NEW JERSEY COURT OF ERRORS AND APPEALS.

Between

IRMA LEIGH EARL,
Petitioner and Defendant,
AND
BINNEY WOODWARD EARL,
Defendant and Appellant.

} ON PETITION FOR DIVORCE.

BRIEF ON PART OF APPELLANT-DEFENDANT AND CROSS PETITIONER ON APPEAL FROM A DECREE OF THE COURT OF CHANCERY, ADVISED BY V. C. VIVIAN M. LEWIS.

I.

STATEMENT OF CASE.

This petition for divorce is based solely upon the ground of adultery on the part of the defendant.

The answer and cross-petition filed by the defendant contains a full denial and sets up the counter-charge of adultery on the part of the petitioner. The situation then is, that the petitioner seeks for a divorce on the ground of adultery on the part of the defendant; the

defendant meets the charge insisting there is no ground for divorce being granted the petitioner; and on the other hand, in a counter-charge, insists that he is entitled to a divorce under the testimony which he has adduced in support of his cross-petition.

The basis of the charge against the defendant, Binney Earl, the husband, is that he had a secret disease, known as gonorrhoea, the petitioner insisting that he communicated that disease to her. On the other hand, the defendant insists that the disease in question was communicated to him by his wife.

So that it may be taken as a conceded fact in this case, that both of these young people had this secret disease, and one of the questions to be determined is, which one had it first; and we claim that unless the petitioner shows by the clear preponderance of the proof that the defendant had it first, then the petitioner must fail.

The case is one of inference entirely. No adulterous act on the part of the defendant is shown. No evil association on his part since his marriage has been shown. No suspicious action has been brought out in this testimony from which an inference could be drawn that this defendant had been guilty of a violation of his marital vows.

While there is an absence of all these things as against this defendant, the situation changes as against the petitioner.

At the very outset the attention of the Court is directed to one of the most significant features of this case. Immediately after Binney Earl was put upon the witness stand, and his name and residence and marriage proven, he made an unqualified denial of the charges.

"Ques. Since your marriage to the petitioner, have you had sexual intercourse with any other woman than your wife?

Ans. I have not.

Ques. Did you contract any secret disease since your marriage as the result of intercourse with any other woman than your wife?

Ans. I have not." (Book, page 147.)

On the other hand, in searching the testimony adduced by the petitioner, you will find no such denial as that on her part, of having had sexual intercourse with anyone else than her husband since their marriage.

Further than that, you will not find, when you come to examine the cross-petition and the testimony of the co-respondent, any denial on his part of the charge alleged against him.

So that you have now an absolute denial on the part of one, without any qualification whatever, and no denial on the part of the other.

Our contention is, that the petitioner in this case fails; and that the cross-petition, filed by the defendant, should prevail and the decree below be reversed.

II.

GROUNDS OF APPEAL.

The decree of the Court of Chancery is erroneous:

A. Because it grants the prayer of the petitioner and decrees her a divorce upon alleged admissions of the defendant, petitioner, and members of her family, concealed for a long time, during which petitioner remained in the home of defendant and was supported by him.

B. Because the conduct of petitioner, as shown by the testimony, did not entitle her to a divorce.

C. Because the Court dismissed the defendant's cross-petition for a divorce, the same being supported by clear, competent and conclusive testimony.

D. Because the Petitioner had condoned the alleged offense.

III.

POINTS OF LAW.

A. Burden of Proof.

In *Marsh vs. Marsh, 28 N. J. E., p. 196,* it was held that

> "A judgment of divorce should never be pronounced on doubtful proofs."

Again, in *Reid vs. Reid, 17 N. J. E., p. 101,* it was held that

> "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 criminis* should be regarded as decisive in a case of doubt."

In the case of *Berckmans vs. Berckmans,* in *17 N. J. Eq., p. 453,* it was held that

> "Upon a bill for divorce on the ground of adultery, the complainant must not only show a decided preponderance of evidence in support of the charge, but must prove it to the satisfaction of the Court beyond a reasonable doubt."

And again, in the case of *Hurtzig vs. Hurtzig, 44 N. J. Eq., p. 329*, it was held that

> "The burden of proof is upon him who asserts the adultery."

B. Corroboration.

But the authorities in New Jersey go further, and a divorce is not granted upon the uncorroborated testimony of the petitioner or complainant; the Court's attention is directed to the cases which are abridged and digested in the *II. N. J. Digest, par. 65, p. 3804.* There are ten or more cases there cited, and the Court's attention is directed to Points A, B and C:

> "Point (a). A decree will not be granted on the uncorroborated testimony of either of the parties.
>
> "(b). Although the testimony of a party is competent in divorce cases, a divorce will never be granted upon such testimony alone as the cause of divorce.
>
> "(c). A divorce *a vinculo* will not be granted on the testimony of the complainant alone as to the cause of divorce."

C. Defendant's Denial.

Then, in connection with the burden of proof and the corroboration necessary, attention is directed to what our courts have said with reference to a defendant's denial. In *Mount vs. Mount, 15 N. J. Eq., p. 163*, as to defendant's denial:

> "* * The defendant denied that since his marriage he had had connection with any other woman

> than his wife." "Although his evidence is not entitled to the weight due to the testimony of a fair and impartial witness, it is, nevertheless, entitled to some weight, and in a case of this kind is at least sufficient to overcome the effect of the evidence on the part of the complainant."

In that case the only evidence on the part of the complainant was simply the fact that she had this secret disease, and his denial was held to be sufficient to overcome the presumption arising from that fact.

D. Admissions.

With respect to the force and effect to be given to the admissions of the defendant—and their case depends entirely upon declarations alleged to have been made by Binney Earl, the defendant, to members of the family of the petitioner—now, what force and effect is to be given to them in law?

We call attention to cases of *Clutch vs. Clutch, 1 N. J. Eq., p. 474;* and *Miller vs. Miller, 2 N. J. Eq., p. 138;* and *Perkins vs. Perkins, 59 N. J. Eq., p. 515;* and *Kloman vs. Kloman, 62 N. J. Eq., p. 153.* The announcement of our Court on this point, as taken from these decisions, is, that confessions of parties are to be taken with extreme caution and are never sufficient without strong corroborating circumstances. The above doctrine is applicable to alleged statements of a defendant that he was the source of his wife's trouble.

E. Concealment of Testimony.

We call attention to the authorities in New Jersey on the question of concealment of testimony, or knowledge of facts not disclosed, or not spoken of until the case comes into court, and notwithstanding which knowledge the parties acted towards each other as though no such facts existed.

What do our courts say with reference to that kind of testimony? From the testimony of the members of the family of this petitioner, it will be seen that the most harmonious relations existed for months after they claimed the so-called admissions or declarations were made.

The authority on that point is the case of *Stevens vs. Stevens, 14 N. J. Eq., p. 374.* The Court says:

> "When it appears that the wife has continued to live with the husband after the offence charged has been committed, there should be facts or circumstances to show that the offence had not been condoned, or a clear, express and unequivocal denial by the complainant of knowledge of the husband's infidelity during the continuance of their cohabitation, and a report of the master adverse to the condonation."

Again, practically on the same line, but more especially as to actual concealment of facts, attention is directed to the case of *Miller vs. Miller, 20 N. J. Eq., p. 216*:

> "The Court is reluctant to grant a divorce on testimony of a single witness, uncorroborated, especially when the evidence is the betrayal of a secret confided to the witness, so long kept undivulged as to render the witness almost a *particeps criminis.*"

F. Ante-Nuptial Incontinence.

Objection was made during the taking of testimony on the part of the petitioner as to the admissibility of certain testimony concerning the conduct of the defendant prior to his marriage. There is no question but that the testimony was inadvertently admitted, and no question but that it must be excluded under the authorities in New Jersey.

Hedden vs. Hedden, 21 N. J. Eq., p. 61. "Evidence of ante-nuptial incontinence is not admissible to support the charge of adultery on a bill for divorce."

G. Declarations of Co-Respondent.

There was one other question of a legal nature that appears from the testimony: the declarations of the co-respondent in the cross petition. It is not claimed that the declarations of the co-respondent are affirmative evidence as against the petitioner in this case; but if his testimony is impeached by showing contradictory statements made out of court, or statements made out of court inconsistent with his declarations in court of innocence, or otherwise, that the force and effect of his testimony is destroyed; that is to say, it has a tendency to destroy it—it is for the Court to weigh the testimony, and to decide how far it has been destroyed; that was the purpose of the testimony of the colored man, McCrea, as to the purchase of the medicine for this secret disease for the co-respondent, Mark Whitfield; it was also the purpose of the testimony of Mr. Wright as to the conversations

that he had with the co-respondent, Mark Whitfield, concerning his conduct and actions towards Mrs. Binney Earl. The authorities with reference to that are:

Graham vs. Graham, 50 N. J. Eq., p. 701; a question of the admissibility of contradictory statements by Stiles, who was the paramour, was reserved. The Court says, on page 705:

> "I think the weight of authority is that such statements may be admitted as contradictory of the testimony of the witness, but not as bearing on the main charge."

IV.

ARGUMENT.

Before analyzing the testimony, the chronology of the important events in the case, around which the testimony seems to revolve, is important.

The times of certain occurrences definitely fixed, will aid in considering and weighing the testimony.

These young people, the petitioner and the defendant, were married on the 28th of March, 1909. They lived for a time with the defendant's mother, who finally built a home for them at Edgewater, where they went to live in December of that year, December of 1909. With the defendant's mother, they went to Florida, on the day before Christmas of 1910, December 24th, and they remained in Florida until March of 1911. In March, 1911, they returned and resumed the housekeeping at this house at Edgewater. Shortly after their return from Florida, Mark Whitfield, who figures in this case as a co-respondent on the cross-petition filed by the defendant,

entered the service of the defendant and his wife, according to the testimony of the wife on page 47. At first he was there as an out-door man. Later on, upon their cook leaving the employ of these young people, he was taken into the domestic service, and from that time on up to the separation between these parties, in October of that year, he was the person who had general charge of the housework, as cook and waiter and also in doing the chamber-work, etc. He was in their employ from March to October of 1911.

The petitioner testifies, on page 34, that her husband was complaining the last of June or the first of July, 1911. She does not fix it any more definitely than that—the last of June or the early part of July.

But there is a date that is fixed with great positiveness, which antedates that in the general statement, and that is the time when the petitioner first complained of the irritation of her urinary organs or irritation of the bladder; that was on the 10th of June, 1911, when she complained to Mrs. Earl, the mother of the defendant. (Page 411.)

On the 10th of June the petitioner made this complaint to the mother of the defendant, and that is found in the testimony, (pages 51 and 52). The petitioner practically admits it on these pages.

Now, the next date in chronological order is the time of the defendant's, Binney Earl's, visit to Dr. Tracy, July 5th, 1911, according to Dr. Tracy's testimony on page 82; that is, Dr. Tracy's visit to Binney. Dr. Tracy went out to Binney's house first; that was July 5th. Then Dr. Tracy, on page 83, says that it was three or four days after that when Binney came to his office and the pe-

titioner was in the automobile; the defendant went in and talked with the doctor and came out, and some conversation took place as to which there is a diversity of testimony; that is, three or four days after the 5th of July.

At this time Dr. Whittaker takes the place of Dr. Tracy in Beverly, while Dr. Tracy is away on his vacation; that is in Dr. Tracy's testimony on page 84—that right after Binney's visit to his office he went away on his vacation.

The next date that is of importance is the visit of Binney's mother, the mother of the defendant, to Point Pleasant. She left Burlington—we do not think she had as yet finished her house at Edgewater; she left her home at Burlington on the 8th of July, and remained away visiting at Point Pleasant, or boarding there, until the 28th day of July, twenty days. That is found in the testimony, (page 412).

So that it is at once apparent that the talk that Mrs. Earl, senior, had with her daughter-in-law with reference to the irritation that the petitioner experienced occurred before that visit.

The next date that is of importance is the examination made by Dr. Crusen, of the petitioner, which was on the 31st day of July, 1911. That is found on page 95 of the testimony.

Then, the next and last date which is of importance—the day of the week or month is not definitely fixed, but it was about the middle of September, when Binney Earl started with his wife and Miss Keim to visit or to take dinner at Columbus, and Binney was taken ill and got out at his mother's; the others went on and had their visit and returned home. (Pages 151 and 152; see also

top page 71.) Binney could not return home on account of his illness. He was then sick at his mother's house from that time, about the middle of September, up to the time that the petitioner left, in October; this took place, according to the petitioner, the first day, or the first part of the month; she would not be positive, on cross-examination, whether it was the first day, but it was the first of the month. (Page 55.) In other words, before Binney Earl recovered from his sickness at his mother's and could go back to his home, his wife left him.

Now, a significant thing in connection with these dates, before passing, is this: that according to the petitioner's own testimony, the latter part of June or early July, she knew that her husband had this secret disease, and yet, from July to October, or from July to the middle of September, she remained in his household, a member of his family, giving all of the care and attention which a devoted wife could give to a sick husband, receiving from him during that period all of the care and attention which a devoted husband could give to a sick and ailing wife; not only that, but the petitioner continued to draw this large sum of money that the mother-in-law, the defendant's mother, gave her, monthly or weekly, for the household expenses, and a liberal allowance for her own personal expenses and clothing; and in addition to that, during this period, the mother of the petitioner and the two brothers of the petitioner knew of this secret disease of the defendant; and yet, during the whole of that period they permitted the petitioner to remain a member of this household, nursing and caring for this defendant, and receiving from this defendant's mother these large contributions towards the family expenses and her own personal support.

And the Court will not be unmindful of the fact that the whole of the testimony against this defendant is from the mouth of the petitioner, the mother and the two brothers of the petitioner; and the whole of it consists of alleged admissions on the part of this defendant; there is nothing else in the case against the defendant.

As to the existence of the disease, both of them had it; that is beyond any question.

But further than that, it appears in the case that during the month of August, Dr. Leigh, the brother of this petitioner, notwithstanding what he testifies as to the condition of this defendant and the wrong that he has worked upon his sister, the petitioner, notwithstanding that, he remains on such intimate terms with this defendant that he borrows his automobile and takes the family riding in the defendant's automobile during the month of August. (Page 99.)

Even, further than that, this petitioner's mother, Mrs. Leigh, in the month of October, in the presence of a disinterested witness, Ella Burns, says—about the time Binney comes back from his mother's home—about the time that the petitioner is packing up her belongings and taking them away, Mrs. Leigh—notwithstanding what she now tells us of the knowledge of this secret disease by the defendant—and that the defendant has admitted to her, as she says, that he had given it to his wife—the daughter of Mrs. Leigh—notwithstanding all that, Mrs. Leigh says, in the presence of Ella Burns, that she would like these young people to go back and live together. (Pages 342-3 and 4.)

We insist that this testimony on part of petitioner and on which the decree is based is incredible; it is con-

shows condonation
otherwise it

trary to human experience; it is not the character of testimony that we look for under ordinary circumstances. The natural thing would have been, immediately, in July, or at least on July 31st, for this mother, for these two brothers, to demand that the daughter and sister should at once leave this defendant and not remain there nursing and caring for him as a devoted wife—and receiving from him the same care and devotion and attention; and that, instead of concealing the knowledge which they claim to have had as to the extent of the disease in the defendant, and his having admitted that he communicated it to the petitioner, instead of concealing it, it would have been the natural and ordinary thing for them to have denounced this defendant and at once to have taken the daughter and sister away from the home of this defendant, and promptly to have commenced the proceedings which are now pending.

As one of the decisions quoted says: "Where the facts are concealed for a long period of time, they become incredible and the witness is impeached and the testimony is to be practically disregarded." Remember, that the whole of the petitioner's case rests upon alleged admissions of this defendant that he communicated the disease to the petitioner. Both had it. One of the questions is, which one had it first? They say that defendant had it first because they say that he admitted it to the petitioner and the mother and the two brothers, and yet these persons have acted in this matter in such a way as to destroy their credibility before the Court; the testimony of these persons must be disregarded and the divorce prayed for by the petitioner must be denied.

In *Miller vs. Miller, 20 N. J. Eq., 216,* Chancellor Zabriskie says: "The Court is reluctant to grant a di-

vorce on testimony of a single witness, uncorroborated, especially when the evidence is a betrayal of a secret confided to the witness so long kept undivulged as to render the witness almost a *particeps criminis.*"

The underlying principle on which defendant relies in this particular is the same—that this mother and these brothers, remaining silent during all this time, and permitting the wife to remain in the household under the circumstances which she did, renders them almost *particeps criminis.*

Then, bearing in mind that other principle of law, that not only must the petitioner satisfy the Court by sustaining the burden of proof, but as this case is somewhat of a criminal nature, the charge of adultery being a criminal charge, it must be proven beyond a reasonable doubt.

Case of *Berckman vs. Berckman, 17 N. J. Eq., 453:* "The complainant must not only show a preponderance of evidence, but must prove it to the Court's satisfaction beyond a reasonable doubt."

Again, and in connection with the chronology of the case, reference is made to the testimony of Dr. Tracy, the attending physician of both these young people.

He had treated Binney, the defendant, on July 5th. (Page 82.) On cross-examination he says it was an acute case, one of very recent inoculation (page 91); that the disease is progressive, and that when he treated the petitioner on July 30th he "did not consider that the "condition had been there longer than eight weeks per-"haps." (Page 92, line 10, &c.)

On re-direct examination, he says *from what Dr. Crusen told him* he couldn't tell definitely of how long standing it was. (Page 94.)

Taking the testimony of the attending physician as a whole, it is evident that the petitioner was the first sufferer. He was impartial and was fair to both parties, although called by the petitioner.

V.

PETITIONER'S TESTIMONY ANALYZED.

A brief review of the testimony will sustain the defendant's contention.

On page 34 the petitioner says that she first noticed Binney's, that is, the defendant's, burning condition, or condition of affairs, the last of June. Then she says that a short time afterwards she had it, and then, on page 35, she makes the remarkable statement, on direct examination, that "he did not go to Dr. Tracy's before I had it." So that prior to July 5th, the petitioner had this trouble, according to her own testimony, given on direct examination, that before the visit was made to Dr. Tracy, whether that may refer to the time that Dr. Tracy came down to their house, July 5th, or whether it refers to the time that they two went up in the automobile three or four days afterwards to Dr. Tracy's office is not very material, because it is the difference between the 5th and, perhaps, the 7th or 8th of July, but before that time she had it; that is on page 35.

On page 36, on direct examination: "He was treated, but I was not until Dr. Tracy got back." He was treated, but she was not; he had been to a physician; he was receiving the benefit of medical science; she says he was being properly cared for, being cured—she was not. It

was not until the 31st of July that she goes to a doctor about this matter.

On page 37 we come to a contradiction of the petitioner; that is to say, on page 37 she makes a declaration which is contradicted by Dr. Tracy on page ~~68~~ 87. She says that Dr. Tracy told her that Binney had got it from a toilet, and had given it to her. Dr. Tracy denies that any such thing as that was said. He denies that Binney admitted that he gave it to his wife. What he says is, that they both accused each other, in his presence. That is on page 87 ~~68~~ of Dr. Tracy's testimony.

Now, then, another significant thing. On page ~~10~~ 38 she says that she told her mother—now, this is tracing the knowledge home to the mother: "As soon as Dr. Tracy told Binney what he had;" that was either July 5th or July 7th or July 8th, as she testified, that she told her mother that she had this trouble; and on the same page she says she told her brother; and on re-direct examination, ~~on page 53~~, the same testimony appears. Now, the significance of that is this: that early in July, three months before this petitioner leaves the household of the defendant, she has told her mother of her trouble, and she has told her brothers of her trouble, or her brother, the doctor; they knew it during the whole of July, the whole of August and the whole of September. Then, she says, on page ~~38~~, that she talked this over with her brother before Dr. Tracy came back; and on page ~~26~~ 46, she makes an admission, which I will take up later, to the effect that she frequently talked about her trouble with Mother Earl, or Binney's mother.

In being examined about the conversation with her mother-in-law, Mrs. Earl, on the next page (page ~~26~~ 46),

the petitioner says that she told her about the examination by Dr. Crusen, and on the following page, Mrs. Earl, the mother, according to the petitioner's testimony, suggested that the toilet was a probable cause of the contagion.

Now, I desire to call the Court's attention to the testimony of the defendant's mother, and the testimony of all of the other witnesses, so far as it connects the defendant's mother with this case; and it will be seen that the most tender solicitude was shown on the part of this defendant's mother towards the daughter-in-law; the kindness that she had exercised towards her; the gifts that she had made her; the trips that she had taken her on; the expenses that she had borne; the beautiful home she had built for her; and the monthly allowances, etc., which go to show that the mother-in-law's heart was in the right place, and she wanted to cherish this daughter-in-law, and was unwilling to believe any evil; unwilling to accept the worst construction that could be put upon the matter, when the daughter-in-law tells her of this irritation from which she is suffering in the secret parts; the mother-in-law at once suggests that she possibly might have taken this disease or contracted this disease from contact with a soiled toilet seat; there are authorities that recognize that. An old English case, *Collett vs. Collett,* where accidental contagion is recognized as one of the causes of this secret disease. See *Mount vs. Mount, 15 N. J. Eq., 162; Bishop on Marriage and Divorce, Sec. 440.*

Now, then, she admits—I am speaking now of the petitioner's testimony—she admits she nursed and cared for her husband until the middle of September, ~~at~~ up to the

time he was taken sick up at his mother's house and could not get back home, and she did everything that a tender and devoted wife could do. Going back a little in her testimony, on page 45, in the direct examination, we find an exceedingly significant statement, and an incredible statement on the part of this petitioner. She says that after she had learned of her husband's trouble they had no sexual intercourse; they did not cohabit with each other, but on page 45 she admits that after she knew his condition, as she claims it, that they occupied the same bed; that he would come to her room, as she describes it, and knock at the door, and she would unlock the door and he would occupy the bed with her.

Now, then, I don't know what character of men could be made to believe such testimony as that; it is contrary to all human experience; it is absolutely incredible on the face of it. Here are two young people, vigorous, lusty, strong; the girl wonderfully attractive—the kind of a girl that would attract a man the most, barely 21 or 22 years of age—the defendant not much older, occupying the same bed, and then is it credible to believe that they did not have sexual intercourse. I cannot bring my mind to think such a thing is possible.

The time he came to the door and knocked is not stated, nor the time when they occupied the same bed together definitely stated; that is obscure; it is simply this, that after she learned the fact that he had had gonorrhoea, they occupied the same bed together, and prior to the separation. If it was only in September, if it was during convalescence, practically approaching complete healing, the force of the testimony is apparent, and Dr. Crusen, whose affidavit is taken as testimony in

this cause, fixed the time when he made the last examination and found her microscopically clean. The last examination is: "On the 20th of September, 1911, last, I made another examination, this time miscroscopically, and found she was clean of the disorder." (Page 95.)

So that, some time before they separated, they occupied the same bed, and she was healed by the middle of September.

Now, she admits on page 21, that she complained to Mrs. Earl; she remembers about Mrs. Earl being down there with the architect at the house; she does not positively admit that it was on that precise date—that is, in the direct examination; she does admit that she had the talk with Mrs. Earl, and that Mrs. Earl was down there.

I will refer to Mrs. Earl's testimony presently, showing that the date was absolutely fixed. The petitioner admits that she drew allowances from the mother-in-law, Mrs. Earl, from June to October. And on page 12, she makes rather a curious statement. On page 41, in answer to a question put by her counsel, she says: "Ans. During the last part of my time there, he began to act very indifferently, after he found I was staying on and was not making any move to leave, and he went out without me a lot and never took me anywhere, and got awfully disagreeable, and then I decided that I felt there must be someone else in the case to make him act that way."

So that the reason for the final separation—the reason that she gives—is one prompted by jealousy, according to her own testimony, and not prompted by the fact that her husband was afflicted with a secret disease which he had communicated to her.

Then, another significant thing in her testimony; on page 45, you will find that she admits that her family

CONDONATION ; this certainly constitutes condonation ; the petitioner admitted the defendant to her bed ; she thereby condoned the alleged offense on which her petition is based ; when she testified as above, she was being examined by her own counsel as to co-habitation after she knew of the existance of the secret disease in her husband. She says she admitted him to her bed ; this was evidently during the same period as to which her counsel was directing her attention in taking her testimony at this time and on this point. She knew the nature of the common ailment from which they both had suffered ; she had talked it over with her Mother early in July, and also on or about the same time with her Brother who was a Physician. She had been examined by an expert in July : After all this she admitted her husband to her bed, and by that act condoned the supposed offense against her. She lived two months with her husband afterward : Her conduct and that of her Mother and Brother as well as their testimony hereinafter anayalized, is consistent with this theory of condonation and with no other ; it is otherwise irreconcible to common experience and observation.

tried to separate them as soon as they were married—that they disliked the marriage; in answer to question: "Ques. Never mind that;" she was about to repeat something that Binney's mother had said, "Ques. Never mind that —as soon as your family learned of the marriage, they tried to separate you, didn't they? Ans. My family did; yes, sir." And the Court asked the question: "Ques. Your family? Ans. Yes, sir."

So that we have, as a motive underlying the whole of this case, the fact that this family of this petitioner tried at once after the marriage to separate this young couple, and our theory is that they are still working along that line; and along with the separation what they want to accomplish is, the payment of a large sum of alimony to the petitioner.

But look at her testimony on pages 55 and 56, and you will find that two or three weeks before the separation she says that she had finally decided to leave him; not until two or three weeks—that is, the middle of September. But she engaged a servant, she engaged this Ella Burns to come there to work. She was asked: "Ques. Why was it then, if you had decided some two or three weeks before you left, that you engaged a servant to come and live with you and him in October? Ans. I supposed that he would live on there; I did not suppose he would break up before I did. Ques. Then, you were engaging a servant for him? Ans. Yes, sir. Ques. The servant that you were engaging was Ella Burns? Ans. Yes, sir. Ques. At about that time you were contemplating taking a yachting trip? Ans. Yes, sir. Ques. And you had asked Binney if he would mind if you went off on a yachting trip? Ans. That is true."

Now, with respect to her testimony about the defendant, Binney Earl, going out at night in the automobile, she knew that he was the agent for this lamp, and she knew he went out evenings for the purpose of illustrating this lamp, and on page 34 we get one of the little side lights to this affair, and we find that they had had a quarrel and she left, and she had gone to her mother's, but that evidently did not suit the family for this rupture to take place in that manner, for the quarrel to be between this husband and wife, and for the wife to leave the house; they knew well enough that that did not put her in a proper position to appeal to the Court, and in answer to my question, on pages 58 and 59: "Ques. You and Binney had had a quarrel over night, hadn't you? Ans. We had not had a quarrel; no, sir. Ques. You had some words together? Ans. Probably a disagreement. Ques. And Binney went up to his mother's with his car and staved away all night? Ans. He said he did. Ques. But he did not stay at home that night? Ans. No, sir. Ques. What was that quarrel about? Ans. I don't remember. Ques. Didn't you tell him on that night that you never wanted to see him again? Ans. No, sir. Ques. Are you sure of that? Ans. Yes, sir." She is asked if she did not say she did not want to see him again; she denied that, but Binney affirmed it; so that all had not been peace and harmony in this family up to the time the final separation took place.

But here is another significant side light in this case, and you will find it commencing on page 59, and running through quite a number of pages, and when you come to take up the cross-examination of Binney Earl, you will find that counsel on the other side devoted nearly thirty or fifty pages to this so-called Goulard's episode.

Now, Mr. Goulard is not mentioned by the defendant in the cross-petition as a co-respondent, but the Goulard's episode figures in this case for the purpose of showing the mental attiture of this petitioner towards her husband. Now, what do we find? We find for one thing, and it is undisputed, she admits it, that she had this man's picture on her dressing-table, Mr. Goulard's picture on her dressing-table, before her on the dressing-table, as she performed her toilet at night and in the morning, and it was there until there was a disturbance over it between the husband and wife; and then she said she tore it up at Binney's request. Now, that is undisputed. (Bottom pages 63 and 64.)

Now, isn't it a little singular, her testimony and her mother's testimony as to the mere chance resumption of the acquaintanceship with Goulard, whom she had known when they were boy and girl going to school together; the testimony of the mother is, that she was living at the Metropolitan Hotel in Burlington, and Goulard was there on business, and Irma, the petitioner, her mother and brother again met Goulard, and that practically, until Mr. Goulard comes to the house, that is, according to their view of the case, by their testimony, the whole of that Goulard incident; but is there enough in that to account for the fact that Mr. Goulard's photograph was on some kind of support on the dressing-table of this young woman, staring her in the face and a constant taunt to her husband, as it must have been; and then, as appears by the testimony of Mrs. Leigh, the mother of this petitioner, while there at the Metropolitan Inn, the acquaintance between the petitioner and this man Goulard was so intimate that Clinton Leigh, the brother of this

petitioner, took it upon himself to invite Goulard to go down to the Binney Earl's household, at Edgewater, to take dinner.

And then, again, Goulard visits the house. It does not make any difference, as I view it, whether he went there on the invitation of Binney Earl, or whether he went there on the invitation of the petitioner, his wife, or whether he went there on the invitation of Clinton Leigh; he was there. Neither does it amount to anything, in my judgment, whether he was there one night, two nights or three nights—he was there at least one night, and this is a fact in the case that cannot be erased, and that is, that his conduct towards the wife of this defendant, the petitioner, and the petitioner's conduct towards this man Goulard, was such that Binney Earl left the house and called up the petitioner's father to come there, and whether the father kicked him out, or whether he invited him to go out of the house, is immaterial—they went out of the house together. Binney Earl went and called up his father-in-law, and, expecting to meet him down at the trolley crossing, had walked down there at night, but the father of petitioner came some other way, and got to the house, and when Binney got back to the house he found his father-in-law and the man Goulard had left; in other words, the situation was such that Binney Earl, as he said on the witness stand, not feeling himself physically able to do that which an ordinary man would have done, if physically able, namely, to kick the man out of the house, appealed to his father-in-law instead—an undisputed fact in this case, and the father-in-law came there, and this young man was either ordered out or requested to go out, or in-

vited to go out; whichever it was, he left with the father-in-law at the instance and request of this husband, this defendant, who felt that his wife was not acting prudently—we have not said criminally—but who was not acting prudently with this visitor. (See pages 78 and 158.)

Then again, on page 65, there is the foundation for a contradiction of the petitioner; she denies most emphatically that her mother did not say, in her presence and in the presence of Ella Burns, or say to her in the presence of Ella Burns, that she wanted these people to come back and live together. Ella Burns says that the mother did say that, and you will find her testimony on pages 342, 343 and 344.

Further, on page 69, as showing the belief of the mother-in-law, the defendant's mother, in the innocent contagion of the petitioner, she says, "Mrs. Earl," referring to her mother-in-law, "was very nice, and she proposed taking us on a trip to California;" and then, on page 69, the same page, she, repeating a conversation with her mother-in-law, in which her mother-in-law said that "I" referring to the petitioner Irma, the wife, "Ans. She said in a very nice way that she thought probably I had got it from the toilet and given it to Binney." And then the petitioner makes this statement, and I quote the exact words of her testimony: *"I thought she was telling me the truth; I did not get provoked at her."*

Why did she think her mother-in-law was telling her the truth? Why was it that she did not get provoked at her mother-in-law, when her mother-in-law said to her, "Irma, you must have gotten this from a toilet to give this to Binney." Why didn't she indignantly then

and there deny that she had given it to Binney; why didn't she at once deny that she did not have this disorder until Binney had given it to her? But instead of that, she says, "I thought she was telling me the truth;" that is to say, that she must have gotten it from a toilet. Now, she knew whether she got it from the toilet or whether she got it from her husband; and knowing that she did not get it from her husband, she accepted her mother-in-law's statement and did not get provoked at her. It is impossible for that testimony to be accepted if she knew that Binney had had it first; and if Binney had complained of this irritation prior to any trouble on her part.

On page 79, during the time that Binney was sick at his mother's home, he sent notes daily—daily to his wife. (Page 79.) She had nursed him during the whole time he was ill from the secret disease. (Page 80.)

So much for her testimony.

Now, briefly summing up her testimony, it is simply this: that her husband had this irritation; that she had the irritation also; that she says her husband admitted to her that he had given it to her; that is the whole of it. Strip the whole of her testimony, analyze it, and discard all that is immaterial and irrelevant, and we come down to her declaration that he made admissions.

Now, we come to Dr. Tracy's testimony. He says that Binney visited him on the 5th of July; on page 82, that he complained of the burning sensation a day or two before.

So that we have Binney's complaint or illness or sickness from this disease, manifesting itself a day or two

before the fifth day of July; in the early part of July we fix, then, quite clearly and conclusively, the time when Binney first felt this irritation.

Then, on page 84, he says he treated petitioner on July 30th.

On page 83 Binney told him of the trouble on July 5th, and on page 87 is where he comes in contradiction with the petitioner; he says that it was on a Sunday, and it was after the visit to Dr. Crusen that each of them accused the other.

But a significant feature of his testimony is, that, on page 91, on cross-examination, he is asked, from his knowledge of the disease and from his examination of Binney and the condition in which he found Binney at that time, whether his disease was of long standing or whether it was recent, and he says it was quite recent; it was not chronic; that was July 5th. So that we have, according to Dr. Tracy, a very recent case on the part of Binney, early in July, as the period of contagion.

Now, on page 92, he makes a statement which, on cross-examination, he seems to depart from, but really, when you examine it, you find that he does not depart from it. On cross-examination, he is asked from what he saw of the petitioner's condition on July 30th—the day before they went to Dr. Crusen—from what he learned of her symptoms, his own personal knowledge, his own experience, based upon his experience and upon the fact that he himself gained that day, he is asked on cross-examination how long, in his judgment, had the petitioner been suffering from this trouble; and he said "Six to eight weeks."

I will read from the bottom of page 73: "Ques. Now, from your experience as a physician, can you say whether

or not Mrs. Earl, at the time you treated her, July 30th, had been suffering a long time or a short time, or are you unable to say? Ans. I would be unable to answer that question; but I do not believe it was of long standing. Ques. What do you mean by that? Ans. I do not think it was chronic. Ques. When you say you do not think it was of long standing, what are we to understand by the word 'long'? Ans. Do you mean previous to July 30th? Ques. Yes. Ans. Well, I mean weeks; I did not consider that the condition had been there longer than eight weeks, perhaps." Then the Court asked this question: "Ques. Was that when you examined her, on July 30th? Ans. Yes, sir." (Page 92.)

In other words, from his personal examination and knowledge of the disease, and based on his experience as a physician, all he could say was, that her condition had not been existent longer than eight weeks.

Well, from July 30th, that took it back to May 30th; that took it back for the whole period of eight weeks. Now, he does not say it is eight weeks—he says "not longer than eight weeks," but unquestionably, you can see from that statement of his, from that answer of his, that from his examination, and based upon his knowledge, that she unquestionably had this disease fully as early as Binney Earl had, and, according to that testimony, earlier.

Now, ~~on cross-examination~~ he apparently contradicts that. On re-direct examination by Mr. Backes: "Ques. Could you tell from what you saw and observed of Mrs. Earl, how long she had been afflicted with the disease, when you first saw her on the 30th or the 31st of July? Ans. No, sir; only from what Dr. Crusen had told me I felt quite sure it was not a chronic condition. Ques.

Then you could not tell whether it was of two weeks' or four weeks' or eight weeks' standing? Ans. No, sir."

In other words, he is basing his answers on ~~cross-examination~~ re-direct, not upon his own examination, which was the basis of the ~~direct examination~~ Cross, but upon what Dr. Crusen has told him of his examination there on July 30th. So that it is a fair inference from Dr. Tracy's testimony, that the petitioner was afflicted with this secret disease at an earlier period than was the defendant, her husband. At any rate, they do not exclude, by the testimony of any physician, the probability, or the inference, that she had it first.

So much for Dr. Tracy's testimony.

Now, we come to the testimony of Dr. Chester A. Leigh, who is a brother of the petitioner; and his testimony is found on page 95. On direct examination, he says that he knew his sister's condition in July, from a conversation that he had with his mother; corroborating what we have already alluded to as to the length of time that they had this knowledge, three months, practically, before the separation.

He knew of his sister's condition in July, from his mother.

On page 97 he says he went with his sister and his mother to Dr. Crusen; and, more significant, two or three days after that he had a talk with the defendant, and in that talk with the defendant he claims that the defendant admitted to him that he had given this secret disease to his sister, that is, to the witness's sister. (Page 98.) You see the whole of the testimony against this defendant is in the nature of admissions by him.

In July his mother told him about his sister having this secret disease. On the 31st, he went with his sister and mother to this expert, this specialist, and two or three days after that, he had a talk with this defendant, in which he claims that the defendant admitted that he had given this trouble to his sister. Now, is that credible testimony; is that a consistent statement, one that can be accepted by the Court as proving the facts. Bear in mind what the authorities say as to the small force and effect to be given to a defendant's so-called admission, and then, coupled with that, consider the source from which is comes. It comes from a physician, a man who knew this disease; who knew the danger that his sister incurred every hour that she remained under the roof of this man, if his testimony is to be accepted. And yet, during the whole of July and the whole of August and the whole of September, this physician brother permits his sister to remain under the roof of the defendant, afflicted, as he says, with this disease, and who had communicated it to his sister; he permits this sister to remain there, nursing and caring for this diseased defendant, being most kind, affectionate and devoted, so that it was remarked in the family that no trained nurse could have done better than what this petitioner did; drawing this allowance, as he knew she was doing, taking money as the wife—not by order of the Court in the shape of alimony, or of allowance, but accepting the regular monthly or weekly moneys for the payment of the household expenses, and accepting her own allowance for clothing and personal expenses.

And further, Dr. Leigh admits, on cross-examination, page 99, that in August, he twice borrowed the automobile belonging to the defendant, for a family ride; I

think it was to Atlantic City that they went; he borrowed the automobile of this defendant, thus putting himself under the favor of this defendant, whom he ought to have scorned, whom he ought to have treated as a pariah, a man with whom he should have had no intercourse whatever—but, instead of that, claiming to have this knowledge of this wickedness—concealing it—not demanding of his sister that she leave the home of such a loathsome beast as he pretended to consider him, but remaining there, he himself accepting favors. The testimony coming from such a source as that is not the testimony to satisfy a court of conscience that the petitioner has proven her case beyond any reasonable doubt.

