS: Your Honor, A. J. Cartan's daughter goes to my wife shortly after this thing came out and told her that from a conversation she heard going on in her house, she knew it was a plot to ruin me." See pp. 554-555.

There was no other reason which he could suggest. At the end of this examination counsel for the petitioner moved to strike the evidence from the record in so far as it related to anything that Devlin had learned from his wife as to this alleged conversation with Helen. This motion was granted by the court. We now have this significant comment by Mr. Lane, "The daughter will be called and Mrs. Cartan will testify to it." See p. 557. The fact is, however, *that both the daughter and Mrs. Cartan went upon the stand, and neither of them gave any testimony in respect to this alleged "frame-up" or conspiracy.* Even Mrs. Devlin did not refer to the matter. Moreover, it does not appear how the bringing of this false and fabricated charge could ruin the business of Devlin, as intimated. If the business were injured by the divorce suit, the injury would fall equally upon the Cartan estate and Devlin. Self-interest would have restrained the Cartans from this attempted self-injury. Besides, it is shown that the business is enjoying its former prosperity, and that nothing has occurred to interrupt its efficiency and progress. This Devlin himself admits.

When Mrs. Cartan is asked by the court for the motive which would prompt this debauch in perjury, she offers no explanation. She admits that the relationship between the families had been intimate and friendly. When pressed by the court for an explanation, the most she could say was this, *"I never have said anything before,* but I always have felt that there was a sort of antagonism in the family against me." See p. 849, top. This seems to be both inadequate and absurd as an in-

ducing motive for vicious and deliberate perjury.

Mrs. Devlin is asked by the court to disclose, if she can, her theory as to adequate motive. She first said in a general way she had "some idea that it was due to jealousy." See p. 784, near top. When permitted to explain as to what she meant, the details given seem trivial and inconsequential. On a certain occasion when she was asked by Mrs. Henderson, a guest at her house, "what large pieces of furniture" she had placed in her living room, and had replied, "two corner pieces and a secretary," Mrs. Rens Cartan, who was present, remarked, "Six months ago she didn't know what a secretary was." See p. 784, near bottom. When further pressed for some details illustrative of this alleged jealousy, she mentioned the circumstance that once she had gone to a certain card party, to which we are led to infer Mrs. Rens Cartan had not been invited; that the card party was given by Mrs. Duncan; and that Mrs. Cartan in speaking with her about the party had referred to Mrs. Duncan as that "old deceitful Mary Gus." See p. 785, top. How this incident, if it ever happened, would be illustrative of jealousy, does not appear. In any event, all that was said by Mrs. Devlin as manifesting any element of motive for perjury is inadequate and unsatisfying.

Again:—The defendants have sought to impeach the evidence in respect to the occurrence of May 27th, 1916, by endeavoring to show that no sofa or chair was in the outbuilding. This effort proved futile. It appears that the outbuilding had been constructed about ten years ago, and had been used at times for the keeping of poultry. The building, however, was not so used continuously, but only occasionally and at intervals. Mr. A. J. Cartan has testified that there was no poultry on the premises in 1916. It is admitted by all the witnesses who have testified in behalf of the defendants in respect to this matter that the keeping

of poultry was not continuous, and that there came a time when the building was used as a playhouse for the children. Mr. A. J. Cartan said that in 1916 the building contained a wicker sofa and a chair; that the sofa was bought to furnish his daughter Helen's room; that the top or side was broken down when received after purchase, and that Helen refused to have the sofa in her room. It was then taken to the A. J. Cartan store and placed in stock, and not having been sold, was carried to Mr. Cartan's home, and afterward removed to the outbuilding; that its present whereabouts cannot be discovered, but that Mrs. Cartan from time to time permitted dilapidated furniture to be removed by her relatives and others. This last statement Mrs. Cartan does not contradict. The witness, Brown, whose deposition was taken, testifies that such a sofa was in the store and exposed for sale; that it was not sold, and was subsequently removed to the A. J. Cartan house. He fixes the time of removal prior to May, 1916. Rens Cartan the next morning after he had observed the defendants at and in the outbuilding says he visited the outbuilding and found the chair and sofa there. P. 61, near bottom. A. J. Cartan has a distinct recollection that both pieces of furniture were in the outbuilding in 1916. These witnesses, who are members of the Cartan family, are corroborated by Selden Hardy. Hardy in 1916 was living with his father over the Cartan & Devlin store. While living there, it appears that it was his practice to go to the A. J. Cartan property for the purpose of playing with the Cartan and other children of the neighborhood. He has testified that he saw both the sofa and chair, and what he said, together with his manner and appearance, we think convinced the court that he was a truthful witness. The time of his observation is definitely fixed by the circumstance that he visited the Cartan premises only while living over the Cartan & Devlin store. After

that his father moved to another section of the town. The period of this tenancy is definitely fixed as covering the month of May, 1916, by Rens Cartan, who found upon the Cartan & Devlin books memorandum showing the period of tenancy. See p. 950 and pages following.

There is further corroboration in the testimony of Rens Cartan, Jr., who also played with the children and frequently visited this building. He recalls having seen the sofa and the chair during the period which would include May, 1916, and definitely recalls having seen both the sofa and the chair while the Hardy boy was living across the street over the Cartan & Devlin store. See pp. 1004-1005.

Mrs. Bert Cartan, the day after the discovery of May 27th, 1916, visited the building and testifies to the presence of these two articles of furniture. See pp. 333 and 334.

This is the affirmative proof. The denial comes first from Mrs. A. J. Cartan and from the two children, Helen and Johnson. Mrs. Cartan, as already pointed out, has a vital interest in the controversy, and the two children are evidently very hostile to the father. When in Florida in January, 1918, Johnson wrote to his mother, "I also hope, of course, that you will make out all right with the case and get lots of alimony. That is the main thing." See p. 712, bottom. We think this throws some light upon his state of mind, the quality of his interest, and the eagerness with which, in disregard of the real gravity of the situation, he wishes his mother to profit in the pending litigation.

In addition, two colored women testified. Julia Williams was a servant in the Cartan household. She says she never saw any sofa or chair in the outbuilding. She fails to establish with any degree of accuracy exactly when she did work for the Cartans or that she was employed in the household during the year 1916. See p. 722 and pages follow-

ing. Mr. A. J. Cartan says her service was occasional and, from memoranda of her store account, which showed settlement for work done, that he is certain she was not employed in the house during the year 1916. See evidence of A. J. Cartan, last day.

Martha Smock also endeavored to establish the absence of this furniture. She failed utterly to prove any continuous service at the Cartans or to make it even probable that she was there in the year 1916. Mrs. Cartan in her testimony does not say that Martha Smock was employed during the year 1916, and in referring generally to such assistance as she received in her household work, said that she was aided only occasionally by servants. See p. 619 and pages following. The Smock woman admits that she had been convicted of crime, having been charged with robbery, and that she was locked up on another occasion. This may be regarded as affecting her credibility. See p. 621. Mr. A. J. Cartan and Mrs. Bert Cartan testified (see evidence of last day) that after the suit was commenced they had a talk with this witness and that she said she could not remember whether there was a sofa and a chair in the outbuilding or not, and that she had so informed Mrs. A. J. Cartan, who inquired about the matter. We think that by a preponderance of the evidence, the presence of this furniture in the outbuilding has been fairly established.

Again:—It may be suggested that some invidious or prejudicial inference is to be drawn from the circumstance that Rens Cartan and other members of the family discovered the guilt of the wife in May, 1916, and that their knowledge was not imparted to A. J. Cartan until May, 1918, and that even after this knowledge came to A. J. Cartan, he did not accuse his wife until October of the same year, and did not begin his suit until the December immediately following. This

sequence of events, we think, has been satisfactorily explained. Rens Cartan testifies that immediately after his discovery on the 27th of May, 1916, and within a few days thereafter, he gave all the details to his cousin, James D. Carton, a well known and responsible member of the Bar; that he was advised by James Carton not to tell his brother. In this detail he is corroborated by James Carton, who says that he suggested this course in the hope that public scandal might be avoided, and that he was prompted to make his suggestion since he was informed that the relationship between Mrs. Cartan and the paramour was apparently less intimate and friendly. Acting upon this advice, Rens Cartan did not inform his brother until May, 1918, and did so then only after the suspicions and anxiety of his brother had become overwhelming and he (Rens Cartan) had been put under pressure. The proof is that immediately thereafter A. J. Cartan consulted with James D. Carton; that these consultations were frequent and covered a considerable period of time, and that the attorney again advised (for the reasons already mentioned) that A. J. Cartan should remain inactive; that A. J. Cartan acted upon his advice until sometime in the summer or fall of 1918, when he found conditions so intolerable that he accused his wife and insisted a suit for divorce should be brought. According to James D. Carton's statement, preparation for bringing the suit was at once begun. The delay, if any, in actually filing the petition was due to the laches of petitioner's solicitors, if indeed there was laches. See evidence of Rens Cartan, pp. 67 and 68; evidence of A. J. Cartan, pp. 183 and 184; and evidence of James D. Carton, page 479 and pages following.

We think it unnecessary to dwell at length upon the circumstance that the papers in the suit were not served upon Mrs. A. J. Cartan until the night before her departure for Florida. It appears by

her own admission that she had known for a number of weeks that a suit for divorce was to be brought; that her trip to Florida was one which was made upon her own suggestion. She makes it clear that there was no collusive arrangement between her and her husband. See evidence of Sarah Cartan, p. 829 and pages following. In this connection, it should be noted that Mrs. Cartan seemed desirous of making an agreement with her husband which, if not collusive, certainly implied her willingness that he should obtain a divorce. The husband testifies (see evidence taken on last day of hearing) that she said to him, after he had accused her: "You go on with your divorce suit, but I will raise hell with the Cartan family before it is over; Bert will lose his job in the bank, Ren will be out of the firm of Cartan & Devlin, and you will lose your business; * * you give me this house and lot in which we live, and I won't blow on the bunch; I won't blow on the bunch and you can go on with your divorce trial." See pp. 971 and 972. The attempted denial as to this conversation by Mrs. Cartan is far from convincing. She says that she did tell him that he was "losing his business;" that she did ask for the house and lot; that this was in connection with a discussion that had relation to divorce, and that she did say to her husband, "I will tell you what I will do. Give me this house and lot in which we live and I won't blow on the bunch." See p. 888. She admits that she said that she would "raise hell with the Cartan family," and added, "I expect to yet." See p. 888, near bottom.

Again, it may be suggested that A. J. Cartan's admission that he sought to obtain from his wife a paper which would have served in effect as a written confession tends to establish that she had never previously admitted her guilt but, on the contrary, had made emphatic denial. The statements of the husband and wife in respect to this matter

must, after all, stand over and against each other. What she did and said, however, by her own admission, would seem to be consistent with the husband's statement that she had confessed to acts of immorality with Devlin, but even though she had done so, it seems probable that Mr. Cartan should have sought to obtain her confession in "black and white," to use his own expression. He said in making his request of her, the dominant thought in his mind was that he "might avoid the notoriety of divorce proceedings;" that if he "held this paper over her that she would never come back after me (him) or make any demands upon me" (him); that the demands to which he referred were demands for maintenance and support. His idea seems to have been that with this written confession in his possession, he might thereafter, for reasons of expediency, refrain from making an application for divorce, and yet have it in his power to successfuly resist her demands for maintenance, if she were disposed to make such demands. See p. 967 and pages following.

We have thus far discussed the testimony offered upon both sides and certain suggestive inferences rising from such testimony relating to the adulterous conduct of the wife. We have yet to consider what force shall be given to three certain letters which were written by the paramour, addressed to Mrs. Cartan, two of which admittedly reached her hand. It is clear, of course, that she cannot be directly bound by the contents of these letters. The paramour is bound, however, since he wrote them and provided a method by which two of them reached her possession. It is confidently asserted that these letters, even after his explanation, make it clear beyond doubt that his relation with Mrs. Cartan had been improper and adulterous. If this be true, it would be anomalous to suggest that adultery might thus be proved against the paramour and found unproven against his victim. This

would seem to be a result which the court cannot reach. The circumstances under which these letters were written should be kept in mind. It appears that the petitioner accused his wife of infidelity on or about the 1st of October, 1918. The husband says that the accusation was made in detail and that the circumstances of May 27th, 1916, were brought to her attention. This the wife denies, insisting that she never knew any details of her alleged offence until the bill of particulars was furnished in the case. This was not until October, 1919. She at first says that she gained the information from the original papers which were served upon her December 12th, on the eve of her departure for Florida. These papers, however, are silent in respect to these details. After a recess of the court, she was recalled to the stand by her own solicitor and stated that the information came from the bill of particulars. If her story is true, we have this unbelievable situation, namely: that a husband who had been devoted to his family, who had treasured the affection of his wife, who had repeatedly complained to her that her love was "black out," and who had been seeking to enkindle it, made this grave accusation against his wife and at a time, too, when he was being urged by his attorney, James Carton, to seek a reconciliation, and was endeavoring to do so, yet failed to disclose to his wife the particulars that made up the sum total of her guilt. He says that she was given full information when he first accused her, and the husband's story, in view of all the circumstances in the case, we think is more reasonable and believable than hers.

It appears that shortly after the accusation was thus made, namely, on the 6th of October, 1918, Devlin sent to Mrs. Cartan this letter:

"October 6, 1918.

"Dear Doll:

For God's sake go to Johnce and ask him to

forgive you for everything. Promise him you will do anything on earth that a woman can do for her husband, and that for the rest of your life you will do your utmost to make him happy and contented.

Yours very truly,
P. J. DEVLIN."

On the 8th of October, 1918, the second letter was written. It is as follows:

"October 8, 1918.

"Dear Doll:

Please don't have any ill feeling toward Ren's wife for telling May. She had the best motive and did it to prepare Mame for what was coming. Please don't blame her and try to do what I wrote you a few days ago. I know you would be doing the noblest thing that any person on earth can do. Please, Doll, do this, and I am sure you will never regret it, for I know positively somebody else was going to her and tell her.

Yours,
P. J. DEVLIN."

These two letters were admittedly in the handwriting of P. J. Devlin, and admittedly reached the possession of Mrs. Cartan. There was a third letter also prepared by Devlin on the 8th of October. It is as follows:

"October 8, 1918.

"Dear Doll:

I am very sorry you are offended because Edna told Mame. A good friend of mine persuaded her very much against her will, to go to Mame, as Johnce was surely going to her with the story, and felt that Edna would tell her in such a way that it might not be so hard.

Yours,
P. J. DEVLIN."

See pp. 77, 78, 83, 85 and 86.

This last letter was written by Devlin and given

to Rens Cartan for delivery, but was not delivered for reasons which he explains in his testimony. It appears that after the wife was accused and before the first letter was written, Mrs. Rens Cartan told Mrs. Devlin that Mr. Devlin had been "intimate" with Mrs. Cartan. Devlin appears to have learned of the husband's accusation of Mrs. Cartan through his own wife, and with such knowledge, the letters were prepared. The letters written by him, under the circumstances, seem to be tantamount to a confession of guilt. He had been accused of adultery. He knows that the accusation had been made by the injured husband. He knows that this accusation had come to the knowledge of his wife. He sought out Rens Cartan with a view of having him assist in straightening out this serious complication. Rens Cartan says that he undertook to help him, and procured the delivery of the first letter by the hand of his own wife. In this posture, let us consider the fair import of what the accused paramour has written. He begs the guilty wife "for God's sake" to ask her husband "to forgive her for everything." She is urged to promise him that she "will do anything on earth that a woman can do for her husband, and that for the rest of her life she will do her utmost to make him happy and contented." If this letter had come from one who was an intimate friend of both the husband and wife and was written under circumstances where some trivial matter had lead to a quarrel, the words employed might have no controlling import. Written as they were, with knowledge that the wife had been accused by her husband of adultery with him, the conclusion seems irresistible that the wife was by this letter being vehemently importuned to seek forgiveness for the offence charged, namely, adultery, and that she was to urge this forgiveness with a promise that for the rest of her life she would seek to make him "happy and contented."

The second letter, written on October 8th, 1918,

was of still graver significance. It appears that in the interval Mrs. A. J. Cartan had learned that Mrs. Rens Cartan had told Devlin's wife. This had incensed her. Now note:—Devlin informs Mrs. A. J. Cartan that "a good friend" of his "persuaded Edna to go to Mame" with a story that meant that he, Devlin, had debauched the wife of his friend and business associate. He informs Mrs. Cartan that if the friend had not gone, "Johnce was surely going to her with the story," and he "felt that Edna would tell her in such a way *that it might not be so hard.*" What was to be "so hard"? Would a "good friend" persuade someone to tell his wife a story which was false? Was it a false story that was to "be so hard"? How could Devlin, if innocent, thus justify the telling of a story to his wife which was cruelly false? How is the language of this letter to be explained except upon the theory that knowledge of Devlin's wife that he (Devlin) had been guilty of adultery would have been a tremendous blow to her—"hard" indeed, and that he rejoiced that the story of his shame had been told to his wife by one who would have been more considerate than an outraged husband. It is true that this letter was not delivered. None the less, it was prepared by Devlin. The other letter of October 8th was delivered. In it, he says that Rens' wife had the best motive in informing Mrs. Devlin; that her purpose was to prepare her "for what was coming." What, after all, was coming? Was it not that he (Devlin) was shortly to be confronted with accusing and convincing proof that he had been guilty of adultery? He again importunes her (by reference to his first letter) to seek the forgiveness of her husband. He admonishes her that in pursuing such a course she "would be doing the noblest thing that any person on earth can do." He knew he had been accused of debauching his friend's wife. He says this accusation was false. If so, why did no one of these letters assert their mutual innocence?

Why did he not express his indignation and his sympathy for the woman accused? Why do these letters approve the method by which this story of his infamous conduct reached the ear of his wife? The reasonable mind cannot escape the conclusion that the letters in substance and in tenor, having regard to all the surrounding circumstances, were tantamount to an unqualified expression of guilt.

Devlin seeks to escape from this inevitable inference by an explanation which is specious and manifestly false. He says, in the first place, that they were written at the suggestion of Rens Cartan, with a view of reconciling A. J. Cartan and his wife about matters that were relatively trivial; that Rens Cartan had told him that A. J. Cartan and his wife were estranged; that the wife had treated A. J. Cartan in a mean way about the employment of the boy, and in respect to various matters which were relatively inconsequential; that the real purpose of the letters was to effect a reconciliation under such circumstances; that in return (and apparently as a bargain) Rens was to induce his (Rens') wife to withdraw the charge which she had made against him (Devlin) to Devlin's wife. See p. 577 and pages following. This seems incredible. Again:—He asserts that the language employed in the letters was really not his language, but was acutally "dictated" to him by Rens. See p. 588. When his attention is called to the fact that one of these letters stated that a "good friend" had informed his wife, he unhesitatingly says that he had no knowledge as to who this friend was. Think of a man, under such circumstances, referring to a person who had made this alleged infamous and false charge against him to his wife as being a "good friend" and using that expression in a letter which Rens Cartan dictated for him! We might expect such a man to cheerfully write his own death warrant if someone were to ask him to do so. See p. 587 and pages immediately following.

He further seeks to justify the writing of the letters by saying that he didn't attach any special significance to the words employed. When his attention was directed to a sentence apparently damaging he said, "I didn't attach any meaning to it; it was dictated by him (Rens) and I wrote it." See p. 591, near bottom. This is unbelievable.

Without further comment as to this aspect of the matter, the court is respectfully requested to read the cross-examination of Devlin in respect to the letters, beginning at p. 580.

This inquiry seems pertinent: if the purpose of the letters was merely to reconcile some relatively trivial difference between A. J. Cartan and his wife, why should Devlin have been selected in preference to all other relatives and friends to carry out this delicate mission? If the testimony of Rens Cartan is to be believed as to the circumstances under which the letters were written, it is clear Devlin knew that his adulterous conduct had been discovered; that his wife had been informed; that he was overwhelmed with regret, shame and dismay, as he might well have been, and that he sought to escape by inducing the wife to secure the forgiveness of her injured husband. We think that the testimony of Rens Cartan in respect to these details is convincing, but if it were otherwise, the letters themselves, together with Devlin's own explanation, leave the judicial mind in no doubt as to Devlin's guilt.

Again:—It appears by his own admission that there came a time when he knew that A. J. Cartan was accusing him of this grave offence. He admits that he never sought out the injured husband for the purpose of denial or explanation. If innocent, we should expect that as soon as this compromising story had come to his knowledge, he would have gone to the husband and offered his explanation and made solemn denial. His failure to do so is one of the earmarks of guilt. When he and the hus-

band met, they met because the husband sought him out. With vehemence and passion, the husband accuses him. He either stands mute or contents himself with the statement that the story is untrue. He seeks to justify his failure to either explain or resent this false charge by a promise which he says he made to his wife to the effect that he would not get in any "argument" with Mr. Cartan. He leads us to believe that both she and he were fearful that if there was "argument" he might inflict physical violence upon Mr. Cartan. This would hardly comport with the crude code of domestic ethics which even cave men are said to observe. We are of the opinion that the letters, his explanation, and his conduct are all persuasive of guilt.

While, as already pointed out, Mrs. Cartan is not bound by these letters, yet she is bound by her conduct after she was accused by her husband and after two of these letters reached her hand. If Mrs. Rens Cartan and her husband are to be believed, immediately after the receipt of the first letter, she had an interview with them, in which she made many statements which were consistent with her guilt. If her husband is to be believed, she confessed her guilt to him. The wife denies this. She admits, however, that shortly after she had received the letter of October 6th, she met Devlin on the street; that the subject matter of the letters was discussed, and that this was the only interview she ever had with Devlin after her husband accused her. See p. 876 and pages immediately following. What passed between them on the street, according to her version, we think is suggestive and significant. She says that she asked him, "What does all this mean; what is this letter business?" and that he replied, "I cannot tell you here, there is too much of it;" that she then asked, "Who told Mame?"; that he said "Big Edna," (see pp. 876 and 877, near middle); that she said, "Why did she tell all this stuff?" and he said, "Why don't you make it up

with Johnce?" She replied, "You don't know Johnce; you don't know what kind of a man he is; I have got to see this thing through." See pp. 876 and 877. This, she says, is substantially all that passed between them. We are to bear in mind that this was a meeting between an accused wife and her alleged paramour; that according to the theory of the defense, she had been unjustly accused. It seems improbable that upon this theory she should not have reminded Devlin that the charge was false and urged him to use his best endeavor to explain the unfortunate affair to her indignant husband. It seems improbable that she should not have resented most bitterly the language of his letter, which implied guilt on her part. She failed even to ask him why he had written the letter or what he meant by the expression, "For God's sake go to Johnce and ask him to forgive you for everything." When her attention was brought to this particular detail, she sought to justify her failure to do so by saying, "I didn't have time." See p. 878 and pages following. She sought to justify this answer by saying, "He seemed to be in a hurry to get down to the store and I didn't say any more to him." When she was reminded that this interview occurred in October, 1918, and that she stayed in Matawan until the December following, and was then asked why in the interval she did not see Devlin for the purpose of having his two letters explained, and also for the purpose of joining with him in a common plan of correcting a false impression of her angered husband, she offered by way of explanation the appalling statement, "I didn't have time." See pp. 878, bottom, and 879, top. In further justification of her failure to seek explanation from Devlin, she said, "I went to Mr. Cartan about that." See p. 880. This seems astonishing when we remember that Mr. Cartan had not written the letters, but Mr. Devlin had. When confronted with this dilemma, the witness said, "I

didn't know who wrote them" (the letters) and then was immediately forced to admit that she did know the letters were from Mr. Devlin. She sought further to justify her conduct by saying, "I didn't put any faith in them (the letters) whatever, because I knew there hadn't been anything," (see p. 881, middle) and yet she admitted that the letters implied that there was something wrong. See p. 881, near middle. She further seeks to justify her conduct by saying the letters did not "mean anything to her," and yet she concedes that the letters charged her falsely. See pp. 881, bottom, and 882, top. Her evidence seems to us to be damaging and accusatory. What she said and did presented the indubitable earmarks of guilt, and the letters, together with her attempted explanation, lead us to the conclusion that her conduct was clearly indicative of guilt.

III.

CONDONATION AND ACQUIESCENCE.

The defendant did not set up condonation in her original answer filed June 18th, 1919. This defense was interposed during the trial. The trial was begun on the 4th of October, 1920. We are informed that the defendant disclosed to her counsel the facts upon which the defense of condonation now rests in one of her early interviews with him. He says that he did not set up condonation in the answer because he regarded it as "poor tactics." Whether his failure to do so involved "tactics" that were good or bad is a matter of indifference, since the wife may now avail herself of the defense if the essential facts are proven.

The petitioner received definite knowledge of his wife's immoral conduct in the latter part of May, 1918. He asserts that he did not thereafter cohabit with her. On the contrary, she claims that their cohabitation continued until about six weeks

before the first of October, 1918, when it ceased. See p. 893, bottom. She admits that about the first of January, 1918, she left her husband's room and bed because of illness and asserts that she never again occupied her husband's bed *except for the purposes of cohabitation.* See pp. 892 and 893. She further says that for the purpose mentioned he sometimes came into her room, and that she usually dressed and undressed in the room which he occupied. There would seem to be little significance attached to this circumstance since she says that "there was no other place to keep my clothes and I always had to use that room, because that was the only closet we had." P. 824. It is doubtless true that the husband went to the room which she occupied, either alone or with Elizabeth; that sometimes he was undressed or partially dressed, but that he went to the room for the purpose of securing his clothing and towels from a dresser and the laundry basket which was kept in this room. This the wife does not deny. It also appears that he passed through the room to go into a hall adjacent to get hats and outer clothing. He denies that he ever entered this room for any other purpose, and says that he had no sexual companionship with her at any time after he had heard the story of her unfaithfulness in May, 1918. The daughter, Helen, and the son, Johnson, claim to have seen the petitioner and his wife in the bed located in the room the petitioner occupied. It was claimed that these observations were made while the witnesses were passing to and fro in the hall, the door of the room being open. The location of the bed, as we insist and will hereafter show, rendered it physically impossible to see what the witnesses claim to have observed.

The wife's testimony as to what could be seen was too extravagant to be believed. She was asked how much of the body of the occupant could be seen.

"A. Pretty near all of it.
"Q. How much of it, half of it?
"A. Yes, more than that.
"Q. Three-fourths of it?
"A. Yes.
"Q. You could see everything but the face?
"A. You could if you wanted to; you could see the face too, if you looked.
"Q. Just in passing the door?
"A. Yes." See p. 855.

Let this stand in contrast with what Mr. Heuser, the surveyor, has said, and we are not left in doubt as to which of these two witnesses is accurate and truthful.

The daughter, Helen, testified in support of this branch of the wife's defense. First, note: She claims to have seen her mother and father in bed in the father's room *down to the time the mother went to Florida.* See p. 638. The mother has said that she never occupied the husband's room except for purposes of cohabitation, and that *this ceased at least six weeks before the first of October.* She did not leave for Florida until the 12th of December. Here is a conflict which seems irreconcilable. See p. 893, bottom. Helen occupied a room immediately adjacent to that in which A. J. Cartan slept. Between the two rooms there was a closet with doors opening into each room. She has said that when taking her clothing to this closet at night upon retiring she saw her father and mother in the bed located in the room which the father occupied, and that she also saw them in the bed when passing to and fro in the hall going to her room from the stairs and from her room to the bathroom at night when she retired. In view of the proved physical conditions which must have controlled the ability to observe, her statement does not seem to be truthful. The evidence as to his occupying the same bed relates wholly to what occurred in the husband's room. No witness has testified to

having seen them occupying the bed in the room which the wife used. The husband's room had an entrance from the upper hall of the house. The bed (a large double bed) was located to the left of the door as one enters. The side nearest the door was 27 inches distant from the outer edge of the door jamb. The husband uniformly occupied the side of the bed nearest the door, and the bed was moved back so that its head was against the division wall between the room and the hall. It will be noted that the observations of Helen were confined to the night time. She says that she was enabled to see by reason of a gas jet that was burning in the hall. The gas jet was not directly opposite the door of the husband's room, but cater-cornered, and projected from the wall of the hall farthest from the room. The door of the room opened to the right as one entered, so that it would not have obscured the vision of one in the hall who sought to discover whether or not the bed was occupied. The gas was left burning at night. If the witness saw the husband and wife occupying the bed, the observation was clearly a casual one. To have thus determined under the physical conditions premised, that the bed was occupied by two persons, we think was an impossibility. Mr. Heuser, the surveyor, who appears to be both honest and cautious in his statements, has informed us that in passing the door coming from the stairs or from the bathroom, it was impossible to see the bed at all; that this would only be possible in the event the observer should stop in front of the door and turn around and look in. The witness, Helen, does not pretend that she put herself in that position. In coming from her room to the bathroom, the vision of the room occupied by the husband was indistinct and incomplete. What he said in this regard was the result of a careful observation made upon two occasions. He says that the light from the gas jet, whether burning low (as the husband said it

usually burned at night) or turned on at full power, illuminated merely a portion of the room; that the shadow of darkness cast by the frame of the door and the partition between the room and the hall obscured at least three-fifths of the bed (pp. 1020 and 1021); that in consequence, in his opinion, it was impossible for one passing the door to discern the identity of a person or persons occupying the bed, and it was also impossible to determine whether the bed was occupied by one or two persons. The shadow just reverted to passed diagonally across the bed and traversed the further side of the bed (the portion of the bed which the wife occupied) at a point only about eight inches distant from the footboard. If one were to ascertain who was in the bed and whether occupied by one or two persons, it would be necessary, in his opinion, for the observer to stand in the doorway and look into the room with some degree of intentness. He testified that the same conditions would obtain, for all practical purposes, if the observer was in the closet between the room occupied by Helen and the room used by her father. If any more distinct view was to be obtained, it was necessary that the observer should look intently and seek a better vantage ground than that which would be afforded by a mere casual passing of the closet and hallway doors. This testimony seems to us to be convincing, since it is reasonable and is consistent with the physical conditions which must be controlling. See p. 1009 and pages following.

The wife's case is sought to be strengthened on this issue by the testimony of the son, Johnson. What has been said in respect to Helen's testimony will apply to his also, except we are to remember that Johnson's observations, if he made any, were confined to what he saw from the hallway, and not from the closet. His statement, taken as a whole, is clearly unreliable and untrustworthy, since he admits that he did not know that his mother had

left his father's room in January, 1918, and strongly asserted that, according to his understanding, she had always continued to occupy that room. Pp. 710 and 711. He is clearly mistaken in this regard, and this mistake serves as an impeachment of the accuracy of that particular observation which he claims to have made, and which is vital to this present issue.

Mrs. John Terhune gave testimony also. She formerly lived in the house. She had not been upstairs in the dwelling *during the last ten years or more.* P. 1045, bottom. She does not pretend ever to have been there while the husband occupied the room in question, nor while the bed which the husband occupied was located as the evidence shows it was. She said that the light in the hall was sufficient to illuminate "the entire room," so that the entire room would be visible to one passing the door, and that the occupants of the bed could be seen, even though the bed were located in the corner of the room farthest from the door but next to the partition wall between the room and the hall. P. 1052. This would locate the bed four or five feet farther from the door and make it practically invisible to one passing through the hall. She is evidently in confusion in respect to this matter.

Another witness, Dora Hopkins, also gave evidence. Her statement was neither accurate nor discriminating. She, too, insisted that if the bed were pushed in the corner with the head against the partition wall between the hall and the room, and if the side of the bed was pushed up against the side wall extending outward from the hall partition wall, the bed and its occupants could still have been distinguished by one passing in the hall. She insisted that an observer in the hall "could see every part of the room in passing the door." This was clearly a physical impossibility. See pp. 1058, bottom, and 1059, top.