Then, again, a very significant thing in the doctor's testimony as to Mark Whitfield, the co-respondent, pages 100, etc. "Ques. Don't you remember being there at the house in Edgewater and accusing Binney of infidelity, in the presence of your sister? Ans. Yes, sir. Ques. And didn't you call Mark Whitfield as a witness? Ans. No, sir; he came in while I was there, but I did not call Mark in. Ques. You made the accusation in Mark's presence? Ans. No, sir. Ques. Did not Mark hear the conversation? Ans. Yes, undoubtedly; that is the reason he came in. Ques. Did not Mark there at that time say, that if Binney accused him of having the disease he was willing to be examined by Dr. Rink? Ans. Yes, sir.

So that you have this significant thing, that at one time, while these parties were together in this house at Edgewater, in the presence of the brother of the petitioner, a physician, the question arose as to Mark Whitfield having this secret disease; and the theory of the defence is, and the theory of the cross-petition is, that

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Mark Whitfield had this disease, and that he communicated it to the petitioner, and that the petitioner communicated it to the defendant. And here, in the presence of Dr. Leigh, the brother of this petitioner, this colloquy took place about Mark Whitfield having a secret disease. The time is not fixed. It can be fixed only by a general reference to his testimony as to when he had these conversations with Binney at Binney's house, the times that he went there. It was on one of these occasions, and Mark overheard this conversation, and Mark undoubtedly must have heard Binney say, "Why, Mark Whitfield has got this disease." Whether Binney Earl knew at the time of what McCrea knew, or whether he knew that Wright was buying this Hood's Sarsaparilla for the blood, at Mark Whitfield's request, we don't know; but, unquestionably, it does appear that then and there was a discussion about Mark Whitfield's having this secret disease.

And this Dr. Rink, there is no testimony as to who he is, or as to who Dr. Mulford is, but Dr. Mulford is a reputable physician.

Then, again, still further, as bearing on the testimony of Dr. Leigh, is his admission, on page 101, that he did not approve of this marriage, and on page 102 he admits his knowledge of Binney's disease—that he allowed his sister to remain there in the house—and that he allowed her to nurse Binney, all of which is inconsistent with the statement which he says Binney made, and the fact that he concealed it so long is, I think, conclusive that his testimony is not to be accepted.

Now, we come to the testimony of Mrs. Leigh, the mother of petitioner, on page 103. Mrs. Leigh says,

on page 105, that she learned of her daughter's sickness in July, and she says that she went with her daughter to Dr. Crusen; and then she says that a few days after she had a talk with Binney; this is her testimony as to Binney's accepted admission: "Ques. Do you recall Mrs. Earl and your son, with Dr. Tracy, going to Dr. Crusen, in Philadelphia, for the examination of your daughter? Ans. Yes, sir. Ques. Do you remember your daughter returning home that day? Ans. Yes, sir. Ques. Was Binney at home? Ans. Yes, sir. Ques. What happened between you and Binney at that time; what took place, what talk took place? Ans. Well, a few days after my daughter was at Dr. Crusen's, Binney said he was going down to Philadelphia to a specialist, and he left with that intention, or, at least, that is what he said. He stayed over night, and I went down and stayed with my daughter, and I was there when he came home, which was about noon the next day, and he said he came home in the morning, but he had been up to his mother's, that is what he said; and I asked him why he did not come to his own home first, and he said he had been very angry at his mother, and he went up to talk with her; he said that his mother wanted him to say he had contracted this disease from Irma, and that he would not say it, and he said that he went to his mother to explain to her that he would not say it, because he did not get the disease from Irma, and that he gave it to Irma himself; he said his mother wanted him to say that he contracted it from Irma." (Page 106.)

Now, what an improbable thing, that Binney told her his mother wanted him to lay it to Irma, and instead

of that, that he told her that he had himself given it to Irma.

Well, in the first place, I think it is exceedingly doubtful if this husband—any husband—would go around publishing to all the members of the family that he had communicated a secret disease to his wife; that he would tell his wife, "Yes, I gave it to you," and go to the two brothers and say, "Yes, I got it and I gave it to your sister;" but nowhere is there coupled with this any declaration as to where Binney got it from—how Binney got it. The testimony in the case is absolutely silent as to this feature. They do not trace Binney to any house of ill-fame; they do not show him under any suspicious circumstances since his marriage. So that, is it not remarkable, first, that Binney should be telling his mother-in-law and his brother-in-law that he gave this secret disease to his wife, the daughter and sister of these people; and further, that there should be no declaration or statement as to how he got it? It is an improbable story.

On page 107, this mother of the petitioner admits that they were not pleased with the marriage, and she says that they tried to separate the young pair; her language is, "Ans. Yes, sir; we did all we could to separate them." Then she admits that during July, August and September, or during so much of the time they were, respectively, sick, that they nursed each other, took care of each other; no other nurse or helper in the house. And then, a remarkable thing on that page in cross-examination is, and in contradistinction of what the mother-in-law testified to, this petitioner's mother admits she did not urge her daughter to see a doctor; and yet, Mrs. Earl's testimony, the mother of the defendant, repeated over and

over again, is to the effect that as soon as this daughter-in-law complained of this irritation, she urged her to see a physician.

And on page 108 this mother of the petitioner admits that she and the family used the defendant's automobile in August, when they had known of the existence of gonorrhoea in this defendant for over a month, and had known that her daughter had the gonorrhoea, and as she claims that her son-in-law had told her that he had given the gonorrhoea to her daughter; and yet, is it conceivable, is it probable, that knowing these facts she would do as she did—go to this son-in-law and beg this favor of the loan of the automobile, that the family might have this trip? I submit that the testimony will not bear scrutiny.

The next witness that the petitioner called was William Wright; and an effort was made to prove certain things by William Wright, which resulted in absolute failure. On page 114, they asked him if he and Binney were not out riding with two girls in the automobile, and he denied it, and there is no contradiction—there is no proof of it—it is something that is made up out of the solid. He denies going out at night; he denies drinking beer with him; he denies staying out all night with him; and, as significant of the barrenness of the petitioner's case, it is quite evident that they had detectives on this defendant. I don't know that they had; there is no proof in the cause that they had, but you can draw no other inference from the testimony of Mr. Wright but that they had, because they asked Mr. Wright whether or not, on one occasion, he did not go with Binney in the automobile to

Philadelphia and stop at a certain brick house, describing it, and asked if he did not wait there. (Page 117.) The inference to be derived from that was, that these folks had taken Binney, in broad daylight, down to a house of prostitution, and that they remained outside while Binney went inside and gratified himself. It appears that the automobile was owned by a man named McCoy, since dead, who drove the car. Wright was along; Binney Earl was there, and, on cross-examination, one or two questions cleaned the whole thing up most beautifully. Binney Earl was not well, and that was Dr. Whittaker's home; they went there to see Dr. Whittaker; he was not at home, but he was down at Fortescue; they waited while Dr. Whittaker's mother prepared herself for the ride in the automobile, and then the two of them went down to Fortescue, where Mr. Binney Earl saw Dr. Whittaker. (Page 123.) So that the only thing that they thought they had, turned out to be an absolutely innocent transaction, and one that has absolutely no weight whatever, and even is not referred to by counsel in his opening as one of the matters on which he relies.

And on page 125 he explains an accident and the delay that they had once when out in the automobile. That is the end of the testimony for the petitioner.

Then they called Anderson Shinn to testify about Binney's escapade before his marriage. This is totally irrelevant. That is page 129.

Then they called a Burlington whore, Julia Richardson, who was the "Razor-back" companion of Binney on this escapade before his marriage. (Page 134.)

Now, the acts of the respondent prior to his marriage are totally incompetent, from any aspect of the case; that was nearly two years before this disease manifested itself. On the contrary, the presumption is that after marriage the inclination would be to stay at home, especially with a sweet and attractive young wife such as Binney Earl had here. They do not show any intercourse with this whore after marriage—any communication with her—any being together, or anything of that kind, or with the other woman whose name was mentioned; so that the case is barren in that respect.

Heddon vs. Heddon, 21 N. J. Eq., 61.

Now, we come to the testimony of Clinton Leigh, the other brother of the petitioner. (Page 138.) He speaks about the visit to Dr. Tracy, date not given; he went to Dr. Tracy, and when he comes back he has a talk with Binney, and he tells Binney that it is the gonorrhoea, and then he repeats, as an alleged admission of defendant, and this is the purpose of his testimony—to put something in the mouth of this defendant—the only testimony they have is alleged admissions and coming entirely from members of the family, and members of the family who for three months concealed this and permitted their daughter and sister to remain in the house—he says that Binney told him this improbable story: "Ans. I told Binney that Dr. Tracy had told me that Binney intimated that he caught it from my sister, and Binney said that was not so; he said his mother said that, and it was not so; he said Mrs. Earl wanted him to say that." That was the conversation. (Page 143.) Can you imagine a

man going around and telling such things as that, volunteering such statements, and then can you imagine a brother for three months concealing his knowledge of that and permitting his sister to remain in the household of the man who made this declaration, and permitting her to nurse him during the whole of this illness, and permitting her to receive the allowances for her clothing, and for her family support, coming from the mother of a man who had treated her is this manner? There the petitioner rested, but, with the permission of the Court, their case was opened later, and interjected during the cross-examination of Binney Earl, was the testimony of Dr. Mulford which I will treat here as part of the petitioner's original case.

Dr. Mulford says, on page ~~263~~ 248, that on June 13th, June 15th and June 16th, he treated this girl for hemorrhoids: that is about the time that Clinton Leigh fixed as the time when he says Binney complained of irritation.

On cross-examination, he is asked about this treatment, and about the examination that he made of the petitioner, and he says that he examined the rectum only: he says that the private parts were covered with towels or napkins, and that no examination was made of the private parts at all; nor were they exposed; and further, on cross-examination, he said that he could not tell from his examination whether or not at that time she had any secret disease; and he says further, that at that time *she complained not only of the hemorrhoids, but she complained of an irritation of the bladder*—the same thing that Binney was complaining of; at or about that

same time she complained of an irritation of the bladder, and on page 250, in answer to questions, he said that either hemorrhoids or gonorrhoea would cause this irritation of the bladder. That is the petitioner's case. Let us briefly review it.

The petitioner's case rests, first, on the existence of the disease; it is admitted that both of them had it; her claim is, that he had it first; his claim is, that she had it first.

In addition to the existence of the disease, she has nothing in the case except so-called admissions by this defendant—made to her mother and her brothers.

Now, in connection with these admissions, or so-called admissions, when you come to examine them, take the exact language of the witness, and you will find that every time Binney Earl made those admissions—if he made them, and if he made them in those words—that every time he did it, it was coupled with the declaration of innocence, that he must have gotten it from the toilet; and I think that the utmost that can truthfully be said about any of those so-called admissions was with the use of the word "if," which they have omitted, "If I gave it to your sister I must have gotten it from a toilet." Dropping the word "if," it is simply, "I gave it to your sister, but I got it from the toilet." Every time you hear that these admissions, so-called, are made, it is coupled with Binney Earl's assertion of his innocence, and if he did give it to his wife, that he must have come in contact with a soiled toilet and got it in that way.

Then I desire to note that these so-called admissions come from the family; not an outside witness. You will note that there was a concealment by them for a period

of three months; that their conduct was inconsistent with their belief in any such statements, if they were made; *there is absolutely no corroboration in the case.* The case stands wholly upon the existence of the disease in the petitioner and in the so-called admissions to the mother and the two brothers of the petitioner; there is absolutely no testimony, no corroboration, in support.

Attention is especially called to the oath of innocence by the defendant; an absolute denial in unqualified terms, and not by mere inference or innuendo, that never, since his marriage, has he had sexual intercourse with any woman except his wife, and that he did not, since his marriage, contract sexual diseases as the result of intertercourse with any other woman. (Page 147.)

According to Dr. Tracy's testimony, fairly viewed, this petitioner had that trouble before July 6th. Dr. Tracy, an impartial witness, called by the petitioner, contradicts the petitioner on an important point, and is to be believed when he says that instead of Binney admitting in his presence that he had given the disease to his wife, that each of them then and there accused the other in connection with this testimony. The petitioner has failed; she has not proven her case beyond a reasonable doubt.

VI.

DEFENDANT'S TESTIMONY.

The defendant and cross-petitioner is the first witness called in his own behalf.

On page 147 he interposes a full and emphatic denial of the charges against him.

In doubtful cases this is controlling. *Moyer vs. Moyer, 21 N. J. E., 246.*

In doubtful cases this is of sufficient weight to defeat divorce. *Culver vs Culver, 39 N. J. E., 163.*

No improper conduct in association after marriage is shown against him; no plan, opportunity or occasion, whereby he became contaminated, is shown. The only explanation of his condition is the one he himself gives. The contrary appears as to the petitioner, as will hereinafter be shown.

He says that in the early part of June, 1911, his wife "complained to me, almost screaming, when she urinated" (page 169, line 30). At that time he had no inflammation or discomfort (page 170); he first felt discomfort in early part of July (page 170).

This is corroborated by Dr. Tracy, who from his examination and treatment of both husband and wife is of opinion that the wife's condition was of longer standing. (See cross-examination, pages 91 and 92.)

He is further corroborated by his mother. The petitioner told her of her sickness on June 10, 1911. Mrs. Earl fixes time and place beyond question. (Page 411.)

She was building for herself a house at Edgewater, alongside of the one she had built for her son, and on that day she went to Edgewater and made the first payment on her new house, and it was there and on that occasion the conversation took place.

The petitioner herself admits this conversation with her mother-in-law.

She remembers that her mother-in-law came down to her new house with the architect. She can not tell what day it was, *but on this occasion* she was asked:

"Ques. Well, didn't you on that day, while Mrs. Earl was there at Edgewater Park, complain to her of a peculiar burning sensation and of some of these symptoms?

Ans. *I must have done so.* I do not remember the time, but I remember complaining to her several times; I do not remember any particular time.

Ques. The first time you complained to her was on that occasion?

Ans. I do not remember.

Ques. From your recollection you are not prepared to say you did not complain to her on that day?

Ans. No, sir." (See pages 48 and 49.)

Mrs. Earl, Sr., took an innocent view of her daughter-in-law's contagion. She said:

"Child, you must have gotten it from the toilet room in Philadelphia." (Page 414.)

This is reasonable and according to experience.

Modern toilet seats are made with front part cut out.

Dr. Lushington, in *Collett vs. Collett,* says:

"The existence of such a disease in the wife is con-
"sistent with the adultery of the husband, with her own
"adultery *and with accidental communication.*"

This opinion is cited with approval by Chancellor Henry W. Green in *Mount vs. Mount, 15 N. J. E., 163.*

The weight of the evidence clearly is that the wife was first inoculated.

Again she complained of an irritation of the bladder to Dr. Mulford when he treated her for hemorrhoids. (Page 250.) This was on June 13. (Page 248.) Gonorrhoea would account for this irritation. (Page 250.)

He made no examination of her privates. (Page 249.)

How did she contract it? It may have been innocently, as above suggested. Or she may have contracted it from the co-respondent, Mark Whitfield, who in February had the disease and who had asked the colored man, McCrea, where he could get some medicine for it. (Page 322.)

In the middle of July, in the course of conversation, the petitioner said to her husband "She thought she had "the same thing that I had and that she had given it "to me." (Page 171.)

Again in August she said, in presence of defendant's mother, "She had given it to me. She did not know "where she got it. She might have gotten it from a "toilet." (Page 173.)

After her return from the examination by the Philadelphia specialist, she nursed her husband, was extremely affectionate and took the best of care of him. (Page 308.)

This was long after she alleges he had confessed to her that he was the source of her infection and long after the alleged talks with her mother and brothers.

She confirms this. (Page 54.)

The defendant denies each and every of the alleged declarations or so-called admissions of guilt attributed to him. (See pages 175 and 176, 230, 305, 6, 7 and 8.)

One matter urged against the defendant was that he was out at nights. The defendant was county agent for an electric lamp and went out evenings to demonstrate the lamp (page 58.); the petitioner accompanied him on some of these occasions. (Page 58.) Petitioner's witness, William Wright, says he went out at nights with defendant to demonstrate the lamps. (Page 124.)

She says one night he stayed at his mother's (page 59); this is the only time specified.

One night while accompanied by Clinton Leigh (page 276), the car broke down near Odd Fellows' Cemetery. He telephoned to William Wright at Beverly, who took the trolley car, came up, fixed the car and they got home about midnight. (See Wright's testimony, pages 116 and 125.)

Clinton Leigh, although called as a witness, does not deny this.

On the other occasion he was out at night he had been on a trip to Mr. Edison's country place, near Burlington, (son of the great inventor); a thunder storm came up as they were going home; water got in the machinery; the car wouldn't run and as he reached Burlington at a very late hour, the car gave out altogether and he left it and went home in the trolley. (Page 407.)

There was no other testimony on this point

A desperate attempt was made by petitioner, which resulted in absolute failure, to show that the defendant took females out in his automobile. Mr. Wright, who was called by petitioner, in clearest and most emphatic manner denied any such occurrences. (See his testimony, page 112, etc.)

Some stress was laid to the fact (testified to only by hearsay, page 44), that Wright had found pins in the automobile, which he handed to petitioner.

They were not stick pins, not jewelry; simply stub pins with a black head, such as were worn by petitioner's mother, who was a widow, in fastening her veil, and who was a frequent passenger in the automobile.

(See Wright's testimony, page 356.)

Wright was also asked about a trip to a certain house in Philadelphia. (Page 117.) It was the residence of

one of the physicians who had been consulted in this case. (Page 123.)

All the detective work done by petitioner, ~~endorsed~~ disclosed by this examination of Wright, resulted in nothing. Not even the smell of fire is found on defendant's garments.

The cross-examination of the defendant was not only long and laborious, but it was also fruitless; it emphasized and strengthened the direct. It covered one hundred and twenty-seven pages (pages 176 to 303), and nothing was elicited that sustained the petition or that militated against the defendant.

So far as it was directed toward the cross-petition it strengthened the defendant's case.

The following extract from page 208 illustrates its general character:

> Ques. I would like to know where you slept?
> Ans. I don't remember.
> Ques. You did not sleep in the coal bin, did you?
> Ans. No.
> Ques. You did not sleep on the front door mat did you?
> Ans. No.
> Ques. You did not sleep downstairs on a lounge?
> Ans. No.
> Ques. You did not sleep outside of a bed, did you?
> Ans. No.

The testimony of Ella Burns, a domestic, is of great importance: She says in the early part of October she was at defendant's house and saw the petitioner and her mother (page 342). The petitioner was packing up to leave. (Page 345.)

On that occasion the mother said, in the presence of the petitioner, that "She wanted Irma and Binney to go back to the house and live together." (See pages 342-3 and 4.)

Now, why should the mother say this, why entertain this wish and desire? It is absolutely inconsistent with any knowledge she had as to defendant's wrongdoing.

This servant, Ella Burns, had been engaged by petitioner late in September to come and live with them in October. (Page 55.) This is also inconsistent with petitioner's claim of her husband's misconduct.

Mrs. Marie Binney Earl, the mother of defendant, was an important witness in his behalf. Her testimony will be found on page 409.

She had been very kind and indulgent to petitioner.

The Vice Chancellor says: "The attitude of the mother-"in-law was extremely kind and considerate to her." (Page 15.)

The defendant's mother built the house for them, gave the petitioner $45 a month for her clothing and $100 a month to run the house. (Page 66.) She also paid doctor's bills, taxes, water rents, trips, etc., and gave her family diamonds. (Page 81.)

There is nothing to show prejudice or ill feeling toward the petitioner.

The petitioner, in speaking of her conversations with her mother-in-law, and the construction of innocence which the latter put upon this unpleasant situation, says:

> "Ques. Now, what was his mother's conduct and her deportment towards you two during the time that you two were suffering from this disease?

> Ans. Mrs. Earl was extremely nice to me and came down a lot and seemed to feel sorry; she wanted to take me to California the next summer, and she was very sorry she had not enough money to buy me a runabout." (Page 69.)

And again, on the same page, she says:

> "She said in a very nice way that she thought probably I had got it from the toilet and given it to Binney, and I did not know how you could get it and I thought she was telling me the truth; I did not get provoked at her."

Defendant's mother tells of her talks with petitioner, such as a mother would have with a daughter in trouble. These talks put petitioner's illness several weeks earlier than defendant's illness; this is practically conceded by the Vice Chancellor, who finds from the proofs that:

> "In the latter part of June or early part of July, 1911, the defendant first complained of a burning sensation when urinating." (Page 15, at bottom.)

One of the most significant features of this case is the fact that this petitioner, Irma Earl, made a complaint of the irritation of the bladder to her mother-in-law at an early date in June and prior to any time, as shown by the testimony, when Binney Earl was suffering from a like complaint. This seemed to be such an important feature of the testimony, as adduced by the defendant, that counsel for petitioner took it up in rebuttal and attempted to show an alibi, attempted to show that on the day in question the petitioner was not at Edgewater. Binney's mother testifies she had been to Edgewater that day to note the progress of the house, and made the first payment. (Page 411.) She fixes this talk with

her daughter-in-law—when her daughter-in-law first made the complaint to her of this irritation of the bladder—in connection with her house that was being built for her at Edgewater, and in connection with the first payment. The 10th of June, Saturday, is at the period of the year when the days are the longest; and this petitioner, in attempting to fix her whereabouts on that day at another place, does not say at what time of the day she left Edgewater to go to Trenton with William Wright in order to get her sister to come and pay her a visit.

Mrs. Earl's testimony is to the effect that she had been to her home, her new home, the house that was being built at Edgewater, and made her first payment.

It is uncontradicted and stands, therefore, as unquestioned testimony in the case.

Now, evidently, before she made that payment she and the architect had viewed the premises, the house that was built for her, for the purpose of seeing whether or not the payment was due, and the conversation between her and her daughter-in-law unquestionably took place at Edgewater, because she says that she saw her daughter at Edgewater.

The petitioner admits the conversation and the occasion on which it occurred, but cannot fix the date. (Page 48.)

Now, the petitioner acknowledges that she did speak to her mother-in-law; she did speak to her mother-in-law about this trouble when the mother-in-law was down there about the house. The only thing she would not say positively was, whether or not it was the 10th day of June; but the fact is that she talked with her mother-in-law—that she talked with her at Edgewater—that she

talked with her at or about the time she was down there at the house; and, take that in connection with the testimony of Mrs. Earl, the mother of the defendant, and we have the time fixed, conclusively. But the very way in which counsel for petitioner put the question to the petitioner with reference to this occurrence is not without significance. The question that the counsel put to the petitioner is not this: "Did you see your mother-in-law any time during that day;" he does not put that question—but this is the question that he puts: "Did you see your mother-in-law *that night,* that is, after her return from Trenton;"—absolutely no contradiction as to seeing the mother-in-law during that day. (Page 476, line 23.) But there is another contradiction with reference to this occurrence; the petitioner says that Wright drove the car; Wright testifies that he did not drive the car. (Page 489.)

Over the objection of defendant, the Vice Chancellor admitted evidence as to an escapade by defendant *before* marriage and seems to have been to some extent swayed and prejudiced against defendant. (See opinion, page 14.) It will be noted that the marriage took place March 28th, 1909; defendant's sickness was in July, 1911.

It is submitted that all presumptions are those of innocence, and especially is it true after marriage and within a short time thereafter. No evidence of any character showing any disposition to depart from the path of virtue *after* marriage is adduced.

If any such testimony had been offered as to defendant's actions *after* marriage, as were offered in the cross-petition against the petitioner, then it might be reasonably argued he had shown a disposition to wrong his wife.

Late in September, 1911, petitioner and defendant, with friends and a chauffeur, started for a day's outing; defendant was taken sick and was left at his mother's home in Burlington, while the rest of the party went on their trip. Defendant was confined at his mother's for two weeks, sending daily messages to his wife. Before his recovery and return petitioner left the home and shortly after filed this petition. (Pages 151 to 154.)

During all the months that intervened from the time of sickness and her talks about it with her mother and brothers, one of whom was a physician, she remained in defendant's home, nursing him and being nursed by him, receiving the money allowances and gifts from her mother-in-law; during this time neither she nor her mother or brothers showed by their actions and conduct that they believed the charge now made, to be true.

Again, it is significant that just before she left, she asked her husband's permission to go on a yachting trip. (Page 55.) This was at the time of the Waterway Convention at Norfolk. (Page 76.)



VII.

DEFENDANT'S CROSS-PETITION.

It is argued because this was not filed with the answer, but under an order of the Court, subsequently obtained, that it is not in good faith.

The learned Vice Chancellor was misled by this argument and failed to note the testimony and doubtless the true situation in connection with other facts hereafter referred to, which doubtless, owing to the long interval be-



All this shows Condonation

tween concluding the testimony and the final argument, inadvertently escaped him and led to the decision made.

The Vice Chancellor says:

> "In passing it may be remarked that one of the suggestive features of this case is that when the defendant communicated with his counsel and filed his answer to the petition, he failed to advise them of the charges against petitioner contained in his cross-petition, which as hereinbefore stated was subsequently filed." (Opinion, bottom page 23, and top page 24.)

This is not correct; on the contrary, the opposite is the fact by the uncontradicted testimony.

The defendant testified in cross-examination that immediately after he was served with the citation he employed counsel and told them all that was testified to in the trial. (Pages 176 and 177.)

It was not known to counsel at that time that the defendant could be corroborated and it was deemed best under the circumstances that the answer with denial was sufficient at that time, it being well known that amendment could be made at any time upon good grounds being shown.

When counsel in preparing the case for trial learned what testimony could be given by other witnesses, it became their duty to file the cross-petition. (See page 304.)

It is charged that the petitioner committed adultery with Mark Whitfield, a servant in the house, and as showing her disposition, her imprudent conduct with one Goulard, a visitor, is introduced.

The Goulard episode is described on pages 155 to 162; his conduct with petitioner in defendant's own house was

so outrageous that defendant telephoned petitioner's father, who came and put the man out of the house. (Page 158.) Petitioner gives a different version of the occurrences, but admits her father was sent for, that he came and took Goulard away with him.

Binney was asked why he didn't put the man out or in some other way resent his actions and his reply was, he was not physically able. (Page 214.)

The petitioner, on rebuttal, in being asked by her counsel as to what Binney on this occasion, said "he cried". (Page 467.)

Binney being asked on cross-examination:

Page 191

"Ques. You were not angry enough to leave your wife?

Ans. I was not as angry as I was heart broken."

One very important matter in connection with Goulard is overlooked by the Vice Chancellor when dealing with this episode in his opinion. (Page 18.)

The petitioner had Goulard's photograph on her dressing table in her bedroom until the defendant required her to tear it up and throw it away. (Page 63, at bottom.)

She had received a number of letters from Goulard, one of which was produced and offered but not allowed, ~~as his handwriting was not sufficiently proven~~. (Page 159 and 199.)

The fact that petitioner had this photograph not only shows imprudence, but goes far to show an affection. While he was in the house and before her father puts him out, the defendant had consulted the father as to this man's conduct and was told to telephone for him if he needed help. (Page 158.)

THE GOULARD LETTER.

One of the Goulard letters that was in the possession of the defendant at the time of the trial was produced and offered in evidence. (Page 160.) Marked as Ex. D. A. 1½. (Page 199.)

It was objected to on the ground it had not been brought to the hands of the petitioner. (Page 161.) Not because the handwriting was not proven nor because the identity of the writer was not shown.

The defendant testified to having seen a number of letters from the same person, and that the writing in the one produced was the same as the others. (Page 160.)

The Vice Chancellor permitted proof of the contents of the others, hereinbefore recited, after demand had been made and refusal to produce—demand and order of Court is on page 162; the answer is on page 309.

From this answer, as well as from petitioner's admission, she had received letters or at least a letter from Goulard (not produced), and could have identified the handwriting. (Page 468.)

On this page she is asked by her counsel if she knew Goulard's handwriting, and answered, "I had that one letter from him." She is asked if she had seen the letter produced and answered, "Never." She is not asked if it is in Goulard's handwriting. This is in rebuttal. (See page 468.) She nowhere denies the handwriting.

It is dated October 1st, 1911; received at Edgewater October 2d, while defendant was sick at his mother's, and during the time she was at the house packing. It was found in her desk. (Page 159.)

Petitioner's counsel had the letter that was produced and offered, impounded with permission to photograph (page 320); when he rested he reserved the right to call or produce the deposition of Goulard. (Page 483.)

Goulard was not called, and no use was made of the photograph.

Goulard's first name was Alexander. (See petitioner's testimony, page 76.)

The letter should have been received in evidence. It is as follows:

[Envelope.]

Mailed at: Erie Pa., October 1, 1911, 7.30 P. M.

THE REED HOUSE,
Erie, Pa.

Mrs. W. Binney Earle,
Edgewater Park,
New Jersey.

Received: Edgewater Park, N. J., Oct. 2d, 4 P. M.

[Letter.]

THE REED HOUSE,

Erie, Pa., Oct. 1st, 1911.

Hello Irma—

Here I am in Erie for a short stay and would enjoy a note immensely.

Sincerely,
Alexander.

D. A. 1½ for id., June 12.

Page 145, Petitioner admits the letter, looks like hand-writing.

It is undeniable that the photograph was on her dressing table—she admits it (page 63), and that her father put this man out of the house. (Pages 59 and 467.)

Now, with reference to the Goulard episode, I simply want to remark, in passing, that while there were only three bedrooms in the second story, and that one of them was ordinarily occupied by the female servant when she was in the employ of the family, but there is absolutely no testimony that she was in the house on the night or the nights that Goulard was there, and that Binney Earl's testimony in that respect stands uncontradicted, that he said he could not say whether she was there or not. Much was sought to be made of this on cross-examination and in the argument, but it is evident Goulard was there all night, at least for one night.

The letters from Goulard to petitioner were not produced, although demanded and ordered by the Court. (Pages 310 and 11.)

Some of the expressions were: "Hello, Irma, would "enjoy a note immensely," and "Very much surprised to "get such a such nice letter, and it is very difficult to "write to a married peach," &c. (Pages 316 and 317.)

As to petitioner's relations with Mark Whitfield, let it be remarked at the outset that in February, 1911, he had the "clap." (Page 322.)

He had a woman in bed with him at defendant's house about the same time, and while defendant and petitioner were in Florida. (Pages 321-2 and 329.) ~~He~~ fixes the date by his discharge on February 18, 1911. (Page 331.) This is not denied by Whitfield.

He admits he got Wright to purchase Hood's Sarsaparilla for him during the spring and summer of 1911. (Page 447.)

Here again the Vice Chancellor falls into a grievous error. His memory failed him; he had a wrong impression of the testimony and failed to verify it by reference to the record. He says:

> "The object of McCrea's evidence is obvious, but it might be just as reasonably inferred that Whitfield, who was the servant of Earl, was purchasing or inquiring about the purchase of medicine for his employer." (See opinion, page 23.)

In the first place this was in February, 1911, (page 322) and the Vice Chancellor admits Earl's trouble did not commence until July, 1911. (See opinion, page 15, bottom.) And in the next place Earl, with his wife, was in Florida at this time and Whitfield had been left at home in charge of the house. (Pages 328 and 330.)

Telegraphic discharge from defendant from Florida February 18, 1911. (See page 331.)

The testimony as to defendant's relations with the co-respondent is circumstantial. It relates to certain occurrences and opportunities as to which the testimony is full and complete, such as their being in the bathroom together—petitioner being in Whitfield's bedroom, which was on the first floor next to the kitchen—his buttoning her dress for her—her remark to him that her dress was cut too low—his being in her bedroom *to keep her company* when her husband was out on business—his going to her room early in the morning in a state of undress, &c.

The Court is asked to read the testimony bearing on this feature of the case. A brief review of it follows:

The architect says you see through the glass in the door, from the porch, up the stairs. (Page 348.)

With reference to the time the car broke down and Binney got home late, he says (and he is corroborated by Wright) that he saw Whitfield in a state of undress coming down the stairs from his wife's room; that is, from the direction where his wife's room was.

A great deal has been made of his expression, coming from or out of his wife's room, a conclusion of witness, and it was attempted to be shown that a person at the door couldn't see the doorway of his wife's room.

The petitioner admits that a person standing on the porch could see, as defendant and Wright testify they saw. (Page 61.)

The Court's attention is first directed to Binney Earl's direct examination on page 167: "There was one occasion, yes; I broke down, and I arrived home late with my man, William Wright. Ques. About what time of night was it? Ans. I should say it was after one o'clock at night. Ques. And when was it? Ans. I don't recollect the date. Ques. Was it in the spring, summer, fall or winter? Ans. It was in the spring, to the best of my knowledge. Ques. What did you see? Ans. When we arrived at the house, we could not get in, and we knocked on the side door and rang the front door-bell, and the light was lighted inside the house, and there is a little window in the top of the front door allowing any one to see through to the front stairs; down those stairs came Mark Whitfield. Ques. How was he dressed? Ans. He had on an outing shirt without a collar; his sleeves were rolled up; he had on a pair of trousers and a pair of rubber-soled canvas shoes. Ques. Was Mark Whitfield's bedroom in the second story of the house? Ans. No, sir; it was next to the kitchen on the first floor of the house. Ques. After you saw him come

down the stairs that way, did you get in the house? Ans. Yes, sir; he admitted us. Ques. Did you see your wife? Ans. I went upstairs to my wife."

Now, turn to the cross-examination. He says (page 282) there was a hanging gas lantern. "Ques. And turned low? Ans. Medium; it gave sufficient light to fully see the stairs. Ques. Where was Mark when you first saw him that night? Ans. He had one hand on the side of the wall leading from my wife's door. Ques. How far was the door from the top of the steps? Ans. I should say about 18 or 20 inches. Ques. And to come down the top of the steps, you would have to pass that wall, wouldn't you; you would have to pass your wife's door? Ans. Yes. Ques. In other words, as you go up your stairs, your wife's room is the first one to the right? Ans. Yes. Ques. And your room is where? Ans. Next door to it. Ques. The second one to the right? Ans. Directly ahead. Ques. And the third—where is the cook's room? Ans. Next to the kitchen, on the first floor. Ques. But the woman cook had a room upstairs; where is that? Ans. That is the guest room; that is on the left."

Now, further cross, on page 302, he explains: "Ques. You did not see her with Mark, did you? Ans. He came out of her room; I saw him come out of her room. Ques. You said the first place you saw him was alongside of the wall leading to the door of your wife's room? Ans. He was swinging around the corner of the wall. Ques. Coming out of the room? Ans. Yes."

It is a conclusion of the witness that because he saw him swinging around the corner of the wall and coming down the stairs that he was coming out of the room.

Defendant is corroborated by William H. Wright, who had been called by petitioner as a witness.

See his testimony, pages 361-2-3-4 and 5. Among other things he says the petitioner told her husband in his presence: "I had to have Mark up here to keep me company for I was afraid." (Page 365.)

Whatever discrepancy there is in their testimony is as to details and not as to the main facts, and is evidence of truthfulness rather than of a manufactured story, as intimated.

Again, at top of page 289 on the cross-examination of Binney Earl: "Ques. Well, all right. Now, your wife told you, so you told us, that she was lonesome and she had Mark reading for her; is that right? Ans. She told me she was afraid to stay there, and she had Mark up there reading to her, and I reprimanded her severely. I asked her what she meant by having a servant in her bedroom in the robe that she had on. Ques. Was she in bed at one o'clock in the morning? Ans. No. Ques. Where was she? Ans. She was standing, when I entered the room, alongside of the bed. Ques. Had the bed been mussed? Ans. Yes. Ques. As though somebody had been it it? Ans. No. Ques. The covers carried down? Ans. No. Ques. Just mussed on top? Ans. Yes. Ques. At one o'clock in the morning? Ans. Yes." (See also further on that page and on page 291.)

Look at the opportunities. This girl is only 21 or 22 years of age. She had already shown some disrespect for her husband, to say the least, by having on her bureau the picture of another man until he remonstrated with her, and she tore it up. She had already been so intimate with this other man, and had conducted herself so imprudently, to say the least, with him, in the defendant's own house, that he had been obliged to call her father to put the man out; but she now has a man servant in

the house, whose duties put him in the most intimate relations, according to the petitioner's own testimony, with the petitioner. He did ordinary housework; his work took him to the second floor of the house. He did the chamber work; he cleaned the bath room; and the petitioner says that she assisted him in doing this household work. Here is a young girl, and here is a lusty young man, who is the household servant, engaged in these domestic duties. And here is this girl, who has shown disrespect for her husband by her imprudent conduct with this other man. The husband not a man in the best of health—not possessed of a strong, rugged physique. (See Dr. Mulford's testimony, pages 251 to 254.)

Now, what more natural, what more natural than that improper relations should follow. Wasn't it exceedingly imprudent on her part to place herself, to say the least, where her conduct would be open to suspicion and to remark. And we find that this young man, who is in the house, is a young man about whom there had been some controversy with the petitioner, and with the petitioner's brother, a physician; in the course of that controversy this defendant has practically, according to the inference to be drawn from the testimony, accused this household servant of having a secret disease, and a request is made that he should consult a physician. (Page 101.)

Now, there had been this controversy in this family over this servant at the time of defendant's alleged admission to the physician, brother of petitioner.

But, further than that, by the undisputed testimony in the case, and this is not mere contradiction for the purpose of breaking down Mark Whitfield, but as affirma-

tive testimony, he admits that during that summer or late spring, somewhere along there, the time is not definitely fixed, something was the matter with his blood, and he was taking medicine. He sent for Hood's Sarsaparilla, that medicine that is advertised so extensively for the "tired feeling." (Page 447.)