But aside from a consideration of these details,

there are some general observations which seem important. First, we have the admission of the wife that after January she did not occupy the husband's room except for cohabitation, and these occasions were always at night. We have Helen's statement to the effect that she was enabled to see because the room door and the closet door were left open. It seems appalling to assume that if the husband and wife had found sexual companionship under such circumstances, these doors would have been left open so that an adult daughter and a boy nearly grown could have observed them. The common decencies and proprieties of life are a convincing answer to such a theory.

Again:—It appears that if this cohabitation occurred after May, 1918, and continued until about six weeks prior to the first of October, 1918, then the husband committed an act which he knew was fatal to his determined plan of divorce. He had consulted with James Carton within a day or two after he had learned the story of his wife's shame. He had been told by Mr. Carton that cohabitation would be fatal to an action for divorce. Both Mr. Carton and the petitioner swear to this fact. Is it reasonable to suppose that he would have sought such an association with his wife under the conditions premised? We think that what the husband said in respect to this matter was consistent with every reasonable probability. Not only were his words convincing, but his manner also. It seemed to us that when on the day of the last hearing he said that such a course of conduct was "repulsive to him," he sounded the keynote of truth, and that his denial and explanation were truthful and persuasive.

It is clear that condonation is a substantive defense, and the burden of proof is upon the defendant. The rule is thus stated in *Greims v. Greims, 10 Buch. 233 (Court of Errors and Appeals):*

> "It is well settled that condonation is a conclusion of fact and not of law and must be proved by the defendant, and the burden of proof is upon the defendant."

See also:

> Graham v. Graham, 50 N. J. Eq. (5 Dick) 701, 706.
> Goeger v. Goeger, 59 N. J. Eq. (14 Dick) 15, 16.
> Hann v. Hann, 58 N.J. Eq. (13 Dick) 211.

The cases hold that if the husband and wife reside in the same house, there is a presumption of matrimonial intercourse. This presumption, however, is overthrown if the parties occupied separate apartments *(see Graham v. Graham, 50 N. J. Eq. 701)*, and is also swept aside even where the same room and bed is occupied, if the fact of occupancy is satisfactorily explained. *Todd v. Todd, 37 Atl. 766.* See also *Hann v. Hann, 58 N. J. Eq. 211.*

In *Greims v. Greims (supra)* it appeared that the husband occupied the same bed with his wife, but this circumstance was satisfactorily explained. The court's comment was:

> "That he occupied the same bed with his wife on Friday and Saturday night might, if unexplained, warrant a conclusion of forgiveness on the part of the husband, but any presumption of condonation arising therefrom *may be rebutted and has been in this case.*"

Attention is called to these cases, not upon the theory that we must rebut condonation, which might be presumed from the fact that the husband and wife occupied the same bed. We insist that the proofs establish that they never did in fact occupy the same bed after the husband had knowledge of her guilt. The cases are cited in order to emphasize the scope of the controlling rule, which is that *any* presumption as to marital intercourse

arising from the occupancy of the same house, or even from more intimate association, may be completely rebutted.

It may be said that the husband was not vigilant in protecting the honor of his wife when he observed a social intimacy with Devlin. We confidently assert that no cases will be found in support of this contention as applied to the concrete facts in this case. The husband had no knowledge upon which he could base a reasonable suspicion of adultery prior to May, 1918. He did remonstrate with her and in this and other respects discharged his full measure of duty. He repeatedly objected to her association with Devlin in the years which immediately preceded. At first, to use his language, "she gave no satisfaction," but finally admitted that "she had lost affection and love" for him. Still later she left his room against his wish and when he said "he could not understand" why she had done so, she made no reply. See pp. 162, 164, 172 bottom and 173. The evidence discloses that the husband had been faithful, if not devoted, and had shown a clear recognition of the duty which he owed his wife and his children. Indeed, this is established by the testimony of the defendant's own witnesses. The facts of this case do not fall within the rule in respect to consent or connivance.

Nor is the situation changed by the attempted proof in respect to the Bigget and Close parties. It is said that the husband accompanied his wife and Mr. and Mrs. Devlin to Bigget's (a sea shore restaurant) for social purposes on the night of June 18th. The husband insists that this party occurred in May and before he had learned of his wife's unfaithfulness. We think he has testified truthfully in that regard. By his diary it appears that two of the children were ill between June 15th and July 15th with the measles. It is not likely that both parents would have absented themselves from the home under such circumstances. Mrs.

Cartan seeks to fix the date of this illness at some other period. She says that she knows the children were well at that time. This is her statement:

> "I know they didn't have them on that date, because I remember the children being out in the yard when I left." See p. 860 near middle.

We cannot believe that she would have remembered this trivial circumstance two years and five months after its occurrence, when at the time or even since there had been nothing to impress the fact upon her memory. Moreover, Mr. Cartan testified from independent memory that he attended a meeting of the Building and Loan Association at which officers were elected and a certain loan was approved. The minutes of that meeting offered in evidence disclose that this election was held on that night, and that the loan was approved on that date. Examining counsel for the defendant endeavored to contradict the witness as to his recollection in respect to the Wilson loan. The witness had testified that the loan on the night in question was referred to the Building Committee, but not then approved by the Committee. Examining counsel, with a copy of the minutes in his hand, asserted that the recital of the minutes was otherwise. An axamination of the memorandum discloses that the loan was *not approved* that night, and that the witness was correct. The recorded minute is as follows: "On motion same (the loan) was referred to the Building Committee and *if approved by them* to be granted."

The Close party he did attend. Mr. Close was a neighbor living near the Cartans at Matawan. The wife admits that she asked him to go (see p. 861 near bottom); that he was reluctant and she "coaxed him a little." It appears that Devlin and his wife were also present, and our theory is that she was prompted to importune her husband to go with her because of that knowledge. The husband

says that he yielded to his wife's importunities because, after her repeated requests, he thought it was "the easiest way" and that otherwise he would be obliged to invent some excuse. See p. 964. This does not seem improbable, but, in any aspect of the matter, the incident seems relatively trivial.

IV.

SPECIAL COMMENT RESPECTING VARIOUS MATTERS REFERRED TO IN BRIEFS OF JOHN S. APPLEGATE & SON, OF COUNSEL WITH DEFENDANT, SARAH CARTAN, AND JACOB R. LEFFERTS AND MERRITT LANE, OF COUNSEL WITH CO-RESPONDENT, PATRICK J. DEVLIN.

Mr. Applegate in his brief, in referring to the incident sworn to by Rens Cartan, of Devlin laying his hand upon Mrs. Cartan's leg while auto riding from Princeton, states that the tale presents a physical impossibility, as Andrew J. Cartan was driving, and that Mrs. Cartan, his wife, sat immediately behind him, while Devlin sat in the front seat to the right of the petitioner. The fact is that Mrs. Cartan, the defendant, sat on the rear seat on the right hand side immediately back of Devlin, who was in the right forward seat. This statement is not denied, and therefore positively refutes Mr. Applegate's assertion that the happening presents a physical impossibility. It also appears from the testimony that Rens occupied a movable seat in the center of the car, and, therefore, was not between Devlin and Mrs. Cartan. See testimony of Rens Cartan, p. 98.

Mr. Applegate and Messrs. Lane and Lefferts lay special emphasis on the fact that Rens Cartan accepted a gift of $200 from Devlin, when it appears that Rens Cartan knew of the alleged relations be-

tween Mrs. Cartan and Devlin. Rens, it seems to us, makes a satisfactory explanation of this incident. When he received the check, he refused to use it, and did, as a matter of fact, keep it nearly two years before he cashed it. It further appears that he attempted to return the check to Devlin, but the latter would not receive it. Rens, in order to equalize the gift, as he thought, contributed a like sum, $200, to Devlin on account of election expenses. Why should he keep this check for a period of two years before he used it, and why did he not use it until he had made the contribution to Devlin of a similar amount? The answer seems perfectly apparent that he did not accept the gift by cashing the check because he knew of Devlin's guilt and would not be the recipient of any friendly act upon the part of Devlin, and did not consider that he did so receive any, in view of the fact that he used it after he had contributed a like amount to Devlin. Moreover, it should be borne in mind that the $200 which Devlin sent to him was the check of the firm, of which Rens was a member, and was really not a gift from Devlin, but this amount was undoubtedly charged up against Rens' share of the business.

Mr. Applegate states that the petitioner lived in the house with his wife after she returned from Florida, namely, from January to February, 1919. This is untrue. It appears from the testimony that the petitioner did not live in the house with his wife after she went to Florida.

Messrs. Lane and Lefferts attempt to quote verbatim one of the three very important letters written by Devlin, dated October 8th. We are surprised to find that they have misquoted this letter. They have interpolated the words "to help everybody and." These words appear in the second sentence of the letter, so that that sentence then reads in his brief, "She had the best motive and did it 'to help everybody and' prepare Mame for what was com-

ing." We are amazed and at a loss to know where Counsel found these words and why they were inserted or added to this letter. We cannot believe that they would deliberately attempt to deceive the court by adding temporizing words to this most damaging letter, but certainly the words which they have added do not appear in the letter, and no such words were uttered by any of the witnesses who testified. We must admit that they soften the letter to a very considerable degree, but this wholesome effect cannot be accomplished by the addition of these manufactured words used by enthusiastic counsel in endeavoring to take the sting from the very damaging communication over the signature of the accused.

Messrs Lane and Lefferts state that Mrs. Rens Cartan testified that "there was a light in the room back of her." It appears nowhere in the testimony that there was any light in the house or elsewhere immediately back of Mrs. Rens Cartan. The testimony is confined in this regard to light in front of Mrs. Rens Cartan which would permit her to see distinctly Mrs. Sarah Cartan, the defendant, as she passed around the side of the house.

Counsel severely criticises James D. Carton for the advice which he gave as lawyer to his cousin, the petitioner. It is quite immaterial whether the advice given was good or bad. The sole question in this regard is whether the solicitor did or did not give the advice which he states that he did give. Counsel did not attempt to contradict Mr. Carton, the lawyer, but merely makes light of and criticises the advice which he gave. This advice can by no possibility have any bearing upon the facts in question. It is very clear from what Mr. Carton stated to his cousin that he was endeavoring to keep the petitioner from bringing any divorce suit and, further, his advice conclusively shows that he was using every effort possible to keep them living harmoniously together as man and wife. It shows fur-

ther conclusively that he was not attempting to lay any foundation or prepare any ground-work for a future divorce.

Messrs. Lane and Lefferts lay great stress on the fact that the proof was confined to one incident, whereas the bill of particulars and petition referred to a number of incidents. It is enough, we think, to call attention to the fact that it is quite common in divorce pleadings to allege that adultery occurred on consecutive days or numerous occasions, even though it should be determined later to confine the testimony to one or two specific incidents. An examination of the witnesses usually takes place after the pleadings have been prepared, and if it should then appear that the testimony upon certain incidents is insufficient to establish guilt, it would be useless to take the time of the court in offering proof on the same. If, after proving inclination and desire, it appears that the parties were once in a place and position where their apparent desire could have been gratified, it is sufficient. All these facts, we believe, have been conclusively shown. Because the solicitor, zealous to give his client the benefit of every fact, sets out in his pleadings certain allegations which cannot be substantiated by proof, cannot detract one iota from the positive proof submitted establishing the guilt of the defendant upon at least one occasion.

Mr. Applegate states, in commenting upon Mrs. Cartan's testimony, that the "petitioner accused her (defendant) of intimacy with Devlin, but not stating when or where." The petitioner in accusing the defendant of intimacy with Devlin, did in fact allege that it occurred in the outhouse in the back yard. See bottom of page 239, printed case.

V.

CONCLUSION.

The record of the case, unfortunately, is voluminous, but it is likely free from irrelevant matters and does contain all of the facts surrounding the petitioner's claim for relief, and the defendant's denials.

The learned Vice Chancellor, after considering the proofs, found himself perplexed and left the parties as he found them, hoping possibly that such a result might aid the parties in getting together, but the record shows that various efforts had already been made to bring about such a result, both by Mr. Carton, the attorney, before the suit was started, and by counsel for both sides after the suit was begun and before answer filed.

We feel confident in asserting, however, that a reading of the proofs will show that the petitioner is entitled to a decree. The evidence covering the act of adultery is from the lips of members of the family, it is true, but the circumstances are so described as to leave no doubt as to their happening, unless it be said that these witnesses are entitled to no consideration whatever and that they have deliberately conspired to commit perjury, in the face of the fact that for two years they withheld their knowledge of the act of adultery from the petitioner because they did not want to break up the friendly relations existing between all of the parties.

Their testimony is not seriously affected by the mere denial of the two defendants. But little or no importance is given by our courts to the denials of defendants in such cases.

Denial of such charges is natural, but if the testimony of the defendant Devlin is read in connection with the proofs of the petitioner on the adultery charge, we contend that additional proof is shown by Devlin himself in support of the peti-

tioner's cause and this, plus the three letters over his signature to Cartan's wife, after he had been accused of adultery with her, it seems to us should leave no doubt in the judicial and discerning mind that the petitioner has proven his case in a manner entitling him to a decree of divorce.

This case presents a domestic tragedy which involves two husbands, two wives, and two groups of children. We cannot escape the thought that if the wife be found guilty, two households will be put to shame and suffer to some extent, at least, from reflected disgrace. We all draw back from being actors in such a tragedy. It was this thought, no doubt, that prompted James D. Carton to adopt the Fabian policy as to informing the husband, accusing the wife, and bringing an action for divorce, when consulted first by the husband's brother, and then by the husband himself. But, on the other hand, it must be remembered that if the wife has fallen, the law has given the injured husband the very remedy of which he now seeks to avail himself, and the responsibility is his—and not ours.

We respectfully insist that the facts, circumstances, and reasonable probabilities surrounding the case support the petitioner's prayer for relief, and that accordingly a decree should run in his favor.

Respectfully submitted,

WILSON & SMOCK,
Solicitors for Petitioner.

New Jersey Court of Errors and Appeals.

BETWEEN

ANDREW J. CARTAN,

Petitioner-Appellant,

and

SARAH CARTAN,

Defendant-Appellee.

On petition for Divorce

BRIEF on part of defendant-appellee,

Petitioner seeks a divorce from defendant Sarah Cartan on the ground of adultery. Defendant Patrick J. Devlin is named as correspondent who intervened and filed an answer October 16th, 1919 denying the charges of the petition.

The petition was filed December 13th, 1918. The answer of defendant denying the charges of adultery not until June 18th, 1919, the delay being due to an attempt on the part of the Solicitors of the several parties to effect a reconciliation. (Page 920.)

During the progress of the cause application was made on the part of Mrs. Cartan to amend the answer filed by her so as to include the defence of condonation, and the answer was amended in that respect.

The petition was dismissed in the Court of Chancery for failure of petitioner to sustain the truth of his charges and for the reasons set forth in the conclusions of Vice Chancellor John E. Foster before whom the cause was heard.

The petitioner charges defendant with adultery committed with Patrick J. Devlin January 1, 1914 "and on each day of each month of said year 1914, and of the years 1915, 1916, 1917 and 1918 to the

date of the verification hereof" (December 11, 1918) "in the city of New York, at the Borough of Matawan aforesaid, and at various places in the County of Monmouth and elsewhere in the state of New Jersey."

April 21st, 1919 upon application of Defendant Sarah Cartan, petitioner furnished her with a bill of particulars in part as follows: "the said defendant committed adultery as charged in the petition, please accept the following as the most definite information in possession of the petitioner at this time in respect to such particulars.

"The defendant committed adultery with Patrick J. Devlin (as charged in the petition) on the 23rd day of November, in the year 1914, in the city of New York and State of New York. The precise place is at this time unknown to the petitioner. The defendant also committed adultery with the said Patrick J. Devlin in the Borough of Matawan, Monmouth County, New Jersey, on two certain nights in the latter part of May or in the month of June, 1916. The precise dates are at this time unknown to the petitioner. The adultery was committed in or near an out building located in the back yard of the premises then and now occupied for residential purposes by the petitioner.

"Also on two other occasions in early Fall or the summer of 1915, and on three other occasions in spring of 1916, in or near said out building, or other places on or near the premises owned and occupied as aforesaid by the petitioner, in said Borough of Matawan."

Upon application of defendant Patrick J. Devlin petitioner October 22nd, 1919 furnished him with a bill of particulars the first and second paragraphs of which are the same as furnished defendant Sarah Cartan; the last paragraph is as follows:

"The defendant also committed adultery with the said Patrick J. Devlin in said Borough of Matawan at the residence of the petitioner, the petitioner being absent. This was an occasion when the defendant and the intervening defendant were found together in the house by Mrs. Bert Cartan. The precise date, as near as your peti-

tioner is now able to ascertain, was the fore part of March, 1916.'

The bill of particulars as furnished indicate considerable uncertainty in the mind of petitioner as to the acts of adultery charged, both as to time and place, and that uncertainty was emphasized at the hearing, as there was no evidence offered to prove adultery other than that relating to an alleged meeting of the defendants in a chicken or out house located at the rear of petitioner's premises, in May 1916.

The parties were married in 1892. Petitioner is 55 years of age and his wife 47. They have lived at Matawan since their marriage, where petitioner keeps a general store. They have four children, namely, Helen, age 26, Johnson, 18, Jean, 10 and Betty, 6. They are apparently reputable persons and respected in their community.

I.

There is no direct evidence of the adultery charged; the evidence adduced on the part of the petitioner is entirely circumstantial, and insufficient to warrant the conclusion that defendant committed adultery.

Petitioner's brother, Rens Cartan, the latter's wife, Mrs. Rens Cartan, and one Norman Tice, brother of Mrs. Bert Cartan, petitioner's sister-in-law, testify that in the month of May, 1916, about 9 P. M., Mrs. Rens Cartan observed Sarah Cartan leave her porch and cross to the opposite side of Main street and speak to defendant Patrick J. Devlin for a moment (403, line 30) (404) and then return to her house. Mrs. Rens Cartan informed her husband who was at work in his store and at his request sought out Norman Tice. (404, line 10). These three persons, believing, as they stated, that defendants had arranged to meet in the rear of Andrew J. Cartan's residence, stationed themselves at different vantage points to watch defendants. Rens Cartan stated that he stationed himself behind an out house (56, line 28) in the rear of the residence of Andrew J. Cartan

and next to the Hopkins fence line (57, lines 1-10). Crouching there he saw defendant Sarah Cartan pass through the grape arbour and by the out house where he was stationed (57, lines 10-30) to the gate of the fence surrounding the out buildings and there met Devlin. He then saw the two enter another out building, referred to throughout the case as a chicken house, and close the door, (57, lines 10-35), remaining inside from twenty minutes to a half hour (348, line 5). Norman Tice testified he could identify Devlin only (346, line 25). He was never nearer than 50 feet to him (361, lines 10-30). Mrs. Rens Cartan testified she saw defendant Sarah Cartan go to rear of her premises (408, 409), but did not recognize her in the garden (412, line 30), although she saw a woman there. She did recognize Devlin. She did not see them enter or leave the chicken house, simply saw Devlin and a woman together in the garden (412, lines 1-30).

Consider the improbability of their testimony.

(a) The place selected for the commission of the act a chicken house, with a dirt floor. The photographs offered in evidence on the part of defendants show the sort of building it is. A most improbable place to be selected by a man and woman of the refinement of defendants.

(b) Andrew J. Cartan, Rens Cartan, Mrs. Bert Cartan, a son of Rens Cartan and a lad named Selden Hardy, testify there was a wicker couch and chair in the building. Rens Cartan and Mrs. Bert Cartan say they saw it there the morning after they witnessed the meeting already referred to, the other two witnesses some time before that. Mrs. Andrew J. Cartan denies that a couch or chair was ever in the chicken house (806, line 12). The building was used as a chicken house. It contained no furniture. When chickens or ducks were not housed there it was used as a place to store the garden tools (806-807). It had an earth floor, and a door, to enter which one had to stoop. Helen Cartan, petitioner's eldest child, testifies there was no couch or chair in the out house (682, lines 5-10). Johnson Cartan, a son, swears there was

never a couch or chair in the out house (695, lines 1-10). Martha Smock, a servant of the petitioner off and on for seven or eight years last past (613, line 20) never saw a couch or chair in the out house (613, line 34) (617, line 20), nor did she ever see anything wrong between Mrs. Cartan and Devlin (617, line 30). Mrs. Julia Williams worked for the petitioner, familiar with the premises, never saw a couch or chair or even a box in the out house (722, line 9). Dora Hopkins, a next door neighbor of petitioner, familiar with the house and pemises, accustomed to pass the out house almost daily in going to the rear of her garden and could see in it, never saw any couch or chair there, and could have seen it if it had been there. (1056, line 30).

(c) At the meeting place in the garden witnesses saw no overt act of affection, they heard no word of endearment, but like phantoms the defendants met, and together entered the place of assignation and from thence like phantoms departed, silent and without display of passion, no embrace at meeting, no lingering parting caress. Yet these two were lovers and for more than a decade had been consumed by the burning ardor of an illicit love. Improbable? Yes, impossible.

(d) No other assignation or love meeting place in all the years of alleged intimacy, is mentioned. Was it because the witnesses "having dared so much they dared no more?" No disclosure made of their alleged discovery until two years had passed, excepting to James D. Cartan, a lawyer and another relative of the petitioner upon whose advice they kept their secret, hoping the alleged fondness existing between defendants would be dissipated by passing time, so they assert, and yet in the same breath they insist that fondness had been continuing and growing (89, line 12) for a decade. Was not their real reason for not disclosing their alleged secret, that they knew by passage of time the defendants' difficulty to meet the charge finally made against them would be increased?

(e) No exact date of the alleged meeting is giv-

en in the pleadings, in the bill of particulars, nor in the proofs, thereby depriving defendants of the possibility of disproving their alleged presence by proof of presence elsewhere. Yet what more natural, under the circumstances, than to have made note of the actual date and time, acting as they profess, in the interest of their brother, the petitioner.

(f) They assert they had no feeling against Mrs. Cartan or Devlin. They did not want to see a break in the family, they hoped for the best. Why then did they not disclose their secret to Devlin, at least, their business partner, their intimate friend, their constant associate? An intimation of their knowledge would have immediately accomplished what they now declare was their object in keeping silent. They give no reason, they say they can't. (133-134) (445, line 1).

(g) Why did they continue to associate in business with Devlin, and socially with two adulterers. (417-418) (443).

(h) Two months after the chicken house incident Devlin gave Rens Cartan a check for $200.00 to help pay his expenses to Atlantic City where he was going on account of illness. He accepted the check and finally used it (549, line 10).

When he reached Atlantic City he acknowledged the gift by letter in the strongest terms of friendship (Exhibit D7 November 17th, 1920) (1076). Rens Cartan undertakes to explain the receipt of the check, (987) stating he didn't use it for some months, being suspicious of the purpose of the gift, and that subsequently he gave Devlin a check for $200 to help defray some political expenditures on the latter's part. But this statement does not explain. He received a gift and used it and subsequently made Devlin a gift, an exchange of gifts, really emphasizing the friendly relations that existed between them. He could have destroyed Devlin's check to him if he preferred not to use it. He didn't. He accepted and used a gift of money from a man who at the time he now asserts he knew was guilty of adult-

ery committed with his brother's wife. He was either a fool or a liar.

The only answer to the above comments, is that the story told by the witnesses of the alleged chicken house incident is too improbable under all the circumstances, occurring before and subsequent, to be believed.

We would call to the attention of the court that of the three witnesses, Rens Cartan, Mrs. Rens Cartan and Norman Tice, who testify to the chicken house incident, only Rens Cartan indentifies Mrs. Cartan, the defendant, as the woman in the garden. Norman Tice did not recognize her (346, lines 20-30). (348, lines 10-30) (354 line 1) (351, line 5). Mrs. Rens Cartan says she saw Mrs. Sarah Cartan leave her house (408-409) and disappear in the darkness (409, line 31). In the garden she recognized Devlin but not Mrs. Cartan (412, 413, 414). The result is that only Rens Cartan swears as to the identity of the woman in the garden. His evidence stands uncorroborated so far as direct evidence of identity is concerned. Mrs. Sarah Cartan swears she was not in the garden, as does Devlin. Did the witnesses see some woman other than defendant in the garden, if they saw any one? Is it possible that even Rens Cartan was mistaken in his identification? He had Mrs. Sarah Cartan in his mind, he had just been told by his wife to watch out for Mrs. Sarah Cartan and Devlin. At her suggestions he went to the garden. In his mind was the picture of Mrs. Sarah Cartan and Devlin. It was night, the light such as it was as described by petitioner's witnesses must have necessarily been meagre. He was excited and apprehensive of discovery. In a case of so much doubt as this, a doubt engendered by the circumstances related and by the express denial of defendants, and keeping in mind the elementary principle that the burden of proof rests upon the petitioner throughout the entire case, and that by that is meant in a case of this class something more than a mere preponderance of the evidence, the circumstances must lead the guarded discretion of a reasonable and just man to the

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conviction that the crime has been committed, Culver v. Culver, 38 N. J. Eq. 163, 165,—we submit the proof does not warrant finding that Mrs. Sarah Cartan was in the out house as testified on the part of petitioner, or that she committed adultery.

The testimony of Mrs. Bert Cartan is to a great extent discredited by two incidents, one relating to the contents of the bill of particulars furnished Patrick J. Devlin by petitioner (324, lines 1-35) (325) (14), the second relating to the anonymous letter she wrote Mrs. Devlin and her apparent animus toward Mr. and Mrs. Devlin.

The first incident referred to relates as stated to the contents of the bill of particulars in which it is stated that defendants committed adultery in the residence of petitioner in March 1916, when Mrs. Bert Cartan found defendants there together. Witness denied the truth of that allegation (325, lines 8-15). She denied that she ever made such a statement to Solicitor of petitioner. Where did the Solicitor obtain it? It is certain he did not insert it in the particulars without authority based on what he considered genuine information. From whence came it if not from Mrs. Bert Cartan to whom it refers as being the eye witness of the incident described? Her denial but emphasizes the certainty that she gave the information. There was no evidence given to support it. It died a premature birth. If she didn't make the statement, who did? Certainly one of the witnesses for petitioner. It wasn't true in fact. It is evidence of the extent witnesses for petitioner were willing to go in making a case against defendants, and reflects upon their credibility.

The second incident relates to the letter admittedly written by Mrs. Bert Cartan to Mrs. Devlin, but unsigned. (503) (320, lines 10-30).

The testimony of Norman Tice is of little evidential value. He was not on speaking terms with Devlin (358, line 19). His relations were not friendly (358). He had made threats against Devlin (358, 359, 387, line 30). He was active in helping prepare petitioner's suit. There had been a

legal action instituted against him by Devlin ending in a settlement. (358, line 1).

The value of the testimony of Rens Cartan and his wife, brother and sister-in-law respectively of the petitioner, has already been discussed. Certainly no friendly feeling for the defendants predominated in their hearts either during the years that had passed prior to the commencement of the suit or at the hearings.

II.

To warrant a finding of adultery upon circumstantial evidence a criminal desire and opportunity to gratify it must be shown.

See Marsh vs. Marsh, 1 Stew. 196.
Stickel v. Stickel, 3 Dick. 336.
Rector v. Rector, 78 N. J. Eq. 386, 401.
Osborn v. Osborn, 44 N. J. Eq. 257.
Bowers v. Bowers, Court of Errors, 104 Atl Rep. 831.
Black v. Black, 30 N. J. Eq. 228.
Wille v. Wille, Court of Errors, 103 Atl Rep. 74.
Tiger v. Tiger, 100 Atl. Rep. 848. 14 Cyc 684.

We have in this case an isolated incident relied on to prove adultery between the parties. No sufficient proof of intimate conduct or relations, no endearing terms indicating extreme affection, no clandestine meetings or correspondence.

Voluminous testimony has been introduced to show intimacy and affection, but it is most equivocal. Similar evidence could readily be found against any man and woman accustomed to meeting together in the same circle of friends and relations.

The proof submitted covers a period of time commencing some thirteen years before the suit at the wedding reception of petitioner's sister (154, line 30), when as Andrew J. Cartan testified the two were sitting close together on a settee

carrying on a conversation of their own, she arranging his necktie and picking at his coat collar —and all occurring in the midst of the assembled guests. (154, lines 25-35). Again, at card parties seven or eight years before the suit they apparently wished to sit at the same table (155, line 20), and at dances they danced together more frequently than with others, at dinners they preferred to sit next to each other (156, lines 1-10), on automobile rides they usually sat together on the rear seat, and other similar incidents too numerous to mention. (See testimony of A. J. Cartan, (158, 159); Rens Cartan, (49-55); Mrs. Bert Cartan (300-306); Mrs. Rens Cartan (394-405). But all the acts complained of were, if true as related, open and above board as though the two had nothing to conceal. No endearing terms, no clandestine meetings or correspondence, nothing to indicate a guilty love, or a guilty desire. A married man and woman, if possessed of a criminal desire one for the other, would not so deport themselves in the presence of their friends and relatives, and of their respective husband and wife so that the entire assembly could read their secret at a glance. The conduct in question falls far short of that from which criminal desire can be inferred, and which is necessary to warrant a conclusion of criminal intimacy.

But the alleged acts of intimacy were vehemently denied by the defendants, as well as by Mrs. Devlin who was present at the gatherings in question when it is said the defendants deported themselves with almost wanton abandon. Miss Helen and Johnson, the former aged 26 and the latter 18 at the time of hearing, deny that they ever observed any evidence of intimacy or fondness between the defendants (630, lines 20-35). Devlin never called at the home of petitioner (630, line 31). The son stated he usually drove the automobile, his father sitting on the front seat with him, his mother, Mrs. Devlin and Patrick J. Devlin on the rear seat, and that he never observed any intimacy between his mother and Devlin, or any fondness, one for the other (685 ,lines 1-20), upon the occasion

of the auto trips or at any other time (685, lines 20-31). He was present at the dancing parties, auto rides, and road house visits, and never saw any intimate conduct between his mother and Devlin (690, lines 10-31). Mrs. Devlin testified that at no time had she ever observed anything approaching undue intimacy between her husband and Mrs. Cartan (734, line 33) (735, lines 1-31). That often the petitioner arranged the seating of the members of the party (735, line 11). On auto rides she usually sat on the rear seat in the center (739, lines 1-31). Who more quickly than a wife would note any conduct on the part of her husband indicating affection for another woman, or of a woman for the husband of the wife, and give expression in some form of her displeasure. Yet the intimacy between Mrs. Devlin and Mrs. Cartan has been constant, even to the present time.

There is no evidence that during all the years the alleged display of affection was taking place there was any real remonstrance made on the part of any person present including Mrs. and Mr. Rens Cartan, and Mr. and Mrs. Bert Cartan. Even the petitioner swears that while he noticed an existing affection between the two he took no effective step to stop it, never spoke to Devlin (205, line 10) (206, lines 1-30) (207, lines 1-30), and during the time in question the two youngest children were born, nor was there any apparent break in the feeling and affection between petitioner and his wife until the spring of 1918. (209, line 21) (628, line 5).

The evidence offered is confined to the petitioner, his brother, the latter's wife and sister.