On two different occasions Mark Whitfield admits that he sent money by Mr. Wright to the drug store to purchase Hood's Sarsaparilla for the blood, for himself; that is an undisputed fact in the case. Now, his household duties and the work he did is an undisputed fact in the case. Another undisputed fact in the case is, that at the time Binney Earl was taken sick and went to his mother's, his automobile was taken up to his mother's garage. It had been continually getting out of order, and when Binney Earl wanted to go out in the evening, something was the matter with it very frequently, and the testimony is, that gravel stones and other things were found in delicate places in this machinery, which would not have gotten there from travel on the road. Binney accuses Mark Whitfield of it, and Mark denies it. Binney tells his wife that Mark did it, and that she replied, when Binney said he would discharge him, that if he discharged Mark she would get a divorce. (See page 368.)

This was evidently to delay Binney's return at nights when out with his lamps.

It is the undisputed testimony, that after that automobile was in the mother's garage, there was no further difficulty with respect to the automobile getting out of order in the manner stated, and the automobile ran all right, and the gravel stones and the other things mentioned no longer made their appearance. (See pages 358 and 360.)

Further, Wright, who was called by the petitioner as a witness, and, therefore, must be taken as a person whose testimony is entitled to credit at the hands of this Court, otherwise they would not have called him, they called him—they failed to make anything out of him; but Wright testifies to some facts and circumstances—not in contradiction, but as affirmative testimony against this man Mark Whitfield. Among other things, is the fact that he went to the door early in the morning with the mail, and as he reached the screen door of the kitchen he says, on page 369, "I thought I saw something part, but I could not say what it was, it looked white; I could not say what it was, I just got a glimpse, that was all. Ques. Where was Mark's bedroom? Ans. Right next to the kitchen. Ques. Anyone in the house at that time, to your knowledge? Ans. Not to my knowledge, only I saw Mark in the bed afterwards." Then on page 370: "Ques. Was there ever an occasion when he did not come out and open the door, and you had to go to the window? Ans. After that time; yes, sir. Ques. Just tell us what happened then without repeating any conversation. Ans. I knocked at the door and he would not get up, and I went to the window and hollered, and he told me to put the mail through the window. Ques. What time of day was that? Ans. Somewhere about seven o'clock."

Then, on page 370: "Ques. On any of these occasions did you ever see Mrs. Earl, Binney's wife? Ans. No, sir; not that early. Ques. When did you ever see her up—when you went there with the mail, or when you went there on any other errand? Ans. I never saw her in the morning that early. Ques. Where, in the house, did you see her? Ans. In the kitchen door. Ques. And who else, if anyone, was in the kitchen? Ans. Mark,

he was working around the kitchen. Ques. What time of day was it? Ans. About ten or eleven o'clock."

Then, on page 371, he testifies to seeing Mark Whitfield doing laundry work or washing, seeing him wash napkins and towels; he says that one day he saw Mark spread out a suit of underwear, which he said looked like a womans' underwear, and that on going up to investigate, he says that he saw some water in the basin, bloody water, under the sink.

And then, on page 374, Wright says that one morning when he went to the house with the mail, he saw Mark Whitfield in his pajamas, and the bell rang upstairs, and then Mrs. Earl called for him, that he recognized her voice, which sounded as if it came out of the front of the house, and that Mark responded to the call without dressing himself any more completely. He says that Mark had an erection on at the time, and in this condition he went through the dining room door into the dining room, and that he was gone about ten or fifteen minutes.

Mr. Wright says that he noticed Mark's person, and he saw that Mark had an erection. He was not asked, it was not proper to ask, what conversation was had between him and Mark Whitfield at that time; that was saved for contradiction. But this fact is affirmative testimony; in response to that call of the female voice, Mark Whitfield, in this condition of virility went into the front part of the house. Wright remained in the kitchen. In ten or fifteen minutes Mark Whitfield returned, and the evidence of his virility had disappeared. What took place between them in the shape of conversation I did not ask at that time, because it had to be reserved for contradiction, and was not affirmative tes-

testimony. But these facts are affirmative testimony. The conversation is afterward given in contradiction. (See page 486.)

Now, if you believe Wright, who was called by the petitioner, and who was presented to this Court, therefore, with credentials, as a truthful man, there is a fact and a circumstance such as you may search the whole hundreds of pages of testimony and you cannot find the like of—absolutely nothing like that against this defendant.

And yet, here is this positive testimony on the part of Wright as to this occurrence.

Further, Mark Whitfield is called in rebuttal, and it is a most significant thing—nowhere in his examination in rebuttal of this charge made against the petitioner and himself does he categorically, or in any other way, deny that he had sexual intercourse with the petitioner. He is not asked the question by petitioner's counsel, and he makes no denial. You have, therefore, no denial by the petitioner. You have no denial by this co-respondent.

And now we come to contradiction, and the contradiction has this effect, that it absolutely destroys his testimony, and the case stands as if he were not called as a witness in rebuttal. What is it—it comes out of the mouths of two witnesses; first, it comes out of the mouth of that respectable colored man McCrea; where any man, a colored man, is in the employ of a family for a long time, or in the employ of different families in a given neighborhood, for a long time, it speaks volumes for that man's character. No man can retain service for a long period of time if he has not a good reputation, and if he is not a straight, upright, truthful man and servant; and, McCrea, in contradiction of Mark Whit-

field, says that Mark Whitfield did say to him that he had the clap in the late spring of 1911, and that Mark asked McCrea where he could get medicine with which he might cure himself; and, in a long and searching examination, this witness told all that had occurred, and told the place where it could be acquired (page 322); and months have elapsed since that testimony was taken, and ample opportunity has been given to show the falsity of it, if it was false; so that Mark Whitfield is absolutely contradicted in that respect.

But, again, Wright, in rebuttal, is called, and he testifies to the conversations that he had with Mark Whitfield, which Mark Whitfield had denied, as to a female voice calling him to the front part of the house, when he said, "This is where I get it off," and "I never ran up against such a woman as this before; I have heard of such women, but I never ran up against one." He denies that, but Mr. Wright says that he said it. If Wright is to be believed, then the whole structure of this defence to the cross-petition, so far as it is built up on the testimony of Mark Whitfield, disappears, and the case stands as though it was confessed, so far as Mark Whitfield is concerned.

But there is some direct testimony on this matter of a cross-petition outside of the testimony of the defendant, Binney Earl, Mrs. Earl, the mother of the defendant, and in considering her testimony and determining the weight that shall be given to it, remember her kindness towards this girl, her affection for her, her consideration, her willingness to attribute her trouble to an accident, and her offer to take her on a trip to California, and all that sort of thing, as well as a continuation of the allowance made to her during the period of three months, when she knew that this girl was suffering in this way.

On page 418 of the testimony Mother Earl testified that she heard the petitioner tell Mark Whitfield that her dress was cut too low; that was a very improper thing for a young woman to say to a servant.

On page 417, she testifies that from the very beginning she had urged this young girl, from the time she heard of this irritation of which she complained, to see a physician, and that the girl never did so.

Take the testimony of Mr. Wright in corroboration of the testimony of Binney Earl, above referred to; he speaks of the trip to Edison's; he tells how Mark came downstairs in his pants, shirt and thin shoes.

She says that Mark was not upstairs. Binney Earl and Wright both say that Mark Whitfield was upstairs, and they saw him come downstairs. His bedroom was downstairs, and he had no business on the second floor of this house at night when he was there alone with this petitioner; and both of these witnesses swear that they saw him coming downstairs in this condition of undress.

Binney Earl is every bit as credible as the petitioner, and Mr. Wright has been produced by the petitioner as a witness, and, therefore, given a standing in this court as a truthful man; the weight of the testimony as to this event of Mark Whitfield's coming downstairs is with the defendant.

We also call attention to the testimony of Wright, which stands uncontradicted, by the way—that while Binney Earl was sick, the petitioner and Mark Whitfield were at the house together and no one was with them. (Page 366.)

It is testified that during the time that these young folks were in Florida, which is fixed now as the late win-

ter of 1910 and the early part of 1911, that during that time Mark Whitfield was in the house in charge of it, and received from Binney Earl the telegram that discharged this man McCrea, and during that time Mark Whitfield was entertaining a woman in that house. Unquestionably, we can infer from that, that he was entertaining a woman of dissolute habits, and that during that time, or shortly afterwards, or while he was doing that, he incurred this disease which was communicated to the petitioner. That is uncontradicted—that he had this woman there, this unknown woman, and he had her there while these young folks were in Florida. When called as a witness by petitioner he is silent as to this event.

They say that McCrea was discharged; that McCrea had retained money that had been put in his hands, or the change from some money that had been put in his hands for household purposes.. McCrea says that there were wages due him, and he had kept the money to equal his wages. He is discharged by Binney Earl by telegram, therefore he has no love for Binney Earl; therefore, there is no reason why he should go out of his way and come and testify to anything in favor of Binney Earl. If anything, he had a grudge against Binney Earl for his being discharged on the accusation of stealing money, and, therefore, he would be more probably a witness against Binney Earl.

Wright, in speaking about various things, also testifies about this washing that he saw Mark Whitfield doing. On page 371 he speaks about the incident in which the pajamas are concerned, and further, on page 377, he says that Binney's wife, in his presence, said that she liked Mark Whitfield real well.

Now, they undertake to incidentally destroy Wright's testimony, even after they had called him themselves, and find that they can get nothing out of him, and that he turned out to be a witness that was of great assistance to the cross-petition in this cause.

They attempt to show by Dr. Leigh, I think it is, that Wright had said that he knew a lot about this case that he could tell if he wanted to. Wright tells us of the conversation and tells us the language that he used on that occasion, as near as he can recall it, and it is somewhat similar to what Dr. Leigh testified to, but it has a different twist; instead of saying that if it were not for losing his job he would testify against Binney, this is what he said when they wanted him to leave, that this Leigh family wanted Wright to leave the Earls, and his reply was, "A married man cannot pick up a job every day; I want to hold on to the job I have got," an absolutely innocent conversation. (Page 377.)

And on page 404, he says that he saw Mrs. Earl, the petitioner, in Mark's room, and she admitted that she had been in Mark's bedroom, next to the kitchen; she explains it by saying she went there innocently; that there was a looking-glass in Mark's room, and she went in to see if her hat was on straight before going out automobile riding. That was a very strange thing, that there was no looking-glass anywhere on that first floor, and that she had to go into the bedroom adjoining the kitchen, this co-respondent's bedroom, for the purpose of seeing if her hat was on straight. (See page 450, bottom.)

Then, again, Wright says that he heard her ask Mark Whitfield to button her dress as she was going out of the house on one occasion, and Wright says that he looked and saw that not only was her dress unbuttoned, but that

Mark Whitfield admits (page 436) that McCrea saw him in the Earl house with a woman.

This was while the family was in Florida and when there was no other servant in the house. (Page 321.)

her undershirt was torn, and he says, "I saw her bare skin." (Page 404.)

Now, that is a situation that shows great imprudence, great carelessness, recklessness, and even worse, in the conduct between this young woman and Mark Whitfield the co-respondent.

The testimony where McCrea said he saw Mark Whitfield in the Earl's house with a woman is found on pages 322 and 327. He says that this woman was only partially dressed; and this was the day that he left. He fixes the time on February 18th. He says, "I saw the woman on that day—the day that Mark gave me the telegram from Binney; the Earls were then in Florida. The woman was only partially dressed."

Another little sidelight on this case is found in the testimony on pages 438 and 9, in the examination of Mark Whitfield. He admits that after the petitioner had left the defendant's home that he went to her mother's house—after she had left he went over there and took a small package. His testimony is to the effect that it was a small package, easily carried in the hand. That at the time young Mrs. Earl left there was nothing to prevent her from carrying that package had she wanted to do so. A fair inference from that testimony is that it is only an excuse on his part, a prevarication to evade the fact that he visited this petitioner at her own mother's home after she had left this defendant.

Then, again, another little sidelight on Mark Whitfield's testimony which goes to corroborate Mr. Wright. On page 446 of the testimony he admits that Wright said to him, "Come, get up; you cannot fool me." Now, why should Wright say that, unless it was that there had

been something that had occurred between them which led Mark to try to fool Wright?

Then, on page 449, the testimony shows that Mark Whitfield had been out alone with this petitioner in the car on a number of occasions.

And on page 450, he admitted that the petitioner had been in his bedroom; that he had been in hers, and that this had occurred when Binney was away.

So that it is respectfully submitted that the case on this cross-petition is vastly stronger and more convincing than any case on the main petition, and that, not only should the divorce prayed for in the petition by the petitioner be denied, but that a divorce should be granted on this cross-petition upon the testimony that is before the Court.

The decree below should be reversed and a decree for defendant on both the petition and cross-petition entered.

GASKILL & GASKILL,
For Defendant and Cross-Petition.

STATE GAZETTE PUBLISHING CO., Printers, Trenton, N. J.

New Jersey Court of Errors and Appeals.

Between
IRMA LEIGH EARL,
Petitioner (Respondent),
and
BINNEY WOODWARD EARL,
Defendant (Appellant).

On Appeal.

ARGUMENT OF RESPONDENT (PETITIONER BELOW).

This appeal is to review a decree *nisi* for a divorce *a vinculo*. The petitioner (respondent) and defendant (appellant) were married March 28th, 1909. The defendant was twenty-two and the petitioner in her teens. It was a runaway match. Until the December following they lived with the defendant's mother in Burlington, in this state. Thereafter they took up their residence at Edgewater Park, where they lived as husband and wife until October of 1911, when they separated. The petition was filed on the thirteenth of that month. The cause alleged for divorce is adultery, based upon the charge that the defendant, in the month of June contracted and was afflicted with a venereal disorder. The initial answer was a general denial. On Tuesday, April

30th, 1912 (the case was set down for trial May 2d), the defendant moved, obtained leave and filed a cross-petition charging the petitioner with adultery with one Mark Whitfield, a servant in the household of the parties. The evidence is circumstantial and the guilt of the defendant is inferential, but nevertheless conclusively established by the circumstances.

It is not required to a decree for divorce that there shall be direct proof of the crime, for if that were the rule there is not one case in a hundred where such proof would be attainable. *Hurtzig* v. *Hurtzig*, 17 *Stew.* 329.

PETITIONER'S PRIMA FACIE CASE.

The defendant first complained of a burning sensation when urinating, in the latter part of June or the early part of July, 1911 (34). About ten days thereafter the petitioner had like symptoms (34). Dr. George T. Tracy first treated the defendant on July 5th. This was at the defendant's house (82). For the next few days the doctor treated the defendant at his home, and then the latter went to the doctor's office for attention (84). On one of these visits to the doctor's office the doctor says defendant's wife remained outside in the automobile (82). This must have been some days after July 5th. The doctor went on his vacation on July 9th (84). He was gone for two weeks or more, and after his return, he says, it came to light that Mrs. Earl's condition demanded treatment (86). This establishes pretty firmly that the defendant was the one first in trouble. The doctor treated the defendant for about six days after he returned from his vacation; then the defendant consulted Dr. Steel, of Philadelphia (89). It will be observed that although Dr. Tracy treated the defendant at his home and informed him of the nature of his ailment, the defendant gave no intimation to the petitioner of the character of his disease until some time later and after she had gone with him to Dr. Tracy's office. The

petitioner says that when he came out of the doctor's office he said that Dr. Tracy said he thought he had gonorrhea (36); that he was very much worried when he came out of the office, and said he knew that if the petitioner's people knew it they would take her away from him. Petitioner says "I was so surprised that I did not know what to say, as it was such a shock to me" (36). The defendant's explanation to the petitioner of how he contracted the disorder, was the much abused and idle one of that "he must have gotten it from a toilet" (37). The defendant forbade his wife telling her brother, who was a physician, of his condition, because, as he said, he feared he would force the petitioner to leave him. He also enjoined her from telling her mother for the same reason (38). The defendant, in petitioner's presence, told her mother that he had the gonorrhea and had given it to the petitioner (39). He told the petitioner almost every day that he was sorry he had given it to her. He said he was provoked at his mother, because his mother wanted him to say that he had gotten it from the petitioner (68).

Two or three days after the visit by the petitioner to the specialist Krusen (July 31st), the defendant took the petitioner's brother, Dr. Chester Leigh, out into his yard, saying that he wanted to have a talk with him. To him the defendant said: "Chester, I have the gonorrhea. I know I gave it to your sister, but I don't know how I got it. Dr. Tracy told me I might have gotten it from a toilet, but when he told me that he laughed." The witness added that the defendant wanted him to believe that he did not know where he got it, but that the fact was that he had it and gave it to the petitioner (98).

Mary M. Leigh, the petitioner's mother, said that she had a conversation with the defendant, in which she asked him why he tried to give Dr. Tracy the impression that he had contracted the disease from his wife, to which he replied that "Irma did not give it to him, and that he did not want Dr. Tracy, or his mother, to think so; that he knew he had given it to her" (106). To this

same witness the defendant said, upon his return home from a trip to a Philadelphia specialist, that his mother wanted him to say that he had contracted the disorder from his wife, but that he could not at that time be persuaded to say so, because he knew that he had inoculated her (106).

John Clinton Leigh, another brother, fixes the time of the defendant's illness as early as the twelfth or fifteenth of June (140). He says that on July 4th, the defendant was not able to go to the races (140); that the defendant told him the jar of the car hurt him (141), and in explaining his condition said "he had inflammation of the bladder and was taking something for it" (141), and that the defendant evaded discussing the matter (141). The witness called the defendant to task for an alleged statement made by the latter to Dr. Tracy, which intimated that he had contracted the disease from the petitioner. To this, the defendant replied that his mother wanted him to say that he got it from his wife, but that this was not true * * * that he did not get it from her * * * that he might have caught it from a toilet. He told the witness not to tell Dr. Chester Leigh; that he was afraid Chester would come down and kill him (143-144).

It is significant that at or about the time defendant contracted this venereal disorder, he frequently stayed away from home all night. This is testified to by petitioner (42), and by the petitioner's mother (105). The defendant's explanation to the petitioner of his absence, was that he stayed at his mother's home, which is unlikely, when we consider that the mother lived but three miles away, and that it was just as handy for the defendant to go to his own home in his automobile as to that of his mother. When away over night, he was in his automobile, and as tell-tales of his night associates, petitioner says that William, the chauffeur, would oftentimes in the morning bring to her cheap stick-pins (not the petitioner's property), and ask if they belonged to her (43).

In the early stages of his argument counsel for the defendant stated: "So that it may be taken as a conceded fact in this case, that both of these young people had this secret disease, and one of the questions which your Honor will have to determine is, from the evidence in the case, are you satisfied as to which one had it first, and unless, as I shall show you by the authorities in New Jersey, by the clear preponderance of the proof the petitioner satisfies the conscience of the court that the defendant had it first, then the petitioner must fail."

This I take to be a confession of the guilt of the defendant, if by a preponderance of the proofs it is established that the defendant was the first to be inoculated. Upon this point we have, in addition to the petitioner's assertion that she experienced the symptoms of the disease about ten days subsequent to her husband's illness, her testimony that the defendant repeatedly admitted to her, and in her mother's presence, that he had contracted the disorder and communicated it to his wife; and the testimony of Mrs. Leigh, the mother, and Chester and Clinton Leigh, her brothers, that the defendant, upon different occasions, made like statements to them.

In denial of these admissions, we have only the testimony of the defendant. His testimony, in almost all other respects, as I shall hereafter point out, cannot commend itself to the court as truthful. His denial, while admissible, is of slight or doubtful value. *Mayer* v. *Mayer,* 6 *C. E. Gr.* 246; *Culver* v. *Culver,* 11 *Stew. Eq.* 163.

We have therefore, arraigned on the part of the petitioner, the conceded fact that the defendant was tainted with a disease which spells incontinency; the testimony of the petitioner that her symptoms followed the illness of her husband; the testimony of Dr. Tracy that after he had treated the defendant for gonorrhea and after his vacation, it came to light that the petitioner needed treatment; the testimony of the petitioner, her mother and two brothers, that the defendant admitted to them, at different times, that he had it first and had given it

to his wife; against which there stands only the denial of the defendant.

But, it is argued by the counsel for the defendant, that these admissions are not sufficient in law to sustain a decree, and he cites *Clutch* v. *Clutch, Miller* v. *Miller, Perkins* v. *Perkins* and *Cloman* v. *Cloman.* It will be found that these cases were barren of substantive proof of adultery, and that the only evidence of guilt was the confession of the party charged with the crime. Proof of the *corpus delicti* was absent. It needs no extended argument to differentiate these cases from the present one. There, the only evidence was that the alleged culprit had made statements of wrong-doing, which statements may or may not have been true, and may have been uttered by one with conscience sufficient to refrain from crime, but still hardened enough to pretend a cause for divorce, of which he or she was in fact guiltless. Such admissions, without evidence tending to establish the crime, have for obvious reasons failed to move the court to dissolve the marriage tie. The statutory offence charged in these cases was not established, and the bare admissions of the party against whom the charges were preferred, have been uniformly regarded as insufficient proof of guilt. But another situation is presented in this case. Here, the defendant suffered a venereal disorder, indicative of violation of the marriage vows. His admissions eliminated his wife as a possible source of his contamination. These coupled circumstances establish the crime admitted and the corroboration required by the cited cases.

The defendant's counsel seeks to discredit the testimony of the mother and two brothers of the petitioner as to these admissions, on the theory that the three concealed the fact that the defendant had made the admissions to them, and cites *Miller* v. *Miller,* 20 *N. J. Eq.* 216. There might be merit in the contentions, if the premises were true, but it does not appear that any of these facts were kept from either the petitioner or the defendant. Surely not from the defendant, who made the admissions and equally true, not from the petitioner, to whom the

matter was made known, not only by the defendant but by these witnesses. The subject seems to have been one of open and general discussion between the petitioner and the members of her family. There was nothing hidden; nothing kept secret.

Another point advanced is that the offence of the defendant was condoned by the petitioner living under the same roof with him, after knowing that he had a disease, which could only, in the ordinary course of events, be acquired dishonorably. The language of the court in *Stevens* v. *Stevens,* 14 *N. J. Eq.* 374, is quoted. To dissipate the force of the argument, I need but refer to the testimony of the defendant, in which he says that he had no intercourse with his wife after she became ill (237); and to the testimony of the petitioner that they did not room together after the visit to Dr. Krusen (40). It is, however, argued that because the petitioner lived in her husband's house after she knew he had gonorrhea, regardless of sexual relation, the offence was condoned, or at least the good faith in bringing this suit is seriously challenged. But let us look at the situation. The petitioner was a young girl, to whom this virulent disorder was unknown (70). At first she was persuaded by her husband that he was suffering from inflammation of the bladder (35). He then attempted to force upon her the conviction that he had acquired it innocently and she said she tried to believe him (41). She had been persuaded by the defendant's mother to believe that she might have acquired it from a toilet, and given it to her husband (69). She had told her husband that she was going to leave him. She had been advised not to leave him, and was thinking it over. She says she thought she ought to consider it before going to live with her mother. True, she had nursed her husband during the period of his severe illness, and her husband appealed to her sympathy. She was sorry for him—the way he suffered. She did it out of pity and a sense of duty, because as she says she thought "as long as she was living under his roof it was her place to do all she

could for him" (68). When his manner towards her changed, and he became disagreeable, she became convinced of the deceit of her husband and that his disorder was not of innocent conduct. From marital intercourse she held aloof. Doubting, she was swayed between her husband's earnest protests of innocence and suspicion of his guilt. It was a desperate situation. She was not schooled to support herself and she had no one to go to but a widowed mother on whom she had neither legal nor moral claim for support. She was leaving a home where there was abundance and luxury. She struggled long and considered earnestly before taking the final step. Her conduct was discreet and deliberate. For this she is to be commended. It was only when cohabitation became impossible, that she left her home to divorce herself from one who had cruelly wronged her.

And in this connection permit me to observe that the defendant's conduct towards his wife, after he became ill, points strongly to his consciousness of guilt if he believed at that time, as he testified he did (although he disavowed it at all times during that period), that his wife was the source of his trouble. Young as he was, he had been a libertine. He was well versed in the penalties of licentiousness. He said he had never been penalized, because he had always protected himself (229). Is not it likely that one so tutored and learned of evil ways, with a sense of his own innocence, would have indignantly charged his wife with matrimonial misconduct and have driven her from his side? Would he have been as conciliatory, endearing and forbearing as this husband was? Does not his deportment evince a guilty conscience? Let me again impress the court with the fact that during the period of cohabitation following his illness, the defendant neither charged, intimated nor insinuated that his wife was the cause of his sickness, except perhaps the allusion to Dr. Mulford's treatment of his wife, made to Dr. Tracy, calculating to avert the doctor's suspicion of the defendant's wrong-doing, and to attract attention to his wife as a likely source. Whatever his purpose may have

been in scandalizing his wife, the defendant when confronted, abjectly denied doing so and disavowed to her and her brother, Clinton, an intention to reflect upon her or her conduct (37, 175). The statement to Dr. Tracy, if made by the defendant, that his wife had had the services of Dr. Mulford, reflects a design to shift blame. He knew that the attention of Dr. Mulford was for an illness foreign to the one from which he was suffering.

We submit that upon the petitioner's case the defendant's guilt is made out by a preponderance of the evidence, both as to number of witnesses and upon the merits, and that if the cause had there rested, a decree would have gone for the petitioner.

I cannot pass from this phase of the case without commenting upon *Mount* v. *Mount*, 2 *McCart.* 162, where it was held that infection with venereal disease is *prima facie* proof of adultery, and to cite the language of Dr. Lushington in *Collett* v. *Collett*, that:

"It is impossible to lay down any general inflexible rule, for each case must depend upon its own circumstances and it is scarcely possible to conceive a case without some circumstances which would assist the court in coming to a conclusion."

In the Collett case the adultery of the husband was attempted to be established by showing that the wife was suffering from a recent infection. It was held on a hearing by the judicial committee that the adultery of the husband must not be inferred from the mere fact of the wife being tainted with the venereal disease, although she herself is not even suspected of adultery, inasmuch as the existence of such a disease in the wife is consistent with the adultery of the husband, with her own adultery, and with accidental communication of it.

The logic of the judicial committee cannot influence the judgment in the present case. For here we have circumstances in addition to the "mere fact of the wife being tainted with the venereal disease" spoken of by Dr. Lushington, which assists the court in coming to a conclusion. Those circumstances are the conduct of the

defendant: (*a*) in hiding from his wife the nature of his illness, which he well knew, long after he had been informed of it by Dr. Tracy, and until a time when exposure was imminent; (*b*) the claim that he had gotten it from a toilet; (*c*) the intimation to Dr. Tracy of Dr. Mulford's services, knowing that his wife's sufferings were not related to gonorrhea; (*d*) the unfounded, last-minute charge in this case that his wife infected him, which he at no time intimated during their cohabitation; (*e*) the building and giving of obviously false testimony attributing to his wife unbecoming and improper conduct with a servant in the house and with one Goulard, corruptly designed to counter-vail the absolute proof of his guilt.

All of these circumstances and more, have been related, and will be referred to hereafter in a discussion of the defence's testimony.

The defence is of great aid to the petitioner, and helpful to the court, in solving the guilt of the defendant. The malicious counter-charge of adultery contained in the supplemental answer, is in nowise supported by the testimony. Nothing is brought forth which in the slightest degree incriminates the petitioner, nor sullies the purity of her character and her reputation for chastity. It lime-lights the defendant's infamy and diabolical machinations. It brings forth his true character and portrays him as a degenerate and pervert, whose moral obliquity forbids belief in his utterances, even though they be under oath. To say that he swore falsely, that he repeatedly, deliberately perjured himself, is supererogatory.

I enter upon a discussion of the defence's testimony not only to combat it defensively, but also by offensive attack to make clear that that which has been lodged against the petitioner is fabrication, corruptly conceived and executed to meet a desperate situation and to employ the defence as proof of the defendant's guilt of the charge preferred against him.

DEFENCE'S TESTIMONY.

It is argued by my opponent that the flat denial of the defendant of adultery and the failure of the petitioner and the co-respondent to make like denial, is dispositive of this case. In support of the first proposition, the case of *Mount* v. *Mount, supra,* is invoked. Mount had gonorrhea. In that case and under the then circumstances, Mount's denial controlled. But Mount was a witness of integrity. His testimony was not impeached. He was not shown to be mentally unbalanced; a pervert and falsifier of testimony, as we shall show the defendant in this case to be. Other circumstances in that case were that Mount had been recently married to a widow and that it was possible for the disease to have been lurking in his wife's blood, from whom he may have contracted the disorder, while in the present case the wife was a young girl of honest conduct, whose character and reputation had not been assailed until her husband preferred the infamous and scandalous charges, after this action was brought.

The second part of the proposition is that because the petitioner and the co-respondent failed to literally deny adulterous conduct, the charge of the cross-petition must prevail. This is idle talk. Allegations must be met by allegations, and proofs by proofs. The circumstances and incidents testified to by the defendant and his witnesses, died in their borning, or were categorically met by testimony, both satisfying and conclusive. A mere negation, without more, is of no aid to a judge, when the circumstantial testimony is in conflict. For one to say that another is guilty of adultery and a denial by the latter of the charge is not at all elucidating. The judge wants the facts.

A.

The defendant claimed that in the early part of June, 1911, his wife was ill, and complained of almost screaming when she urinated (169). His mother says she heard of the illness June 10 (466). That he told her to get medical attention and she refused, saying she did not like to do so (169). At that time he said he had no pain, inflammation or discomfort in the private parts (170), that he first felt discomfort after July, and immediately went to Dr. Tracy (170), and that he got medicine for his wife *four or five days after* Dr. Tracy treated him. That in the early part of June he asked his wife to have medical attention; that she did not know what was the matter with her and seemed to be greatly worried about her condition, and in the middle of July she said she thought she had the same thing that he had and that she had given it to him (171). That they were on the side porch of his house, when his wife said, in the presence of the defendant's mother, that she was sure she had given it to the defendant; that she did not know where she got it; that she might have gotten it from a toilet (173). That he felt unpleasantness in the parts after July 1st; that he was very sick on July 4th, and that he did not know what was the matter with him (230-231), and that his wife said *the instant he got it*, "You have got this thing from me, whatever this thing is" (232). That in the early part of June he insisted that his wife be examined by a physician and that she refused to be treated until after Dr. Tracy returned (238), and that pending Dr. Tracy's absence on his vacation, his wife refused to submit herself to Dr. Whittaker (242). On Dr. Tracy's return, the wife sent for him to call upon her (242).

A very cursory analysis of this testimony proves that the defendant is a cunning, reckless and conscienceless prevaricator, lacking, however, in circumspection. The petitioner was ill in June, suffering from hemorrhoids, but

that she refused medical attention is not true. Dr. Mulford treated her from the twelfth to the sixteenth of that month for hemorrhoids, during which time she was confined to her bed (243). The hemorrhoids accounted for the irritation of which she complained (245). Mrs. Earl submitted herself to a physical examination by Dr. Mulford for this complaint. The defendant knew all of this. He paid Dr. Mulford's bill and his statement that she refused to accept medical treatment, and by this to give the impression that she was apprehensive of her condition, and of incriminating discoveries by medical examination, is as foul in its purpose as it is false.

Another instance of untruthfulness is the defendant's statement that when very sick on July 4th, he did not know what was the matter with him, and that his wife said *the instant he got it,* "You have gotten this thing from me, whatever this thing is." That the defendant well knew what the matter with him was, cannot be doubted. He had had previous experience. Dr. Tracy did not attend him until July 5th, when he was called to the house and it was not, as we have already shown, until some days afterwards, when the petitioner accompanied him to the doctor's office that, upon his return, he told her what the doctor had said was his ailment. All during that period the defendant dissembled, and it was not until some time after the visit to the doctor that the petitioner experienced symptoms of the disorder. How then could the petitioner, in the circumstances, have said *the instant he got it* that he contracted the trouble from the petitioner.

The petitioner throughout her testimony denied saying at any time to her husband, that she had contracted the disorder first. It was his mother who persisted in urging upon this young girl that she had gotten the trouble from a toilet (53), and by persuation sought to impress this young woman that the disease was accidentally communicated to her while in Philadelphia (63). The petitioner says that she did not know how it could be con-

tracted, and that she thought her mother-in-law was telling the truth (69). Mrs. Earl, the defendant's mother, says that a week after she returned from Point Pleasant on July 29th, the petitioner said to her that she had come to the conclusion that Binney must have got this trouble from her, and she admits saying to the petitioner, "Child, you must have gotten it from the toilet room in Philadelphia" (414).

This testimony does not militate against the petitioner's averments that her ailment followed that of her husband. After the mother-in-law, for the evident purpose of shielding her son, had urged, insisted and pressed upon this young wife her views, there may have been conversational concession upon which the defendant builded, but in no manner is it to be distorted into an admission by the petitioner of the facts sought to be established, and this view is supported by her denial of any such admission of fact.

That the petitioner declined the services of Dr. Whittaker during Dr. Tracy's absence, is true. He was a young man and a stranger to her, and she declined to submit herself to him on these grounds alone, preferring to wait until Dr. Tracy returned. Dr. Tracy was the family physician, and she immediately sent for him. Her refusal to submit herself to Dr. Whittaker emphasizes her womanly decency and modesty. A futile attempt is now being made of this incident, as evincing an effort upon the part of the petitioner to suppress and conceal the evidence of sin. When we consider that in June she sought the aid of Dr. Woodward and upon his return the services of Dr. Tracy, and following solicited an examination by Dr. Krusen, the subtle insinuation disappears as vapor. Mrs. Earl, the defendant's mother, says that she went to Point Pleasant on July 8th and returned on the 28th. She had the first conversation with the petitioner on the 29th of July (412), and that when the petitioner told her of her troubles, she urged her to have a physician and urged her to go to a specialist, and that the petitioner replied: "She did not like to go to

a physician" (417). Dr. Tracy was in attendance upon her at that time, and it was on the 31st of July that the services of the specialist, Dr. Krusen, were enlisted. There is irreconcilable confusion in the testimony of this witness as to when it was that she gave this advice. She says she learned of Binney's illness about the 4th of July (412). Mrs. Earl had been cured of her hemorrhoids, according to the testimony of Dr. Woodward, shortly after the 16th of June. It does not appear that any complaint came from the petitioner between the time the mother said she learned of her son's illness (July 4th) and when she left for Point Pleasant on July 8th. As already noted, Dr. Tracy's services were not needed for the petitioner before he left on his vacation, July 9th. On his return he treated the petitioner. So that if the mother-in-law urged the petitioner to see a physician and a specialist, and the petitioner stated that she did not like to go to a physician, it was really at a time when Dr. Tracy was treating her, and the expression, if made, was of hesitation to expose her person to another—a specialist. Another example of the defendant's duplicity is his statement that he was not sure he had gonorrhea until after his wife returned from Dr. Krusen's, July 31st (261). What was he being treated for by Dr. Tracy and Dr. Whittaker? Dr. Steel had before that time "satisfied me thoroughly well that I had it" (39, 235).

I will now take up the Goulard affair. Alexander Goulard had gone to school with the petitioner and her brother. In the winter of 1909-10, shortly after the parties to this suit were married, Goulard returned to Burlington and stopped at the hotel where the petitioner's mother was boarding. The petitioner met him, and invited him to call (77). The following day, while on her way to Philadelphia with her mother-in-law, the petitioner met Goulard on the train. He invited her to go to a matinee. Before going, she sought and obtained the consent of Mrs. Earle, Sr., who said: "Yes, by all means go!" They returned to Edgewater Park, and the petitioner invited him to dinner. The defendant invited him

to stay over night (77). During the evening the defendant entertained Goulard until bedtime. The petitioner lighted the guest chamber, preparatory to retiring, and was in it with the guest looking over photographs and generally reminiscing (77). Her husband during this time was downstairs. She says she kept calling to him, and eventually said: "Binney, I shall not keep Mr. Goulard up any longer." She then went to her own room and went to bed. Her husband shortly afterwards followed. The next morning her husband was nice to Mr. Goulard, and asked him to return to dinner. The invitation was accepted. At dinner time and before Goulard arrived, for some inexplicable reason, the defendant telephoned to the petitioner's father, stating that the petitioner had been in Mr. Goulard's room half the night with her clothes off. The father demanded an explanation, and was requested to come to the house. Upon his arrival the defendant had disappeared. Goulard was embarrassed and left with the father. The next morning, when the defendant returned to his home, he professed to have forgotten all about the matter and expressed his sorrow that he had done it (78). This is the petitioner's version.

The defendant's weird tale is that Mr. Goulard visited the house in the winter of 1909-10. He stayed that night and he left the next day with the petitioner, and returned at night. The next night the wife complained of a headache, saying she wanted to retire. Goulard complained of having a sore neck, which she massaged with liniment, and in doing this he took off his outing shirt. Against this the defendant says he protested (156-157). Goulard stayed the second night, and the following day, until suppertime (157).

The first night the defendant says his wife went to bed with him. She went in her room and he went to his; they occupied separate rooms. After he was abed he heard someone going downstairs. He did not understand it. He got up, put on his clothes and went downstairs to the library, where he found his wife sitting on the

floor with her hair down, her dress very much mussed; she had no shoes on and one stocking was partly down. She was at the feet of Goulard. He was sitting at the head of the table. He heard no conversation between them that night (157). On the following day he overheard a conversation between Goulard and his wife, in which Goulard asked his wife to elope with him; she said she did not care for the defendant, and knew they could get along together. He waited until the conversation was over and then talked the matter over with his wife and reprimanded her (158).

On cross-examination, the defendant says that he entertained Goulard the first evening to the best of his ability (192). He was not as angry over what he had seen and heard as he was heartbroken (191). He assumed from their conversation that his wife and Goulard were newly made friends. On the first evening his suspicions were aroused by his wife's extreme familiarity with Goulard, and that she stated to the defendant, in the presence of Goulard, she would like to kiss Goulard (197). This was followed by another reprimand, in which the defendant told his wife he did not think that that was the way for a lady to act before a man who was a short acquaintance. She replied that he was disagreeable, unnecessarily. After this incident the wife complained of a headache and wanted to retire early (197). The petitioner rubbed Goulard's neck after expressing a desire to kiss him. Goulard and his wife went upstairs, against which the defendant protested (200). He went as far as the middle of the hall and she met him there with the liniment and massaged his neck there. Before they went upstairs he told his wife it was not the proper thing to do (203). He made his protests in the presence of Goulard, who said he would not allow the petitioner to massage his neck (204). After the massaging they both came downstairs. He said nothing to Goulard about the massaging and a half hour afterwards he and his wife retired, leaving Goulard downstairs (205). He slept in his room, his wife in her room,

Goulard in another (207). He repeats that his wife slept in her own room that night (209). He had fully retired for the night, when he hard a rustle of skirts in the hallway, and footsteps on the stairs (210). When he went downstairs Goulard was in the same room where he had left him, still working on his accounts. His wife was on the floor; her hair was down; one stocking was partly down, showing her bare leg, and her dress was pulled up to her knees (211). His wife did not get up from the floor when the defendant came downstairs. Goulard went right along with his work. This outraged husband says he was so surprised and disgusted that he could not speak (212); that he sat and looked at them for fully fifteen minutes without speaking, and then sent his wife upstairs, telling her it was no way for a lady to act and the place for her was to go to her room (212-213). His wife went to her bedroom, but he did not sleep with her. He ordered Goulard from the house, but he did not go (213). He did not enforce his orders to Goulard because of his physical condition. Goulard apologized and the witness said that for the night he would let the matter go until the next day (214-215). Goulard came back the next day to dinner (218). He came against the witness' protest. He did not tell him to get out, because he was not physically able to put him out (218). The second night Goulard slept in the same room he occupied the previous night (220). The last two days he was at the house the witness told him to go, but he refused (220). Goulard was at the house two or three nights consecutively (223).

This is the defendant's story. Its recital sounds like a tale from a fairy book. It is grossly lacking in probability. The defendant would have us believe that he tolerated and entertained at his home a stranger who threatened to destroy his domestic happiness and steal his wife, without resistance, other than a mild protest. His excuse that because of his infirmities he didn't compel Goulard to leave, as he was ordered to, is not credible. He had at the time in his employment Mark Whitfield,

who was husky, but he says he declined to call upon him for aid, because he was an outsider (217). Besides, it is altogether improbable that if one had acted as the defendant says Goulard conducted himself in his household, while a guest, he would have had the temerity to remain after being ordered away. Then again, according to the defendant, Goulard apparently all during the time that he was a guest and was being entertained by the Earls, was engaged with his accounts (196), and that he was busy with them all evening (196, 206, 211). What manner of guest must he have been?

Aside from the improbableness of this story, there is one feature which proves it to be untrue. Defendant said that on the night after they had retired he discovered his wife downstairs with Goulard, in a questionable, if not compromising attitude. He says he and his wife occupied separate rooms (157, 206, 208), and that he heard someone (his wife) going downstairs. There were but three bedrooms on the second floor. One of them was occupied by Lizzie Bright, a servant in the house (208). Goulard admittedly occupied the guest chamber, and the defendant the remaining room. Where then was the separate room the petitioner occupied and from which she stealthily crept to rejoin Goulard? This discrepancy, the defendant was unable to account for, and characterizes his story as either the vagaries of a diseased mind or the creation of a cunning schemer.

As further proof that the defendant's version is false, I refer to the witness' self-contradiction upon this most vital feature of his testimony of the Goulard affair. He repeatedly stated that he and his wife occupied separate rooms, but we find him saying: "I missed her from my bed; I was not asleep yet" (209). These contradictions are fatal to the story of what the witness says he saw of unbecoming conduct of his wife, and I urge its importance because of the witness' effort to give color to the incriminating part of it by situating his wife, where opportunity for the supposed tryst was more favorable and the happening more likely than if she had quietly stolen from his side in his bed.

Mrs. Earl testified that Goulard remained at the house but one night (Saturday), and this at the invitation of her husband. He left before dinner the next night. She denies that he worked at his accounts while at the house. She denies stating to her husband that she cared to kiss Goulard. She denies saying to her husband that she loved Goulard (465). Goulard had a sore neck, but she denies massaging it. He was having it treated at the hotel where Mrs. Leigh (petitioner's mother) had put some antiphlogistine on it. She offered to fix some for him, but he declined. Mr. Earl then said, "Why not fix it?" The three then went to the bathroom, where Mr. Earl heated the antiphlogistine and Mrs. Earl put it on the neck. They all then returned to the library downstairs, where they all sat and talked until it was time to go to bed (465). Goulard slept in the guestroom and the husband and wife in the husband's room. After she had retired, her husband came up and went to bed with her. After they went to bed, no one went downstairs again. She denies being downstairs with Goulard, and that her husband found them there, and sat for fifteen minutes in utter amazement looking at them (466). She denies Goulard asking her to elope with him, and that her husband in anywise reprimanded her (467). She denies having seen Goulard since, or of telling her husband that she had been to lunch with him in Philadelphia (468).

B-1.

Goulard letters: By way of bolstering up the charge of undue familiarity and indiscreet conduct of the petitioner with Goulard, the defendant testified that shortly before the separation, he found in his wife's desk some fifteen letters addressed to her by Goulard; some of them containing expressions of endearment and indicating a relation which ought not to be common between married women and single men. The desk in which he found them was never locked, was always open. He

placed the letters back into the desk where he found them, because, as he says, he regarded it as "dishonorable to keep them" (159). He held out one of them to show it to his wife, to remind her that he had forbidden her to correspond with Goulard (227). He can't remember why he did not hold out all of the fifteen to remind her of his wishes (228). Petitioner says that the only letter she received from Mr. Goulard was one he had written shortly after being entertained at the Earl house, thanking her for her hospitality, as she expressed it, "just a regular bread and butter letter," which she says she showed to her husband (65).

Upon this issue, the proofs are balanced, so far as the number of witnesses are concerned, and even though the witnesses were equally reliable it would have to be solved in favor of the petitioner. But we must judge the value of the defendant's testimony by his other evidence in the case already noted, and to follow, which shows him to be untrustworthy. His story of the finding of the letters and what he did with them, has not the ring of truth. It does not appeal to one's common sense. Following the supposed Goulard episode in the early part of 1910, it is pretended that the petitioner in defiance of her husband's wishes, carried on a clandestine correspondence and then indifferently allowed the letters to be in a place and segregated, to which the defendant at all times had access, and where discovery was inevitable. This is as improbable as is preposterous the defendant's measure of "dishonorable conduct," when he says that incensed at his wife doing what he had forbidden, he regarded it as dishonorable to confiscate all of her letters, but not so to take only one, to remind her of his wishes. It is fair to assume that had the letters been from the source and of the kind described by the defendant, he would have put them to the same use that he intended putting the single one, which he says he abstracted. It is further fair to assume that if the defendant actually found letters, they were of the petitioner's correspondence with her women friends, which

the disordered brain of the defendant now distorts into that which he hopes will help his case. We have an illustration of this in his statement in connection with a visit the petitioner intended to make to Nyack in August or September of 1911. The defendant told his wife that if she was going, he would go too (163), and because neither went, the defendant's "deficient nerve supply" caused his unbalanced brain to reason and his tongue to say, under oath, that Goulard was the object of the proposed trip (313). The fact is that Mr. and Mrs. Earl were invited to visit Miss Bella Stilson, who resides in Nyack, but because of the illness of the defendant in August, the trip was not taken. This plainly appears by the letter of Miss Stilson to the petitioner marked "P-A-X-1" (470).

It must not escape our attention that Goulard was not made a co-respondent, and furthermore that there is no claim made, either in the briefs or upon the argument, that there was sinful conduct by the petitioner with this man. The evidence for what it is worth and as the court will treat it, was offered by way of inducement, tending to show inclination upon the part of the petitioner to stray from the paths of virtue and to pave the way for the charge laid in the cross-petition of adultery with Mark Whitfield. If the court regards it as I have treated it, its effect must be to increase the belief in the defendant's guilt and doubt in the credibility of the testimony to support the charge of adultery in the cross-petition.

C.

The cross-petition charges adultery with Mark Whitfield in the months of March, April, May, June, July, August and September, 1911. There is nothing in the evidence of the defence, save perhaps that of the colored man McCray, which was not known to the defendant at the time this action was brought and when he filed his original answer, in which he contented himself with a

denial of the charges in the petition. And it is not indulging in mere speculation to assert, at this time, that the fancies of the defendant were galvanized into testimony after a realization of the force of the petitioner's proofs, not in the belief, that it would be accepted to sustain the charge, but rather to so reflect upon and blacken the character of the petitioner as to cause doubt in the mind of the court as to her innocence of first inoculation, and thereby thwart the administration of justice and the petitioner of her right to a recovery. The cross-petition was not filed in good faith.

Mark Whitfield took employment with the Earls shortly after their marriage, and continued with them until they separated in October, 1911. When they moved to their home at Edgewater Park in the latter part of 1909, and after Lizzie Bright, the cook, left (shortly after the Goulard episode) (164), Whitfield assumed the duties of cook, waiter and handyman about the house. The defendant testifies to his excellent cooking abilities (72), and said he was hired because of these qualities (164). The defendant says: "So far as Mark is concerned, everything dates as of 1911 * * * then I suspected him of tampering with my car and I wanted him discharged * * * my wife did not want me to discharge him because of his excellent qualities as a servant (268). Because of his excellent qualities as a cook, she said if I discharged him she would get a divorce. * * * I believed her" (269), and in the very next breath he states that he had no idea upon what ground his wife would get a divorce if he discharged Whitfield (269). The testimony by which the defendant hopes for success, described the following alleged event, given by the defendant and his chauffeur, Wright. The defendant's testimony is that on one occasion he was out with Wright, when his automobile broke down. He came home late. When he arrived at the house he could not get in. They knocked on the side door and rang the front bell. A light was lighted inside of the house, and through a small window in the front door he and the chauffeur saw Whit-

field coming downstairs. Whitfield had on an outing shirt, without a collar, sleeves rolled up. He had a pair of trousers on, and a pair of rubber-soled canvas shoes. The defendant says after the door was opened by Whitfield he went upstairs to his wife. That she had her hair down, was clothed only in a kimono, an undershirt and a pair of slippers. That he asked her what she had Mark Whitfield upstairs for, and she replied: "Don't be unreasonable; I had him here because I was afraid to stay alone" (167-168). On his cross-examination he relates the happening of that night in such discordance with the version given by Wright, the chauffeur, that if there had been an occurrence as they describe, there could reasonably have been no such great discrepancy. He says Clinton Leigh, Wright, the chauffeur, and he went to Burlington in an automobile, to do some errands (275). They did not get home until one o'clock, because the machine broke down (275). Wright was with him when he returned (281). Wright, before taking the car to the garage, which was in the rear of the house, went with the witness to the house (281). They knocked at the side door first and did not get any response, and then went to the front door and rang the bell. When he first saw Whitfield through the glass opening of the door the latter had one hand on the side of the wall leading from his wife's door, which was eighteen or twenty inches from the top of the steps (282). He became impatient, because he had to wait so long before he got in * * * he thought it was peculiar * * * he knocked first at the side door and then went around and rang the front door-bell. * * * Whitfield took his time coming downstairs to let them in * * * he came directly down from the place where the witness first saw him and let them in. He don't remember saying anything to Mark Whitfield about his being upstairs (284), nor does he recall upon entering the house, going to the dining room and being there with the chauffeur and Whitfield (Wright says they were). He further testifies unreservedly that his wife was alone when he returned that

night * * * that Whitfield came out of her room; that he saw him come out of her room; that he saw him swinging around the corner of the wall coming out of her room. He did not reprimand Whitfield because he did not comprehend the situation at that instant (287). He did not ask Mark what he was doing in his wife's bedroom, because he had absolute faith in his wife, who said she was afraid to stay alone, and that she had Mark up to her room reading to her. He reprimanded her severely and asked her what she meant by having a servant in her room, in the robe that she had on (289). When he entered the room his wife was standing alongside of the bed * * * that the bed was mussed * * * mussed on top * * * and upon giving this severe reprimand he asked her if she considered it proper conduct to have Mark in her room with nothing on but an undershirt, a pair of slippers and a kimono (289). He was very angry, but did not go down to chastise Whitfield, because he was not physically able, in case he was called upon to use force. He did not reprimand Whitfield, nor even tell him it was indiscreet for him to be in his wife's bedroom (290-291). He did not discharge Whitfield, because his wife said she would get a divorce, and that was the principal reason for his refraining. He did not insist on Mark going, because he thought his wife would leave him, and he did not want her to leave him, because he loved her (292-293). Later on, he again asserted that at his front door, where he stood on this night, he could see a person come out of his wife's bedroom, and that he saw Mark come out of his wife's bedroom on that occasion (302).

The chauffeur's (Wright) testimony is that he and Earl went in the automobile to a place they called Edisons (264). The automobile broke down and they worked at Mrs. Earl, Sr.'s, until 11: 30 o'clock P. M. trying to get it to run. They went home from Burlington to Edgewater Park on the trolley and walked on up to the house. "Binney rang the bell and after a while Mark Whitfield came down from upstairs and opened the door and we

both went in * * * he had on a pair of pants, light shirt and soft-soled shoes. When Mark started downstairs I could just see him come along and swing around the corner * * * he came from the hall that led to Mr. and Mrs. Earl's room. Mrs Earl said, "Is that you Binney," and he said, "Yes," and she said, "Where have you been," and he said, "I broke down and left the car at my mother's," and she said "I had to have Mark up here to keep me company, for I was afraid" (264-265). On his cross-examination, he says that they left Edisons to go to Burlington about 6 o'clock in the evening, a distance of about three miles (385). They got to the defendant's mother's house in Burlington about 7 o'clock. He finished working on the automobile about 10:30 o'clock and then went into the house and sat there alone smoking. He did not go home when his work was finished, because Binney asked him to go home with him * * * It was a stormy night in the summer-time (389). Binney did not say that he was afraid to go home alone, nor did the witness tell Earl that he was tired * * * although he had a mile and a half to walk after leaving the defendant at his home (390). From the trolley line in Edgewater Park they walked to the house. They crossed the lawn to the side porch and walked around on the porch to the front. Mr. Earl knocked on the door loud enough for anyone to hear (391). He stopped at the side door before knocking, about a minute; long enough for someone to come down and let them in. After he rang the doorbell, in about a minute Mark came downstairs. The witness continues: "I went on into the house (392). Binney and I stood close together. We were right close together, so that we both saw Mark come downstairs at the same time through the opening in the door. Binney did not say anything to Mark, nor Mark to Binney. Mark closed the door (393). I went out into the kitchen. We went to the dining-room and then to the kitchen * * * don't know whether Mark went out too * * * don't know what I went in the kitchen for. Binney asked me

to go home with him, and I went into the house with him * * * I went into the kitchen because he asked me to. He said, 'Come on back in the kitchen.' I went there and stood there a little while, and then I went home * * * stood there talking * * * talking about the car * * * with Mark Whitfield * * * Binney told Mark how the car ran and what happened to it * * * I stayed in the kitchen about ten to fifteen minutes * * * when Mark let us in, we went direct to the kitchen; from the front door into the kitchen (393, 394). Heard Mrs. Earl say that Mark had been up to her bedroom, when at the foot of the stairs * * * just as we went in * * * stayed there while she said that (395). Of course Mr. Earl stayed there too (395). Mrs. Earl said, 'Binney, is that you,' and he said 'Yes, that is me,' and she said, 'Where have you been,' and he said, 'My car has been broken down,' and she said, 'I had to have Mark up here to keep me company, because I was afraid' (396). All the rest were standing there at the foot of the stairs and I stood there too (396). Mark Whitfield let me out of the house that night" (397).

When this witness concluded, the defendant again took the stand and testified that he was mistaken in saying that on the night he saw Whitfield come out of his wife's room, he returned home in his automobile. He said, "I remembered afterwards that that was not the night. It was the night that I was out to Edisons in the country * * * and got as far as mother's house and could not get any further. It (car) would not run, so I left it there and stayed that evening with my mother, and late that evening I took Wright, my chauffeur, and I went down and took the trolley car down town, and came down on the trolley car" (408).

The defendant may have been confused, but I doubt it. He vividly and in detail described how he approached the house in his automobile, and saw a light burning in the house. That the car was stopped at the side door, and the chauffeur got out before taking the car to the

garage. That he knocked at the door, rang the doorbell and there together he and Wright saw the servant Whitfield emerge from his wife's bedroom. How one could be mistaken after such elaboration of details, is hard to understand.

The petitioner and Mark Whitfield emphatically deny this testimony (473-436), and indeed, without their denial, it would fall of its inherent improbability, untruthfulness and earmarks of deliberate and willful perjury. These I will point out.

First. Physically it was impossible to stand at the front door of the house, peering through the glass opening and see a person in, or come out of, the petitioner's room. The architect's plans of the house prove this conclusively. Henry A. Brown, the architect, called by the defendant, says: "One could not see a door leading into any of the bedrooms, standing at the front door. One standing at the front door cannot see the interior of the bedroom south of the hallway (Mrs. Earl's), nor the bedroom door nor the casing of that door" (352).

Second. Mrs. Earl was never left alone on nights when her husband was away. The petitioner says she was never alone with Mark at night (61, 472). Always when her husband was away, he provided either her mother or brother as a companion, or he would take the petitioner to her mother's home (472). Whitfield (433) and Mrs. Leigh (105) make the same statement of fact. The defendant admits that he never went out at night leaving his wife alone, without having her mother to stay with her (277). Where then was Mrs. Leigh on the night of this supposed happening? If she was at the defendant's house, and they all say that she was always there when he was absent at night, her presence and knowledge of what took place is unexplained by the defendant.

Third. The defendant testified that it was up in his wife's bedroom when she admitted and explained why she had Mark Whitfield there and that there he reprimanded her. He said: "When Mark let me in I went diret to

my wife's room" (287). He also described how she was dressed and the condition of the bed. In conflict, Wright testifies that it was while he and Earl were standing just inside of the door, as they entered the house, the petitioner called downstairs to the defendant not to be angry because she had Whitfield in her room, and then the three went into the kitchen. The defendant made no such pretence. This marked discrepancy in the two stories manifests a concoction to which Wright was suborned, but who collapsed through improper or insufficient rehearsal.

Fourth. The conduct of the defendant towards this servant gives the lie to the story that he saw Whitfield come out of his wife's bedroom late at night, while the two were alone in the house. Whitfield was retained by the defendant in his service until the end. On the last trip in the automobile, when the defendant and his wife, with a Miss Keim, started for a Columbus Inn, Whitfield was the driver, and asked to explain why Whitfield was thus tolerated, the defendant answered that he had no suspicions of his wife up to that time (275). The defendant's conduct towards Whitfield on the night of the supposed happening, as testified to by Wright and Whitfield (397, 434, 472), that the three of them held friendly conversation in the kitchen; his failing to call Whitfield to task for that which would have alarmed and outraged a husband; his constant intimacy with him, associating and drinking with him until after his wife departed, shatters the last vestige of belief in his story, which may still be lurking in one's mind. The defendant's excuse for not discharging Whitfield because he was not physically able to eject him, and for fear that his wife would divorce him, is mere silly talk and nonsense. It is worthy of thought that if this affair had substance, it was well known to the defendant at the time he filed his first answer. His failure to set it up at that time suggests after thought.

There were other incidents given in evidence by the defence, intending to show undue intimacy between Mrs. Earl and Whitfield.

I.

The defendant says that as many as fifteen times he threatened to discharge Whitfield, but that his wife always interfered, saying that she would get a divorce if he did so. Wright corroborates him as to one occasion (368), but on his cross-examination says that the remark was playfully made by Mrs. Earl, and the defendant says that the reason his wife did not want Mark discharged was because of his excellent qualities as a servant (268). The petitioner denied the charge and if perhaps such a threat was made by her, it was inconsequential and forgotten as soon as made.

II.

It was insinuated that Whitfield tampered with the defendant's automobile for some ulterior purpose. He denies this. Wright, the chauffeur, says that the defendant was at all times taking the machine apart and trying to put it together again (381). This explains.

III.

The defendant says that one evening, while sitting on the side porch of his home with his wife and Mrs. Leigh, his wife being partly dressed, Whitfield came out. He told Whitfield he could not come out because his wife was not dressed, and that Mrs. Leigh remarked, "Come out Markie dear, you are a member of the family," and that his wife added that he (the defendant) was very disagreeable. That thereupon Mark came out and remained with the party on the porch (167). He says he did not enforce his orders because he loved his wife (297). The petitioner denies any such happening (62). Mrs. Leigh says it did not take place (110). Whitfield says it did not occur (432). Mrs. Earl explaining, says

that on warm summer nights Whitfield frequently sat with her and her husband on the porch, at his invitation (472).

IV.

Wright, the chauffeur, testified that he saw Whitfield wash napkins and towels and one day saw him spread out a suit of underwear which he thought were of the female type, and that at the same time he saw some bloody water under the sink in the kitchen (371). The brutal insinuation is obvious. On cross-examination the witness admitted that he did not know that men wore union-suits nor that the union-suits he saw Mark wash belonged to him. As to the bloody water, he did not know whether it was discolored by blood or not (400). He says the napkins he saw Whitfield wash were table napkins (399), and not of the kind suggested by counsel in his questions to Mrs. Earl on cross-examination (73).

V.

It appears that a barber came to the house to shave Binney, and that at the time Mrs. Earl and Whitfield were in the bathroom. It was about 2:30 in the afternoon. The barber had to wait five or ten minutes before he was given the use of the bathroom. Upon Binney calling to his wife that the barber was there, she replied, "All right, will be through in a few minutes" (347). Mark was cleaning the bathroom and very likely Mrs. Earl was helping him (74, 481). It was part of the servant's duty to keep the bathroom clean. That is all there is to this morsel of scandal.

VI.

Wright tells more. He saw Mrs. Earl in Whitfield's bedroom downstairs on days when she would be going

out. Why should this attract attention? It was in the daytime, in the presence of Wright and most likely when Mr. Earl was there. The servant's bedroom joined the kitchen and it was naturally a part of Mrs. Earl's care in the household to go into that room as well as any other. But it seems, according to this witness, that Mrs. Earl on one occasion, when she was about going out, asked Whitfield to button up the back of her dress. That her undershirt was torn and Whitfield remarked this. She told him to pull it over and pin it. He obeyed. Wright says this was done while he was standing by, looking on. He did not know but that it was just a single hook that Whitfield fastened. It is argued that wickedness lurked in this act. I fail to see it. Mrs. Earl makes denial (474), so does Whitfield (432).

VII.

Mrs. Earl, Sr., adds her bit of gossip. She says that in the summer of 1911, before she went to Point Pleasant, they had dinner on the porch and that she heard the petitioner say to Mark, the servant, that her dress was too low. She had on a little pink dress with a square neck (418). The petitioner answers that she had such a dress at one time, but it was before she was married, and that she did not wear it during the summer mentioned; that it had been worn out long before. She denies the observation (481). But what if she had made the remark? It might have been some off-hand one. It must be borne in mind that this male servant was hired by the defendant to do the work usually expected of a maid, and necessarily the wife and servant were together considerably. Mrs. Earle says, however, that she always treated him as a servant; she was always nice to him and he did his work properly, but that at no time did she ever treat him as anything but a servant (472).

VIII.

Wright testified that on one occasion, in the morning about seven o'clock, he brought the mail to the house. It was a week before the separation (375). * * * The bell rang. Whitfield did not respond promptly, and then Mrs. Earl called for him. The witness says he recognized her voice. It sounded as if it came out of the front of the house, but he could not say whether it was upstairs or down (375). * * * The voice said "Mark." * * * Whitfield went into the dining room in his pajamas, his person being exposed. He returned in about fifteen minutes (375). On cross-examination the witness retracted. He says that he took it to be Mrs. Earl's voice, but he could not say positively, and that he did not know whether it was or not (398). He says that Mr. and Mrs. Earl at the time were upstairs asleep. That Mr. Earle was at home (398). Mrs. Earl testifies that she never saw Whitfield in the morning. Sometimes she would ring the bell and call Mark downstairs and then would call from her room and give orders, and then Mr. Earl would call for him and tell him what to tell Wright (479). The evidence recited does not bear against the petitioner. It requires a great stretch of the imagination to associate Mrs. Earl with the supposed doings of Whitfield, in view of the admitted fact that at the time of the ringing of the bell and the calling of "Mark," Mr. Earl was in the house, and upstairs with his wife. Whitfield makes emphatic denial (436). The disgusting conversation said to have been had between Whitfield and Wright, is affirmed by Wright and denied by Whitfield (446, 447, 485, 488). It is vile, and if regarded pertinent, I ask that the record be consulted. In the law of evidence its effect is limited to discrediting the testimony of Whitfield, but its practical aim undoubtedly was to prejudice the petitioner and to bend the mind of the court into the belief that what is supposed to have occurred, related and referred to Mrs. Earl. With whatever

may have occurred, Mrs. Earl has no concern. It cannot reflect upon her probity. As between the two witnesses, Whitfield and Wright, credibility balances in favor of the former. Wright's testimony in this regard is to be viewed in the light of his other narrations. He gave testimony of matters which in themselves were improbable, if not impossible. Some of his evidence is contradictory; others colored and warped. He has shown himself to be a willing and pliant witness for the defence. His motive is apparent—he's endeavoring to serve his master. Matters which before this suit were regarded as of no, or very little moment, he has moulded and fashioned to the scandal of the petitioner. That he was biased and self-interested, was plainly observable while on the witness stand. He denies saying to Mrs. Earle at the time she was packing her goods to leave her husband: "Well, I should think you have every reason in the world to get a divorce," and when asked by Mrs. Earl what he meant, he replied: "Well, I cannot say what I mean; I am employed by Mr. Earl, work for him, and I cannot say anything against him" (401); and that he said to Dr. Leigh at or about the time of separation, "I am sorry that this has happened. There are lots of things I could tell, but it is bread and butter to me" (402). That he made such statements is testified to by Mrs. Earl (478), and by Dr. Leigh (456). Who is lying? Of course, this testimony is not substantive of the cause, but it is usable to discredit Wright, which I submit it effectually does.

IX.

It is urged by my opponent that because Whitfield carried a small package from the Earl home to Mrs. Leigh's house, where the petitioner was staying after separation, it implies undue intimacy. At this time Whitfield was still in the employ of the defendant and in his confidence. From aught that appears in the cause, this confidence was

not shaken until the defence found it necessary to assume offensive tactics. How can this messenger-act be reasoned as one of impropriety?

X.

William McCray, a colored man, gave testimony that one morning in February, while the Earls were away, he saw a woman in the kitchen with Whitfield (322). He only saw the woman for a second and did not know whether it was Lizzie Bright, the cook (329-330). The witness was discharged by the Earls on February 18th, and he said that a few days after Mark asked him where he could get clap medicine (322), and that Whitfield told him he had the clap (339). Whitfield admits that one morning McCray saw a woman in the house with him, but denies being infected or asking McCray where he could get medicine (436). McCray's story, according to his statement, was gotten by the defence about two weeks before June 13th (333). Leave to file the cross-petition was obtained April 30th. He says he first told it to Reginald Branch, one of the defence's attorneys. John Gaines, Mrs. Earl, Sr.'s, coachman, came to him and asked him to meet Mr. Branch (334); he met Branch at Mrs. Earl, Sr.'s, house (337-338). Up to that time he had not heard of any trouble between Mr. and Mrs. Earl. Branch talked to him about the disease and wanted to know if Mark had the clap (339), and then he told for the first time what he testified to. The manner in which this witness was procured is, to say the least, remarkable. He was gotten long after the cross-petition was filed and undoubtedly to bolster it up. He was drafted into service by the colored servant of the defendant's mother. Why he was enlisted; how it was known that he was available, and the consideration moving to the witness, is left in mystery.

The testimony relates to a period far removed in point of time from the first manifestation of the disorder by the defendant, followed by like symptoms in the peti-

tioner. The issue of fact between the colored man and Whitfield is collateral and irrelevant. True or false, it is hearsay. It establishes nothing pertinent to this cause. Its office is confined to a reflection upon the credibility of Whitfield as a witness.

XI.

A parting but futile charge is that these proceedings had for their ultimate object the levying of blackmail, and the incoherent and illogical testimony of the defendant is referred to, of what he says occurred shortly after the marriage. Upon the return to Mrs. Leigh's house immediately after the marriage, Mrs. Leigh is supposed to have asked Earl how much he would give his wife if she would live apart from him (150), and that Dr. Leigh suggested that for a money consideration the wife would live apart from him (189). The story is ludicrous. The defendant and the petitioner at that time had no desire to live separate, and it was no inducement to the defendant to pay money for the doing of that furthest from his wishes. Mrs. Leigh (456) and Dr. Leigh (455) make denials. Dr. Leigh says that he did not see his sister nor Binney Earl until some time in July or August after they were married in March. How can the testimony of the defendant be reconciled with his other and previously given evidence that Mrs. Leigh said that the marriage was over, it had been accomplished and that she was going to make the best of it (181). The making of this statement the defendant denied in the next breath (181). What reliance can be placed upon such testimony, and what effect must it have upon the court's mind when considering the evidence of this witness on other issues. The change to which the petitioner subjected herself by these proceedings is alone sufficient to repel the charge. With her husband she would be abundantly supplied with money, surrounded by comfort and luxury. To leave meant to be thrown upon her own resources or a dependent of

her widowed mother and brother. The battle-door and shuttle-cock evidence of the defendant, puts to route his counsel's argument.

XII.

There are many other triflings which I have not dwelt upon in discussing the essential features. In closing I beg leave to urge upon your Honors that in the weighing of the testimony of the guilt of the defendant, the false evidence given and procured by him to support the dastardly charge preferred against his wife, and his obviously false "I don't know" and "I don't remember" evasions, ought seriously to be considered, and the maxim *"falsus in uno, falsus in omnibus"* should be rigorously applied. The learned Vice Chancellor did so. He had the opportunity to observe the defendant's conduct while on the witness stand and the manner in which his testimony was given. And in this connection, the testimony of Dr. Woodward must not be overlooked. He treated Earl for some years. He says he has a deficient nerve supply throughout his whole body; that he has attacks of severe headache, which are due to an unequal blood supply to the brain (251). That his nervous equilibrium is thereby disturbed (251). That this affected his brain (251). That he is temporarily unbalanced when the blood is not properly distributing itself to the brain * * * and for the time being he may be off—way off his center (254); and that the greater this disturbance, the greater are his false impressions and false conceptions of things (254).

I submit with confidence that the petitioner made out her cause beyond peradventure, and that the wanton and malicious fabrications with which she has been assailed should not obstruct her path to an affirmance of the decree divorcing her from this villainous and semi-imbecile-maniac-husband.

Respectfully submitted,

THEODORE BACKES,
Of counsel with the petitioner.

In Chancery of New Jersey

PETITION FOR DIVORCE.

(Filed October 13, 1911.)

To His Honor Mahlon Pitney, Chancellor of the State of New Jersey:

The petition of Irma Leigh Earl, of Edgewater Park, in the County of Burlington, in the State of New Jersey, respectfully shows:

(1) That on the twenty-eighth day of March, in the year nineteen hundred and nine, she was married to Binney Woodward Earl, her husband, at the rectory of the Episcopal Church of Burlington, in the City and County of Burlington, in the State of New Jersey, by the Reverend Stoddard, a minister of the gospel and the rector of said church.

(2) That from the time of the said marriage until the latter part of September, in the year nineteen hundred and eleven, your petitioner lived with her husband continuously in the County of Burlington in this State aforementioned.

(3) That your petitioner and her said husband, ever since their said marriage and up to the time of the commencement of this suit, have been and each are, at the commencement of this suit, actual and bona fide inhabitants and residents of the County of Burlington in this State;

(4) That on or about the first day of July, in the year nineteen hundred and eleven, the said Binney Woodward Earl, wickedly disregarding the solemnity of his vows and the sanctity of the marriage state, committed adultery at a place and with a person unknown to your petitioner.

(5) That on or about the said first day of July, in the year nineteen hundred and eleven, the said Binney Woodward Earl, while so wickedly disregarding the solemnity of his vows and the sanctity of the marriage state, and while so committing adultery, at the time and with the person unknown to your petitioner, and in the commission of the said act of adultery, contracted and became afflicted with a loathsome venereal disease known as gonorrhoea, with which disorder he is still afflicted. That your petitioner has not voluntarily cohabited with her said husband since the discovery by her of his said act of adultery.

Your petitioner, therefore, prays that she may be divorced from her said husband for the cause aforesaid, according to the statute in such case made and provided; that her husband may be ordered and decreed to provide for her support and maintenance, and that she may have such other and further relief as may be equitable and just.

And your petitioner will ever pray.

JOHN H. BACKES,

Solicitor of and of Counsel with Petitioner.

STATE OF NEW JERSEY,
COUNTY OF MERCER, } *ss.:*

Irma Leigh Earl, the petitioner in the foregoing petition, being duly sworn according to law, upon her oath says that her petition is not made by any collusion between her and the defendant in said petition, but in truth and good faith, for the cause set forth in the said petition.

IRMA LEIGH EARL.

Sworn and subscribed before me this 12th day of October, 1911.

LYDIA A. WAKEFIELD,
Notary Public of New Jersey.

A true copy.

SAML. K. ROBBINS,
Clerk.

ANSWER.

(Filed November 16, 1911.)

IN CHANCERY OF NEW JERSEY.

BETWEEN
IRMA LEIGH EARL,
Petitioner,
AND
BINNEY WOODWARD EARL,
Defendant.

ANSWER.
IN DIVORCE.
ON PETITION, &C.

The answer of Binney Woodward Earl, defendant, to the petition of Irma Leigh Earl, petitioner.

1. This defendant admits it to be true that petitioner and defendant were lawfully married as in said petition is alleged, but avers that said marriage occurred at the rectory of the Episcopal Church in Mount Holly, in the County of Burlington and State of New Jersey, instead of at the rectory of the Episcopal Church of Burlington, as stated in said petition.

2. This defendant denies that since his said marriage, and on or about the first day of July, in the year nineteen hundred and eleven, he committed adultery with any one, as in said petition alleged, or with any other person, at any other time or places; but to the contrary this defendant says that he has always been true and faithful to his marriage vows and has faithfully observed his obligations as the husband of the petitioner.

3. This defendant denies that since his said marriage, and on or about the first day of July, nineteen hundred and eleven, or at any other time, he contracted and became afflicted with a loathsome venereal disease, known as gonorrhoea, while committing adultery with any person, or in the commission of the act of adultery, or as the result thereof.

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

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

BINNEY WOODWARD EARL,
Defendant.

And ECKARD P. BUDD,
Solicitor of Defendant.

A true copy.

SAML. K. ROBBINS,
Clerk.

ORDER.

IN CHANCERY OF NEW JERSEY.

BETWEEN
IRMA LEIGH EARL,
Petitioner,
AND
BINNEY WOODWARD EARL,
Defendant.

ON PETITION FOR DIVORCE.
ORDER.

This matter coming on to be heard and application on behalf of the defendant in the presence of Eckard P. Budd and Joseph H. Gaskill, solicitors of the defendant, and John H. Backes, solicitor of the petitioner;

IT IS on this thirtieth day of April, A. D. one thousand nine hundred and twelve, ORDERED that said defendant have leave to file a cross-petition alleging that said petitioner committed adultery with one Mark Whitfield, at the home of her husband, in Edgewater Park, Burlington County, New Jersey, on divers occasions between the middle of March, nineteen hundred and eleven, and the first day of October of the same year.

Respectfully advised,

VIVIAN M. LEWIS,
V. C.

ANSWER AND CROSS-PETITION.

(Filed April 30, 1912.)

IN CHANCERY OF NEW JERSEY.

BETWEEN IRMA LEIGH EARL, *Petitioner,* AND BINNEY WOODWARD EARL, *Defendant.*	ON PETITION, &C. IN DIVORCE. ANSWER AND CROSS-PETITION.

The answer of Binney Woodwarl Earl, defendant, to the petition of Irma Leigh Earl, petitioner.

1. This defendant admits it to be true that petitioner and defendant were lawfully married as in said petition is alleged, but avers that said marriage occurred at the rectory of the Episcopal Church in Mount Holly, in the County of Burlington and State of New Jersey, instead of at the rectory of the Episcopal Church of Burlington, as stated in said petition.

2. This defendant denies that since his said marriage, and on or about the first day of July, in the year nineteen hundred and eleven, he committed adultery with any one, as in said petition alleged, or with any other person, at any other time or place; but to the contrary this defendant says that he has always been true and faithful to his marriage vows and has faithfully observed his obligations as the husband of the petitioner.

3. This defendant denies that since his said marriage, and on or about the first day of July, nineteen hundred and eleven, or at any other time, he contracted and became afflicted with a loathsome venereal disease, known as gonorrhoea, while committing adultery with any person, or in the commission of the act of adultery, or as the result thereof.

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

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

1. This defendant and cross-petitioner, Binney Woodward Earl, was lawfully joined in the bonds of matrimony to his present wife, Irma Leigh Earl, the petitioner and cross-defendant, on the twenty-eighth day of March, in the year nineteen hundred and nine, at the rectory of the Episcopal Church at Mount Holly, in the County of Burlington and State of New Jersey, by the Reverend James Stoddart, a minister of the gospel and the rector of said church.

2. That from the time of the said marriage, and until the latter part of September, in the year nineteen hundred and eleven, this defendant and cross-petitioner, Binney Woodward Earl, lived with his wife, Irma Leigh Earl, the petitioner and cross-defendant, continuously in the County of Burlington and State of New Jersey.

3. That this defendant and cross-petitioner, Binney Woodward Earl, and his said wife, Irma Leigh Earl, the petitioner and cross-defendant, ever since their said marriage and up to the time of the commencement of this suit, had been and each are at the commencement

of this suit actual and bona fide inhabitants and residents of the County of Burlington in this State.