The alleged fondness of defendants for each other, if it existed, would have found expression in some more signal form than that given in evidence, if not publicly, then privately. It would have been observed by persons other than petitioner and his relatives. If the guilty desire was present in the minds of both to the extent we are asked to believe, it would have been beyond human restraint to stifle it. It would have broken bounds in secret meetings and clandestine correspondence.

But of either there is no proof. Such conduct as evidenced by the alleged acts of intimacy related as continuing during a period of ten to thirteen years does not conform with the ordinary person's experience of human conduct.

Mrs. Rens Cartan and her husband testify that upon an occasion in New York city six to eight years before the suit, Mrs. A. J. Cartan said that Devlin had just kissed her in a telephone booth (41, line 15). Mrs. A. J. Cartan denied the alleged incident (797, lines 1-12) as did Devlin (514, line 25). Think of it—a married woman possessed of a guilty desire for a married man declaring without apparent reason that her equally guilty partner had just kissed her. The story in its setting discredits itself. No other contradiction was necessary.

The swimming incident related by Mrs. Rens Cartan (399, line 20), indecent if true, is denied by Mrs. Cartan and Devlin (799, line 10) (513, 514), and like the alleged kissing incident is palpably false. That such acts of intimacy occurred in a public bathing pool in view of any person who cared to look is highly improbable, considering the place and the character of the persons involved. It is but another evidence of the extent to which the witness was willing to go in giving vent to her jealous venom. But not one remonstrating word to either Mrs. Cartan or Devlin whose friend she pretended to be, no sign or indication of disgust, no warning to the petitioner of his wife's conduct.

Then the incident sworn to by Rens Cartan of Devlin laying his hand upon Mrs. Cartan's leg, while auto riding (42) denied by Mrs. Cartan (799, lines 15-20) and Devlin, (512, line 20) and on cross-examination the witness departed from his previous positive statement that he saw Devlin's hand on Mrs. Cartan's leg, and said he simply felt the rug move that covered Mrs. Cartan as well as other members of the party, and saw Devlin pull his hand from under the rug (100-102). The tale presents a physical impossibility. Andrew J. Cartan was driving. On the rear seat directly back of him sat Mrs. Andrew J. Cartan. Devlin sat be-

side Andrew J. Cartan on the front seat (98, line 12). To reach Mrs. Cartan he would have had to extend his hand and arm over the back of the front seat in front of the witness and across to Mrs. Andrew J. Cartan. But if physically possible, it is highly improbable that a man as cautious as Devlin is alleged to have been (394, line 31) should have dared such conduct before the open eyes of his wife and other persons in the tonneau of the car. Truly "Those whom the Gods would destroy they first make mad."

The three alleged incidents last above referred to, we submit, are, under all the circumstances, so improbable that they are not entitled to any consideration as factors in determining whether a criminal desire possessed the minds and hearts of the defendants as to warrant the conclusion that they committed the crime of adultery in the chicken house in the rear of petitioner's premises in the month of May 1916.

With minds fairly reeking with suspicion, alert to every move of defendants, single and together, constantly on the qui vive to detect an act indicative of affection toward each other, covering a period of at least ten years, the brother and sisters and sister-in-law of petitioner were unable to adduce evidence of what they insist is guilty intimacy between the defendants other than that related by them; conduct as consistent with innocence as with guilt, depending upon the purity or foulness of the mind and heart of the witnesses of the alleged acts.

III.

We have now in the discussion of the case reached the event of the disclosure by Rens Cartan to the petitioner of the alleged criminal intimacy between the defendants and we would now speak of that event and the subsequent conduct of the parties with relation to the truth and probability of the main incidents of the case relied on to show adultery.

From May 1916 until May 1918 the alleged sus-

picious conduct of defendant and the out house incident had not been revealed by Rens Cartan or any of the other persons cognizant thereof, to the petitioner (65, line 30). When petitioner approached Rens Cartan and insisted that he knew something concerning petitioner's wife and Devlin and must tell him (66, line 1) (178, lines 20-35), Rens Cartan did so. From that time petitioner says he ceased to cohabit with his wife (181, line 15), but did not speak to his wife about what he had been told by his brother until October 1918 (181, line 20), that she had withdrawn from his room without explanation in January 1918 (185 line 30) (186), nor did he speak to her concerning her alleged fondness for Devlin between May and October 1918 (185, line 10). October 1st, 1918 he talked with his wife about the matter and she said she had had intimate relations with Devlin (189, line 25) (190, line 20). He did not institute suit for divorce until December 13, 1918 when his wife was served with citation (194, lines 3-10). Between October and December 1918 his wife insisted that he begin his suit for divorce (194, lines 10-35). The day after she was served with the suit papers she went to Florida with his consent (197, line 15), he paying the necessary expenses including rent of house (196). His explanation for not starting suit before he did ,he says was due to advice of counsel James D. Carton (199, line 1).

The main points of petitioner's story are 1st, that he knew nothing of the out house incident until May 1918, although he says he had observed her fondness for Devlin for at least ten years previous and had occasionally spoken to her about it, but never taken any steps to break off the alleged intimacy. The parties continued likewise the auto rides with the Devlins, a complacent husband to say the least. A word from him to Devlin would have put an end to the alleged intimacy. He could have stopped the auto rides and parties if he had seen fit. Either he didn't see anything suspicious or he was willing that the intimacy should continue and grow. If the latter, his conduct was despicable and reflects upon his credibility, as well

as his motive in instituting suit at so late a day.

2nd. That his wife left his room without explanation in January 1918.

3rd. That he talked with his wife October 1st, 1918 of the criminal intimacy between her and Devlin after he had been informed by his brother, and that she in effect admitted it to be true.

4th. That he delayed starting suit five months after being informed of his wife's conduct and three months after her alleged admission.

5th. That he did not cohabit with his wife after May 1918, although he did continue to live with her in the same house until she went to Florida and also during her return visit from January to February 1919.

Mrs. Cartan's story told in a simple but convincing manner is a complete refutation of petitioner's assertions. She denies the alleged intimacy between herself and Devlin (789-791), 797-801), (804) including the out house incident (804, 805, 806, 807).

She and petitioner lived happily together until the summer of 1916 when they had some difference concerning one Van Mater, a friend of Miss Helen, their daughter, (817, line 10) (867, line 20). Mrs. Cartan taking her daughter's side in the matter believing that Helen was old enough to chose for herself (807, line 20). The first time her husband ever spoke to her concerning her alleged intimacy with Devlin was in the first week in October 1916 (807, line 35), never had he spoken to her concerning the matter before that time (808, line 1). This is corroborated by the testimony of Helen (628, lines 1-35) (629, lines 12-30). She says the home life was very congenial, no quarrels or bickerings, her father and mother seemed to think a great deal of each other, and there was no change until May 1918 when she and Van Mater became the subject of controvery between her mother and father. Testimony of Johnson Cartan, a son, is to the same effect (686, line 1).

Continuing with Mrs. Cartan's testimony—in October 1918 and before she had received either of the letters from Devlin, the petitioner accused

her of intimacy with Devlin (808, line 1-20), but not stating when or where (808, line 30).

"Witness: Yes, he said 'You have been at this "a good long while,' and I sat and looked at him, "and I was so amazed that I couldn't hardly be- "lieve what he was telling me; I couldn't under- "stand it, and I said, 'Johnce, you are crazy;' he "said, 'No, I am not crazy, you have been intimate "with Pat Devlin,' and I said, 'It is not so.'

"After he had accused me a few more times, "then I started for the door.

"COURT: On the same occasion?

"WITNESS: Yes. I started to go out of the "room, and he headed me off and pushed me down "on the bed, and choked me down there, and said, "'You say it is so; you know it is so;' and I said, "'I wouldn't;' then I called for Johnson and I "heard him come up on the stairs, but he didn't "come in the room, and after he had told me that "half a dozen times and held me down there, then "I managed to get up, and I got out of the room "and he went out." (809, line 1) Johnson, the son, corroborates this. (702, line 25).

He never told her of the chicken house incident nor did she know of it until she saw it in the bill of particulars (810, line 2). After that occurrence she and her husband had many quarrels. (812, line 20). Always she denied her guilt (810, line 25) (706, line 20-35). Corroborated by Helen (641, line 10).

She asked her husband to tell her of what she was accused and who was back of it, but he refused, saying "I cannot tell you, because I have got to take care of those that are taking care of me." I said, "they are taking care of you all right, they are taking care of you, and when they get through with you, there won't be much left of you." (814, line 20). She and he lived together until she went south December 14, 1918 (816, line 5). During all that time she attended to her usual household duties, preparing her husband's meals and taking care of her family, and all that time even after October 1918 he lived in the house as usual, she fixing his clothes and darning his socks (829). Her

explanation of the Van Mater incident will be found at page (817, line 10). This occurred in August or September 1918 (819, line 31). In November 1918 petitioner endeavored to get his wife to sign a paper admitting guilty intimacy with Devlin (820, line 15).

"In the daytime, I was ironing—and he said, "I would like to ask you about a little matter concerning our differences," and I said, 'What is it?' He said, 'Well, I would like you to sign a little paper.' I didn't know what he meant by a little paper; I said, 'What do you mean by a little paper?' 'Well, Just a little slip of paper that I would like you to sign,' and he said, 'I will give you $2,000 right in your hands if you will sign it;' I said, 'I don't understand you at all; I don't understand any signing, what do you mean me to sign it for, and what does the paper say?' 'Well,' he says, 'you will say that you have had improper conduct with P. J. Devlin.' I looked at him, to see if he was in his right mind or whether I was dreaming or what, and I said, 'Do you mean to tell me, that me, the mother of four children, and you stand there and try to bribe me;' I said, 'You never had five cents to spend on me before in your life, for pleasure or anything else, and what do you want me to do with the $2,000.' He said, 'You can have it for pin money.' I said, 'I never had any pin money before in my life, and I don't know why you should give it to me now.' I said, 'You are willing to send me South and pay $450 for a house and then give me $2,000 for pin money? I said, 'I cannot understand it at all.' I said, 'I am willing to go South all right; I am glad to go. I like the trip and all, I know it will do me good,' because I was all worn out; I was glad to get away.

"Q. Did he produce the paper at that time?

"A. No; I told him I wouldn't sign any such paper; why would I sign such a paper like that for him?

"Q. Did he show you any money?

"A. No, he said he had it. I said I wouldn't

take it if it was $10,000; I wouldn't do such a thing as that."

That in January 1918 she left petitioner's room because she was sick, had had appendicitis and an abscess resulted compelling her to sleep alone (821, line 20). Corroborated by Helen (635, line 30). That he often came to her room before and after May 1918 (821, line 35). "Sometimes he would come in at night and sometime in the morning and kiss me and cover me up and go on down stairs; I never got up very early because I wasn't well. Q. How long did that continue? A. Up until the time almost that he told me this affair." During all this time he treated her with fondness and affection except when discussions arose over Helen (822, line 1).

After May 1918 he cohabited with her as well in her room as in his (822, line 20) (821, line 15). Sometimes at his request (822, line 30). This continued until about six weeks before October 1st, 1918 (823, line 5). Up to the morning she left for Florida. December 14th, 1918 they dressed and undressed in the same room. (824, line 25).

The cohabitation is corroborated by Helen (635, line 10-30) and Johnson (696, line 1) who swear they saw their mother and father in bed together frequently between May and October 1918 and that they dressed and undressed in the same room even after October 1918. (696, lines 1-10).

She denies ever saying to her husband that she and Devlin had been intimate (906, 908). She did go to him after the suit for divorce was begun and offer a reconciliation (827, line 21).

"Yes, I offered to fix things up for the children's sake, we could live it down, if he would.

"COURT: How did you mean 'to fix it up?'

"WITNESS: To look over everything and anything, that had happened between us, and any differences that we had had, and I said, 'For the children's sake I am willing to do the best I can.'

Q. What did he say?

A. He couldn't say anything until he had seen Ren.

Q. Did he say that? A. No.

MR. WILSON: I move to strike out the previous answer.

WITNESS: He said he couldn't tell me; I said, 'Why not?' He said he couldn't; I asked him Friday night when I was home from the South for five weeks, it was one of those times; I had been down to see Jim and Mr. Applegate and it was a Friday night, and I said, 'Why can't you tell me now?' he said, 'I cannot.'

COURT: Tell you what?

WITNESS: Whether we could make up or not, or let it go, and I didn't say anything more that night, and all day Saturday he walked up and down the street; Ren wasn't home and he couldn't talk to him, and Sunday they had one of their family conferences, as usual, and the whole business were over at little Edna's house.

Q. How did you know?

A. Because I could see every move they made. I saw every move they made from the start; they all went over there and they had their little conversation, and that night I waited for him to say something, whether he intended to come back with me, and he said nothing. Monday morning I said, 'What is the verdict; have you made up your mind what you want to do?' He asked me what did I mean; I said, 'You mean to tell me you don't know what I was talking to you about Friday night?' 'Oh, well, yes, I believe there was something concerning the reconciliation, but,' he said, 'there is nothing to that.' 'Oh,' I said, 'isn't there? 'Then,' I said, 'that settles it; you go ahead and do whatever you want to.'

Q. In this talk, Friday night or any other time, did you say or intimate that you had been guilty of any intimacy with Devlin?

A. I did not.

Q. And it was that that you wanted him to forget?

A. No. I just said 'whatever differences we have had I am willing to look over and do the best I can.'' (826, 827, 828).

She did insist finally upon petitioner bringing suit for divorce, not as an admission of guilt but

because she was worn out by his nagging and refusal to come to any decision.

"Q. He also testified that you kept asking him, 'Why don't you sue for a divorce; why don't you sue for a divorce? Is that true?

A. No. He kept telling me that he was going to get a divorce, and that these proceedings were going on, and of course that was hanging over my head all the time. I was naturally anxious to know what he was doing about it. I was doing for him every day of my life; he came in the same as usual; I was fixing his clothes and darning his socks and feeding him the same as usual, and I wanted to know what he was doing; I would ask him at night; we would sit there and he would be reading the paper; I said, 'What have you done about this matter?' And sometimes he would mention it himself; he would say, 'concerning this little trouble we are having'—it didn't seem to be any more than a business transaction, and he would say, 'this little affair of ours, I am attending to it, and it is progressing as fast as it can, and I intend to serve you with papers,' but the papers never came, and I was anxious to know what he was doing about it, and when they were coming, and I was thinking about going South and I wanted to go." (829, line 10).

She finally suggested going South to escape what had become an intolerable situation.

"We were eating at the table, and of course when I sat opposite him at the table every meal and knew he felt towards me as he did, it made me feel pretty sore to think that I was working for him and doing for him just the same as I always had done, and still he lived there; I asked him how he could do it; he said it was his home; I said, 'It is your home,but it is my home, too. I am sick and tired of these things,' I said one day, 'I wish I could get away.' I always wanted to go South, and he said, 'Well, after a while maybe we can fix it so you can.' That is all that was said that day, and later it was mentioned again, and he said well, maybe if he could get a house—'Why don't you ask Mrs. Worthley if she knows of any

houses?' So we asked Mrs. Worthley to write to this party she knew there, and he sent the letter to her that we could have the house for a certain price. That is how I come to go. I was glad to get away.

Q. Had you ever asked to go South before that?

A. Yes, lots of times.

Q. Did he ever permit you to go?

A. No, he never could afford it, he said. (830, line 20).

He acquiesced, although never before would he listen to such a plan or provide the means of the trip. The tickets were purchased with money furnished by him, some days before she left, (831, line 30) and the night before leaving, just after supper, she was served with suit papers (832-833). Petitioner had supper with the family that night as usual (833, line 31) but never informed her that the suit had been started. He bid her good bye in the morning and asked if he should go to New York with her (834, line 30). Her reply was "Do you think it would look nice after serving me with the papers last night. (834, line 30).

After defendant had gone South and after conferring with a lawyer and receiving a letter from her daughter Helen (836, line 10) she determined to return home and defend the good name of herself and children. She did so (836, line 25) and remained home five weeks (836, line 35). During that period she lived in the homestead. The petitioner while not sleeping there was in and out of the house remaining evenings as late as eleven o'clock (837, lines 10-35) reading or conversing much the same as prior to the suit.