4. That the said petitioner and cross-defendant, Irma Leigh Earl, since her said marriage to this defendant and cross-petitioner, Binney Woodward Earl, and on different days in the months of March, April, May, June, July, August and September, nineteen hundred and eleven, wickedly disregarding the solemnity of her vows and the sanctity of the marriage state, committed adultery with one Mark Whitfield, at Edgewater Park, in the County of Burlington and State of New Jersey.

5. This defendant and cross-petitioner, Binney Woodward Earl, prays that the marriage between this defendant and cross-petitioner, Binney Woodward Earl, and the petitioner and cross-defendant, Irma Leigh Earl, may be dissolved for the cause aforesaid, according to the statute in such case made and provided, and that he may have such other relief as may be just.

And this defendant and cross-petitioner, Binney Woodward Earl, will ever pray, etc.

BINNEY WOODWARD EARL,
Defendant and Cross-Petitioner.

JOSEPH H. GASKILL,
ECKARD P. BUDD,
Solicitors and of Counsel with Defendant and Cross-Petitioner, Binney Woodward Earl.

STATE OF NEW JERSEY,
BURLINGTON COUNTY, } *ss.:*

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

BINNEY WOODWARD EARL.

Sworn and subscribed before me this twenty-ninth day of April, A. D. 1911.

MARY W. SAMSON,
Notary Public.

[L. S.]

A true copy.

SAML. K. ROBBINS,
Clerk.

ORDER FOR ALIMONY AND COUNSEL FEE.

(Filed November 14, 1911.)

IN CHANCERY OF NEW JERSEY.

BETWEEN
IRMA LEIGH EARL,
Petitioner,
AND
BINNEY WOODWARD EARL,
Defendant.

ON PETITION, &C.
ORDER FOR ALIMONY
AND COUNSEL FEE.

This matter being opened to the Court by John H. Backes, solicitor of the petitioner, in the presence of Joseph H. Gaskill, solicitor of the defendant, upon petition for an award of alimony and counsel fee to the petitioner, and it appearing to the Chancellor that the prayer of the said petition should be granted; it is thereupon, on this fourteenth day of November, nineteen hundred and eleven, upon motion of the said solicitor for the petitioner;

Ordered that the defendant, Binney Woodward Earl, pay to the said petitioner, Irma Leigh Earl, the sum of ten dollars ($10) per week, at the termination of each and every week from the date of this order, for her maintenance and support, until the further order of this Court in the premises, and also that he pay to John H. Backes, her solicitor, the sum of one hundred dollars

($100) as a counsel fee in prosecuting the said suit, together with the costs of this order to be taxed.

MAHLON PITNEY,
C.

Respectfully advised,

E. R. WALKER,

Vice-Chancellor.

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A true copy.

SAML. K. ROBBINS,
Clerk.

OPINION.

(Filed April 19th, 1913.)

IN CHANCERY OF NEW JERSEY.

BETWEEN
IRMA LEIGH EARL,
Petitioner,
AND
BINNEY WOODWARD EARL,
Defendant.

ON PETITION FOR DIVORCE.
OPINION.

For the Petitioner, MR. JOHN H. BACKES.

For the Defendant and Cross-Petitioner, MR. JOSEPH H. GASKILL and MR. REGINALD BRANCH.

LEWIS, V. C.

This action is for divorce on the grounds of adultery. The petition of Irma Leigh Earl is for an absolute divorce. The petitioner charges the defendant, Binney Woodward Earl, with communicating to her the secret disease of gonorrhoea. The initial appearance of the defendant in this court was by answer denying the charges alleged in the petition. On April 30th, 1912, the defendant moved for and obtained leave to file a

cross-petition, charging the petitioner with adultery, and naming Mark Whitfield, a servant in the household of the petitioner and defendant, as co-respondent.

It is shown by the evidence, that both the petitioner and defendant had gonorrhoea, and the question, of course, is: which one had it first and communicated it to the other? The petitioner insists that the defendant communicated the disease to her, and, on the other hand, the defendant claims that the disease was given to him by his wife.

At the hearing of the case, testimony was admitted concerning the conduct of the defendant prior to his marriage. It was insisted by the petitioner's counsel that this testimony was admissible under the circumstances of the case, as showing the disposition of the defendant, and the Court must confess to considerable sympathy with this view, when a divorce is sought for adultery, the charge being based upon the communication of a secret disease. There is no question, however, that under the authorities in New Jersey, it must be excluded. Evidence of ante-nuptial incontinence is not admissible to support the charge of adultery in a bill for divorce. *Hedden vs. Hedden,* 21 *N. J. E.* 61.

In a preliminary way, it may be said that this marriage was that of a young girl of good family, in moderate circumstances, to a young man in affluent position. At the time of the marriage, the defendant was twenty-two years of age, and the petitioner, nineteen. It was a runaway match, and as appears by the testimony, was objected to by the parents of the petitioner. The parties lived together until October, 1911, when the petitioner returned to the home of her mother.

Great stress is laid upon the fact that the petitioner remained with the defendant for some months after the discovery of the disease, which, it is alleged, he communicated to her; but it is shown by the testimony of the defendant, that there was no cohabitation during this period; that the petitioner was not aware of the

character of the disease or its source; that she had been persuaded by the mother of the defendant and informed by the defendant himself, that the disease had been contracted from a toilet. In treating of this phase of the case, it should be remembered that the petitioner, up to the time of her discovery of the secret disease, had lived in comfort and happiness with the defendant. The testimony shows that the attitude of the mother-in-law and of the husband, the defendant, from the time of the discovery, was extremely kind and considerate to her; that the petitioner had no means of support except that provided by her husband and his family and was dependent upon them. There is nothing brought out in the testimony, that proves to the satisfaction of the Court, that she was anything but an innocent young woman. No adulterous act on her part has been proven, and no evil associations have been shown. It was not unreasonable, under all these circumstances, for her to remain some time in the home of the defendant, even after the revelation of the secret disease, and her remaining there is not held to have worked such a condonation that would preclude her from securing a divorce under the petition filed.

The petitioner's case, in some measure, is dependent upon admissions made by the defendant to the petitioner's mother, Mary M. Leigh, and to her brothers, Dr. Chester Leigh and John Clinton Leigh. Aside from this, however, is the very important testimony of Dr. George D. Tracey, who attended both the petitioner and defendant. This is the only evidence offered by either petitioner or defendant from an outside source, i. e., outside of the family, dealing with the time at which the petitioner and defendant were inoculated with the secret disease. This evidence seems to clearly establish the fact that Binney Woodward Earl first had this secret disease. Dr. Tracey first treated the defendant on July 5th, 1911. In the latter part of June or early part of July, 1911, the defendant first complained of a

burning sensation when urinating. The first treatment given the defendant by Dr. Tracey, was at the defendant's house, and for the first few days thereafter, he continued treating the defendant at the defendant's house. Later, the defendant went to the doctor's office for attention. The doctor went on his vacation on July 9th that year. He remained away about two weeks or more, and upon his return he treated Mrs. Earl. His testimony is that he treated her after July 30th. While, upon cross-examination, Dr. Tracey stated, that he might conclude from his examination of Mrs. Earl, that she had been suffering from the disease for a period of eight weeks or more, yet, on re-direct examination, he said that he was sure that her condition was not chronic, and that he could not tell whether it was of two weeks' or four weeks' or eight weeks' standing.

Mary M. Leigh, the petitioner's mother, said that she had a conversation with the defendant in which she asked him why he tried to give Dr. Tracey the impression that he had contracted the disease from his wife, to which he replied that Irma did not give it to him; that he did not want Dr. Tracey or his mother to think so; that he knew he had given it to his wife. To Mrs. Leigh, the defendant also said, that his mother wanted him to say that he had contracted this disease from his wife, but he refused to say so because he knew that he had inoculated her. To the petitioner's brother, John Clinton Leigh, the defendant also said that his mother wanted him to say that he got the disease from his wife, but that this was not true; that he did not get it from her; that the fact was, that he might have got it from a toilet. The defendant also had a conversation with Dr. Chester Leigh, another brother of the petitioner, two or three days after the visit by the petitioner to the specialist, Krusen, July 31st. To him the defendant said: "Chester, I have the gonorrhoea. I know I gave it to your sister, but I do not know how I got it. Dr. Tracey told me that I might have gotten it from a toilet,

but when he told me that, he laughed." It is shown throughout the testimony, that the defendant frequently admitted to his wife, in the presence of her mother, that he had contracted the disease and communicated it to the petitioner.

A denial of these admissions is made by the defendant, and it is strongly urged by his counsel, that the admissions of the defendant to the members of the family of the petitioner, are not sufficient in law to sustain a decree. There is no doubt that the confessions of the defendant are to be taken with extreme caution, and, without corroborating circumstances, might not be deemed sufficient to sustain petitioner's case. The cases of *Clutch vs. Clutch,* 1 *N. J. E.* 474; *Miller vs. Miller,* 2 *N. J. E.* 139, and *Perkins vs. Perkins,* 59 *N. J. E.* 515, are cited in support of this contention, but they are easily differentiated from this action. The evidence in the cases mentioned was, that the alleged offenders had made statements of wrongdoing. In *Clutch vs. Clutch,* the only direct evidence offered to sustain the charge of adultery, was that of one witness, who testifies that while the defendant lived in the home of his father-in-law, he stated that he had the venereal disease. There was no strong corroborative circumstances shown in the cases referred to which would justify a decree. The case in hand differs materially from these. Here, the defendant, who suffered from a venereal disease, in his conversations with the members of the petitioner's family, declared that he had communicated the disease to her. The admission is established in this case, and the corroboration suggested by the cited cases, furnished.

Citing the case of *Miller vs. Miller,* 20 *N. J. E.* 216, defendant's counsel urges that the testimony of the mother and of the two brothers of the petitioner, is of doubtful value, on the grounds that they had concealed the fact that the defendant made admissions to them. The facts were not kept from either the petitioner or the

defendant, certainly not from the defendant, who made the admissions, and not from the petitioner, to whom the matter was made known, not only by the defendant but by the witnesses. The subject was generally discussed by the members of the petitioner's family and the petitioner.

The cross-petition charges the petitioner with infidelity with one Mark Whitfield, a servant in the household. Under the cross-petition, evidence was introduced to show undue familiarity on the part of the wife with one G., who is not named as a co-respondent in the cross-petition. G. was a visitor at the house, and it was clear that he had been a friend of the petitioner for many years, and that his invitation to visit the defendant's house was by and at the request of the defendant. The defendant stated that his wife said to him, while G. was on his visit at their home, that she would like to kiss G., that she loved him. There was also a charge that she massaged his neck. The petitioner testified that G. remained at the house of the defendant but one night, Saturday, and that he left before dinner the next day. She denies that she stated to her husband that she would like to kiss G. or that she loved him, or that she had massaged his neck. She says that G. had a sore neck and that she offered to fix some antiphlogistine for him to place upon it while he was at her house, but he declined. She denies that G. asked her to elope with him, or that her husband in any way reprimanded her for her conduct with him. For the purpose of strengthening the charge of familiarity with G., the defendant alleges that he took from the desk of the petitioner, after she had left his home, several letters from G. to her, containing expressions of endearment. He fails, however, to produce any of these letters, and says that he does not remember why he did not keep them. The petitioner denies any letters from G. save one thanking her for the hospitality he had enjoyed at the house, which letter she says she showed to

her husband. There is not a scintilla of evidence which would form the basis of a charge of adultery with G., and, upon the testimony, I would exonerate the petitioner from the charge of any misconduct with him.

The co-respondent named in the cross-petition, Mark Whitfield, had been in the employ of the Earls almost since their marriage, and continued to be so employed until their separation in October, 1911, when he left of his own accord. The defendant says that one night, which he thinks was in the spring of 1911, upon returning home from Burlington with his chauffeur, Wright, he could not get into the house. He knocked on the side door and rang the front bell, a light was lighted inside the house, and through a small window in the front door, he and the chauffeur saw Whitfield coming downstairs. Whitfield had on an outing shirt and a pair of trousers and rubber-soled canvas shoes. The defendant says, that after the door was opened by Whitfield, he went upstairs to his wife; that she had her hair down and was clothed only in a kimono, undershirt and pair of slippers; that he asked her what she had Whitfield upstairs for, and she replied: "Don't be unreasonable. I had him here because I was afraid to stay alone." On cross-examination, he says that he and Wright did not get home until one o'clock, because the machine broke down. They knocked at the side door first, and, upon getting no response, they went to the front door and rang the bell. When he first saw Whitfield through the glass opening in the door, he looked at one end of the side of the door leading from his wife's room. Whitfield took his time coming downstairs to let them in. He came directly from the place where the wife's room was. Defendant says he does not remember saying anything to Whitfield about his being upstairs, nor does he recall, upon entering the house, going to the dining room and being there with the chauffeur and Whitfield, as Wright says they were. He swears positively that Whitfield came out of his

wife's room and that he saw him coming out of her room. He says he did not ask Whitfield what he was doing in his wife's room, because he had absolute faith in his wife. He says he reprimanded his wife, but he did not go downstairs to chastise Whitfield, as he was not physically able. The testimony of the chauffeur, Wright, is that the defendant rang the front door-bell, and that after a while, Whitfield came from upstairs and opened the door and that they both went in. He says that when Whitfield started downstairs he could see him coming along, swinging around the corner of the door which led to Mrs. Earl's room. Mrs. Earl said, "Is that you, Binney?" and he said, "Yes." She said, "Where have you been?" He said, "I broke down and left the car at my mother's." She said, "I had to have Mark up here to keep me company, for I was afraid." On his cross-examination, he says they walked to the Earl home from the trolley line at Edgewater Park and that they crossed the lawn to the side porch and walked around to the porch on the front; that the defendant knocked on the door loud enough for anyone to hear. He stopped at the side door before knocking about a minute, long enough for some one to come down and let them in, and that he rang the door-bell, and in about a minute, Mark came downstairs. The witness continues: "I went on into the house. Binney and I stood close together. We were right close together, so that we both saw Mark come downstairs at the same time, through the opening in the door. Binney did not say anything to Mark, nor Mark to Binney. Mark closed the door. I went out into the kitchen. We went to the dining room and then into the kitchen. I don't know whether Mark went out too. I went to the kitchen because Binney asked me to. I went there and stayed there a little while, and then I went back. We were talking about the car with Mark Whitfield. I stayed in the kitchen about ten or fifteen minutes. Mr. Earl was there all the time with Mark. Mark let me

out of the house that night."

The petitioner and Mark Whitfield deny that he was in the bedroom on the evening in question. The testimony of the architect who planned the house in which the Earls lived, proved conclusively that it would be impossible to stand at the front door of the house, peering through the glass door, and see a person coming out of the petitioner's room. This witness says, that standing at the front door, it would be impossible to see a door leading to any of the bedrooms in the house.

Wright, the chauffeur, testifies that he saw Whitfield wash napkins and towels and that one day he spread out a suit of underwear that he thought was of female type. At the same time, he saw some bloody water in the sink. This evidence is of small and doubtful value. Instances of Whitfield's presence in various bedrooms and bathrooms of the house, are numerously related. The testimony clearly shows that Whitfield did general work in the house, cleaning rooms and making beds, besides performing his duty as cook. The chauffeur also testified, that on one occasion, in the morning, about seven o'clock, he brought mail to the house; that it was a week before the separation; that the bell rang; that Whitfield did not respond promptly and that then Mrs. Earl called for him and the witness says that he recognized her voice; that it sounded as if it came from a front room of the house, but he could not say whether it was upstairs or down. The voice said, "Mark!" that Whitfield went into the dining room in his pajamas. Wright says that Whitfield had an erection on and that the remark was made by him, "Here's where I get it off." That he returned in about fifteen minutes and there was no evidence of the erection. Wright, upon cross-examination, would not swear that he was positive that it was Mrs. Earl's voice that he heard calling. If this incident ever occurred, it does not require much stretch of the imagination to conclude, that, if the voice was that of Mrs. Earl calling to Whitfield, what he

meant by the expression, "Here's where I get it off," was, that he was going to change his clothing before he put in an appearance before his mistress. The happenings upon the return home from Burlington and the one just referred to, are the main ones suggested by the testimony under the cross-petition for asking a decree against the petitioner. It is true that the mother of the defendant testified, that on or about the tenth day of June, 1912, the petitioner told her that she had great pain in urinating. Mrs. Earl, Senior, remembers this date; she says, to quote her own statement, "Because that was a very happy day for me. I was building my house and I made my first payment on it that day." There are no receipts or other corroborative documents offered to show anything about this payment, nor is it said that the petitioner went into any detailed description of her sickness with the mother of the defendant. It appears also from the testimony, that about this time Dr. Ephraim R. Mulford was treating the petitioner for hemorrhoids. On the thirteenth day of June of that year, Dr. Mulford made a physical, digital examination of the petitioner for this complaint, and he treated her for several days thereafter. Dr. Mulford, it is true, did not then examine the vulva. He said that the presence of hemorrhoids would account for the irritation of her bladder. If the testimony of the mother of the defendant is to be believed as to this conversation with her daughter-in-law, the evidence of this physician may throw light upon petitioner's statement.

The testimony of one McCrea is offered to show that in February, 1911, Whitfield, the co-respondent, asked him if he knew where he could get some clap medicine. The testimony of this witness, on this point, and of Wright as to conversations with Whitfield concerning his conduct towards Mrs. Earl, were admitted, although it was urged by the petitioner that they were not admissible. The defendant offered them as impeaching the testimony of the co-respondent and as contradictory

to his statements. The weight of authority is, that such statements may be admitted, but not as bearing on the main charge and not as affirmative testimony against the petitioner. See *Graham vs. Graham,* 50 *N. J. E.* 271; *Berkman vs. Berkman,* 16 *N. J. E.* 122. The object of McCrea's evidence is obvious, but it might be just as reasonably inferred that Whitfield, who was the servant of Earl, was purchasing or inquiring about the purchase of medicine for his employer.

Upon a review of the whole case, there is nothing offered which satisfied the Court that the petitioner has been guilty of infidelity with Whitfield. If for no other reason, I should not be inclined to place much faith in the testimony of the defendant as to alleged misconduct of his wife with Whitfield, on the ground that the latter was permitted by the defendant, who paid his wages, to remain in his employ at his home for months after the night that he alleges he came home and found him emerging from his wife's bedroom. To say the least, it was a most extraordinary course to pursue, for this defendant to retain in his service a man believed to have been guilty of criminal conduct with his wife. It is contrary to human nature.

It does not appear, from the testimony, that the petitioner was away from home at night without her husband or without his knowing exactly where she was, nor does it appear from the testimony, that she was at home alone with Whitfield at night. The defendant himself says, that he always took care to see that she was not left alone. There is no charge that she made secret trips with Whitfield or with any other man. It is significant, that at or about the time that Earl contracted this venereal disease, he frequently stayed away from home all night. When away over night, he generally had his automobile with him, and yet he testifies that he stayed at his mother's house, which was only three miles from his own residence.

In passing, it may be remarked, that one of the sug-

gestive features of this case is, that when the defendant communicated with his counsel and filed his answer to the petition, he failed to advise them of the charges against petitioner contained in his cross-petition, which, as hereinbefore stated, was subsequently filed.

The conclusion of the Court is, that the petitioner is entitled to a divorce and in her behalf, a decree nisi is accordingly directed.

A true copy.

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SAML. K. ROBBINS,
Clerk.

DECREE NISI.

(Filed May 14, 1913.)

IN CHANCERY OF NEW JERSEY.

BETWEEN
IRMA LEIGH EARL,
Petitioner,
AND
BINNEY WOODWARD EARL,
Defendant.

ON PETITION FOR DIVORCE.
DECREE NISI.

This case having been regularly set down and now coming on to be heard in the presence of Theodore Backes, of counsel with the petitioner, and Joseph H. Gaskill, of counsel with the defendant, upon petition, answer, cross-petition and proofs, and the Court having read the pleadings, and heard the testimony of the witnesses sworn on behalf of the respective parties, and the arguments thereon, from all of which it now appears to the satisfaction of the Chancellor that the petitioner and defendant were joined in the bonds of matrimony on the twentieth day of March, in the year nineteen hundred and nine, and that the defendant has been guilty of the adultery charged against him in the said petition, and that at the time of the cause of action for divorce thereof arose, the petitioner and defendant were bona fide residents of this State, and that said petitioner and defendant have continued so to be down to the time of this action. And it further appearing that jurisdiction herein has been acquired by personal process upon the defendant within this State, who thereafter appeared and filed answer in this cause. And it further appear-

ing that the petitioner is not guilty of the adultery charged against her in the cross-petition;

It is therefore, on this fourteenth day of May, nineteen hundred and thirteen, by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, ordered, adjudged and decreed, and the said Chancellor, by virtue of the power and authority of this Court, and of the acts of the Legislature in such case made and provided, doth hereby order, adjudge and decree that the said petitioner, Irma Leigh Earl, and the said defendant, Binney Woodward Earl, be divorced from the bonds of matrimony for the cause aforesaid, and the said parties, and each of them, be freed and discharged from the obligations thereof, unless sufficient cause be shown to the Court why this decree should not be made absolute, within six months from the date hereof.

And it is further ordered that the cross-petition of the defendant be and the same is hereby dismissed.

E. R. WALKER,
C.

Respectfully advised,
VIVIAN M. LEWIS,
V. C.

I, SAMUEL K. ROBBINS, Clerk of the Court of Chancery of the State of New Jersey, the same being a Court of Record, do hereby certify that the foregoing is a true [Seal] copy of the Decree Nisi in the cause wherein Irma Leigh Earl is petitioner, and Binney Woodward Earl is defendant, now on the files of my office.

IN TESTIMONY WHEREOF, I have hereto set my hand and affixed the seal of said Court, at Trenton, this third day of June, A. D. nineteen hundred and thirteen.

SAML. K. ROBBINS,
Clerk.

NOTICE OF APPEAL.

(Filed June 28th, 1913.)

IN CHANCERY OF NEW JERSEY.

BETWEEN
IRMA LEIGH EARL,
Petitioner,
AND
BINNEY WOODWARD EARL,
Defendant.

NOTICE OF APPEAL.

Binney Woodward Earl, the above named defendant and cross-petitioner, hereby appeals from the decree nisi filed in this cause dated May fourteenth, one thousand nine hundred and thirteen, and from every part thereof to the Court of Errors and Appeals in the last resort in all causes.

GASKILL & GASKILL,
Solicitors and of Counsel with Defendant and Cross-Petitioner.

Dated June 27th, 1913.

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

J. H. GASKILL,
Of Counsel.

PETITION OF APPEAL.

(Filed June 28th, 1913.)

NEW JERSEY
COURT OF ERRORS AND APPEALS.

BETWEEN
IRMA LEIGH EARL,
Respondent,
AND
BINNEY WOODWARD EARL,
Appellant.

PETITION OF APPEAL.

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

The petition of Binney Woodward Earl, appellant, respectfully shows that your petitioner finds himself aggrieved by decree nisi made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, on the fourteenth day of May, A. D. one thousand nine hundred and thirteen, in that the said decree recites and adjudges that the defendant is guilty of adultery charged against him in the said petition, and that the petitioner is not guilty of the adultery charged against her in the cross-petition; and doth decree that the marriage existing between your petitioner and the respondent be dissolved for the cause set out in said petition, and that the cross-petition be dismissed.

And your petitioner appeals from the said decree and from every part thereof on the ground that the same is erroneous for that the said Chancellor should have re-

cited and adjudged that your petitioner was not guilty of adultery as charged against him in the said petition, and that the said respondent was guilty of the adultery charged against her in the cross-petition, and should have dismissed the petition of the respondent, and granted the prayer of the cross-petition.

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

GASKILL & GASKILL,
Solicitors and of Counsel with the Appellant.

NEW JERSEY
COURT OF ERRORS AND APPEALS.

BETWEEN
IRMA LEIGH EARL,
Respondent,
AND
BINNEY WOODWARD EARL,
Appellant.

ON APPEAL.

Service of a copy of a notice of appeal filed in the Court of Chancery, and copy of the petition of appeal filed in the Court of Errors is hereby acknowledged this 28th day of June, one thousand nine hundred and thirteen.

Deposit to secure costs is hereby waived.

THEODORE BACKES,
Solicitor and of Counsel for the Petitioner-Respondent.

ANSWER TO PETITION OF APPEAL.

NEW JERSEY

COURT OF ERRORS AND APPEALS.

BETWEEN
IRMA LEIGH EARL,
Respondent,
AND
BINNEY WOODWARD EARL,
Appellant.

ON APPEAL.
ANSWER TO PETITION OF APPEAL.

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

The respondent admits it to be true that a certain decree nisi was on the fourteenth day of May, A. D. nineteen hundred and thirteen, 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, as to the matters complained of by the appellant in his petition of appeal, is agreeable to law and equity, and she prays that the same may be affirmed, in the particulars aforesaid, with costs to be adjudged to this respondent.

THEODORE BACKES,
Solicitor for and of Counsel with Respondent.

IN CHANCERY OF NEW JERSEY.

BETWEEN
IRMA LEIGH EARL,
Petitioner,
AND
BINNEY WOODWARD EARL,
Defendant.

ON PETITION FOR DIVORCE.
TESTIMONY.

Transcript of testimony taken in the above-entitled cause before Hon. Vivian M. Lewis, Vice-Chancellor, at the State House, Trenton, New Jersey, on the second day of May, nineteen hundred and twelve, at 10.30 A. M.

APPEARANCES:

JOHN H. BACKES, ESQ., for the Petitioner.

JOSEPH H. GASKILL and ECKARD P. BUDD, ESQS., for the Defendant.

IRMA LEIGH EARL, sworn in her own behalf, testified as follows:

Direct examination.

By Mr. Backes:

Q. You are the petitioner in this case?
A. Yes, sir.
Q. Your husband's name is what?

A. Binney Woodward Earl.
Q. How old are you?
A. Twenty-two.
Q. When were you married?
A. March 28th, 1909.
Q. At that time were you married to your present husband?
A. Yes, sir.
Q. Where?
A. In Mt. Holly, New Jersey.
Q. Before whom was the marriage ceremony performed?
A. Mr. Stoddard.
Q. Who was he?
A. The Episcopal rector at Mt. Holly.
Q. The rector of what church?
A. I don't know the name of the church.
Q. St Andrew's Episcopal Church?
A. Yes, sir.
Q. Where were you living at the time you were married to the defendant?
A. At my mother's home in Burlington.
Q. In this State?
A. Yes, sir.
Q. Where was Binney Woodward Earl at that time living?
A. At his mother's home in Burlington, New Jersey.
Q. After you were married, where did you live?
A. We lived at his mother's.
Q. For how long a time?
A. For about six months.
Q. Would you mind taking your veil off; just lift it up.

(The witness does so.)

By the Court:

Q. Do I understand that you both lived together at his mother's house?

A. Yes, sir.

Further direct.

Q. For a period of what time?

A. Until the following December.

Q. Then, where did you go to live?

A. We lived in Edgewater Park, New Jersey.

Q. Did you keep house?

A. Yes, sir.

Q. You kept house there for how long a time?

A. Until last October.

Q. When, in October?

A. The first part; I cannot remember the date.

Q. Did you notice anything in the condition of your husband's health the latter part of last June or the early part of last July?

A. Yes, sir.

Q. What was it?

A. He complained of a burning sensation.

Q. Complained to whom?

A. To me.

Q. A burning sensation where?

A. Where he urinated.

Q. What did he say to you about it?

A. He did not say anything; he just complained of the sensation.

Q. Was there any change in the condition of your health?

A. A short time after that I had the same sensation.

Q. How shortly after he first complained to you of having this burning sensation?

A. About ten days, as near as I can remember.

Q. Well, did you report it to him that you had it also?

A. Yes, sir.

Q. Now, tell me, during that ten days, that is, between the time he first complained to you of this sensation and the time that you felt it, did you sleep together?

A. Yes, sir.
Q. Did you have to do with each other?
A. Yes, sir.
Q. You say you reported it to him?
A. Yes, sir.
Q. What was said; what did you say to him?
A. I told him I thought he must have inflammation of the bladder.
Q. Why did you say that?
A. I did not know anything else that would affect you that way, and I thought that would.
Q. Had he spoken about inflammation of the bladder up to that time?
A. He said he thought he must have that, too, when I suggested it.
Q. When was it that he suggested that—when, with reference to the time he first spoke to you of having this burning sensation?
A. He spoke of it at the same time that he started with it.
Q. Please tell me what he said when he told you about having the burning sensation.
A. He just said he had a burning sensation when he urinated; that is all he said.
Q. Did he attribute it to any cause?
A. No, sir.
Q. Who was it said that it must be inflammation of the bladder; who was it made that statement, you or he?
A. Well, I think we both said so; because I did not know, and he said he thought it must be that.
Q. Prior to that time, he said he had difficulty in urinating?
A. Yes, sir.
Q. Well, what happened then; what was done then?
A. Then he went to Dr. Tracey.
Q. Did he, to your knowledge, go to Dr. Tracey before you experienced this sensation?

A. No, sir; not that I know of.

Q. Who was Dr. Tracey?

A. He is a physician in Beverly, New Jersey.

Q. How do you know he went to Dr. Tracey?

A. Because I went with him in the automobile, and I stayed outside while he went in the office.

Q. When he returned, did he say anything?

A. He said that Dr. Tracey said he thought he had gonorrhoea.

Q. Did he tell you anything else, as to what Dr. Tracey told him to do?

A. I think Dr. Tracey told him the treatment to take; I am not positive about that; I don't remember.

Q. Just tell us all that he said that had occurred.

A. He was very much worried when he came out of the office, and he said he knew if my people knew it, that they would take me away from him, and I was so surprised that I did not know what to say, as it was such a shock to me; and then, Dr. Tracey went away on his vacation, and he had a young doctor named Dr. Whittaker in his place, and he doctored him, but he did not doctor me, because I wanted to wait until Dr. Tracey came home, as I did not want a young man; and he told Mr. Earl what to do, and Mr. Earl told me what to do.

Q. When you say "he," you mean whom?

A. Dr. Whittaker; and he told Mr. Earl the treatment to take, and I took the same treatment through Mr. Earl; and then, I think, Dr. Tracey was away about two weeks, and when he came home then I sent for him to come up, and said "I want to be examined;" and he said that he would take me to a specialist in Philadelphia, Dr. Crusen; in the meantime, Mr. Earl had told Dr. Tracey that I had it first. I know that, because my brother went to Dr. Tracey to know what Mr. Earl had said, and he said that he as much as intimated that I ought to know what he had, because I had it first; and when I knew that Dr. Tracey thought that, I sent to him to come up, and I explained to him ——

Q. Did he come to your house?
A. Yes, sir.
Q. Where was Binney?
A. He was home there in the same room.
Q. Did Binney hear what you said to Dr. Tracey and what Dr. Tracey said to you?
A. Yes, sir.
Q. Did Binney have anything to say at that time?
A. Yes, sir.
Q. Now, relate just exactly what occurred at this meeting between you, Dr. Tracey and Binney.
A. I asked Dr. Tracey what Binney had told him, and he said—I think he said, that Binney had intimated that I had it first, and I told Dr. Tracey, "You know perfectly well that I did not have it;" and Binney said, "Of course, I did not say it; of course, I gave it to Mrs. Earl," he said; so then, after I found that Dr. Tracey's mind was settled, then I talked about the disease and what I should do about it.
Q. Binney at that time told Dr. Tracey that he gave it to you?
A. Yes, sir; he did.
Q. Did Binney at that time attempt to explain where he got it from?
A. He said he must have gotten it from the toilet.
Q. Now, up to the time that Dr. Tracey came to see you and to treat you, what treatment were you submitted to?
A. I was doing just what Binney was doing, taking the same treatment that he was taking.
Q. Under Binney's advice?
A. Yes, sir.
Q. But not under the advice of a physician?
A. No, sir.
Q. What did you do after that?
A. As soon as Dr. Tracey told Mr. Earl what he had, then I said I would go to my brother, who was a physician, and he said he did not want me to tell my brother,

because he would make me leave him, and he would not pay my doctor's bill; my brother is a physician in Trenton, and I thought my brother would take me to a physician; and Binney said if I told my brother he would not pay my doctor's bill.

Q. What, if anything, did Binney say about not telling it to your mother?

A. He said not to tell her, because she would also make me leave him, and she would be worried to death about it.

Q. What reply did you make to that?

A. I said I would tell her.

By the Court:

Q. Did I understand you to say, that the first treatment you took was under the instruction of your husband?

A. Yes, sir.

Further direct.

Q. And he was then, to your knowledge, being guided by Dr. Whittaker?

A. Yes, sir.

Q. Now, when did you tell your mother?

A. Right away, as soon as Dr. Tracey told me what he had; before that, I had been talking to her; I told her I felt that way, the way I did, and I told her I thought it was inflammation of the bladder.

Q. About when was it you told your mother?

A. I told her as soon as Dr. Tracey told Mr. Earl what he had; I told her at once.

Q. And was your condition communicated to your brother, Dr. Chester Leigh, by you?

A. Yes, sir.

Q. Did anyone before you communicate it to him?

A. My mother did.

Q. What did you do then?
A. Then I went to Dr. Crusen.
Q. Who took you there?
A. My brother, Dr. Leigh, and Dr. Tracey.
Q. What happened there?
A. He made an examination and pronounced it gonorrhoea.
Q. Dr. Crusen lives where, and what is his specialty?
A. He lives in Philadelphia, on Twentieth Street; I do not know the number, and I do not know what his specialty is.
Q. Did he make a report to you at that time?
A. Yes, sir.
Q. Then you returned to your home?
A. Yes, sir; and Mr. Earl was very much worried.
Q. You returned to your home, I say?
A. Yes, sir.
Q. You say Mr. Earl was very much worried; what did he say?
A. When I came home he said he never expected me to come back again; he thought my brother would make me leave him.
Q. What then?
A. That was all.
Q. Do you recall the time when your brother came to your house after that?
A. Yes, sir; he talked to Binney about it, and Binney acknowledged to him that he had given it to me.
Q. Did you hear that?
A. No, sir.

The Court: Strike that out, then.

Q. Had you heard Binney make any statement as to his or your condition to anyone outside of Dr. Tracey?
A. He told my mother, in my presence, that he had gotten the gonorrhoea and had given it to me.
Q. When was that?

A. I don't know about the date, but it was when the thing first started.

Q. After you came back from Dr. Crusen's?

A. Yes, sir.

Q. Where did you live after that?

A. In Edgewater Park.

Q. Until when?

A. Until October.

Q. With your husband?

A. Yes, sir; as far as living in the same house with him.

Q. Did you room together?

A. No, sir.

Q. I mean, did he ever have anything to do with you after the time that you had the burning sensation; after you discovered that he had had the gonorrhoea?

A. No, sir.

Q. Explain why it was that you continued to live with Mr. Earl from the time that you learned that he had had gonorrhoea, up until October.

A. Well, as soon as I came home from Dr. Crusen's, my brother went to see a lawyer.

Q. You must not tell that.

A. Well, I was very indifferent to him and he was awfully nice to me, and seemed to do everything to please me that he could; and he asked me all the time when I was going to leave him.

Q. And what did he say as to the cause of his illness, as to how he got it?

A. He said he thought he had gotten it from the toilet.

Q. Did you believe that?

Mr. Budd: Objected to.

The Court: Objection overruled.

A. I did not exactly believe it, because the doctors

had told me that it was almost impossible to get it that way, but he seemed to be very earnest about it, and at times I felt very sorry for him, and tried to believe it.

Q. When did you ultimately become convinced that the condition of illness from which he was suffering was the product of immoral conduct?

A. During the last part of my time there he began to act very indifferently, after he found I was staying on and was not making any move to leave, and he went out without me a lot and never took me anywhere, and got awfully disagreeable, and then I decided that I felt there must be someone else in the case to make him act that way.

By the Court:

Q. For how long a period was that after you discovered this disease?

A. I discovered it in June or July, and I stayed there until the first of October.

Further direct.

Q. You simply stayed in the same house, but not with him?

A. That is correct.

By the Court:

Q. Did you sleep in a separate bedroom?

A. I would go to my bedroom, lock the door, and he would knock and want to come in, and I would let him come in the same bed, but I did not have intercourse with him.

Further direct.

Q. How long did he have this gonorrhoea?

A. He had it badly all the time I was there, and he suffered dreadfully and went on awfully about it.

Q. Tell us how badly he suffered.

A. He groaned, and at night he could not sleep, and I got up and did things for him and took care of him, and he suffered agony; I guess so, from the way he went on.

Q. Did that only happen at night time?

A. In the day time, too; he could not walk very well, but he suffered principally at night.

Q. In what way would you minister to him, with the ice bag?

A. No, sir; cold water.

Q. You had been to Florida during the preceding winter, had you?

A. Yes, sir.

Q. And returned from Florida in the month of March?

A. Yes, sir.

Q. Had your husband got an automobile?

A. Yes, sir.

Q. And an operator?

A. Yes, sir; a chauffeur.

Q. What was your husband's conduct as to staying out at night during the month of June last year?

A. Well, sometimes he would go out in the afternoon and did not come home at night, and he would send word that he was not coming, and I would go and stay at my mother's then. One time we were out in the automobile, and we came in about 11 o'clock at night, and mother had been along, and we got out of the car and went in the house and I thought he was coming after us, and I thought he had gone to put the car up, but I found afterwards he had not done so; I heard him go out of the lane, and knew he had not gone to the garage; and he did not come in until morning, and when he came he said he had been at his mother's.

Q. What time in the morning did he get in?

A. Around nine or ten o'clock; I don't remember exactly.

Q. Where did his mother live at that time?
A. In Burlington, New Jersey.
Q. How far is that from your home?
A. Two miles.
Q. Binney had a key to his own home?
A. Yes, sir.
Q. Was there plenty of room there for him that night?
A. Oh, yes.
Q. Was that in the month of June?
A. I think it was, because it was before he started to doctor with Dr. Tracey.
Q. How long was it before he started to doctor with Dr. Tracey?
A. I cannot remember exactly.
Q. Now, speak further of his conduct in that line, about his staying out at night.
A. Usually he would start out in the afternoon and 'phone that he would not be home and that he would stay out for supper—all night; and sometimes he would get my mother to stay with me in the evening, and he would go out in the car and stay out until ten or eleven o'clock, somewhere along there.
Q. Is Edgewater Park in the country?
A. Yes, sir.
Q. It is a small town?
A. Yes, sir.
Q. Did you ever find anything in his automobile that belonged to the feminine sex, which did not belong to you, at a time when Binney had been out the evening before?
A. Several times William would bring me little cheap stick-pins, and ask if they were mine, and I would say, "No, William, take them to your wife, they are not mine."
Q. Where did William get them from?
A. He said he got them from the car.

Mr. Gaskill: Objected to; that is a mere conversation.

Mr. Backes: You are quite right about it.

Q. What was it you said was found in the automobile?

A. The chauffeur would bring me little common stick-pins, and say he had found them.

Mr. Gaskill: I object to what he said.

The Court: The objection is sustained.

Mr. Backes: I have a right to establish that the stick-pins were produced to her?

The Court: Yes.

Q. How often did that occur?

A. I remember on two different occasions, that is all.

Q. Let me see those pins.

A. Just little stick-pins similar to this, but this is not one of them.

Q. Ornamental pins, though?

A. Yes, sir; and I would tell William to take them home to his wife.

Q. You cannot state what you said to William. Now, was there ever any discussion between you and your husband about his staying out at night?

A. Sometimes he would say he was out on business, and sometimes he would say he had been to his mother's for a ride.

Q. I mean the next morning after he had stayed out all night, would there be any discussion about that?

A. No, sir.

Q. Over what period of time did these habits extend; you came back from Florida in March—I mean the

habit of staying out at night?

A. It started around May or June.

Q. When the automobile came into service, eh?

A. Yes, sir.

Q. Did you ever see Binney in the automobile when you were not in it—out riding?

A. I would see him start out from the house, and I would see him go past my mother's when I was there.

Q. Did Binney work?

A. No, sir.

Q. He was, then, a gentleman of leisure?

A. Yes, sir.

Cross-examination.

By Mr. Gaskill:

Q. I understood you to say you are twenty-two years of age now?

A. Yes, sir.

Q. You and Binney had known each other for quite a long time before your marriage, hadn't you?

A. Yes, sir; we lived next door to each other.

Q. You had been boy and girl together?

A. Yes, sir.

Q. Your marriage was a runaway match, wasn't it?

A. Yes, sir.

Q. You and he went over to Mt. Holly without the knowledge of your parents or his parents?

A. Yes; he said that his mother ——

Q. Never mind that—as soon as your family learned of the marriage, they tried to separate you, didn't they?

A. My family did, yes, sir.

By the Court:

Q. Your family?

A. Yes, sir.

Further cross.

Q. Your father was living at that time?
A. Yes, sir.
Q. He is now dead?
A. Yes, sir.
Q. After your marriage in 1909, you and Binney lived, as I understand, in Burlington, in the home of Binney's mother?
A. Yes, sir.
Q. This is Binney's mother here (indicating)?
A. Yes, sir.
Q. And you lived there for how long?
A. We were married in March, and we moved in December.
Q. In the meantime, Mrs. Earl had built a home for you down at Edgewater Park, hadn't she?
A. Yes, sir.
Q. And you and Binney moved down there?
A. Yes, sir.
Q. Were you living there at the time you went to Florida?
A. Yes, sir.
Q. You and Binney and Mrs. Earl went to Florida in the early winter of 1909?
A. December 24th.
Q. Before Christmas?
A. Yes, sir.
Q. The day before Christmas?
A. Yes, sir.
Q. And you three stayed down in Florida how long?
A. Until the following March.
Q. And then, upon your return in March, you and Binney went back to this home that had been built for you there by his mother at Edgewater Park?
A. I stayed at my mother's for a while.
Q. How long did you stay at your mother's?
A. For about two weeks.

Q. Then you were ready to commence housekeeping again, and you went back to your little home?

A. Yes, sir.

Q. You remained there, then, from March until October, when you left him?

A. Yes, sir.

Q. You were in that home from March of 1910 until October of 1911, were you not; a year and some months?

A. Yes, sir.

Q. That is right, isn't it?

A. Yes, sir.

Q. Now, while you were living there in that home during the year 1911, the last part of the time you had a man servant doing the household work, didn't you?

A. Yes, sir; I had a man servant longer than that.

Q. His name was Mark Whitfield?

A. Yes, sir.

Q. How long was that, from March, 1911, up till the time you left in October, 1911?

A. Yes, sir; but that was not the beginning of it; he had been there before.

By the Court:

Q. March, until when?

Mr. Gaskill: March of 1911 to October the first, 1911.

Further cross.

Q. He was the only servant you had in the house at that time?

A. Yes, sir.

Q. You have no children?

A. No, sir.

Q. There were no other members of your household

living in that house but your husband and yourself and Mark Whitfield?

A. That is right.

Q. Now, when was it, Mrs. Earl, that you first experienced any burning sensation such as you have described?

A. About ten days after Mr. Earl complained.

Q. Fix it by the month, the time and the month.

A. I don't know that.

Q. It was in the year 1911, March and October, wasn't it?

A. Oh, yes.

Q. And won't this, perhaps, help you to fix the date: Mrs. Earl, the mother of your husband, decided to give up her home on Union Street in Burlington, and build a house at Edgewater Park on the land immediately joining where she had built for you and Binney?

A. Yes, sir.

Q. Do you remember her coming down there to look over, the day that she met the architect, Mr. Hewitt?

A. Yes, sir.

Q. Now, you cannot tell us when that day was?

A. No, sir.

Q. You remember the fact that she did come there with an architect?

A. Yes, sir.

Q. That was in the early summer of 1911?

A. Yes, sir.

Q. In the month of June, wasn't it?

A. I don't remember that.

Q. Well, didn't you, on that day, while Mrs. Earl was there at Edgewater Park, complain to her of a peculiar burning sensation and of some of these symptoms?

A. I must have done so; I do not remember the time, but I remember complaining to her several times; I do not remember any particular time.

Q. The first time you complained to her was on that occasion?

A. I do not remember.

Q. Had you complained to her before that?

A. I do not remember that.

Q. You do remember that you complained to her on that day?

A. I complained to her several times, but I do not remember that day especially.

Q. From your recollection, you are not prepared to say you did not complain to her on that day?

A. No, sir.

Q. Dr. Tracey, of Beverly, was your family physician, so to speak, the physician that you and Binney called on in cases of sickness after you went to Edgewater Park?

A. Yes, sir.

Q. You remember the fact that Dr. Tracey that summer of 1911 took a trip to Maine, and left this young man, Dr. Whittaker, that you have spoken of, in his place, while he was gone?

A. Yes, sir.

Q. Was it before Dr. Tracey went to Maine, or after, that you say you went with Binney in the automobile and remained outside while he went in to see the doctor?

A. It was before Dr. Tracey went away.

Q. It was about the Fourth of July, wasn't it, or the day after?

A. It was before that, I think.

Q. Are you quite certain?

A. Yes, sir; because Binney was sick on the Fourth of July and could not go out.

Q. Well, was it before that or after that, that you went to see Dr. Tracey; wasn't it on the 5th of July, the day after, that Binney was so sick?

A. I do not think so; I am not sure; I do not remember.

Q. And when Binney came back, that is, when he came out of the doctor's office and got in the automobile with you, he then told you, you say, that the doctor

said to him that he had the gonorrhoea?

A. Yes, sir.

Q. That was in the early part of July, you are sure of that?

A. I cannot remember the date when Binney went to Dr. Tracey.

Q. You are quite sure it was the early part of July, I say?

A. I cannot be sure, because I do not remember.

Q. You remained in Binney's house there at Edgewater Park until the first day of October then next, didn't you?

A. Yes, sir.

Q. Mrs. Earl, you had an allowance, didn't you?

A. Yes, sir.

Q. Mrs. Earl, you had an allowance from mother Earl, hadn't you, a monthly allowance?

Mr. Backes: Objected to as not a cross-examination.

The Court: The objection is overruled; I will deal with it on final hearing.

Q. What is the fact?

A. Yes, sir.

Q. That was for yourself personally?

A. Yes, sir.

Q. And then you also had another allowance from her to keep the family?

A. Yes, sir.

Q. Now, from the time that you learned, whenever it was, that Binney had the gonorrhoea, as you say he told you as the result of his visit to Dr. Tracey—after he had been to Dr. Tracey's office he told you that—you remained with him until the first of October, and continued to draw this allowance from mother Earl?

A. Yes, sir.

Q. These allowances, I should have said?

A. Yes, sir.

Q. During that time, Mrs. Earl, you frequently talked with mother Earl about the symptoms that you experienced?

A. Yes, sir.

Q. You say you did not know what it was?

A. I did not.

Q. Mother Earl did not know what it was?

A. She said she did not.

Q. Did not mother Earl, as soon as you first complained about it, urge you to go to a physician?

A. No, sir; she said she thought I had inflammation of the bladder.

Q. Didn't she urge you to go to a physician?

A. I don't think she did at first; I do not remember that.

Q. You did not go to any physician?

A. Not until I went to Dr. Tracey.

Q. How soon after Binney visited Dr. Tracey, when you went with him, as you have said, and when he came out and got in the automobile and made the remark you have attributed to him—how soon after that was it that you told your mother about these symptoms that you experienced?

A. I told her right away then.

Q. Did she urge you to consult a physician?

A. Yes, sir; I was taking the same treatment that Binney was taking; I did not want the young doctor to examine me.

Q. And you did not want to go to any other doctor?

A. No, sir.

Q. Your brother, Chester Leigh, is a physician here in Trenton?

A. Yes, sir.

Q. And you did not go to him and complain of these symptoms at that time?

A. He knew all about it.

Q. You did not go to him?

A. Yes, sir; I did go to him and explain it to him.

Q. When was that?

A. I don't remember the date, but he came down several times to my mother's house.

Q. Wasn't that after Dr. Tracey came back from his vacation?

A. No, sir; I talked it all over with Dr. Leigh, my brother, before Dr. Tracey came back.

Q. Are you sure of that?

A. Yes, sir.

Q. After Binney had been at Dr. Tracey's as to the treatment to be followed by him, you followed the same treatment?

A. Yes, sir.

Q. Under Binney's advice, you say?

A. Yes, sir.

Q. You say you had quite a number of talks with mother Earl about this matter?

A. Yes, sir.

Q. With Binney's mother?

A. Yes, sir.

Q. I used the term "Mother Earl" so as to distinguish between the two Mrs. Earls, not that I want to force you to that recognition.

A. I never called her that, and it sounds strange, that is all.

Q. Now, you and Binney's mother had frequent talks about this matter?

A. Yes, sir.

Q. And she went away during the month of July, about the same time that Dr. Tracey went away, didn't she?

A. I don't know; she went away, I remember, one time ——

Q. She went to Point Pleasant, and was gone about three weeks, wasn't she?

A. Yes, sir.

Q. After she came back from Point Pleasant, you had a talk with her in which you told her about the results of this examination in Philadelphia at Dr. Crusen's?
A. Yes, sir.

By the Court:

Q. After she returned?

(No answer.)

Q. At that time it was known to the members of the family; your mother, and to Binney's mother, that both of you had had some disorder?
A. Yes, sir.
Q. Didn't you, in that conversation with Binney's mother, in speaking about the trouble that you both were suffering from, didn't you say to her that you must have given it to Binney?
A. No, sir.
Q. And that you must have caught it from some toilet in Philadelphia, some department store?
A. No, sir; she suggested that to me.
Q. She suggested that as a probable cause of inoculation?
A. Yes, sir.

By the Court:

Q. Of your trouble?
A. Yes, sir.

Further cross.

Q. Didn't you say to her on that occasion that you must have given it to Binney?
A. No, sir.
Q. All the time, Mrs. Earl, that you knew Binney

was suffering from this disease, you nursed him and cared for him?

A. Yes, sir.

Q. You were a tender, devoted wife to him during the whole of that period, were you not?

A. Yes, sir.

Q. So that he spoke of it in your presence to others about how devoted you were in caring for him?

A. I don't remember about that.

Q. Don't you remember, after Binney's mother came back from Point Pleasant to your house, don't you remember Binney saying to his mother, in your presence, that you had taken such good care of him and that no trained nurse could have done as well as you?

A. I remember that.

Q. That no trained nurse could have done as well as you?

A. Yes, sir; I remember that.

Q. And this was after you had been to Dr. Crusen's?

A. Yes, sir.

By the Court:

Q. This conversation with the mother of your husband was after you had been to the doctor in Philadelphia?

A. I do not remember at all.

Further cross.

Q. I am referring to the time when Binney told his mother, in your presence, that you had taken such good care of him, and better than any trained nurse could have done; was not that after you had been to see Dr. Crusen?

A. It must have been.

Q. And you still continued to take care of Binney and nurse him after you had been to Dr. Crusen?

A. Yes, sir; I took care of him because he suffered so that I could not stay in the same house and not do something for him.

Q. You remained in the home there until the first of October?

A. Yes, sir.

Q. When was it that you resolved to leave your husband?

A. I made up my mind fully the first of October; I had been thinking about it all the summer and talking about it, and saying to Mr. Earl that I expected to leave.

Q. When you say the first of October, do you mean the first day in the month of October?

A. I do not know exactly what date I left, but I think it was during the first part of October.

Q. Well, how many days or weeks before you actually left him had you finally decided to leave him?

A. I think two or three weeks.

Q. And had you told him?

A. Yes, sir.

Q. Why was it, then, if you had decided some two or three weeks before you left, that you engaged a servant to come and live with him and you in October?

A. I supposed that he would live on there; I did not suppose he would break up because I did.

Q. Then you were engaging a servant for him?

A. Yes, sir.

Q. The servant that you were engaging was Ella Burns?

A. Yes, sir.

Q. At about that time you were contemplating taking a yachting trip?

A. Yes, sir.

Q. And you had asked Binney if he would mind if you went off on a yachting trip?

A. That is true.

Q. Now, Ella Burns came to the house to serve be-

fore you had actually left, didn't she?

A. No, sir.

Q. Didn't she come there while you were packing up?

A. Yes, sir.

Q. And didn't you then say that you did not want her?

A. Yes, sir.

Q. Why was it that you said that, if you were getting a servant for Binney and thought Binney was going to continue to live there?

A. Because she said she would not stay there with him if I left.

Q. Now, after you went down to Edgewater Park to live, you and Binney occupied separate bedrooms, didn't you; you had your bedroom and he had his bedroom?

A. No, sir; that is not the fact.

Q. Did you first occupy the same bedroom?

A. When we first went to Edgewater Park, yes, sir.

Q. I am speaking of the period between March and October of 1911, particularly?

Mr. Backes: That is the latter part; the witness was misled.

Q. During the period from March to October of 1911, the last six months you were there at the house, did you and Binney have separate bedrooms?

A. No, sir; we had the same bedroom until Binney got this disease.

Q. Where was that bedroom?

A. Well, we had three bedrooms, and sometimes we slept in one and sometimes in another; usually it was the north one. We had three bedrooms upstairs, and the servant's room downstairs.

Q. The servant's bedroom adjoined the kitchen on the first floor?

A. Yes, sir.

Q. And Mark Whitfield occupied the servant's bedroom next to the kitchen?

A. Yes, sir.

Q. You have spoken about Binney's automobile and about his staying out at night?

A. Yes, sir.

Q. Do you remember the fact that Binney complained to you, that his automobile was tampered with?

A. No, sir.

Q. And that after he got out on the road it would break down?

A. No, sir.

Q. Didn't he call your attention down at the garage to the fact that gravel stones were in the machinery, and emery, and that the wires were crossed?

A. He might have said that.

Q. Do you remember his telling you that down at the garage?

A. Not at any particular time.

Q. But you remember the fact that he did speak of his automobile being tampered with?

A. It used to often be out of order.

Q. You do not remember his ever saying to you that his automobile was tampered with and that it broke down after he got out?

A. No, sir.

Q. Didn't he, on one of those occasions, in the latter part of the summer or fall of 1911, and before you left, say that his automobile was tampered with so much and broke down when he went out, that he was going to discharge Mark Whitfield?

A. Never.

Q. That he thought Mark Whitfield tampered with it?

A. Never.

Q. And didn't you say to him, that if he did discharge Mark, that you would get a divorce?

A. Never.

Q. Your husband was the county agent for some kind of an electric lamp, wasn't he?

A. So he told me.

Q. And you knew that he frequently went out evenings, or at least he told you that he went out on some of these evenings to demonstrate the lamp?

A. Yes, sir.

Q. On one occasion, I think you and Mark Whitfield went over to Lumberton with him when he demonstrated the lamp?

A. Yes, sir.

Q. And you had a sort of little picnic; you got your supper in the woods?

A. Yes, sir.

Q. After a while, or towards the latter part of the time, Binney stopped keeping his automobile in the garage down at Edgewater Park, and took it up home to his mother's home and kept it up there?

A. I don't remember about that; he always had it up to his mother's when he was there, but never when he was home.

Q. Didn't he, on a number of occasions, keep the automobile up there at his mother's?

A. Not unless he was there with it.

Q. Well, he was there at his mother's all night on several occasions during the latter part of the time that you lived together?

A. He told me he was.

Q. Binney always had a chauffeur along with him when he went out, didn't he?

A. Most of the time.

Q. You do not remember ever seeing him go out alone?

A. Yes, sir.

Q. At night?

A. Yes, sir. The night I spoke of, he came out, and I thought he had gone to put the car up; he did not

have a chauffeur.

Q. You don't know whom he had with him as he went out of the lane?

A. No, sir.

Q. You and Binney had had a quarrel over night, hadn't you?

A. We had not had a quarrel, no, sir.

Q. You had some words together?

A. Probably a disagreement.

Q. And Binney went up to his mother's with his car and stayed away all night?

A. He said he did.

Q. But he did not stay at home that night?

A. No, sir.

Q. What was that quarrel about?

A. I don't remember.

Q. Didn't you tell him on that night that you never wanted to see him again?

A. No, sir.

Q. Are you sure of that?

A. Yes, sir.

Q. Do you remember the time you and Binney had another quarrel, and your father came over to the house and put the man out of the house that was the cause of the quarrel?

A. No, sir.

Q. Don't you remember your father coming there?

A. Yes, sir.

Q. Did the man that was visiting there leave while your father was there?

A. He left because Binney had left me there alone in the house with him.

Q. How long had he been there?

A. He had been there for that night, for dinner, and he had been there all night the night before, at Binney's invitation.

Q. On that night Binney sent for your father to come?

A. Yes, sir.

Q. Now, Mrs. Earl, Mark Whitfield did the cooking and waited on the table?

A. Yes, sir.

Q. And he did the upstairs work, too?

A. Yes, sir.

Q. Did he do any washing?

A. No, sir.

Q. Didn't he wash your garments?

A. No, sir; never.

Q. Didn't he wash the towels that you used monthly, on one or more occasions?

A. Not that I remember; we had a regular laundress.

Q. Don't you remember his washing out towels ——

A. He might have washed a few towels, but he never washed my clothes.

Q. Don't you remember his washing out a union suit of underwear?

A. No, sir.

Q. And spreading it out on the grass?

A. No, sir.

Q. Now, during the latter part of the time that you were at Binney's house, say from March to October, Binney had there a man of general work who acted as chauffeur and took care of the yard, and so on, by the name of Wright, didn't he?

A. Yes, sir.

Q. Do you remember one occasion when Binney came home late at night and Mr. Wright was along with him?

A. When?

Q. During the last six months?

A. No, sir.

Q. You don't remember that?

A. No, sir.

Q. About 11 to 12 o'clock at night?

A. No, sir.

Q. Don't you remember their knocking at the back

door of the house and being unable to get in, and then coming around to the side door and knocking, and your admitting them?

A. I do not remember it at all.

Q. This door of the house—the one that I speak of now—was a door that had a circle divided in lights of glass, near the top of it?

A. Yes, sir.

Q. And a person standing on the porch could see through those lights of glass?

A. Yes, sir.

Q. Don't you remember, that on this night you came downstairs in a kimono?

Mr. Gaskill: I will withdraw that question.

Q. That on this night in question you and Mark Whitfield were upstairs together; that Mark came down in his shirt sleeves, pantaloons and canvas shoes, and opened the door and let Binney and Mr. Wright in the hall?

A. I don't remember it at all; Mark might have gone to the door, but I do not remember the circumstances.

Q. Maybe this will refresh your recollection: didn't you say to your husband Binney, that you were so lonesome that you had Mark upstairs reading to you?

A. No, sir.

Q. Did you have Mark upstairs reading to you at any time?

A. No, sir; I never was alone with Mark at night.

Q. Do you remember the day before you started for Florida?

A. Yes, sir.

Q. Do you remember the barber of Burlington coming down to either shave Binney or cut his hair, or perform some service for him?

A. I think I do, yes, sir.

Q. You and Mark were upstairs in the bath room

when the barber came, were you not?

A. I don't know; we might have been; Mark did the upstairs work; he might have found us up there.

Q. Don't you recall your husband calling up to you to hurry, as the barber was there?

A. No, sir.

Q. To hurry up and give him the bath room?

A. Mark might have been cleaning the bath room—that was a funny question for him to ask.

Q. Mrs. Earl, didn't you and Mark stay upstairs there some fifteen minutes after Binney called to you?

A. If Mark was cleaning the bath room, most likely he stayed up there.

Q. Didn't you come downstairs together?

A. Most likely we did. What did Mr. Earl mean?

By the Court:

Q. This was in the day time, if it happened at all?

A. I don't ever remember his saying that.

Further cross.

Q. Mrs. Earl, you remember one evening sitting on the porch of your house at Edgewater Park during the last six months, with Binney and Binney's mother and your mother, Mrs. Leigh?

A. I don't remember any special evening, no, sir.

Q. When Mark started to come out on the porch and join the party, on an occasion when you were very scantily dressed, with nothing but a kimono and underwear?

A. No, sir; never.

Q. And did not Binney, in the presence of his mother and in your presence, tell Mark not to come out?

A. I do not remember it at all.

Q. Well, do you remember any such occurrence any time when Binney's mother was not there, and your mother was there, and Binney told Mark not to come out?

A. No, sir.

Q. And your mother said, "Come on; you are a member of the family"?

A. Never, never.

Q. On another occasion did not you say to Binney's mother, while you were in the automobile, in Burlington, in front of Binney's mother's house, that you gave this disease to Binney?

A. Never, never.

Q. During the summer when you talked this matter over with Binney's mother, was not it always the subject matter of conversation between you two, that you must have contracted this disease from some toilet in Philadelphia, accidentally?

A. Mrs. Earl always told me that; I did not say anything about it, because I did not know.

Q. Did not you say that?

A. No, sir.

Q. Didn't you there say to Mrs. Earl, on one of these occasions, that you were glad, as long as both of you were sick, that you had been sick at home, where the doctor knew both of you and knew you both to be respectable?

A. Mrs. Earl used to often make light of it and say she hoped she would not get it, when she came down. It was an awful disgrace to have it, and I was terribly ashamed for Dr. Tracey to know that we had it.

By the Court:

Q. You say you refused to be treated by the younger doctor there?

A. Yes, sir.

Further cross.

Q. Mrs. Earl, this man that had been visiting and left with your father on the occasion spoken of, you had his picture on your dressing table, didn't you?

A. Yes, sir.

Q. And you kept it there until your husband made such a fuss that it was taken away?

A. No, sir; he simply asked me to tear it up one day, and I did so; he never said anything about it before.

Q. How long had you had it there?

A. I don't know; I tore it up in Binney's presence, because he asked me to tear it up.

Q. In Binney's presence?

A. Yes, sir.

Q. Didn't you tell Mrs. Earl, Binney's mother, that you loved this man whose picture you had on the dressing table?

A. No, sir.

Q. And didn't you say to her that you would rather live in a single room with him ——

A. No, sir; that would be absurd to say to your mother-in-law.

Q. I only asked you whether you said it.

A. No, sir; I did not.

Q. Did not Binney's mother then say to your mother in your presence, "Take your daughter home"?

A. No, sir; but she was afraid I would go home.

Q. And didn't your mother say that she wanted you to live together?

A. My mother said, if we could get along, she would rather us live together than to part.

Q. You remember that part of the talk?

A. Yes, sir.

Q. Did you afterwards meet that man in Atlantic City, the man whose picture you had?

A. No, sir.

Q. Was he, to your knowledge, in Atlantic City at one time when you and Binney's mother and you were there?

A. I did not see him; Binney told me he saw him.

Q. You did not see him?

A. No, sir.

Q. You had quite a number of letters from this

young man, didn't you?

A. No, sir; I had one letter that he wrote thanking me for having him there over night, just a regular bread and butter letter, and I showed it to Binney.

Q. In one of those letters, did not he say it was "hard to write to a married peach"?

Mr. Backes: Objected to; the question assumes there was more than one letter.

The Court: I will allow the question for what it is worth, and dispose of it on final hearing.

A. No, sir.

Q. Did not he in one letter that he wrote to you, address you as "Hello, Dearie"?

A. No, sir.

Q. Didn't he ask you to meet him in New York in one of those letters?

A. No, sir.

Q. You remember when you left the house taking the letters that belonged to you out of the house and taking them away with you?

A. No, sir.

Q. You do not remember that?

A. No, sir.

Q. Mrs. Earl, with reference to the employment of Ella Burns, the servant, on or about October first, did not your mother, in your presence, say to Ella Burns that she wanted you and Binney to go back in the house and live together?

A. Never.

Q. You knew that right after that Ella Burns went to the hospital for an operation, didn't you?

A. Yes, sir.

Q. You knew it as a fact?

A. Yes, sir.

Q. Now, after that, on the 13th of October, didn't

she come to the house with Binney, Ella Burns I am speaking of, and find you packing?

A. Yes, sir.

Q. And you said that you did not want her?

A. Yes, sir.

Q. And on that occasion did not your mother say, in your presence and in Ella Burns' presence, that Mark Whitfield could have a home at her house as long as he lived?

A. No, sir.

Q. Nothing like that?

A. No, sir; I don't remember that at all.

Re-direct examination.

By Mr. Backes:

Q. You were about to say, when you ran away to be married, that Binney told you something and you were interrupted by counsel?

A. He told me that his mother knew that we were going to be married.

Q. You were also speaking of the allowances that were made; what were those allowances?

A. I don't understand the question.

Q. The allowances that were made by the mother, the elder Mrs. Earl, she made allowances to you for your house and for yourself, you said?

A. Yes, sir.

Q. What allowances were they?

A. She gave me $45.00 a month for my clothes, and $100 to run the house.

Q. What did Binney contribute to the household?

A. Nothing.

Q. Who owned the house?

A. Mrs. Earl.

Q. Did you pay rent?

A. No, sir.

Q. How long had that arrangement been going on?
A. The money part, do you mean?
Q. Yes.
A. Ever since we lived in the house; before we went there, she gave Mr. Earl $25.00 a week; he told me that is what he had before he was married.
Q. It is a fact that you nursed Binney during the month of July and up until the time the mother came back from Point Pleasant?
A. Yes, sir.
Q. And you nursed him carefully?
A. Yes, sir.
Q. Attentively?
A. Yes, sir.
Q. Why?
A. Because I felt sorry for him the way he was suffering.
Q. You were his wife at that time?
A. Yes, sir.
Q. Living with him?
A. Yes, sir.
Q. Any other reason why you did it?
A. Simply out of pity for him.
Q. During that same time were you treating yourself?
A. Yes, sir.
Q. How was Binney's conduct towards you during that time?
A. He was extremely nice to me, because I told him all the time I was going to leave, and he did not start to get indifferent and disagreeable until the last part of the time that I was there.
Q. Did Binney's conduct towards you in any manner persuade your conduct towards him?

(Question withdrawn.)

Q. Did Binney's nice conduct towards you in any

manner persuade you in your nursing of him?

A. Yes, sir; he was nice to me and I felt sorry he was suffering, and I thought that as long as I was living under his roof, it was my place to do all I could for him.

Q. Up to that time had he persuaded you of his innocence or guilt?

A. No, sir.

Q. What did he say to you?

A. He said he was terribly sorry he had given it to me.

Q. How long did you nurse him all told?

A. All the time he was suffering so hard.

Q. Three or four weeks?

A. Yes, sir; as near as I can remember.

Q. That was in the early part?

A. Yes, sir.

Q. What did Binney say to you as to his innocence or guilt?

A. He simply said he had given it to me and he was terribly sorry and worried about it.

Q. How often did he repeat that?

A. Almost every day.

Q. How often did you attend to him during the day?

A. I guess three or four times; sometimes I would be up all night with him, and he said he was provoked at his mother, because his mother wanted him to say that he had gotten it from me, and he would not say it.

Q. Well, where was Binney and where were you when you told him you were going to tell your brother Chester?

A. We were in my own house; I don't remember the room we were in.

Q. You told us what Binney said, but how did he act in saying it?

A. He seemed very much excited as soon as I said, "I will go right to Chester, and he can take me to a specialist," and Binney said, "If you go to Chester, he will

take you right away from me."

Q. Now, what was his mother's conduct and her deportment towards you two during the time that you two were suffering from this disease?

A. Mrs. Earl was extremely nice to me, and came down a lot and seemed to feel very sorry; she wanted to take me to California the next summer, and she was very sorry she had not enough money to buy me a runabout.

Q. When was it that she suggested you might have caught this in Philadelphia and given it to Binney?

A. She suggested that all along to me.

Q. What did she say about it?

A. She said, in a very nice way, that she thought probably I had got it from the toilet and given it to Binney, and I did not know how you could get it, and I thought she was telling me the truth; I did not get provoked at her.

By the Court:

Q. Had you ever been sick with any venereal trouble in your life before this?

A. No, sir.

Further re-direct.

Q. Let me ask you—where were you raised?

A. In Burlington, New Jersey.

Q. You were born where?

A. In Trenton, New Jersey.

Q. And you went to Burlington at what age?

A. When I was two years of age, or one year old.

Q. You lived in Burlington with whom?

A. With my mother and father.

Q. Did you go to school?

A. Yes, sir.

Q. Where?

A. I went to Mrs. Haines' private school, and I went to the public school for about two years, and then I went to St. Mary's Hall.

Q. Until what age?

A. I think I left school when I was about 18, on account of my eyes, and I did not go back.

Q. How long had you known Binney Earl before you married him?

A. About four years, I think, or five years.

Q. Where did you live with reference to where Binney lived?

A. Right next door to him for four years.

Q. Were you children together?

A. Yes, sir.

Q. And you played together?

A. Yes, sir.

Q. Did you live adjoining each other at the time you went away to be married?

A. No, sir; we lived on Locust Avenue in Burlington then.

Q. Before your marriage had Binney called on you?

A. Yes, sir.

Q. Did he call on you to pay you attention?

A. Not me especially; he came to call on my brother, my younger brother, Clinton.

Q. Was he a companion of your younger brother?

A. Yes, sir.

Q. Did you ever hear of the disease of gonorrhoea or clap, before the time you were informed of it by your husband?

A. No, sir.

Q. Did you ever know what it was?

A. No, sir.

Q. During the last two or three weeks that you lived in the Edgewater Park house, was your husband there?

A. No, sir; the last two weeks he left and went to his mother's, and I had to go to my mother's and stay there.

Q. How did that come about?

A. We were out in the car one day, and he said he was going to his mother's, and he would be back for me in town for dinner, and he sent a note and was taken ill and could not come; so I stayed at my mother's then, and he sent word to me every day that he was sick and could not come home, but different physicians in town and friends told me ——

Mr. Gaskill: Not what others told you, you can't state that.

Q. Omit what other people, outside of Binney or Binney's mother may have told you; tell us the facts.

A. Dr. Morford said ——

Q. You don't understand; you are not permitted to tell us what other people told you; but during that two weeks you remained at your mother's home?

A. Yes, sir.

Q. Did you see Binney during that two weeks?

A. I saw him go past the house in his automobile.

Q. What house?

A. My mother's house.

Q. During the time he said he was too ill to come to see you?

A. Yes, sir.

Q. When was this Mark Whitfield hired as a cook?

A. I think just a few months after we moved in the house in December, at Edgewater.

Q. Of 1909?

A. Yes, sir.

Q. Who hired him?

A. Mr. Earl; Mr. Earl asked him if he would come in and leave his outdoor work and do the cooking for a while; but I paid him with the money I got from Mrs. Earl, Senior.

Q. But what was Mark Whitfield hired for in the first instance?

A. To work for Mr. Earl outside on the lawn and

things like that.

Q. And when and how was his occupation changed?

A. We had a girl named Lizzie, who drank and was crazy ——

Mr. Gaskill: I object to that as irrelevant and immaterial.

The Court: The objection is overruled.

Q. Proceed.

A. And Mr. Earl discharged her; then Mr. Earl asked Mark to come in and do the cooking till we could get another cook, and Mark said "Yes," and we liked his cooking and we kept him.

Q. Did you and Mr. Earl know anything about Mark with reference to his qualifications as a cook?

A. He had been brought up by a friend of Mr. Earl's, and she trained him as a cook, and that is the work he did when he was with her.

Q. Was Mark a good cook?

A. Very good, excellent.

Q. Were you a cook?

A. I could cook a few things, but not enough to do it all the time.

Q. Were you a housekeeper?

A. No, sir.

Q. Was Mark?

A. Yes, sir.

Q. Did Mr. Earl know it?

A. What?

Q. That he was a good cook and a good housekeeper?

A. He always praised his cooking.

Q. Now, tell us what Mark's duties were, what duties he performed in your home.

A. He did the cooking and waited on the table, and did all the sweeping; and I did the dusting, and I helped

him make the beds.

Q. Did Mr. Earl know that?

A. Yes, sir.

Q. Was Mr. Earl around while you did that?

A. Yes, sir.

Q. And what did Mr. Earl do about the house?

A. Nothing.

Q. What else did you do?

A. I helped Mark in a general way; I always did the dusting and straightening up, and I often made a cake or a salad, and if he was awfully busy, I would help him wipe the dishes.

Q. In other words, you worked with Mark as you worked with a girl in the house?

A. Yes, sir.

Q. And that was all with Mr. Earl's knowledge?

A. Yes, sir; Mr. Earl was mostly in the library when this work was going on.

By the Court:

Q. You had no servant, then, but this man?

A. No, sir.

Further re-direct.

Q. Did Mark do any laundry work at the house?

A. I think he used to wash his own clothes, but he could send them to our laundry.

Q. You say he might have washed some towels; what did you mean?

A. The towels that were used in the bath room.

Q. You did not mean that he, at any time, washed your private napkins?

A. Of course not.

Q. Were you ever out in the automobile with Mark, except this one night that your husband took you out?

A. Never, at night.

Q. And this time that your husband went over to display some automobile lamp that he had, he took Mark along for the purpose of serving you and your husband with your supper in the woods?

A. That is right; we did not intend to go for supper, but before going Mark prepared the supper; we started at six o'clock, and I went in the grocery store and bought some cold things, and we stopped in the woods.

Q. Why was Mark along?

A. Because Mr. Earl had taken him to help with the car.

Q. You did not have the chauffeur with you?

A. No, sir; and Mr. Earl was sick, and he sat in the car, and Mark got out and served my supper; and I coaxed Binney to eat, and he wouldn't; this was one night he went to Lumberton on business.

Q. Was that before Binney had the gonorrhoea?

A. No, sir, I guess it was while he had it; I don't remember.

Q. Was it anything out of the ordinary for Mark to be in the bath room cleaning the bath room?

A. No, sir; he always cleaned it every Saturday.

Q. Was it anything out of the ordinary for you to be upstairs while Mark was doing it?

A. No, sir.

Q. Was it a small or large bath room?

A. An ordinary sized bath room.

Q. Did you sometimes take a hand in doing the work?

A. I had to help; it was too much for one.

Q. Did you ever ask Binney to help?

A. Sometimes he would help a little bit with Mark.

Q. Where was Mark's bedroom?

A. On the first floor; it opened out of the kitchen.

Q. Was there any other bedroom on the first floor?

A. No, sir.

Q. How long had Mark occupied that room?

A. Ever since he had been there.

Q. This man Wright, the chauffeur, did he occupy a room at your house?

A. No, sir.

Q. How did you come to take separate rooms when Binney got the gonorrhoea?

A. I think we were advised to do so by my brother and Dr. Tracey.

Q. When you were informed that Binney had the gonorrhoea you had it also, now, at Binney's solicitation, did you, for any period of time, refrain from informing your mother or your brother?

A. No, sir; I told them right away.

Q. Did you understand me?

A. I told my brother and mother right away—is that what you mean?

Q. Yes, that is right. Now, this man Mark, did he remain at the house after you left, after you packed up and got out?

A. I think he was there for a week or two; I think he left because Mr. Earl was up at his mother's.

Q. You must only tell us what you know. When was it that this Ella Burns was contracted for—when you bargained for her to come; when was that?

A. That was the last part of the time that I was there; I do not know the date.

Q. Was that before Binney went to his home and you went to yours?

A. Yes, sir.

Q. Tell us about when it was.

A. Probably it was a week before; I do not remember.

Q. How did it come about that you wanted to hire her?

A. Well, I thought that—Mrs. Earl said I could have two men; Mr. Earl said he would give me the extra money; he did not want me to work, and that we would have Ella too.

Q. Did you, at that time, say you had told Binney

that you were going to leave?

A. Yes; but I thought he would stay on and want a maid, but Ella said she did not want to stay if I was not going to be there.

Q. Something was said about a yachting trip; with whom were you going?

A. My cousin and her husband invited me to go to Norfolk, Virginia; but I did not go; that was a short time before I left; it was while they were having that waterway convention in Norfolk.

Q. Had you spoken to Binney about that?

A. I asked him if he cared if I went, and he said "No".

Q. Was that after you had told him you were going to leave?

A. I had been telling him all along that I would leave, but I had not made up my mind as to any special time.

Q. Why not?

A. Because I was thinking of what to do; I had been advised not to leave, and I was thinking it over; and as long as I was there I did not want to go on a trip without asking him.