While north she took the necessary steps to defend the suit and then returned south to her children remaining there until May 1919.

She spoke but once to Devlin after October 1918 and then only to ascertain, if possible, what he meant by writing her the letter of October 1, 1918 (843, line 20) (567, lines 1-30). She and Devlin have had no conferences and no correspondence (843, line 22) also Devlin's testimony (566, lines

10-15). The defense of the two defendants has been conducted independently (612, lines 1-20).

Mrs. Cartan has told a straightforward and most convincing story of the circumstances with which this suit is concerned. It bears upon its face the stamp of truth and veracity, as did her demeanor and attitude upon the witness stand. It is consistent with innocence and the deportment of an innocent and wronged wife. Attacked by her husband and his entire family she stood at bay, and defended her honor and her good name unaided and alone with the exception of the support given her by her children, which in itself speaks volumes for her innocence. The son and a daughter corroborate her and insist upon her morality. They could not have but been aware of her guilty love for Devlin if it had existed. She could not have concealed it from them. They deny it. They take the witness stand against their father upon whom they are dependent. They flatly contradict him in many particulars. They sacrifice their own interests. Would they so do if they did not believe their mother innocent and that they were acting in the right?

Mrs. Cartan's attitude at the accusations of her husband as disclosed by her testimony was that of an indignant and wronged wife, and her husband's testimony in many particulars corroborates her. When he accused her as he says of intimacy with Devlin years ago, she became angry (166, line 20) (241, line 5). When he accused her in the spring of 1918 she became angry, even threatened to leave home (166, line 21) and denied his charges (241, line 5) (239, line 31). When he accused her in the fall of 1918 after the Van Mater incident, she denied it (176, line 18) (174, line 10). She insisted upon a divorce suit (254, line 10) (194, line 10)—not the attitude of a guilty woman of no independent means, and her alleged paramour a married man.

Upon receipt of the letter (P3) (1079) Mrs. Cartan immediately went to Mrs. Rens Cartan who had delivered the letter to her and asked for an explanation (811, line 12). She so testifies and it

is so testified by Rens Cartan (78, line 29) and his wife (429, line 10) (456, line 25). She was angry (144, line 8). Her conduct upon that occasion was certainly as consistent with innocence as with guilt.

If she had admitted guilt and acquiesced in her husband's accusations, as he says (190, line 18), and her alleged admission is uncorroborated, which it must be to be given any effect, it is inconceivable that his attitude would have been what he himself concedes it to have been. He kept silent from May 1918 when he first heard the out house story until October 1918. He didn't tell his wife from May until October 1918, in the meantime living in the same house with her. (212, lines 21-35 (221, line 15). He made no effort to ascertain from disinterested persons the truth of the accusations, and never has (227, lines 20-35) (228, lines 1-35).

He brought no suit for divorce until December, 1918; he was not particularly angry (218, line 15). He lived in the same house with his wife after he knew of her alleged intimacy, even after her first return from Florida, conducting himself, as usual, but refraining from cohabitation, as he says. He met Devlin at business meetings and on the street, but did not accuse him (233, lines 1-20) (259, lines 1-35) (296, line 10), except upon one or two occasions when he was careful that no one else was within hearing (296, line 30) (297, lines 1-30). The ordinary man could not have restrained himself. He never mentioned the subject to Devlin when others were present, although he says he didn't care who heard him. He and his wife attended a party at Mr. Close's (633, lines 20-30) (803, lines 10-35) when Devlin was present and also accompanied Mr. and Mrs. Devlin on an auto ride to Biggott's, Point Pleasant, after May 1918, the date he was told the story of the out house incident by Rens Cartan. He denies this, but his denial is without weight in face of the testimony of Mrs. Cartan, Helen, Johnson, and Mr. and Mrs. Devlin who swear it happened on June 18th, 1918. He says he and Devlin were attending a meeting

of the Building and Loan Association in Matawan on that date (959, line 20), but he brings no one who was present at that meeting to corroborate him, and at page 259-260 he is reported as testifying that he and Devlin seldom met together at the meetings of the Loan Association. "There are never over one or two directors there." At page 259 referring to directors' meetings he says they were held at no particular time, only two or three times between May and October 1918 (259, lines 10-20), and at page 260, line 21 "we are in the Building & Loan together, but we hardly ever met together in that; there are never over one or two directors there." Witness also produced a copy of the minutes of the alleged meeting (1074). The minutes do not show that A. J. Cartan was present, nor has he produced any witness to testify he was present. If he was present why didn't he subpoena the Secretary who surely could have so testified, if it was true? His attempted alibi so most apparently false, reflects upon his entire testimony.

We would also call to the attention of the court an instance in the testimony of the petitioner which we submit indicates clearly his willingness to perjure himself and deceive the court in order to establish his case. The incident to which we refer is that relating to petitioner's diary which he says he kept religiously from about March 1918 to October of the same year, (978-984) and for the purpose of keeping alive in his mind what he considered important facts relating to his suit. He is considerably confused and self contradictory throughout his entire testimony in relation to the diary entries. The entries themselves were not original, but made, as he says, from other memoranda which he had destroyed. The entries in some instances were erased and he could give no reasonable explanation for the cancellations. Many of the entries do not appear in their chronological order. Entries presumed to have been made July 6th appear in the book as before July 4th. The petitioner had testified in contradiction of the contention of the defendants that he and his wife

had not accompanied the Devlins to Biggott's July 18th, 1918, and as proof of that assertion he stated that his diary would show that in June and July his children were sick with the measels, and his wife was not able to leave home for that reason. The diary was called for on cross examination and an opportunity thereby was given to peruse the same. The petitioner could give no satisfactory answer either to defendant's solicitors or to the Court as to how it was he had made the entry which appeared in the testimony concerning the illness of his children, how it was that he considered at the time he made the entry which he says was at the time of the illness, that such illness had anything to do with the suit that was about to be instituted, nor could he definitely say when he made the entry, whether at the beginning of the illness or at its conclusion. (982, lines 1-30) (960, lines 10-20) (1036, lines 1-35) (1037, lines 1-35). It is safe to say that the entry in the diary was not made until after the hearing previous to the one at which petitioner testified in relation to the diary, at which time it was brought out on the part of the defendent that the automobile trip had been taken to Biggott's, Point Pleasant, and that it occurred June 18th, and petitioner then made his entry, thinking thereby to give some semblance of truth and veracity to his testimony by referring in his testimony to the entry in his diary.

Comparing the testimony of petitioner and defendant as to what occurred subsequent to May 1918, that of the defendant is more convincing, more probable, and is sustained by the weight of evidence. The petitioner has not met the legal requirement as to the burden of proof.

IV.

LETTERS FROM DEVLIN.

It is our contention that Mrs. Cartan is not bound by anything Devlin or Mrs. Devlin said or did not in her presence, and we are not concerned with their testimony, for according to the evidence

Mrs. Cartan was not present at any meeting with the Cartans and Mrs. Devlin or her husband, excepting the one occasion when Mrs. Cartan spoke to Devlin on the street demanding an explanation as to why he had written her the letter of October 1st, 1918. (P3) (1079) (843, line 20) (567, lines 1-30).

Objection was made by counsel for Mrs. Cartan as to the admissibility of the letters and to evidence of what was said or done out of her presence. (77, line 30 (80, line 20) (85, line 30) (87, line 30).

The contents of letters written by Devlin and delivered to Mrs. Cartan are likewise not binding upon her. Nothing that Devlin said or did out of her presence can bind her.

Berckmans v. Berckmans, 16 N. J. Eq. 122.
Graham v. Graham, 50 N. J. Eq. 701.
Howard v. Howard, 77 N. J. Eq. 186.
Stickle v. Stickle, 48 N. J. Eq. 336.

Moreover the letters were not written during the period of time that the alleged intimacy is alleged to have continued, but two years subsequent thereto and after the alleged disclosure.

Nor was the conduct of defendant upon receipt of the letters such as to warrant even an inference of admission on her part of guilty conduct or desire, nor of the truth of the writings or any inference to be drawn therefrom prejudicial to her. She did not by word or act admit that the contents of the letters were in any way expressive of improper conduct on her part. She immediately sought the person who had delivered the letter to her and demanded an explanation. She made the same demand upon her husband and likewise of Devlin. She herself denied that she knew to what the letters referred or what was meant by the written words. Her conduct was consistent with innocence.

The contents of the letters do not justify an inference of guilty conduct with Devlin or any other person. Without explanation by the writer they could be read as a reference to an innocent dis-

agreement between husband and wife, but Devlin, the writer, explained the circumstances under which they were written and interpreted their meaning.

We submit the letters so far as Mrs. Cartan is concerned should not be considered in determining her innocence of the criminal charges made against her. There is nothing in the receipt, possession or contents of them that raises a legal implication of guilt or warrants the inference of a criminal relation with Devlin.

V.

We submit the petitioner has not sustained the burden of proof, and is not entitled to a decree for divorce.

The burden of proof is upon him and it must be clear to justify the court in condemning a woman to a life of dishonor. In reviewing the testimony and proofs in this case, one's mind, if not utterly convinced of the innocence of defendant, is at least left in such a state of doubt that to render a judgment of guilty would be under the circumstances a subversion of justice. The defendant notwithstanding the accusation against her appears before the bar of justice innocent, and that presumption continues to the conclusion of the cause. The evidence must be clear and convincing and free from doubt to warrant a decree of guilt.

"Civilized government everywhere rests upon the marriage relation. The Courts should never dissolve this relation except upon full, clear and conclusive proof of the cause of divorce. A judgment of divorce should never be pronounced upon doubtful proofs. If mistakes are committed they should be committed in favor of the continuance of the relation, no matter how painful the consequences are to the immediate parties concerned. Suitors should understand the marriage tie is sacred and inviolable in the eye of the law and will never be broken by the courts except the proofs make the path of duty plain and clear."

Marsh v. Marsh, 1 Stew. 199.

"Adultery being a crime must be proven with practically that degree of certainty required to justify conviction in a criminal case."

Luderitz v. Luderitz, 102 Atl. Rep. 661.

"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. In suits for divorce in a doubtful case the evidence of the accused will be given sufficient weight to defeat a divorce."

Culver v. Culver, 38 N. J. Eq. 163, 165.
Hurtzig v. Hurtzig, 44 N. J. Eq. 329, 45 N. J. Eq. 869.

"To justify a decree for divorce on the ground of adultery, the evidence of the defendant's guilt must be clear and satisfactory. A full and explicit denial of the charge by the defendant and his alleged particeps criminic should be regarded as decisive in a case of doubt."

Reid v. Reid, 17 N. J. Eq. 101.
See also Berckmans v. Berckmans, 16 N. J. Eq. 785. 17 N. J. Eq. 474.
Larrison v. Larrison, 20 N. J. Eq. 100.
Mayer v. Mayer, 21 N. J. Eq. 246.
Maas v. Maas, 34 N. J. Eq. 113.
Brown v. Brown, 63 N. J. Eq. 348.
Whitenock v. Whitenock, 6 N. J. Eq. 474.
O'Brien v. O'Brien, 30 Atl. Rep. 875.

"I realize that the law of this state is that the guard of discretion of a reasonable mind must approach this matter and continue to investigate until it is satisfied that by excluding proper inferences of innocence, that of guilt alone remains. I also realize that I must approach these proofs and continue considering and analyzing them until I have found, before I can find guilt, two things. First, desire, and second, a reasonable opportunity

to gratify the same. Upon the conjunction of these two findings the inference of guilt may result."

Rector v. Rector, 78 N. J. Eq. 386, at 401.

We respectfully ask the Court to apply these principles to the solution of this cause. We ask that the defendant be given the benefit of all doubt. How can it be said there is no doubt? There is the question of identity of defendant. The absolute absence of evidence tending to show criminal desire. A single instance to show opportunity although the evidence covers a period of twelve years. The lapse of time between the alleged commission of the act and institution of suit. The conduct of petitioner during the time he says he observed the intimacy of the parties and his conduct after he was informed of the out house incident. His failure to put an end to the alleged intimacy. His cohabitation with defendant after May 1918. Is his testimony entitled to any more weight than that of his wife? To say that it is because she is the accused is to deprive her of the benefit of the rule of presmption of innocence, and as we have observed, it is the rule that in a doubtful case the evidence of the accused, if believed, is sufficient to refute the charge. The confidence in their mother's innocence, of the son and daughter. The attitude of the defendant in the face of the accusations against her and of the concerted efforts of the Cartan family to deprive her of her honor and good name. Her demeanor and conduct as a witness. The utter improbability of the truth of the charges, considering the life defendant had lived, her relations toward her family, her status in society, and her good reputation in the community in which she lived, which is presumed in the absence of attack, and it has not been assailed or even questioned. Evidence on the wife's reputation for chastity was offered on her part but overruled.

Considering all things we insist that more than a reasonable doubt has been engendered by the evidence of defendant's guilt, sufficient at least to

warrant the court in refusing to brand defendant as an adulteress.

VI.

CONDONATION.

Whether petitioner believed the accusations against his wife to be true or false, he condoned her alleged infidelity. We advance this plea with hesitation, but we urge it out of an abundance of caution and as a matter of right, for defendant is entitled to every available defence in her effort not only to establish her innocence, but to defeat the attempt of her husband and his family to deprive her of her marital rights.

The petitioner in his examination in chief asserted that he did not cohabit with his wife after May, 1918, when he was first informed of the out house incident. He admitted that he had cohabited with her during January, February, March and April of that year at the time when he was already suspicious of her alleged fondness for Devlin. He admittedly lived in the same house with his wife and family after May 1918, and until she left for Florida in December 1918, sleeping in a room on the same floor as that in which his wife slept and directly opposite, with the doors of each room open. He says he delayed bringing suit, acting on advice of Counsel who had suggested to him the possibility of a reconciliation, and no doubt with the same idea continued to live at home. What more probable, with the idea of reconciliation in his mind than that he should seek cohabitation.

His denial is uncorroborated except by evidence of himself and one Heiser, to the effect that the testimony of the witnesses for defendant testifying of cohabitation was false, because of the impossibility of seeing what they described in their evidence. But the attempt at corroboration fell far short of its mark.

Defendant testified that she cohabited with petitioner frequently from May to about six weeks prior to October 1918—occupied the same bed

with him in her room and in his (822-823) and sometimes at his solicitation. She is positive about it. She described in detail the locations of the rooms (850-851) and stated it was possible to see the occupants of the bed (851), and that she made the test only the day before (852). Her daughter, Helen, 27 years of age (635, 638, 639) testified that she had seen her mother in her father's bed after May 1918 and that they dressed and undressed in the same room frequently. She described in detail the rooms and the possibility of seeing from the hallway into her father's room (658, 659, 660, 661, 662, 663, 666). There was a lighted gas jet in the hall, the light from which burned all night, and shone into her father's room (666). Johnson Cartan, a son 18 years of age, swore (696) that his mother and father occupied the same bed room after May 1918 and during that summer, that he saw them in bed together during that time. Their doors were open and there was a light in the hall (696.)

Dora Hopkins, a next door neighbor of defendant, Mrs. Cartan, testified that she had tried at night with the gas lighted in the hall, and could see from the hall occupants of the bed in petitioner's room. (1053-1055).

Mrs. John Terhune, a resident of Matawan, testified she had formerly lived in the Cartan house. The conditions were the same then as now. That one could certainly see from the hallway into petitioner's room at night with the gas jet lighted in the hall. That the light from the hall shone into all the bed rooms if the doors were open, and that without doubt one could see occupants in the bed, and either from the hallway or the closet. (1042-1050).

Three eye witnesses of the intimacy between petitioner and his wife and five witnesses, including the said three, as to the possibility of the observations made, most convincingly establish the fact of cohabitation, and considering the circumstance of petitioner residing under the same roof with his wife and family until December 1918 and his reasons for so doing, to which we have before

referred, the fact of cohabitation is irrefutable.