Q. Were you a woman of means before you were married?

A. I was always taken care of comfortably in my father's home.

Q. And in this, your husband's home, you were kept comfortable?

A. Yes, sir; as long as my father was dead, I thought I ought to consider it before going to live with my mother.

Q. Was that the reason you remained until the time that Binney went to his mother's house?

A. Yes, sir.

Q. Who was this young man who was at your house at the time your father came to the house?

A. He was named Alexander Goulard.

Q. How long had you known him?

A. He had gone to school with me and my brother when I was a little girl of about 13, and my mother was boarding at Burlington, and he happened to stay at the same hotel, and he happened to recognize my brother Clinton; and then I was up there one night with my mother, and he came up and spoke to us, and the next day I asked him if he would not come down to the house to see me.

Q. How long had it been since you had seen him before?

A. I had never seen him since I was a little tiny girl, going to school, and I did not remember him very much; I remembered his face. The next day I was on the train going to the Grand Opera with Mrs. Earl, and this man was there, and he asked me, in Mrs. Earl's presence, if I would go to a matinee with him, and Mrs. Earl said, "You go, by all means;" so I went, and then I asked him to come home and take dinner, and Mr. Earl was very nice to him and asked him to stay over night.

Q. Did he know Mr. Earl prior to that time?

A. No, sir.

Q. Mr. Earl invited him to remain over night?

A. Yes, sir.

Q. Well, do you say Mr. Earl was very nice to him?

A. Extremely nice.

Q. Did you invite this man to stay over night?

A. I simply, as a wife would, when Mr. Earl asked him to stay, I had to be polite and act as a hostess would; and Mr. Earl was very pleasant and talked to him all the evening, and finally I went upstairs to light the light in his room, and we were all together, and Mr. Earl was back of us, and Mr. Earl went back, and Mr. Earl said, "I will be up presently, you light the light in the front bedroom;" and I thought Binney was coming up every minute; and we sat there in the room, talking, and he was looking at the photographs, and we had just a general conversation.

Q. Of old events?

A. Yes, sir; and I kept calling to Binney and he kept saying he would be there in a minute; he could hear everything that was said, and after a while, as Binney did not come, I said, "Binney, I shall not keep Mr. Goulard up any longer," and I went in the other room and went to bed, and Binney came up and went to bed, and then in the morning he got up and had breakfast and was terribly nice to this gentleman, and asked him if he would not come back and have dinner, and the man went home to his hotel for luncheon and said that he would come back for dinner; and when he came back Binney had gone to the telephone in the meantime and called up papa, and said that I had been up in this man's room half the night with my clothes off, and, of course, papa did not know ——

Q. Where was Binney?

A. He was in the library, where I left him.

Q. Proceed.

A. So papa called up on the telephone and he asked me what I meant by such actions, and I told him to come down and I would explain, and papa came down, and this Mr. Goulard was terribly embarrassed and felt awful, and he told papa all about it, and we looked all over for Binney but we could not find him; he had gone somewhere, and he did not come back, and papa and this young man went out, and that is all there was to it. I was terribly mad at Binney then, and he took it all back the next morning when he came back; when he came back he must have forgotten he had ever done it, because he was very nice and was sorry he had done it.

Q. Did you speak to him about it?

A. Yes, sir; I told him how terribly he had acted and how absurd the whole thing was, but you could not get any satisfaction from him at all.

Re-cross examination.

By Mr. Gaskill:

Q. Don't you recall, that on the first night that this man was there, or the second night, one or the other of the nights, that you and Binney retired to your room, or your room, and left Mr. Goulard downstairs making out some accounts; he was a traveling salesman, wasn't he?

A. He was.

Q. And didn't you go downstairs from your room?

A. No, sir.

Q. And did not Binney come down and find you sitting on the floor at this man's feet?

A. No, sir.

Q. And was not that the occasion of the disturbance?

A. No, sir.

Q. Mark run the automobile?

A. He knew how, and he did it occasionally.

Q. And you and Mark occasionally had rides together in the daytime—you say you did not have any at night with him?

A. We went to Burlington sometimes; Mark would run the car for me when I went marketing.

Q. When was it that Mark was transferred from an outdoor man to the indoor man?

A. I think it was in January of the year we moved to that house; we moved in December, and I think it was in January.

Q. You were in Florida, were you not?

A. No, sir; not that year—the first year we lived in this house in 1909 ——

Q. Let us get that straight: when Binney was up home at his mother's sick, didn't he send you notes daily?

A. Yes, sir.

Q. And on one occasion, to your knowledge, didn't

he send a note to your mother—he had expected to come down after you, and he sent a note down that he was sick and for her to take care of you; do you recall that?

A. He might have done so, but I do not recall the circumstances.

Q. The day that you went to Dr. Crusen, did not Binney, in your presence, call up your brother Chester, and ask him to go with you to Dr. Tracey; and wasn't it at Binney's request that your brother went?

A. No, sir; he did not want to talk to my brother at all.

Q. Wasn't it arranged at first that your mother, Mrs. Leigh, and Dr. Tracey, were to go with you?

A. Yes, sir.

Q. And then, did not Binney, when he found your mother could not go, did not he insist on some member of your family going, and called up Dr. Leigh?

A. No, sir; I called up Dr. Leigh myself, in Binney's presence.

Q. Binney knew you were calling him up?

A. Yes, sir.

Q. Didn't he ask you to do so?

A. No, sir.

Q. Now, you nursed Binney, and Binney also nursed you, didn't he?

A. Yes, sir.

Q. And you had no other nurse during the time you were suffering?

A. No, sir.

Q. And whatever attention you needed, Binney gave to you as devotedly as you gave attention to him?

A. Yes, sir; I did not give my attention devotedly, because I was disgusted; I gave it simply because I had to do so.

Q. Well, he was quite devoted in his attention to you?

A. Of course; he had every reason to be.

Q. Now, just a word about that allowance—in addition to the amounts of money that you have named, Binney's mother paid the coal bills?

A. Yes, sir.

Q. And the doctors' bills?

A. Yes, sir.

Q. And the taxes?

A. Yes, sir.

Q. And the water rents?

A. Yes, sir.

Q. And the chauffeur, or the outdoor man?

A. Yes, sir.

Q. And paid for all of your trips?

A. Yes, sir.

Q. In other words, she always did all she could for you and used you nicely?

A. Yes, sir.

Q. And she gave you diamonds?

A. Yes, sir.

Re-direct examination.

By Mr. Backes:

Q. When you rang your brother up over the telephone, in Binney's presence, what did Binney say?

A. He did not say anything then, because he knew I had fully decided to take him.

DR. GEORGE T. TRACEY, sworn in behalf of the petitioner, testified as follows:

Direct examination.

By Mr. Backes:

Q. You are a practicing physician of this State?

A. Yes, sir.

Q. Located where?

A. Beverly, New Jersey.

Q. How long have you been a physician?

A. Since 1898.

Q. How long have you carried on your profession at Beverly?

A. Since 1903.

Q. Do you know the defendant in this case?

A. Yes, sir.

Q. Do you know his wife?

Q. Did you treat either or both of them?

A. Both of them.

Q. When?

A. Do you mean to be specific?

Q. Please, if you can.

A. I was called to see Binney July 5th the first time.

Q. Had Binney been to see you before that?

A. No, sir; I called to see him, and I saw him back in the yard under the trees.

Q. Who sent for you?

A. He called me up.

Q. Who did?

A. Binney.

Q. Do you recall Binney coming to your office at any time while his wife remained outside in the automobile?

A. That visit was subsequent to my first visit, July the 5th.

Q. You had been there before?

A. Yes, sir.

Q. At that time did Binney consult you about his own physical condition?

A. July the 5th?

Q. Yes.

A. Yes, sir.

Q. You say that was out in the yard?

A. Yes, sir.

Q. Where was Mrs. Earl at that time?

A. I don't know.

Q. What was done by you at that time? What was said between you and Binney?

A. He complained of the burning sensation that has been spoken of; that he first noticed it a day or two before, and I asked him questions, and I did not make any examination at all at that time, and I said, "It looks to me suspicious," and I saw him every other day or so, after that, at his home, and then he came down to the office sometimes in the afternoon or evening, just to sort of get straightened out on the treatment; he said there were some things that he did not understand.

Q. Did you, at that time, prescribe for him, on the 5th of July?

A. Yes, sir.

Q. You prescribed for him for what?

A. He complained of this irritation, and I said, "It looks suspicious to me," and I went into the history of the case when this had happened; when he first noticed it, and he said he had noticed it two or three days before, and I gave him some antiseptic treatment, and gave him an injection and gave him some medicine internally.

Q. What were those medicines for, what disease, if any?

A. At that time my mind was not made up, although, as I said before, I was suspicious, and it was merely an antiseptic treatment, the same as you would give in any discharge.

Q. When did you again see Binney?

A. I saw him every day; sometimes he would come down in the afternoon.

Q. When you saw him the next time, did you then diagnose his condition and his trouble?

A. Three or four days—one afternoon at the office, I then had an opportunity to make an examination, and I hesitated somewhat, you might say, thinking maybe

it was not the condition of gonorrhoea; I said, "It looks very suspicious, and I will practically treat you for that."

Q. I asked you when it was that you diagnosed to your own satisfaction the specific disorder from which he was suffering?

A. To my mind, it was never diagnosed specifically, because you would have to have a microscopic examination. In some instances you get microscopic examinations, but it is the exception to do it.

Q. What did you treat him for?

A. I treated him for gonorrhoea.

Q. Did you treat Mrs. Earl?

A. Yes, sir; after July 30th.

Q. Were you in constant practice during the month of July at Beverly?

A. From the 6th of July—oh, up until the 7th of July—no, the 9th of July I went away.

Q. Then you saw Binney every other day from the 6th to the 9th?

A. Yes, sir.

Q. Then, you did not see Binney again until after you came back?

A. That is right; I was away two weeks.

Q. How many times did you see Binney in all?

A. I presume—at his house—oh, twelve or fifteen times.

Q. How many times before you went away?

A. About two or three times, I think it was.

Q. At his house?

A. Yes, sir.

Q. How many times at the office?

A. Probably four or five times.

Q. Doctor, did you say you began to treat Mrs. Earl on July 30th?

A. Yes, sir.

Q. Have you a record of your treatments, doctor?

A. Not here.

Q. Have you it at home?

A. Yes, sir.

Q. Did you look for it before you came here?

A. The date of my first visit to Binney; I practically began treating Mrs. Earl after having seen Dr. Crusen.

Q. The only thing you treated Binney Earl for was the gonorrhoea at that time?

A. Subsequent to having made up my mind.

Q. When was it you made up your mind?

A. That he was suffering from gonorrhoea—on the 9th.

Q. You had no doubt about the nature of his disease after the 9th?

A. Aside from any microscopic examination of it.

Q. He had the ordinary dose of clap?

A. That is what we call it clinically.

Q. How long did you treat him?

A. Three days previous to my going away, and then probably a week after I came back.

Q. And only a week after you came back?

A. Yes, sir.

Q. Where was the place that you first treated Mrs. Earl?

A. At her house.

Q. Was that on the day of your return?

A. It was two or three days after I came back, I was called up at the house after Dr. Whittaker had gone home, and the matter was discussed with Mrs. Earl and Mr. Earl, and I decided—that before I began treatment, I would rather refer it to anyone else before I made an examination, and that he could direct the treatment.

Q. How long was it, as you now recall it, that you went to Dr. Crusen after you first began to treat Mrs. Earl, or after you first saw her for the purpose of treating her?

A. Two or three days; it was discussed, and we finally decided one Sunday afternoon when I was up there, and we arranged for a consultation the next day.

Q. You had, prior to that time, been treating Mrs. Earl?

A. No, sir.

Q. It was only in contemplation, then, was it—I mean on this Sunday?

A. Binney, the first or second visit, had told me.

Q. Just answer my question. (Question read.)

A. That was Friday; it came to light that Mrs. Earl's condition demanded treatment.

Q. How did that come to your attention?

A. Binney told me about the 6th of July, that she had had some disburbance, some irritation of the bladder; she had mentioned it casually to Dr. Mulford; he told me she had some irritation of the bladder, and that Dr. Mulford directed some simple douche, but he did not examine Mrs. Earl; he did not know anything about the condition; I had spoken to Dr. Mulford about it, and he thought it was a cold.

Q. Don't go into that; now, it was on the Friday preceding the day that you went to Dr. Crusen that you first spoke to Mrs. Earl about her condition?

A. I presume so.

Q. What took you to the house at that time?

A. Sunday?

Q. No, on the Friday you speak of?

A. To see Binney.

Q. At that time did Mrs. Earl say anything to you about what Binney had said to you?

A. I do not recall anything just now.

Q. Do you recall a conversation in which Mrs. Earl said to you that she understood that Binney had said to you that he had gotten it from her?

A. Yes, sir; I believe that was on Sunday afternoon; I guess I was there an hour or more, and several things were discussed there.

Q. And what was said, what was discussed of and concerning that one particular matter?

A. Just what you said.

Q. Well, what did Mrs. Earl say, what did Binney Earl say?

A. Each of them—I remember each of them said they had caught it from one another.

Q. When Mrs. Earl said that she was informed that Binney had reported to you that he had contracted it from her, what then did Binney say?

A. I don't know.

Q. You don't remember?

A. No, sir.

Q. You are quite sure you don't remember?

A. No, sir.

Q. Who was present besides you three?

A. Mrs. Earl and Mr. Earl and myself.

Q. Mrs. Earl was quite indignant, wasn't she?

A. Yes, sir.

Q. What did Binney say when she charged him with this falsehood?

A. I don't remember his having been charged with any falsehood.

Q. You do remember Mrs. Earl saying to you that she had heard that Binney had said to you that he had contracted the disease from her?

A. Yes, sir.

Q. Do you remember Binney's reply?

A. No, sir.

Q. He made one, didn't he?

A. I don't remember.

Q. Did you accompany Mrs. Earl to Dr. Crusen's?

A. Yes, sir.

Q. Did Dr. Crusen examine her, in your presence?

A. Yes, sir.

Q. Did he make a microscopic examination?

A. No, sir, not then; he took the slide, and it took two or three days to get the report.

Q. The slide is a preliminary process in a microscopic examination, isn't it?

A. Yes, sir.

Q. Did he, at that time, express an opinion as to the cause of her illness?

A. He did.

Q. Who was it suggested Dr. Crusen?

A. I suggested him.

Q. Dr. Crusen is who, what is he known as in the profession?

A. He is professor of gynaecology at the Temple College in Philadelphia—especially in diseases of women.

Q. What did he say was the trouble with her?

Mr. Gaskill: Objected to as incompetent.

The Court: The objection is sustained.

Q. Did he give any directions as to the treatment to be pursued?

A. Yes, sir.

Q. Treatment for what, doctor?

A. For gonorrhoea.

Q. As a fact, did you treat Mrs. Earl under Dr. Crusen's directions?

A. Yes, sir.

Q. For how long a time?

A. It must have been six or eight weeks.

Q. You only treated her husband six days after that?

A. I treated Binney, after having coming home, about six days after I came home.

By the Court:

Q. After you had been to Philadelphia?

A. After I came back from my vacation, do you mean?

Further direct.

Q. After you came back from Dr. Crusen's, you say

you treated Mrs. Earl six weeks?

A. I only treated Binney about a week after I came back from Maine. I treated him about a week after having come home on the 24th.

Q. Did he change physicians?

A. Yes, sir.

Q. Whom did he get?

A. I understand Dr. Whittaker treated him while I was away, and when I came back he went to Dr. Steele, of Philadelphia; I am only told that.

Q. Why did you stop after about six days?

A. Six days after my return?

Q. Yes.

A. No, sir.

Q. Do you know why it was?

A. No, sir.

Q. You treated Binney at his own home?

A. Yes, sir.

Q. During the six days following your return from Maine?

A. Yes, sir.

Q. How did you come to make those calls; did you have stated periods, or were you sent for?

A. No, no, like we have patients on our list who are to be visited.

Q. How did you come to stop?

A. Well, the patient did not come to the office, and I was treating Mrs. Earl at her home.

Q. How did you come to stop treating Binney after six days?

A. I did not stop; I was there to treat him.

Q. Well, how did it come about that your relations were severed?

A. I don't know.

Q. Any fault on your part?

A. I don't know.

Q. Binney and Mrs. Earl were living at one and the same home?

A. Yes, sir.

By the Court:

Q. Was Binney cured when you stopped?

A. I don't know.

Further direct.

Q. The last time you treated Binney, was he cured?

A. The discharge was very much lessened.

Q. Was he cured or was he still under treatment?

A. I would never pronounce anyone cured for several weeks or months afterwards.

Q. Was he still suffering from the disease when you last treated him?

A. Yes, sir.

Q. When was your call on Binney?

A. I went there to see Mrs. Earl, and I took it for granted he would be there for treatment.

Q. Was he there?

A. Yes, sir; but I was not consulted.

Q. Why not?

A. I don't know; I was not consulted.

Q. When were you first informed that he had selected someone else?

A. I cannot recall that; that would not be down in my list; I don't know. Sometimes a patient stops coming to your office and you don't know why they stop; they just stop.

Q. Was Mrs. Earl's case a persistent one?

A. It persisted for six weeks subsequent to Dr. Crusen's visit.

Q. I understand you treated her for approximately six weeks after your visit to Dr. Crusen?

A. Yes, sir; it gradually subsided after we had instituted the treatment directed by Dr. Crusen.

Q. Was she again submitted to an examination by Dr. Crusen?

A. Yes, sir.

Q. Microscopically?
A. Yes, sir.
Q. And found her cured?
A. The absence of the germ.

Cross-examination.

By Mr. Gaskill:

Q. When you called upon Binney first with reference to the trouble from which he was suffering, and saw him, as you say, under the trees in the yard back of his house, he described to you the symptoms from which he was suffering and the length of time that he had noticed those symptoms?

A. Yes, sir.

Q. Now, from your study and experience as a physician, and from the condition of the patient as you saw him then, and the symptoms described to you, can you tell us approximately about how long he had been suffering from the complaint?

A. To me it looked like an acute case—the character of the discharge.

Q. The indications were, to you, that it was a very recent inoculation?

A. Yes, sir.

Q. Now, when you treated Mrs. Earl on July 30th, I think you said was the first time, what was her condition? I will withdraw that question. Is the disease of gonorrhoea a progressive disease, with certain, well-known regulated or clearly ascertained steps of progress?

A. Well, there are steps. The germ is imbedded in the mucous membrane, and travels along and gets in the gland and in the urethra.

Q. Now, from your experience as a physician, can you say whether or not Mrs. Earl, at the time you treated her, July 30th, had been suffering a long time or

a short time, or are you unable to say?

A. I would be unable to answer that question; but I do not believe it was of long standing.

Q. What do you mean by that?

A. I do not think it was chronic.

Q. When you say you do not think it was of long standing, what are we to understand by the word "long"?

A. Do you mean previous to July 30th?

Q. Yes.

A. Well, I mean weeks; I did not consider that the condition had been there longer than eight weeks, perhaps.

By the Court:

Q. Was that when you examined her on July 30th?

A. Yes, sir.

Further cross.

Q. On this Sunday afternoon when the arrangement was made to go to Dr. Crusen's for a microscopic examination, was Binney Earl present?

A. Yes, sir.

Q. Did he enter into that arrangement with you?

A. Yes, sir.

Q. Did he make any objection to it whatever?

A. No, sir.

Q. Can you say positively, and without reservation, that Binney Earl had the gonorrhoea?

A. Modify that by clinically; it was diagnosed gonorrhoea; with the microscope he never had an examination by it.

Q. What do you mean by "clinically"?

A. You make your examination of the case and arrive at a conclusion by looking at the patient, and looking at the character of the discharge, and you say "It is

gonorrhoea;" there are some few patients who wish to be sure about it, and we have a microscopical examination made, and then you can positively swear it is gonorrhoea.

Q. In your practice have you had any complaints on the part of men similar in character, so far as symptoms and discharge is concerned, to gonorrhoea, where gonorrhoea did not exist?

A. I have seen discharges in the urethra, but not to last so long; but where there is a condition in a woman, a catarrhal condition of the organs in there, it is liable to infect the urethra of the man.

Q. And would that cause conditions similiar to those of gonorrhoea?

A. It would not last as long as gonorrhoea; it would not last any longer than two weeks or ten days.

Q. Can you state positively, then, that a person has the gonorrhoea without the microscopic examination?

A. Not positively, only clinically.

Re-direct examination.

By Mr. Backes:

Q. How many cases of gonorrhoea have you treated in your time?

A. I have no record; I am not a specialist in that line.

Q. You live in the country; country boys have the apparatus ——

A. We can only approximate.

Q. Five hundred cases?

A. Yes, sir; some of those cases are not in my private practice, but in connection with Jefferson Hospital.

Q. You are quite familiar with the symptoms and the appearance and everything else concerning gonorrhoea, are you not?

A. Yes, sir.

Q. And the ordinary country physician, and I am told you are that, can diagnose readily a case of gonorrhoea, cannot he?

A. Yes, sir.

Q. And have you any doubt at all but that this man was suffering from gonorrhoea?

A. No, sir.

Q. Now, doctor, tell me what the period of incubation is of gonococci, or the germ of gonorrhoea?

A. Probably from five to twelve days.

Q. Not before the fifth day?

A. That is my opinion just now; it depends on circumstances; the infection takes place in 24 hours; generally speaking, we begin to feel the irritation in between five to twelve days.

Q. And the minimum you say, is 48 hours; now, what is the maximum?

A. I am not an expert on that condition.

Q. But you have studied it some, haven't you, doctor?

A. Yes, sir.

Q. The books lay it down as what—21 days?

A. Why, it could be longer than that; I could readily see how it could be, in some instances; but I am not qualified as an expert; I am not a specialist in that line.

Q. Could you tell from what you saw and observed of Mrs. Earl, how long she had been afflicted with the disease, when you first saw her on the 30th or the 31st of July?

A. No, sir; only from what Dr. Crusen had told me, I felt quite sure it was not a chronic condition.

Q. Then you could not tell whether it was of two weeks, four weeks or eight weeks' standing?

A. No, sir.

RECESS TO 2 P. M.

AFTER RECESS.

Mr. Backes: Under the statute, I gave notice to the defense that, at Philadelphia, on some day now past, I would take testimony de bene esse of Dr. Crusen. Counsel for the defense appeared in response to that notice, and, instead of taking the deposition, we agreed that his testimony would be as he averred in the following affidavit, which was presented to the Court upon the application.

(Reading): "Wilmore Crusen, being duly sworn, on his oath deposes and says:

"I am a practicing physician of the State of Pennsylvania, and carry on my profession at 127 North Twentieth Street, in the City of Philadelphia. On the 31st of July, I physically examined Irma Leigh Earl, the petitioner, and found she was suffering from gonorrhoea. I prescribed a course of treatment to be followed under the administration of Dr. George Tracey, of Beverly, New Jersey. On the 20th of September, 1911, last, I made another examination, this time microscopically, and found she was clean of the disorder."

CHESTER A. LEIGH, being duly sworn in behalf of the petitioner, testified as follows:

Direct examination.

By Mr. Backes:

Q. What is your business?
A. Physician.
Q. How long have you been a physician?

New Jersey State Library

A. Since 1904.

Q. Where are you practicing?

A. Thirty-eight West State Street, Trenton, New Jersey.

Q. Do you follow any special line in medicine?

A. Yes, sir; the eye.

Q. You are the brother of the petitioner in this case?

A. I am.

Q. You know Binney Earl, her husband?

A. Yes, sir.

Q. Did you ever visit them at their home in Edgewater Park?

A. On numerous occasions.

Q. Were you informed of the physical condition of your sister in the month of July last?

A. I was informed that she was suffering from some complaint; just what I did not know.

Q. Did you learn generally what it was?

A. I knew enough about the condition to imagine what it was.

Q. From whom did you learn what the condition was?

A. First from my mother; she spoke ——

Q. Did you then see your sister?

A. Yes, sir.

Q. Did you also see Dr. Tracey concerning your sister?

A. No, sir; not until afterwards—I did not talk with Dr. Tracey until after we had been to Philadelphia to see Dr. Crusen.

Q. Were you communicated with over the telephone from Edgewater Park—you being in Trenton—in the month of July last, of and concerning your sister's condition?

A. Yes, sir; my sister called me up.

Q. Then what happened after that?

A. My sister called me up.

Q. Did your sister tell you what the matter was with her?

A. Not over the telephone.

Q. Did she tell you what arrangements had been made?

A. Yes, sir.

Q. With reference to her visit to Dr. Crusen?

A. Yes, sir.

Q. Did she tell you who had arranged it?

A. She did.

Q. Were you informed who had arranged it?

A. She had arranged it.

Q. You were informed who had arranged it?

A. Yes, sir.

Q. Was the time then fixed when you were to go?

A. Yes, sir.

Q. And did you go?

A. Yes, sir.

Q. Where did you start from?

A. I started from Trenton and met my sister on the train at Edgewater ——

Q. Was anyone else with her?

A. Dr. Tracey was on the train, but he was not with her.

Q. You afterwards were at Dr. Crusen's?

A. Yes, sir.

Q. You were there during the examination?

A. Yes, sir.

Q. Do you know what the trouble was with your sister?

A. Yes, sir.

Q. And what was it?

A. Gonorrhoea.

Q. Subsequent to that day were you at the home of your sister at Edgewater Park?

A. Yes, sir; I think I was down there in June.

Q. I mean after that, subsequent to that?

A. Yes, sir.

Q. How soon after you had been to Dr. Crusen's?

A. As near as I can tell, three or four days—two or three days, possibly.

Q. Do you know how you came to go down there?

A. I went down there to find out what I could about this affair; and I was called out from the house by Binney to tell me ——

Q. You were called out of the house—you met Binney at the house?

A. Yes, sir.

Q. What happened then?

A. He said he would like to have me come out under some apple trees that they had there, and have a talk with him; about 75 or 100 feet from the house; and I went with him.

Q. What happened there?

A. As far as I remember, he said, "Chester, I have the gonorrhoea;" he said, "I know that I gave it to your sister, but," he said, "I don't know how I got it;" he said, "Dr. Tracey told me I might have gotten it from a toilet, but when he told me that he laughed;" he wanted me to believe that he did not knowingly know where he got it, but the fact was that he had it and that he gave it to my sister.

Q. Anything else?

A. Nothing more that I can think of that was relevant to the case.

Q. Did he say anything about women?

A. No, sir, not a word. I told him I thought it was highly improbable that he could have gotten it from the toilet, and most undoubtedly he got it in some other way.

Q. Do you recall anything else that was said at that time?

A. No, sir.

Q. Did he at that time ask you to believe that he did not get it from a woman?

A. Yes, sir; he said, as I said before: "I want you to

know that I gave it to your sister, but I did not get it from a woman;" and I said to him I did not see how he could have gotten it from the toilet; he simply insisted that is the way he must have gotten it; he did not get it from a woman.

Q. Did all this conversation take place outside?

A. Yes, sir; away from any listeners whatsoever.

Cross-examination.

By Mr. Gaskill:

Q. When was this that you had this talk with Binney?

A. After I went down to Dr. Crusen's with my sister.

Q. Sometime after July 31, then?

A. Yes, sir.

Q. How soon after that?

A. As near as I can tell, about three or four days, within two or three days.

Q. Within two or three days?

A. Yes, sir.

Q. Then, at that time you were satisfied that Binney had the gonorrhoea?

A. Yes, sir.

Q. And he, Binney, as you say, admitted to you that he had given it to your sister?

A. Yes, sir.

Q. Now, you visited there after that?

A. Once, I think, after that.

Q. Did you take any meals there?

A. No, sir.

Q. Did you borrow Binney's automobile after that time?

A. No, sir.

Q. Didn't you have Binney's automobile twice after that during the month of August?

A. I believe I did, yes, sir.

Q. Were you not quite intimate after that visit to Dr. Crusen's, were you not quite intimate with Binney?

A. To what extent—I do not think you would call it "quite intimate," no.

Q. Were you as intimate with Binney as you had been before?

A. Not necessarily so.

Q. Well, were you?

A. No, sir.

Q. How frequently did you visit the house after that?

A. As I remember, I was there once—possibly twice.

Q. Did you take a meal there?

A. No, sir; not to my knowledge.

Q. Did Binney visit at your house?

A. When?

Q. After this visit to Dr. Crusen's?

A. He was there once, yes, sir.

Q. Did he stay over night?

A. No, sir.

Q. Did he take a meal with you?

A. I do not remember.

Q. Now, isn't it a fact, that notwithstanding what you learned on this trip to Dr. Crusen's, that the relations between you and Binney continued just as friendly as they were before?

A. Not necessarily so, no, sir; I would not say so.

Q. Don't you remember being there at the house in Edgewater and accusing Binney of infidelity, in the presence of your sister?

A. Yes, sir.

Q. And didn't you call Mark Whitfield as a witness?

A. No, sir; he came in while I was there, but I did not call Mark in.

Q. You made the accusation in Mark's presence?

A. No, sir.

Q. Did not Mark hear the conversation?

A. Undoubtedly, yes, sir; that is the reason he came in.

Q. Did not Mark there at that time, say, that if Binney accused him of having the disease, he was willing to be examined by Dr. Rink?

A. Yes, sir.

Q. Didn't you want Binney to get the car out and take Mark to Dr. Rink's?

A. No, sir.

Q. Didn't you suggest it?

A. No, sir; I did not suggest anything about it at all.

Q. Was not there any conversation to that effect at all there?

A. Not that I remember.

Q. And did not Binney say that he would get out the car and take Mark to Dr. Mulford, and he refused to go?

A. No, sir.

Q. Wasn't it Binney Earl that telephoned to you, and not your sister, to go with Dr. Tracey and your sister to Dr. Crusen's?

A. Most certainly not.

Q. This marriage between your sister and Binney Earl did not meet with your approval?

A. No, sir; it did not.

Q. You tried to effect a separation soon after, between them?

A. In every way that I could.

Q. And you were never reconciled to it?

A. No, sir; I was not.

Q. You remember visiting Binney's mother at Burlington after the marriage?

A. Yes, sir.

Q. And there was such an exciting time there between you and Binney's mother, for she ordered you out of the house, didn't she?

A. No, sir.

Q. And she sent for her counsel?

A. No, sir.

Q. Didn't you, shortly after the marriage, try to get Binney to make a settlement on your sister?

A. No, sir.

Q. Did not you, in the presence of Binney's mother, at your mother's home in Burlington, and in the presence of your mother, try to arrange for a separation between them, and a settlement upon your sister?

A. Most certainly not.

Q. You knew from the time of the examination on July 31st, what the condition of your sister was?

A. Yes, sir.

Q. And you knew at that time that Binney was suffering from some disorder?

A. Yes, sir.

Q. You did not take your sister away?

A. No, sir.

Q. To your knowledge, she remained there and nursed Binney?

A. Yes, sir.

Q. And Binney nursed her?

A. So I understand.

Q. Didn't you say to Binney on the occasion when you were talking with him under the trees, that you did not accuse hm of cohabiting with another woman?

A. I most certainly did not.

Q. And that your sister might have contracted this inoculation from the toilet?

A. Absolutely not, never.

Q. Dr. Leigh, when was it that you first learned that anything was the matter with your sister?

A. I don't exactly remember the date.

Q. Was it before or after the visit to Dr. Crusen?

A. It was before then.

Q. Was it during Dr. Tracey's vacation, while he was on his vacation, and while Dr. Whittaker was there?

A. Yes, sir.

Q. Then, it was some time after the 9th of July?

A. Yes, sir.

Q. You cannot tell us how soon after that?

A. No, sir; not accurately.

Q. When Mark said, that if Binney accused him of having the disease he was willing to be examined by Dr. Rink, he said that in the presence of your sister, didn't he?

A. I don't know whether my sister was present at the time or not; some of the time I know she was there.

Q. That conversation took place at Binney's house at Edgewater?

A. Yes, sir; in the library.

MRS. MARY M. LEIGH, sworn in behalf of the petitioner, testified as follows:

Direct examination.

By Mr. Backes:

Q. You are the mother of the petitioner, Irma Leigh Earl?

A. Yes, sir.

Q. You are a widow?

A. Yes.

Q. You formerly lived in Trenton?

A. Yes, sir.

Q. Your daughter, the petitioner, is 22 years of age?

A. Yes, sir.

Q. You are living now where?

A. On the Beverly road, not far from Edgewater.

Q. How long have you lived in that neighborhood?

A. Two years last June.

Q. How long have you known Binney Earl?

A. Seven or eight years.

Q. Did you live near them at any time?

A. Yes, sir; for a few years we lived next door to them.

Q. You have how many children?

A. Three children.

Q. What are their ages?

A. Well, Dr. Leigh is my eldest son; he is 31; and I have a son 25 years of age, and Irma is 22.

Q. Do you know whether your children and Binney Earl played together as children?

A. My son Clinton and Irma and Binney used to be very chummy when we lived next door to them; of course, they were half-grown children then.

Q. Do you know this Mr. Goulard?

A. Yes, sir.

Q. Where did you first know him?

A. Well, he was one of the boys down at the Academy when my son and daughter went there to school at Burlington.

Q. Was he then a boy or a man?

A. Well, I imagine he is my son's age, about 25.

Q. Did you lose sight of him for a while?

A. Yes, sir.

Q. Did he move away?

A. He did not live in Burlington, you know.

Q. And after his school days, when did you next see him?

A. While we were building the bungalow, we were boarding at the hotel; that was two years ago; the first year they were housekeeping, and he came to the hotel and took a room, and he was selling some farm produce seeds, and he met my son and remembered him, and in the meantime, I often had my daughter up for dinner and supper, and he met her there, and Clinton told him that he would take him down some day for dinner.

Q. Well, your daughter met him there at that time?

A. Yes, sir.

Q. Now, were you a frequent visitor at your daughter's home?

A. Yes, sir; every day I was not down with Irma, she was up with me; we spent most of our time together.

Q. You mean after she started housekeeping?

A. Yes, sir.

Q. Did you spend any time more than mere daily visits at her house?

A. Yes, sir; always of a night, if Binney Earl was away, I was always down with my daughter, either myself or my son; she was never there alone.

Q. Do you know what Binney's habits were about staying away?

A. Well, he would be away occasionally of a night; not very often.

Q. During the month of June of last year, do you recall what his habits were then about staying away at night?

A. I know twice he was away during June at night, because I went down and stayed with my daughter.

Q. Do you know when he came in?

A. Sometimes he would not come in until the next day; twice that I remember, he stayed away all night.

Q. Do you know where he was?

A. No, sir; one time I asked him where he had been, and he said he had been up to his mother's.

Q. Did you learn of the illness of your daughter during last July or August?

A. Yes, sir.

Q. From whom did you learn it—from whom did you get the information?

A. From Irma.

Q. Did you report it to anyone?

A. Yes, sir.

Q. Whom?

A. I told my son Clinton, and I also went up and told Dr. Leigh.

Q. Do you recall Mrs. Earl and your son, with Dr. Tracey, going to Dr. Crusen in Philadelphia, for the examination of your daughter?

A. Yes, sir.

Q. Do you remember your daughter returning home that day?

A. Yes, sir.

Q. Was Binney at home?

A. Yes, sir.

Q. What happened between you and Binney at that time, what took place, what talk took place?

A. Well, a few days after my daughter was at Dr. Crusen's, Binney said he was going down to Philadelphia to a specialist, and he left with that intention, or at least, that is what he said. He stayed over night, and I went down and stayed with my daughter, and I was there when he came home, which was about noon the next day, and he said he came home in the morning but he had been up to his mother's; that is what he said; and I asked him why he did not come to his own home first, and he said he had been very angry at his mother and he went up to talk with her; he said that his mother wanted him to say he had contracted this disease from Irma, and that he would not say it, and he said he went to his mother to explain to her that he would not say it, because he did not get the disease from Irma, and that he gave it to Irma himself; he said his mother wanted him to say that he contracted it from Irma.

Q. Was anything else said at that time?

A. No, sir; that is all the conversation I had with him about it in any way.

Q. Did you have a conversation with him in which you asked him why he tried to give Dr. Tracey the impression that he got it from Irma?

A. Yes, sir.

Q. When was that?

A. That was one time when I was down there; we did not talk this over of any account there; he said Irma did not give it to him, and he did not want Dr. Tracey or his mother to think so, and that he knew he had given it to her. Binney usually avoided me when I went down

there after that, and I did not say anything more to him about it after that conversation; I did not think it was necessary.

Cross-examination.

By Mr. Gaskill:

Q. Mrs. Leigh, this was a runaway match between your daughter and Binney?

A. Yes, sir.

Q. And you were quite displeased with it?

A. Yes, sir.

Q. And you tried to separate them?

A. Yes, sir; we all did all we could to separate them.

Q. You wanted Binney or his mother to settle some money on Irma?

A. No, sir; all I wanted was to have my daughter separated from Binney.

Q. Irma nursed Binney while he was sick?

A. Yes, sir.

Q. And he nursed Irma?

A. Yes, sir; he seemed very nice to her while she was sick and helped her along.

Q. So far as you could see each of them did for the other all that could be done by either of them?

A. Yes, sir.

Q. Now, when was it that you first learned of Irma's illness or of anything being the matter with her, such as has been described here, such as the burning sensation?

A. I know I was down there on the Fourth of July staying with Binney and Irma, and spent the day with them, and Binney was not well then.

Q. I am not asking about Binney; I asked you when did you first learn that your daughter complained of this burning sensation?

A. That was some time in July.

Q. Not before that?

A. No, sir.

Q. You are quite sure of that?

A. Yes, sir.

Q. When Binney was sick, his mother was away at Point Pleasant, wasn't she?

A. Yes, sir.

Q. You knew what was the matter with him?

A. No, sir; I did not know at first until I went up to see; my son Clinton went down to see Dr. Tracey and had a talk with Dr. Tracey, and then I knew that Binney had impressed upon her, that when she and I had been shopping in Philadelphia, she must have used the toilet, and I went up and asked my son if those things could happen, and he said "No."