It is the law that if the innocent party after knowledge of the guilt of the other spouse cohabits with him or her, the law implies condonation of the offence.

Vin Bermouth v. Vin Bermouth, 76 N. J. Eq. 487.
Johnson v. Johnson, 78 N. J. Eq. 507.
Clark v. Clark, 78 N. J. Eq. 304.
Marsh v. Marsh, 13 N. J. Eq. 281.
Graham v. Graham, 30 N. J. Eq. 701.

The plea of condonation as has been already suggested, is advanced on the theory that it implies no admission of guilt on the part of this defendant, that guilt has been denied under oath, but that petitioner believing a false accusation against defendant of adultery subsequently cohabited with her.

VII.

CONNIVANCE.

The petitioner swears that he had noticed a fondness on the part of his wife for Devlin beginning some twelve years before the commencement of the suit. That it increased rather than lessened. That he spoke to her about it, complained that her affection for him was gone, but did nothing more to prevent the intimacy, continued with his wife to attend social gatherings, at which Devlin was present and to go auto riding, permitting her to sit on the rear seat with Devlin. He and Devlin continuing their business associations. Even after the alleged out house incident was disclosed to him in May 1918, by the great weight of the evidence he permitted and sanctioned by his presence intimacy between the two. We ask to what end did he so conduct himself?

We submit his conduct was such as to amount to what the law terms connivance on his part, either

an intent that his wife should incriminate herself, or an utter disregard to what end her alleged conduct might lead.

Our Divorce Act, 22nd section, provides that "If it appear to the court that the adultery complained of shall have been occasioned by the collusion of the parties, and done with the intent to procure a divorce, or **that the complainant was consenting thereto** then no divorce shall be decreed."

The statutory language "that the complainant was consenting thereto" "is quite as broad and should be given the same effect as the common law rule of connivance in defeating a divorce."

Delaney v. Delaney, (Court of Errors) 71 N. J. Eq. 252.

"It is not necessary to find words or statements of the petitioner indicating connivance or consent. If his conduct indicates an intent, or even a willingness, that the act of adultery may take place, or even culpable negligence in not preventing it, the maxim volenti non fit injuria applies, and the decree will be denied."

"If the conduct of the petitioner was such as to impute to him a desire that his wife should drift into lewdness, and he, with the belief that she had a tendency in that direction, did nothing to guard her against it, or to protect her from it, then connivance and consent may be inferred."

Delaney v. Delaney (Court of Errors) 71 N. J. Eq. 252.

"If a husband sees what a reasonable man could not see without alarm, or if he knows that his wife has been guilty of any weakness whereby he is put upon his guard respecting her weakness, he is called upon to exercise peculiar vigilance and care over her, and if he sees what a reasonable man could not permit, and makes no effort to avert the danger, he must be supposed to see and mean the result."

Hedden v. Hedden, 21 N. J. Eq. 61.
Delaney v. Delaney, ibid.

The conduct of the petitioner according to his own testimony warrants the application of the above rule.

Respectfully submitted,

JOHN S. APPLEGATE & SON,

Solrs. and of Counsel with Defendant Sarah Cartan.

IN CHANCERY OF NEW JERSEY

BETWEEN

ANDREW J. CARTAN,
Petitioner,
and
SARAH CARTAN,
Defendant.

Submitted December 31, 1920.
Decided January 28, 1921

MESSRS. WILSON & SMOCK for Petitioner.

MESSRS. JOHN S. APPLEGATE & SON for Defendant, Sarah Cartan.

MR. JACOB R. LEFFERTS and MR. MERRITT LANE for Intervening Defendant, Patrick J. Devlin.

FOSTER, V. C.

Petitioner filed his petition for divorce against his wife, Sarah Cartan, on December 13, 1918, charging her with having committed adultery with the intervening defendant, Patrick J. Devlin.

Due to efforts made by the solicitors of the parties to effect a reconciliation, the answer of Mrs. Cartan denying the charges was not filed until June, 1919, although about April 21, 1919, she demanded a bill of particulars, and these were furnished her about that date. About October 6, 1919, Mr. Devlin filed his petition for leave to inter-

vene as a defendant, and he was allowed to do so, and upon his demand, he was also, shortly thereafter, furnished with a bill of particulars, and on October 16, 1919, he filed his answer denying the charges. During the course of the hearing in the late fall of 1920, and after petitioner had subsequently presented his case, leave was granted Mrs. Cartan to interpose condonation as an additional defence, in which she asserts that after the date when petitioner claims he had knowledge of her offence he cohabited with her.

Because of the many peculiar features of the case and the intimate relations of the parties and witnesses and their conduct before and after the commission of the alleged offence, I received the impression during the several hearings, which I still retain, that the entire story of the trouble between these parties has not been placed in the record, and this becomes very apparent on mature consideration of the pleadings and proofs.

The charge against defendants contained in the petition which was filed seven months after petitioner first had knowledge on the subject, is that they committed adultery "on the first day of January, 1914, and on each day of each month of said year 1914 and of the years 1915, 1916, 1917 and 1918 * * * in the City of New York, at the Borough of Matawan and at various other places in the County of Monmouth, and elsewhere in the State of New Jersey."

In the bill of particulars furnished Mrs. Cartan, the statement is made that, "the defendant committed adultery as charged in the petition, please accept the following as the most definite information in possession of petitioner at this time in respect to such particulars, the defendant committed adultery with Patrick J. Devlin

(as charged in the petition) on the 23rd day of November, * * * 1914 in the City of New York * * * The defendant also committed adultery with the said Patrick J. Devlin in the Borough of Matawan * * * on two certain nights in the latter part of May or in the month of June, 1916. The precise dates are at this time unknown to the petitioner. The adultery was committed in or near an outbuilding located in the back yard of the premises then and now occupied for residential purposes by the petitioner. Also on two other occasions in early fall or the summer of 1915, and on three other occasions in Spring of 1916, in or near said outbuilding, or other places on or near the premises owned * * by petitioner in said Borough of Matawan." In the bill of particulars later furnished Devlin, in addition to the foregoing it is further specified that, "the defendant also committed adultery with the said Patrick J. Devlin in said Borough of Matawan at the residence of the petitioner, the petitioner being absent. This was an occasion when the defendant and intervening defendant were found together in the house of Mrs. Bert Cartan. The precise date as near as your petitioner is now able to ascertain, is the forepart of March, 1916."

And as stated, all of these charges were denied by the answers filed by the defendants.

Notwithstanding these charges of almost daily acts of adultery, the issues presented by the proofs confine the controversy to a single act of adultery claimed to have been committed about May 27, 1916, in the outbuilding mentioned in the pleadings and to the question of condonation.

In the consideration of the evidence, and the weight to be given it, I have found it helpful to give some con-

sideration first to the parties and to the witnesses who were called to sustain their contentions, and from the record it appears that Mr. and Mrs. Cartan were married in 1892; he is fifty-five and his wife is forty-seven years old; they have lived in Matawan since their marriage and have four children,—twenty-six, eighteen, ten and six years old, respectively. Devlin, the co-respondent, was married about twenty-eight years ago; he is fifty-six years old and his wife is fifty-two; they have lived in Matawan all their married life, and have five children, their ages being twenty-seven, twenty-three, nineteen, fourteen and thirteen, respectively. Petitioner conducts a general store in Matawan, adjoining premises wherein Devlin and petitioner's brother, Rens Cartan, under the firm name of Cartan & Devlin, conduct a feed and hay store and lumber yard. This business was established about thirty years ago, when the father of petitioner formed a copartnership with Devlin, and since the death of Cartan, Senior, his interest in the business has been continued, and the business has been conducted, as stated, by Devlin and Rens Cartan, thte latter representing the interest of his father's estate, in behalf of himself, the petitioner, two other brothers and a sister. For years petitioner and Rens Cartan, with their families, have lived opposite their respective stores, on Main street, in adjoining properties, and Devlin has lived farther uptown on the same street. Petitioner and Devlin are directors in the same local bank, and in the local building and loan association, and both are apparently prosperous and prominent members of the community. For many years the Cartan and Devlin families have been constantly intimate, in both a social and business way, and for years they have been accustomed to

join at least weekly in card, theatrical, dinner, dancing or automobile parties, in which the participants were usually the petitioner and his wife, Mr. and Mrs. Devlin, Mr. and Mrs. Rens Cartan, Mr. and Mrs. Bert Cartan, and on occasions some of the parties were enlarged by the attendance of various residents of Matawan, and it is significant that this close social intimacy between the families continued until at least May or June, 1918, and possibly, as defendants claim, until October, 1918.

It was during this close social intimacy that petitioner claims the defendants manifested such a marked preference and attachment for each other, that it amounted to and establishes such inclination on the part of the defendants for each as equity regards as the prelude to opportunity for the indulgence in criminal desires and acts; and having this established inclination and desire for criminal intercourse with each other, petitioner claims they gratified their desire by intercourse in one of the outbuildings in the rear of his residence on or about May 27, 1916.

The evidence to establish both inclination and opportunity comes from the same witnesses,—the petitioner, Rens Cartan and his wife, and Edna Cartan (the wife of Bert Cartan, another brother of petitioner), and in addition, on the question of opportunity, from Norman Tice, (a brother of Mrs. Bert Cartan.) On the subject of inclination, petitioner testifies he first observed the tendency on the part of Mrs. Cartan for Devlin's society about thirteen years ago, and since then has frequently noted their intimacy at the family parties; that this was manifested principally by their preference to sit by each other and to dance and talk with each other. The other witnesses, notably Mrs. Rens Cartan and Mrs. Bert Car-

tan, not only observed these features of the defendants' intimacy with each other, but they also noticed that defendants would contrive or in some way manage to sit by each other at the card tables, at dinner, in the theatres and in the tonneau of the automobile. After one of their theatre parties Mrs. Rens Cartan states Mrs. Cartan told her Devlin had kissed her in a telephone booth; this was seven or eight years ago, and some time later this same witness while she and some of the party were in a swimming pool at Asbury Park, saw Devlin take liberties with Mrs. Cartan's person on the pretense of teaching her to swim; and several years ago, while the party was returning by automobile from Princeton, one night, Rens Cartan at first testified he saw Devlin, who was sitting on the front seat with petitioner, reach back of him and place his hand on Mrs. Cartan's leg under the lap robe; later he corrected this by stating he felt the robe move, and saw Devlin withdrawing his hand or arm from under the rug. Rens Cartan occupied at the time an improvised seat in the center of the car; his wife, Mrs. Devlin and Mrs. Cartan occupied the rear seat, and the robe covered them as well as himself. Both Mrs. Rens Cartan and Mrs. Bert Cartan testify they have frequently seen Mrs. Cartan while passing the Cartan & Devlin store wave her hand to Devlin in what they described as a sweet or affectionate salute, and Mrs. Bert Cartan testifies that several times at their parties she has seen Devlin and Mrs. Cartan, when sitting next to each other, push and rub their knees together in an immodest way; and this same witness testifies that on several occasions in 1915 and 1916 she has seen Devlin, generally on a Saturday night, enter the Linzmayer Lane and also the Ervin Lane, which afford easy access to a lane or passage in the rear of

petitioner's property, and one night several years ago, she saw Devlin close his store, cross the street and enter the lanes and reach the rear of petitioner's back lot, and leave when he heard Mrs. Cartan calling to Mrs. Rens Cartan about it being a hot night; and this same witnesses testifies that on another night after an automobile ride, when it is claimed that Devlin unaccountably disappeared for about an hour, she saw Devlin pass through the lanes and enter petitioner's back yard, when he passed beyond her sight. This is substantially the nature and extent of the proof offered to establish an intimate, affectionate relation between the defendants, from to conclude they had an inclination or desire for criminal intercourse with each other. This intimate relation and conduct is not only denied by the defendants, but it is also denied by Mrs. Devlin, the wife of the intervening defendant, who was present, as was the petitioner, at the various parties at which the instances of intimacy mentioned are said to have occurred, and it is insisted on behalf of the defendants that all of the testimony relating to the intimacy of the defendants is not only untrue, but that it is unreasonable and improbable that the defendants, if possessed of a criminal desire for each other, would so openly and publicly deport themselves in the presence not only of their relations, and sometimes their friends and the public generally, but on the occasions mentioned, in the presence of the petitioner and of Mrs. Devlin, in such manner that their conduct was apparent to any onlooker. Defendants further insist that it is especially significant that only the two sisters-in-law and a brother of the petitioner, among all their relatives and friends, and among all the residents of Matawan, observed any of the acts of intimacy which petitioner and

his witnesses state occurred during a period of about thirteen years; and they also stress the fact that in all these years there is no proof showing that defendants were ever heard to address each other in endearing terms, or that they wrote to each other, or, except for the single instance to be mentioned, that they ever met clandestinely. And it should be added that during this period of thirteen years, petitioner's relations with his wife were affectionate and happy and their two younger children were born; and that this happy family relation continued until the spring or summer of 1918, when petitioner and his wife had some dispute over the attentions a young man named Van Mater was paying their daughter Helen.

Evidence was presented by petitioner to show that on or about the night of May, 27, 1916, the defendants met under circumstances which petitioner claims are tantamount to direct proof of the commission of adultery by them on that occasion.

The night in question, is thought to have been a Saturday night, as on such nights it was the usual practice for the store of the petitioner and also the store of Cartan & Devlin to remain open after nine o'clock, and Rens Cartan and Devlin were in charge of their store on alternate Saturday nights. On this night Mrs. Rens Cartan testifies she was sitting on her front porch and shortly after nine o'clock she saw Devlin leave his store and walk up Main Street; then the defendant, Mrs. Cartan, left her front porch and ran or rushed across the street and talked just a minute with him and then returned to her porch; there were no lights in Mrs. Cartan's house at this time; the witness then went across to her husband's store and said to him, "Rens, Pat just met Doll out here.

You go up in Hopkins' Lane and see what is wrong with Doll and Pat tonight". By direction of her husband she then went to the residence of Norman Tice, a brother of Mrs. Bert Cartan, and said to him, "Norman, cut across the back lots and get Devlin as he has gone up there and don't lose him like your father did". She suspected that Devlin had gone around to the back of petitioner's property because Mrs. Bert Cartan had previously told her that she had seen Devlin go in the lane at other times. Leaving Tice she returned to her home and sat in the house, close to a screen door on the side porch facing petitioner's house, 80 to 100 feet distant therefrom, and after she was at this station a few minutes she saw the defendant, Mrs. Cartan, come from around the front of her house, walk close up to its side until she disappeared around the rear of the house in the darkness. The illumnation furnished by an electric light on Main Street about 80 feet distant from petitioner's house and the light from petitioner's store across Main Street, and about 50 feet further than the electric light, enabled her to distinctly see and to positively recognize Mrs. Cartan; after some time witness left her house and stationed herself in a vacant lot between her house and petitioner's, and stood under a tree forming part of a hedge on the side nearest the rear of the lot, and in a minute or so, two people appeared at a fence surrounding a small chicken yard in the rear of petitioner's residence; as one of them came directly toward her, she dropped to her knees and then as he reached the end of the fence, she recognized Devlin as he turned toward the back lane, and she saw no more of him; then as she raised from her knees she saw Mrs. Cartan going around the front of her own house. From the scale of the map of the premises,

in evidence, the gate of the fence is about 75 feet from where witness stood, and when Devlin reached the point when she recognized him, he must have been about 60 feet from her and over 150 feet in a direct line from the electric light. On cross-examination she stated that she did not tell what she had seen until October, 1918, and that in the meantime she and the defendants continued to be intimate friends and continued to go on their parties, but not so frequently, and that the intimacy between the defendants at these parties had lessened, but she did not think this was from any good motive. For several years she had felt that Devlin was a pretty mean kind of a man, who had attempted to pay her (the witness) improper attentions. Rens Cartan, her husband, testifies that on the night in question when his wife told him that she had seen Mrs. Cartan talking on the street to Devlin, he was in charge of the store, and sending her for Tice, he locked his store and went to the rear of a small toilet in the yard in the rear of petitioner's house, and crouching on his hands and knees and looking around the corner he saw Mrs. Cartan come around the corner of her house and through a grape arbor by the toilet, to a gate in the fence surrounding a chicken house or out-building, where she met Devlin; they stood together a moment and then drew back and as they did so, he slipped across the few feet of opening between the toilet and this outbuilding and through the glass of a hot bed sash set in the side of the outbuilding, nearly opposite the door; he saw the defendants enter the outbuilding and close the door and then as the darkness in the building prevented him from seeing anything more, he went back to Ervin's Lane, fearing they might see him; defendants remained in the outbuilding from one-half to three-quarters of an hour, and

then the witness stationed himself in the back lane and as Devlin came out he followed him up this lane and recognized him as he passed under a light at Van Brunt's barn. The following morning before any one was around, he and Mrs. Bert Cartan visited this outbuilding and found that it had not been used very much, and they found in it a willow couch and chair; and petitioner and a son of Rens Cartan and a boy named Hardy testified that they have seen at various times such a couch in this outbuilding.

About a week later Rens Cartan told Lawyer Carton, a cousin and attorney for petitioner, what he had seen, and at the lawyer's suggestion, neither he nor his wife told petitioner of the matter until May, 1918.

Norman Tice, the remaining witness to this occurrence, testified that at the request of Mrs. Rens Cartan, he went to the rear of petitioner's lot opposite the fence around the outhouse and about 50 feet distant therefrom and concealed himself in the grass and weeds and in a few minutes saw a man jump over a fence and walk along the front of the outhouse to a gate, where he met some one who looked like a woman; in a minute or two they entered the outhouse for half an hour or better, and when they came to the gate he didn't recognize the woman nor see which way she went, but he had a clear view of Devlin as he came down the driveway toward the back lane, and saw Rens Cartan follow Devlin. While watching he saw Mrs. Rens Cartan on her own lot about 60 feet away.

Both defendants deny that they met at or in this outbuilding at the time and under the circumstances mentioned, and they deny that they were ever guilty of adultery in this outbuilding or in any other place and they also deny that they were ever guilty of immoral or improper

conduct with each other at any time or place. And Mrs. Cartan, her two older children, two servants and a neighbor familiar with the premises, testify that there never was a couch or a chair in the outhouse, which was used at various times for a chicken house, the children's play house and for the storage of garden tools and rubbish.

Acting upon the advice of Lawyer Carton, no disclosure was made by any of the witnesses of what they had seen on this night in May, 1916, until sometime in May, 1918, when Rens Cartan, after repeated demands from petitioner, told him of the occurrence, and in the meantime these three witnesses and the defendants had continued their intimacy and friendship, while the business partnership and relations between Rens Cartan and Devlin continued as usual, and has continued down to the present time.

In August, 1916, when Rens Cartan, because of illness, went to Atlantic City, Devlin gave him a check for $200, which he did not use until June, 1918; his reason for not using it sooner being, as he states, "that he was afraid Devlin might have seen him the night he followed him in May, 1916, and that he gave him the check to sweeten him up". Later he offered to return the check but Devlin refused to receive it, and later, in January, 1917, he returned the amount to Devlin, ostensibly as a gift or contribution for election expenses, and while at Atlantic City, he wrote Devlin thanking him effusively for this check.

After the disclosure of the occurrence of May, 1916, had been made to the petitioner in May, 1918, he continued to live with his wife and family in their customary way, supporting her and treating her as he had done for years, and he states that up to May, 1918, the only diffi-

culty he had with his wife was because she left his room in January, 1918, without any apparent cause, and without explanation, although he continued to have intercourse with her until he learned of her relations with Devlin in May, 1918, since which time he claims he has never cohabited with her. And he states that after May, 1918, he ceased all friendly and amicable relations with Devlin, and that he gave neither his wife nor Devlin any reason or explanation for the severence of their relations, and that neither of them asked for any explanation during the period that elapsed between May and October 1, 1918, when he states he first informed his wife of his knowledge of her relations with Devlin.

Mrs. Cartan states that she left petitioner's room in January, 1918, because of an abscess resulting from appendicitis that compelled her to sleep alone; that petitioner frequently visited her room before and after May, 1918, and would kiss her and cover her with the bed clothes and that during all this time he treated her with affection and they cohabited in his room and in hers, until about six weeks before October 1, 1918, which was about the time that they quarrelled over Van Mater's attentions to the daughter, whose cause Mrs. Cartan espoused. Mrs. Cartan also states that in June, 1918, petitioner took her and their son and Mr. and Mrs. Devlin for a party at Biggett's resort, and in this she is corroborated by her son and by Mr. and Mrs. Devlin; and that some time later, he took her to a party at the residence of Mr. Close, which was also attended by Mr. and Mrs. Devlin. Petitioner denies taking her to a party at Biggett's after May, 1918, but admits attending the Close party.

It was about October 1, 1918, petitioner states, that

the first mention of his wfe's relations with Devlin was made, when his wife asked him who had informed Mrs. Devlin about her intimate relations with Devlin, and he did not tell her, as he states he did not know at the time, and then she told him, apparently without any reason, and also, without any demand on his part, that she had had intimate relations with Devlin some time ago; that it was one of the foolish things women do sometimes; then he asked her if she had any thought for Devlin now, to which she replied that she cared a lot for Devlin and knew he cared a lot for her. A day or two later he saw her talking to Devlin on the street and she told him Devlin wanted her to make up with petitioner for a month or so. A few days later he told her he was going to start suit for divorce, and name Devlin, and she said, "What do you want to bring up an old affair that happened years and years ago, at this late day; why did you leave it until the children got so old?" After that they continued to live together in the home with the children until December 13, 1918, when she and the children went to Florida, and during this time, almost daily, she would ask him why he did not start his suit, that she would not defend it, as she wanted a divorce.

Mrs. Cartan denies these admissions and remarks and states that in the first week of October, 1918, petitioner accused her of intimacy with Devlin, without giving her any particulars; that she denied it, and told him he was crazy; that she attempted to leave the room and he pushed her on the bed and choked her and demanded that she admit it; that she refused, and called for her son, and when petitioner heard the son coming up the stairs he allowed her to leave the room. She states he never told her of the outbuilding nor did she know the

details of the charge against her until she received the bill of particulars. They frequently quarrelled, and he refused her information of his charge, stating he had to take care of those who were taking care of him. Until her departure for Florida she performed the usual household duties, caring for her husband and children. In November, 1918, petitioner offered her $2,000 if she would sign a paper he had in which she admitted she had been guilty of improper conduct with Devlin. She refused to do this, telling him she could not understand why he should be willing to send her South which he would never do before, and to give her $2,000 for pin money, when she had never had any.

In November she asked him if he would pay for herself and the children for a trip to Florida for the winter, and he agreed to do so, and spent for the purpose about $1,400; and the night before leaving for Florida, after the family, including herself and the petitioner, had supper, she was served with the papers in this suit. The next morning petitioner bade her and the children good-bye and offered to accompany her to New York, but was met by her reply, "Do you think it would look nice after serving me with papers last night?"

Mrs. Cartan, as stated, went to Florida leaving her daughter Helen at home to consult with Mr. Geran as an attorney and friend about the course she should take, and in about five weeks, on hearing from her daughter, she returned alone from Florida and consulted counsel about her defence. On her return she lived in her home, to which her husband came daily, remaining as late as eleven o'clock at night, reading or talking to her, when he would leave the house, to sleep elsewhere, and taking his meals at the hotel. About October 1, 1918, Mrs. Rens

Cartan, believing, as she states, that petitioner was about to do so, informed Mrs. Devlin, with no others present, that Devlin had been having improper relations with Mrs. Cartan, but refused to give her any particulars of the matter. Mrs. Devlin gives a different version of this disclosure and states that she first heard of the subject from Mrs. Rens Cartan, in the presence of Mrs. Bert Cartan; that she denounced the statement of her husband's intimacy with Mrs. Cartan as a lie, and thereupon Mrs. Rens Cartan insisted "that it was the truth, he was seen twice—he was seen in the back yard and he has been intimate with little Edna" (Mrs. Bert Cartan); "and little Edna sat there and said, 'Yes, Pat and I have had connection', and I said, 'You mean to sit there and tell me that you and Pat have had connection?' She said, 'Yes', and she looked me right in the eye, and I said, 'What have you to say for yourself?' and she said, 'I was out for a good time'." Stating she would ask Devlin about it, Mrs. Devlin then returned home and talked with her husband about the matter; and comment is unnecessary, on the condition of mind in which the interview left Devlin. Some days later, Mrs. Devlin was taken to a loft in petitioner's store by petitioner and Rens Cartan, and there copies of letters written by Devlin to Mrs. Cartan were read to her by petitioner. It appears that Devlin first learned of petitioner's accusation of Mrs. Cartan through his own wife, and thereupon he consulted Rens Cartan, who advised him to write to Mrs. Cartan, requesting her to seek her husband's forgiveness, and acting on this suggestion, on October 6, 1918, Devlin wrote to Mrs. Cartan as "Dear Doll", urging her for God's sake to go to her husband and ask his forgiveness for everything. Under date of October 8th, Devlin again

wrote Mrs. Cartan, asking her not to have any hard feelings against Mrs. Rens Cartan for telling Mrs. Devlin. Both of these letters were delivered to Mrs. Cartan through Rens Cartan after he and his wife had copied them and retained the copies in their possession. Rens Cartan claims that he was attempting to befriend Devlin when these letters were written and Devlin states that when confronted with this charge by his wife he sought Ren's help and wrote the letters not only as he suggested, but as Rens dictated them, and it does not appear that Devlin knew the letters were to be shown to Ren's wife nor that he and she were to make and keep copies of them. At Rens' suggestion or dictation, on October 8, Devlin wrote a second letter to Mrs. Cartan, the third in all, under the same circumstances, in which he again expressed his sorrow that she was offended because Mrs. Rens Cartan had told Mrs. Devlin; this letter was given to Rens to be delivered to Mrs. Cartan, but after he and his wife had read it, they concluded from the way Mrs. Cartan was acting, as reported to them, by the petitioner, that its delivery would do more harm than good. The tenor of the two letters of October 8th and the fact that all of the letters were copied by Mr. and Mrs. Rens Cartan gives some support to Devlin's statement that he wrote what Rens dictated in that these letters seek to justify Rens' wife in making her disclosure to Mrs. Devlin and make only the most meager reference to the request contained in the first letter that Mrs. Cartan should seek her husband's forgiveness, presumably for her improper relations with Devlin.

Mrs. Cartan upon receipt of the first letter went to the store to see Devlin and met him on the street and asked him what the letter meant; he seemed much worked

up and said there was so much to it he could not tell her, and he left her standing on the street without further explanation, and after that she did not consider it her place to ask the Devlins and Cartans about the matter; she thought the Cartans should tell her, and they never did, although she did go to Rens' house after the receipt of the first letter, through Rens' wife, for an explanation of it.

This substantially states the petitioner's case in respect to both inclination and opportunity on the part of defendants for criminal intimacy, and in addition to the denials, both general and specific, by the defendants of criminal inclination or conduct, evidence has been offered to show that petitioner, if he believed they had been criminally intimate, had condoned their offence, after knowledge of it had been furnished him, as he claims, by witnesses to their acts.

On the question of condonation, Mrs. Cartan is corroborated by her son and older daughter, who testify that they have seen their parents occupying the same bed and dressing and undressing in the same room, until her departure for Florida, in December. Mrs. Cartan, however, contradicts them respecting the occupancy of the bed, by stating that she and petitioner ceased cohabitation about six weeks before he made his disclosure to her in October. It was the custom of the family to leave their bedroom doors open at night, with a gas jet burning in the hall; the children claim to have seen their parents in bed, or in the room, while passing through the hall to the bathroom, and in addition, Helen states she saw them from a clothes closet connecting her room with theirs.

Petitioner and a surveyor whom he employed experimented during the course of the hearing and state that the

position of the bed is such that the light from the gas jet will not permit of any one passing through the hall to see how many occupants the bed contains, nor to recognize any one who may be occupying it; while Mrs. Hopkins, who also experimented during the hearing, states that by the light in the hall the number of occupants in the bed could be seen and they could be recognized, and Mrs. Terhune who lived in the house under precisely similar arrangement of the rooms and light, states that one could see and recognize from the hall or clothes closet the occupants of the bed.

Finally, it is insisted that if petitioner's story is believed, then has shown that for years he has connived at or acquiesced in his wife's intimacy with Devlin, and thereby consented to their conduct, and is therefore not entitled to the relief he seeks.

The record in the case is so replete with charges, countercharges and contradictions, that pages could be occupied in their mere recital; and while it is asuumed that the testimony of the parties is naturally colored by their interests the prejudice and unfriendliness of Rens Cartan, Mrs. Rens Cartan, Mrs. Bert Cartan and Norman Tice against Devlin and his wife and Mrs. Cartan, or one or more of them, is clearly established, and is hardly denied. Mrs. Rens Cartan in effect accuses Devlin of having made improper advances to her; Mrs. Bert Cartan practically admits a criminal intimacy with Devlin, and is incensed at Mrs. Devlin for calling her a "whore" because of this relation. The defendant, Mrs. Cartan, accused Rens Cartan in the presence of his wife, of improper relations with other women, and he states that he and Devlin corresponded with each other in an apparently friendly way, which was both hypocritical

and deceitful; and Norman Tice, about the spring of 1918, had a lawsuit with Devlin, which produced an unfriendly feeling on his part, and this feeling was intensified by the information he received of Devlin's relations with his sister, Mrs. Bert Cartan.

The bias of these witnesses, who are the parties by whom the charge of adultery is sought to be established, coupled with the concealment of their knowledge of the offence, even on the advice of counsel, for over two years, and the continuance of their intimate social and business relations with the defendants during all that time, taken in connection with the peculiar conduct of the petitioner after information of his wife's guilt was furnished him, shown by his occupancy of the same house with her, his support of her, his failure to disclose to her until October the knowledge of her guilt obtained by him in May; his willingness to send her to Florida, making the arrangements for her trip and paying her expenses; the service of process in this suit upon her the night before her departure for the South, after they had supper together; his offer to accompany her to the train the following morning; his frequent visits to the house and association with her during the day and evening after her return from the South; the vague and uncertain allegations of his petition, and of the bills of particulars concerning the times and places when and where the repeated acts of adultery were alleged to have been committed, when in fact he knew that his witnesses at the time when these papers were filed and served, had told him that they had seen and therefore actually knew the offence had been committed in the outbuilding in May, 1916, if it, in fact, had been committed—these features in the case, emphasized by his acquiescence, without remonstrance, in the

affection or intimacy he states he observed manifested by the defendants for each other during the past thirteen years, affected as they are by the presumption of condonation, due to his continued residence in the same house with his wife for months after he learned of her guilt; and the proof, such as it is, of cohabitation after May, 1918, tending to establish actual condonation, leaves the record in a most unsatisfactory condition, and has produced upon my mind, under the guarded discretion with which I have carefully considered every feature of this most troublesome case, such a state of doubt that I am unable to say that I believe the entire story told by any of the parties or their witnesses regarding the intimacy and criminal conduct of the defendants, or in the condonation of their offence by the petitioner; or, in fact, what part of their respective stories, if any, I do believe.

In this frame of mind, and realizing that to doubt is to deny, I reach the conclusion I have, with less reluctance than I might otherwise do, because until that conclusion is disturbed, it will keep two households intact; it will protect the innocent children of two families from the shame and disgrace they must suffer from a different result, and it may be the means of promoting domestic harmony between their respective parents. For the reasons stated, I will advise that the petition be dismissed.