Q. That was some time in July, while Dr. Tracey was away on his vacation trip?

A. Yes, sir; I think that was after Mrs. Earl came home from Point Pleasant.

Q. Now, you feel quite sure that you did not receive any complaint from Irma before that time?

A. I know I did not.

Q. Did you urge Irma to go to a physician?

A. I went up to see Doctor ——

Q. That is not the question I asked you; I want to know if you urged your daughter to go to a physician?

A. Well, she was doctoring when I knew it.

Q. That is not the question—did you urge your daughter to go to a physician when you first learned from her of these symptoms?

A. To go to a specialist, I did, yes, sir.

Q. Did you at once tell her that?

A. Yes, sir; I told her I would rather her see a specialist.

Q. And you told her that the first time she spoke of this burning sensation?

A. No, sir, not then; I did not think of it then.

Q. When she first made a complaint to you of any

character, did you urge her then to go and consult a physician?

A. No, sir; I did not, then.

Q. Now, about this man Goulard; you knew that Irma was going with him, more or less?

A. What do you mean by that?

Q. That she visited places with him of amusement?

A. No, sir; she did not.

Q. Or had conversations together?

A. No, sir.

Q. Or walked together?

A. He never was there but once, at their house.

Q. You knew your husband was telephoned for by Binney to come over to the house on account of Mr. Goulard?

A. I was there at the time.

Q. You know your husband ordered Goulard out of the house?

A. No, sir; he never did.

Q. You know that Goulard left the house while your husband was there?

A. They left together; Mr. Leigh thought it was the silliest thing he ever heard of.

Q. Did not Irma, in your presence, at Binney's house, in the spring of that year, 1910, tell Mrs. Earl, that is, mother Earl, Binney's mother, that she, Irma, loved Goulard?

A. No, sir.

Q. And that she would rather live in a room with a man that she loved, than with Binney?

A. Not in my presence; if she ever said that, I never heard it.

Q. And was not Binney present at that time?

A. No, sir; I never heard anything of the kind.

Q. And did not Mrs. Earl say to you, "Take your daughter home, and in two years Binney will get a divorce"?

A. No, sir.

Q. And did not you reply, "No, I want them to live together"?

A. No, sir.

Q. Did not you afterwards, after that talk, at the Metropolitan Inn, in Burlington, that is, the hotel by the railroad station, take Binney's hand and tell him that you wanted him and Goulard to forget their enmity towards each other?

A. Never.

Q. Did not Binney, one evening at his home, while he was sitting on the porch in the summer time with his wife and yourself, and she being very slightly dressed, didn't he object to Mark Whitfield's coming out on the porch because Irma had on only a kimono?

A. No, sir.

Q. And when Binney objected to his coming out, didn't you say to Mark, "Come on, Mark, you are one of the family"?

A. No, sir; I would not say that to a servant.

Q. Didn't you tell Binney he was a fool for objecting?

A. No, sir; I never thought of such a thing.

Q. Didn't you tell Mark Whitfield that he had a home with you as long as he wanted it?

A. Never; why would I; he was hired as a servant.

Q. Well, Mark came to your house and lived after he was discharged from the Earl household, didn't he?

A. Never.

Q. Didn't he stay there?

A. Never.

Q. After your daughter Irma left the house in Edgewater in October, 1911, did not Mark come to your house and stay?

A. Never; my son employed him two days to work on his lawn, that was at our house; but Mark did not sleep there; Mark had been employed a great many times to work at my home.

Q. Did you see your son, the doctor, use Binney's automobile?

A. Yes, sir.

Q. In the month of August, 1911?

A. Yes, sir; he took a trip down to the shore one Sunday in it; Binney loaned it to him.

Q. This was after Irma and your son had taken the visit to Dr. Crusen; of course, we were always pleasant to Binney and made the best of the marriage, although we objected to the marriage.

Q. At that time that you took this automobile ride, you had learned, as you say, that Binney had the gonorrhoea?

A. Yes, sir.

Q. And you also had learned that he had given it to your daughter?

A. Yes, sir.

Q. Do you remember meeting one Ella Burns at Binney's home at Edgewater?

A. Yes, sir.

Q. Did Ella Burns ever come to your house?

A. Yes, sir.

Q. To the bungalow?

A. She stopped there one day; she stopped to see Mrs. Earl, to see my daughter Irma, and she stopped there one time when I had a dressmaker there; she stopped there to see the dressmaker; the dressmaker's name was Miss Watchhorn, I think that was early this spring that she stopped to see Miss Watchhorn, but when she stopped to see my daughter ——

Q. Mrs. Leigh, do you remember Miss Burns going to the hospital?

A. When I saw her, I think she had been to the hospital, and then she went back for something.

Q. Soon after her return from the hospital, did not you say in her hearing that Mark Whitfield could have a home with you as long as he lived?

A. No, sir; I would not say that to anyone; I don't know why I would say it.

Q. Did Ella Burns come to the bungalow where your home was to engage as cook there?

A. She came to see Mrs. Earl about the work or something.

Q. That was before she went to the hospital?

A. She came there to see my daughter while my daughter was at my house, and Binney was up at his mother's.

Q. Now, let me call your attention to a visit Ella Burns made to your house before the first of October; didn't you say, in her presence, that you wanted Irma and Binney to go back to the house and live together?

A. No, sir; I did not say so—after I found out ——

Q. Wait a moment—well, at the time that either you or Irma engaged her for a cook, didn't you say that?

A. No, sir; I did not say it.

Re-direct examination.

By Mr. Backes:

Q. How long had Irma been married to Binney when this Goulard incident took place?

A. It was the winter before last, the winter before this last winter.

Q. You mean the winter of 1910?

A. Yes, sir; it must have been 1910, yes, that was it.

Q. Irma was married in March, 1909?

A. Yes, sir.

WILLIAM WRIGHT, sworn in behalf of the petitioner, testified as follows:

Direct examination.

By Mr. Backes:

Q. Where do you live?

A. Beverly.

Q. Whom do you live with?
A. Mr. Binney Earl.
Q. Are you married?
A. Yes, sir.
Q. Do you live with your family?
A. Yes, sir.
Q. What family have you got?
A. I have a wife and three children.
Q. Where do they live?
A. In Beverly.
Q. Do you live in Beverly with Binney Earl, the defendant?
A. No, sir; I work for him.
Q. How long have you worked for Binney Earl?
A. I went to work for him a year ago the 22nd of last March.
Q. What did you do for him?
A. Well, I was hired there to cut the grass and run the automobile, and be a handy man.
Q. Your principal occupation was running the automobile, wasn't it?
A. No, sir; just doing anything that came to hand.
Q. But your principal occupation was running the automobile, wasn't it?
A. Well, I was doing everything.
Q. You did more of that than of any one thing, didn't you?
A. At times, yes, sir.
Q. In the summer time—particularly the time when the weather was propitious?
A. Yes, sir.
Q. When, during the day, did you run the automobile?
A. Sometimes in the morning, sometimes in the afternoon, and I run it at night.
Q. Where did you run the automobile to?
A. Places they wanted to go; I could not name the places they wanted to go.

Q. Now, you took Binney Earl out alone often, didn't you?

A. I left the place, yes, sir.

Q. Left what place?

A. His place.

Q. You took him out in the automobile often, alone, didn't you?

A. Yes, sir.

Q. Day time and at night?

A. Yes, sir.

Q. Where did you take him to?

A. To his mother's.

Q. Where else?

A. I took him to Lumberton, when he was selling those lamps.

Q. How many times did you take him to Lumberton?

A. I don't remember how many times I took him.

Q. How far is Lumberton from Edgewater Park?

A. I judge it is about 11 miles, as near as I can fix it.

Q. You have taken him over there at night?

A. He never went there but once at night, and he went there to demonstrate a boulevard arc.

Q. You have started out more than once in the evening?

A. Yes, sir.

Q. And did not return until late?

A. I only went once and did not return until late.

Q. Who was with you at the time of your ride from Edgewater Park to Lumberton at that time?

A. There was not anyone but Mr. Earl and I.

Q. Were there not two girls?

A. No, sir.

Q. When was the occasion when there were two girls in the automobile with you and Mr. Earl, and where were you going?

A. They were not there.

Q. Just think it over.

A. They were not there.

Q. Do you remember having a case of beer in the automobile one night?

A. No, sir.

Q. Do you remember having beer in the automobile one night when you and Mr. Earl were out alone?

A. No, sir.

Q. You know the McConahey girl—her name is really Cook?

A. I might know if I saw her, but I would not know her to speak to.

Q. What other place did you go to with Mr. Earl at night time besides Lumberton?

A. Well, I don't think of any place I went to except to his mother's and Lumberton.

Q. Do you remember going out one evening with Mr. Earl when you did not get back home until the next morning to your own home; do you remember the explanation you gave to your wife?

A. The next morning—no, sir.

Q. Do you mean to say you were never out ——

Mr. Gaskill: It seems to me that all of this is irregular and incompetent.

The Court: I will allow it subject to objection, and will deal with it on final hearing.

Q. You recall being away from your own home during last spring or the early summer all night long?

A. All night long?

Q. Yes; and you did not return to your home until the next morning?

A. I do not remember it, no, sir.

Q. Did such a thing happen?

A. No, sir; not last spring.

Q. When did it happen, if it did not happen last spring?

A. It did not happen until I stayed with Mr. Earl on three nights.

Q. Do you recall the time when you stayed out until two o'clock in the morning?

A. Yes, sir.

Q. Where had you been that night?

A. Well, I went home and Mr. Earl called me up by means of the people who lived next door, through their telephone, and said that his machine was broken down and he would like for me to come and help him out, and I asked him where he was, and he said, "This side of Odd Fellows' Cemetery," that is between Burlington and Beverly; so I took the ten o'clock car and went up there, and I did not get home that night until two o'clock.

Q. Who was with Mr. Earl at that time?

A. Clinton Leigh.

Q. I want to know whether you recall a time when you and Mr. Earl went out together, before the Fourth of July of last year, when you did not return home until two o'clock in the morning?

A. No, sir.

Q. Where else did you go with him at night?

A. I did not go anywhere but to Lumberton and to Mrs. Earl's and Burlington.

Q. When you went to Mrs. Earl's and Burlington, did you stay there?

A. Until he got ready to come home; if he was going to stay all night, then I came home myself.

Q. Where did you take Mr. Earl alone, in the day time?

A. Well, different places; I went around with him to sell lamps; I could not name every place.

Q. When you were not selling lamps, where did you take him?

A. No further than Burlington, to the best of my knowledge.

Q. Have you ever been to Philadelphia with him?

A. Yes, sir.
Q. In the automobile?
A. Not in his automobile, no, sir.
Q. Anybody else's?
A. In George McCoy's.
Q. When was that?
A. That was the time he went down to South Jersey, and I went with him.
Q. Where did you go in Philadelphia?
A. I could not name the street, because I know nothing about Philadelphia.
Q. Could you tell me when it was?
A. Not the date.
Q. The year?
A. It was last year.
Q. Before the first of July?
A. I could not say that; I don't know when it was, but I know it was last summer.
Q. How long did you stay in Philadelphia?
A. We were there about one hour, as near as I can get at it.
Q. Where was Mr. Earl during that time?
A. In a house.
Q. Whose house?
A. I don't know.
Q. And where was the house located?
A. I don't know what street it was.
Q. Did you stop in front of the house in the automobile?
A. Yes, sir.
Q. Who was in the automobile with you?
A. George McCoy.
Q. Who was in the house with Mr. Earl?
A. I don't know.
Q. Whom did he go in the house with?
A. By himself.
Q. You have no idea what street it was on?
A. No, sir.

Q. What month was this in?
A. I don't know.
Q. Was it in June?
A. I don't know.
Q. What time of day was it?
A. I could not exactly tell you the time of day it was.
Q. What kind of a looking house was it?
A. It was a brick house.
Q. How many stories?
A. I could not tell you.
Q. Was it in the central part of Philadelphia?
A. I could not say.
Q. He was not there selling lamps, was he?
A. No, sir; he went on other evenings.
Q. Did you see the party personally who let him in the house?
A. No, sir.
Q. Do you know whether he knocked or rang?
A. He rang the bell.
Q. Did someone come to the door?
Q. Did you see that somebody come to the door?
A. No, sir.
Q. You don't know whether it was a man or a woman?
A. No, sir.
Q. Or whether it was a white man or a black man, or a white woman or a black woman?
A. No, sir.
Q. Will you describe the house?
A. I don't know if I can do that.
Q. What kind of porch did it have?
A. It did not have any porch; it had stone steps.
Q. And white marble trimmings to the house?
A. I don't know about that.
Q. This was a private dwelling house, was it?
A. I don't know.
Q. It had that appearance, didn't it?
A. I don't know.

Q. How far were you from the house itself?
A. How far was I?
Q. Yes.
A. At the curbstone—in the automobile.
Q. Did you have a cover on your automobile?
A. A top?
Q. Was the top up?
A. Yes, sir; I could see out of the side.
Q. Which way was your automobile pointing, south or north?
A. I don't know; it seemed to me it was heading this way.
Q. You were on the wheel side of the automobile?
A. No, sir; George McCoy was driving the car.
Q. And Binney Earl was in that house how long, do you say?
A. I could not say how long; I don't know how long he was in there.
Q. Two hours?
A. I could not say; I don't know just how long he was there, for I don't know what time we got there and I don't know what time we left; I know we were there about an hour, but I could not say that he was in there that time.
Q. Did you see him come out?
A. Yes, sir.
Q. From the time he disappeared from your view going into the house, and again appearing in your view coming out of the house, you had not seen him?
A. Oh, yes, sir; he was out twice to talk to Mr. McCoy.
Q. Trying to induce Mr. McCoy to go in?
A. No, sir.
Q. Where does Mr. McCoy live?
A. Riverside, New Jersey.
Q. What is his first name?
A. George McCoy.
Q. Is he living?

A. He is dead, as far as I know.

Q. How often did you go to Philadelphia during last year and before July the first, with Binney Earl?

A. Only that once.

Q. Now, how often were you out with him alone during last year, prior to the first day of July and at night time?

A. Well, I don't know how many times I was out; I could not say.

Q. A good many times?

A. Well, not so awfully much at night, because Mark Whitfield drove the car a great deal at night, and just at times he called on me in case he broke down on the road.

Q. Do you mean to say that only once he went to Lumberton to sell lights, and once you went out to meet him on the highway when his car broke down?

A. I said that he was broken down.

Q. I am inquiring as to the number of times you were out with him?

A. I could not remember the times, for I was out, perhaps, once a week, and maybe I would not go out again for two weeks, and maybe I would be out twice; I did not keep account of the times.

Q. Now, when you went out with him at night time, Mrs. Earl not being along with you, who was out with him?

A. Nobody but him and I.

Q. At no time were there other women in the car with you and Earl at night time when you were out?

A. No, sir.

Q. Was there ever a woman in the car at night time when you and he were out, other than Mrs. Earl?

A. No, sir.

Q. Just think it over.

A. No, sir.

Q. Do you recall a time when you and Mr. Earl went out together alone of a night, during last year, prior to

July, when Mr. Earl asked you to get out of the car, and he took the car away with him?

A. No, sir; I don't remember—not when he was by himself.

Q. After he asked you to step out and wait for him, and you waited until two o'clock in the morning for him, out in the country?

A. No, sir.

Q. Did you see two women in the car with him when you were not in the car with him?

A. Sir?

Q. Did you see two women in the car with him when you were not in the car with him?

A. I never had two women in the car with him, unless it was his wife or his mother.

Q. I am excluding them; I am trying to refresh your memory as to one certain night when you and Mr. Earl went out alone; I am asking you whether, upon such an occasion, you did not see two girls in the car with him?

A. No, sir; I did not.

Mr. Gaskill: The Court understands I am objecting to this line of examination?

The Court: I will deal with it on final hearing.

By the Court:

Q. Mr. Wright, are you still in the employ of Mr. Earl?

A. Yes, sir.

Q. Does he frequently drive his own car?

A. Yes, sir.

Further direct.

Q. I am trying to refresh your memory, Mr. Wright, of an occurrence ——

Mr. Gaskill: I must insist, with due respect, that this is not a matter for consideration upon final hearing or upon the conclusion of the testimony, for the Court to consider, but it is a matter of the due administration of justice, the proper and orderly method of the trial of the cause. Now, this witness has not shown by his manner any reluctance to answering questions that were put to him; he has been absolutely frank in his answers; he has repeatedly, over and over again, denied that he was out on any occasion with Mr. Earl at night with two women; it has been repeated over and over, and the denial is in, and I submit, as a matter in the due progress of the cause and the examination of a witness, that a further examination on this line and in this manner is entirely improper and should not be permitted by the Court.

Mr. Backes: I have not finished my question yet.

Q. One evening when you did not return to your home until early the next morning, and there gave an explanation to your wife of where you were and what you had been doing; do you remember such an occurrence?

A. No, sir.

Mr. Gaskill: I renew my objection.

The Court: I will allow the question and will deal with it on final hearing.

Q. Can you say whether such an occurrence took place or whether such a thing occurred—you got home early in the morning after being out with Mr. Earl, and there made an explanation to your wife as to where you were?

A. Well, if I was out—I don't understand the question.

Q. What were you going to say?

A. If I was out with Mr. Earl, I always told my wife where I was.

Q. Do you remember now being out until two or three o'clock in the morning on one certain night and then coming home and then giving your wife the explanation as to where you had been?

A. No, sir.

Q. Do you say you cannot remember it?

A. No, sir.

Cross-examination.

By Mr. Gaskill:

Q. Mr. Wright, on the occasion that has been referred to, when you and Binney Earl went in George McCoy's automobile, he driving, to Philadelphia, do you recall whether or not you went anywhere else that day?

A. Yes, sir.

Q. You went down to Fortescue?

A. Yes, sir.

Q. And was not the place where you went to in Philadelphia, Dr. Whittaker's office?

A. I don't know; I could not say, because I did not know.

Q. Well, didn't you, while you were there at this brick house with the steps, that you have been asked about, didn't you take Dr. Whittaker's mother in your car and take her down to Fortescue?

A. Yes, sir.

Q. Binney Earl was quite sick so you had to attend to him?

A. Yes, sir.

Q. And another person drove the car?

A. Yes, sir.

Q. And he was hunting up Dr. Whittaker?

A. Yes, sir.

Q. Now, do you recall whether you went anywhere else with Mr. Earl in the car at night, with these lamps for which he was the county agent—to anywhere else than to Lumberton?

A. Well, we went to Burlington, but we never got out of the automobile; he was just around the street talking to men that he knew; and he gave them these circulars that he had to show them about his light, and we did not go to Lumberton but the once to demonstrate that boulevard arc.

Q. Who was with you that time?

A. Mr. Earl and myself, and we left the boulevard arc burn there, and I went over on the following day and fetched it home.

Q. In the automobile?

A. Yes, sir.

Q. And did you go over alone?

A. Yes, sir.

Q. Did Binney Earl ever go out in the automobile, day or night, in the automobile alone?

A. I don't know, I could not say; if he went out alone at night, I was at home and did not know anything about it.

Q. Ordinarily, your day closed at six o'clock?

A. Yes, sir; sometimes I would be a little later than this.

Q. Your home at Beverly was how far from Binney Earl's house?

A. One mile and a quarter.

Q. You were not along on the occasion when Binney and his wife and Mark went over to Lumberton?

A. Yes, sir; but I did not go all the way to Lumberton; I went as far as—we went from the house to the bungalow, that is Mrs. Leigh's home, and we went from there to Burlington, and then we came back and stopped at the bungalow again; I had the dysentery all day, and when I got to the bungalow I ought to have

got out, but I saw they were in a hurry, and he went on down to Beverly to meet a train to get some circulars off it; when I got to the Five Points at Beverly, before I got there, I asked him to please drive a little faster, for I had to get out, and when I got there I was sick.

Q. Did you get out at the Five Points?

A. Yes, sir, and I went in the yard.

Q. Did they wait for you?

A. No, sir; and I did not see any more of them that day.

Q. When you left the automobile was Mark and Irma both in the car?

A. Yes, sir.

Q. Who was driving?

A. Mr. Earl.

Q. Now, were you out with Mr. Earl on any occasions when the car broke down?

A. Yes, sir.

Q. Tell us first, about this time when you were home at night and the next door neighbor told you that there was a telephone message from Binney Earl; what time of night was that?

A. As near as I can get at it, it was between eight and nine o'clock; I know I was in bed.

Q. And you say you took the trolley car and went up to the Odd Fellows' Cemetery, which is on the outskirts of Burlington?

A. Yes, sir.

Q. And what did you find there?

A. The carbureter had dirt in it, and it would not feed gasoline to the engine; there was grit and sand in it; we had no pan on the car.

Q. How long did it take you to get the automobile in running condition?

A. Well, as near as I can get at it, I should say half an hour.

Q. Did you go down home with Binney Earl?

A. Yes, sir.

Q. What time did you get there?

A. I don't know just about what time it was; I left Beverly at ten o'clock; I could not get any other car up until ten o'clock; I got there at 10.30; it must have been close to 12 o'clock when I got home.

Q. Did you go home that night, to your own home?

A. Yes, sir.

Q. After you left Binney Earl at his home?

A. Yes, sir.

Q. How did you go home?

A. I walked home.

Q. Now, state whether or not the automobile broke down occasionally.

A. Yes, sir.

Q. When you were along with Binney?

A. Not very much when I was along with him.

Q. What was it that you saw that caused the breaking down?

A. The distributing cap came off several times, and the distributor of the magneto came loose, of course, it might have jarred loose; of course, it was disconnected; there is a screw there you could tighten up, and one morning I went down and found the wires had been changed on the automobile in the garage; the car had been out the night before, but I don't know who had used it.

Q. Do you know whether or not Binney continued to keep the car in his own garage, or whether he removed it to another place?

A. He kept the car there until this trouble started, and then he moved it in Burlington to his mother's place.

Q. What do you mean?

A. The trouble between him and his wife.

Q. How long was that before his wife left that he moved the car up to Burlington?

A. As near as I can remember, it was about two or three weeks.

Q. Was there any trouble with the car breaking down after that?

A. No, sir; whenever we wanted to use it, it was ready to go.

Q. How was it before that?

A. We always had trouble with it.

Q. The same car?

A. Yes, sir.

Q. It had not been to the shops in the meantime for repairs?

A. No, sir.

Q. Did you hear any talk between Binney and his wife with reference to the car breaking down, or the cause of it?

Mr. Backes: I object, as not proper cross-examination.

The Court: I will allow it.

Q. You did not?

A. No, sir.

Re-direct examination.

By Mr. Backes:

Q. Towards the latter end of September or the early part of October, Mr. Earl went to his mother's home to live, didn't he?

A. I don't know; I don't know if he went there to live or not.

Q. He was there for a time while his wife was at her mother's house?

A. Yes, sir.

Q. Before they packed up?

A. Yes, sir.

Q. You recall being at the house when Mrs. Earl was packing up; do you recall that she was packing up, that

she did pack up after being at her own mother's house for about two weeks?

A. I was there with Mr. Earl when she was packing up.

Q. She then had been away from the house how long?

A. I could not say.

Q. He had been away from the house how long?

A. I could not say how long he was away.

Q. But while he was away, he was up to his mother's?

A. Yes, sir.

Q. When he went to his mother's he took the car with him, didn't he?

A. Yes, sir.

Q. He did not take the car with him to his mother's before he went?

A. No, sir.

Q. Mr. Earl was somewhat of a mechanician, wasn't he—a machinist?

A. As far as I know of.

Q. He was constantly tinkering with his car, wasn't he?

A. I don't know; I helped him take his car apart, I know.

Q. How many times?

A. Once, to my knowledge.

Q. How many times did you see him taking parts of the car apart?

A. I could not say.

ANDERSON SHINN, sworn in behalf of the petitioner, testified as follows:

Direct examination.

By Mr. Backes:

Q. Where do you live?
A. Burlington.
Q. What is your business?
A. I am an inspector of the Department of Motor Vehicles—of the State Department.
Q. Aside from that, what is your profession?
A. I have no other employment.
Q. How long have you been an inspector?
A. About five years.
Q. What was your business on the 15th of March, 1908?
A. I was inspecting motor vehicles.
Q. Were you also a detective by profession at that time?
A. Well, I do not recall that I was doing anything else at that time, Mr. Backes, except watch the work of the department.
Q. Your name is "Anderson"?
A. Yes, sir.
Q. Where did you live at that time?
A. In Burlington.
Q. Did you know Binney Earl?
A. I have known him for several years.
Q. Do you know his mother?
A. Yes, sir.
Q. On the 15th of March, 1908, or thereabouts, were you employed to find Binney Earl?

Mr. Gaskill: I object to that as incompetent and irrelevant; it antedates the marriage even; it cannot have any bearing upon this case.

Mr. Backes: I submit it can have a bearing, and we have a right, under the present circumstances of this case, to show the entire life and the predisposition of this husband to consort with other women, and that predisposition or tendency does not cease, as a matter of law, with marriage. We have a right to go into his entire history; it is so laid down by authority.

The Court: I will allow the question for what it is worth, and deal with it on final hearing.

Mr. Gaskill: No matter how irregular his life may have been before marriage, that has nothing to do with the question of whether he has been guilty of infidelity towards this woman.

The Court: Answer the question.

A. I do not recall the date, Mr. Backes.

Q. I am showing you depositions in the case of Cook versus Cook, in the Court of Chancery, and ask you whether your signature is appended to that?

A. That is my signature; may I look at the date of the paper?

Q. Yes.

A. Yes, sir; in a general way, I recall it.

Q. On or about the 15th of March, 1908?

A. I have no recollection excepting that paper, Mr. Backes; I have no dispute but what that is entirely correct.

Q. The question is, whether, at that time, you were employed to locate Binney Earl, the defendant in this case?

A. I have no recollection of it, excepting that paper as you show it to me; I am not trying to evade at all a proper answer, but I cannot recollect at that time having any employment to look for Binney Earl.

Q. Do you say your memory has failed you?

A. No, sir; I have had no occasion to keep it in mind.

Q. Do you remember going to Baltimore at or about that time?

A. I remember going to Baltimore.

Q. What did you go there for?

A. I went to see if, possibly, I could locate Mr. Earl.

Q. At whose request did you go?

A. I was employed by his mother.

Q. I thought you said you did not remember that you were employed?

A. I did not say that; I remember going to Baltimore; I cannot connect the question, with that particular date; that is what I am trying to tell you.

Q. Did you find him?

A. Yes, sir.

Q. Where?

A. At an hotel in Baltimore.

Q. What was the name of the hotel?

A. I could not tell you.

Q. Where did you find him in the hotel?

A. I found him in a room on, possibly, the third floor of the hotel.

Q. Who was in the room with him?

A. A girl from Burlington.

Q. What was her name?

A. Margaret McConahey.

Q. Is she still living?

A. I don't know, sir, I have no knowledge.

Q. Was she afterwards married?

A. I don't know whether she was married prior to that or afterwards.

Q. To whom was she married?

A. Well, I presume to Mr. Cook; I only assume that from the fact that her name was quoted as "Cook."

Q. Well, what condition was Binney Earl in as to wearing apparel when you entered the room?

A. Well, in undress uniform, possibly.

Q. How was the girl dressed?

A. She was fully dressed.

Q. What do you mean by "undress uniform"?

A. When I say "undress uniform," I mean that he was in night clothes, underwear, possibly.

Q. What time of the day was it you entered the room?

A. It was at night.

Q. What time of night?

A. I presume about nine o'clock.

Q. While you were in Baltimore, how did you get trace of Binney Earl?

Mr. Gaskill: Objected to as absolutely immaterial.

Q. Did you find his name on the register?

A. Yes, sir.

Q. And under what name?

Mr. Gaskill: Objected to as incompetent.

The Court: The objection is overruled.

A. "Binney Woodward Earl."

Q. Alone or otherwise?

A. "And wife."

Q. What did you do with Binney Earl?

A. I brought him back to Burlington.

Q. What did you do immediately after you were in the room?

A. I waited until he was dressed, then I took him down to the hotel office.

Q. And the girl with him?

A. Yes, sir.

Q. And what then?

A. I had them detained at the police headquarters.

Q. You had them locked up at the police headquarters?

A. The girl was under the charge of the matron, and the boy was in the corridor possibly with the ——

Q. Well, you brought them back to Burlington?

A. Yes, sir.

Q. And you delivered them to whom?

A. I brought them back to Burlington; I cannot say that I delivered them to anyone.

Q. Where did you take them to?

A. I took them to Mr. Reginald Branch's office.

Q. Who is he?

A. A lawyer.

Q. Reginald Branch?

A. Yes, sir.

Cross-examination.

By Mr. Gaskill:

Q. Anderson, how long was this occurrence that you have spoken of before Binney married his present wife?

A. I can only state that in a general way, but my impression is, possibly a year or two.

Mr. Gaskill: I want to make a motion to strike out the whole of this testimony as irrelevant.

Re-direct examination.

By Mr. Backes:

Q. I want you to read this deposition of Cook against Cook, and then tell me when it was you went to Baltimore to get Binney Earl?

A. According to the deposition here, on the afternoon of Sunday, the 15th of March,—and this is dated the 18th of February, 1909 ——

Q. So, the best of your recollection is, that it was in March of 1908?

A. That is, according to this paper.
Q. Does that refresh your recollection?
A. I have no question but what this is correct.

JULIA RICHARDSON, sworn in behalf of the petitioner, testified as follows:

Direct examination.

By Mr. Backes:

Q. What is your name?
A. Mrs. Oscar Lathbury.
Q. What is your maiden name?
A. Julia Richardson.
Q. Do you know a girl by the name of Margaret Cook, whose maiden name was Margaret McConahey?
A. Yes, sir.
Q. Where is she now?
A. She is at Barnegat, I heard, but whether she is, I don't know.
Q. When did you last see her?
A. I have only seen her once since I have been married, and that was this last winter, she was up visiting her mother.
Q. Where do her people now live?
A. In Florence, her father's name is John McConahey, and I don't know her mother's name.
Q. Do you know what name she goes under?
A. She is lawfully divorced from her husband and has married Fred Albery.
Q. Did Fred Albery formerly live at Beverly?
A. Yes, sir.
Q. Do you know Binney Earl?
A. I know him through her, that is all, through Margaret; I got acquainted with him in 1908.

Q. When and where?
A. In Burlington.
Q. Did you ever meet Binney Earl in Atlantic City?
A. Yes, sir.
Q. Where?
A. I never met him there, we went there together.
Q. Who did?
A. Margaret and Elmer Vendegrift and Binney Earl and myself.

Mr. Gaskill: Objected to.

The Court: The objection is overruled.

Q. When was that?
A. It was the same year that he went to Baltimore; we went to Philadelphia Saturday night and Atlantic City Sunday morning.
Q. The four of you?
A. Yes, sir.
Q. And you?
A. Yes, sir.

Mr. Gaskill: This is all under the same objection.

The Court: You understand my position in the matter; I take it, subject to expulsion from the record on final hearing if I so conclude.

Q. What time did you get to the West Jersey Hotel?
A. I don't know what time it was.
Q. What time did you leave?
A. About eight o'clock in the morning.
Q. And you went direct to Atlantic City?
A. Yes, sir.
Q. Where did you stop there?
A. At the O'Neill Hotel, I think it was.
Q. How many rooms did you four occupy?
A. Two.

Q. Communicating, or otherwise?
A. Communicating rooms.
Q. How long did you stay there?
A. Till Tuesday afternoon.
Q. Whom did you sleep with?
A. Mr. Earl.
Q. Sunday night?
A. Yes, sir.
Q. Whom did you sleep with Monday night?
A. With Mr. Earl.
Q. Where was Margaret?
A. With Elmer.

By the Court:

Q. What was the date of all this?
A. The same year he went away, in 1908, I guess it was.

Further direct.

Q. March of 1908?
A. The same year that he went away, whatever date that was.
Q. How soon did he go to Baltimore?
A. He did not come home with us; Tuesday afternoon he was to come up, him and her were to come up to Burlington, and we got a postal card that they had gone to Baltimore.

Cross-examination.

By Mr. Gaskill:

Q. You were a whore, then, were you?
A. I don't know that I was.
Q. Running with men, any man that came along?
A. I don't know that I did, no, sir.

Q. You were generally known around Burlington as "Razor Back"?

A. That is what they call me.

Mr. Backes: Will your Honor direct the defense to supply the petitioner with a copy of the testimony?

Mr. Gaskill: We object to that, for the reason that the Court has allowed a very liberal counsel fee, unusually large, and has made a very liberal allowance to this young woman; the counsel fee was $100.00, the allowance was $10.00 a week.

Mr. Backes: Vice-Chancellor Walker, when the allowance was made, said it was a small one.

Mr. Gaskill: Just a single word. If we had presented our evidence, or if we had presented our counterclaim and that evidence was in, there might be some justification for the request.

The Court: I do not think I shall allow the request at this time; you can renew your motion later on. The evidence is not in nor the witnesses heard upon which the cross-petition is based. Counsel may renew that motion later.

Adjourned to Friday, May 24th, 1912.

Continuation of the taking of testimony in the above-entitled cause, before Hon. Vivian M. Lewis, Vice-Chancellor, at the State House, Trenton, New Jersey, on June twelfth and thirteenth, nineteen hundred and twelve, at ten-thirty A. M.

APPEARANCES:

JOHN H. BACKES, ESQ., for the Petitioner.

JOSEPH H. GASKILL, ESQ., for the Defendant.

Mr. Gaskill: Since the last day's hearing in this cause, Mr. Eckard P. Budd, the solicitor of record for the defendant, has deceased.

The Court: You will be substituted in his place. Let it appear on the record, and you may draw up the order later.

JOHN CLINTON LEIGH, sworn in behalf of the petitioner, testified as follows:

Direct examination.

By Mr. Backes:

Q. What is your name?
A. John Clinton Leigh.
Q. You live where?
A. Burlington.
Q. What is your business?
A. I am employed in the Mechanics' Bank.
Q. What do you do there?

A. I am corresponding clerk.

Q. How long have you been the corresponding clerk at the bank?

A. Three or four years, I don't just remember.

Q. That bank is located where?

A. In Burlington, right opposite the railroad station.

Q. You are a brother of the petitioner in this case, are you?

A. Yes, sir.

Q. Do you know her husband?

A. I do.

Q. How long have you known Binney W. Earl?

A. I could not just tell you, eight or nine years, I should say.

Q. Where did you get acquainted with him?

A. We lived next door to him on Union Street in Burlington City.

Q. How long did you live next door to him?

A. Two years, I guess.

Q. How long ago?

A. About seven years ago.

Q. How old are you?

A. Twenty-five.

Q. Were you on intimate terms with Binney Earl when you lived alongside of him?

A. Yes, sir; I knew him very well; I used to go in his home quite a lot.

Q. Did you visit his home after he married your sister and they went to housekeeping?

A. I did.

Q. Frequently or otherwise?

A. Well, I used to go down quite a lot; I was always very fond of my sister, and, of course, it was a natural thing for me to do.

Q. I did not ask you to explain; I simply wanted an answer; that was all. Now, during the month of June or July of last year, did you see Binney Earl at his home when he was sick?

A. I did, yes, sir.

Q. Now, can you tell when it was that you first noticed his illness?

A. It was around this time of the year, about the 12th or 15th of June.

Q. What did you observe at that time?

A. Well, he sat around on the porch a great deal, and it hurt him to walk; he seemed to limp.

Q. Now, tell us what it was that you noticed.

A. I noticed he limped, and I asked him what was the matter, and he said he had inflammation of the bladder; that is when I first noticed it, and then, on July 4th—I first noticed it on the 15th of June ——

Q. How do you fix that time?

A. I went down to ask my sister if she wanted some early peas, and that is when they were getting ripe.

Q. Where did you see Binney then?

A. On the side veranda.

Q. What did you have to say to him?

A. I asked him what the trouble was.

Q. What did you say to him?

A. I asked him what was the matter, and he said he had inflammation of the bladder.

Q. Did he say anything more?

A. Not at that time, no, sir.

Q. When next did you see him?

A. On July 4th; he was not able to go to the races, I know that ——

Q. When did you next see him?

A. I don't know.

Q. How do you know that on the 4th of July he was not able to go?

A. Because he was not able to go to the races.

Q. Did you see him on that day?

A. Yes, sir; I saw him at his home at Edgewater Park.

Q. Between the time you took the peas to your sister, on or about the 15th of June, and the 4th of July,

did you see Binney Earl?

A. I saw him between that time.

Q. Do you recall during that time, whether he complained of his condition?

A. He did not get any better ——

Q. Now, tell us what happened on the Fourth of July.

A. I went down with the idea of going to Mt. Holly Fair to see the races, and he said the jar of the car hurt him and he would not go.

Q. Did you invite him to go?

A. No, sir; but my sister and all of us were to go over.

Q. Had any arrangement been made before the 4th of July to take the party to the fair?

A. We had talked it over about going to see the automobile races.

Q. Who had talked it over?

A. My sister and Binney Earl and me.

Q. How long before the Fourth of July?

A. I don't remember.

Q. What was his condition, as you observed it, on the Fourth of July?

A. It seemed to hurt him to move at all; he sat on a chair on the veranda at Edgewater, at his home, most of the time.

Q. What did he say as to his physical condition at that time?

A. I asked him why he did not consult a doctor, and he said that he had inflammation of the bladder and that he was taking something for it, and that was all.

Q. What else did he say?

A. He did not say anything else then.

Q. Did he speak freely of this matter?

A. No, sir; he seemed to evade it; I asked him why he did not have my brother down to see him, and he did not seem to want to talk about it at all.

Q. Did you people go to the fair?

A. I went with a man that lived across the way from where I do; I went with Mr. Scott, a farmer ——

Q. Binney didn't go along?

A. No, sir.

Q. At that time he only complained of a bladder trouble?

A. That is what he told me.

Q. Did you see Binney at any time later?

A. Yes, sir.

Q. When?

A. I could not give the dates; every once in a while I would visit my sister.

Q. I did not ask you that; I asked you whether you saw him later?

A. Yes, sir.

Q. About when was it—about how long after the Fourth of July?

A. Well, in September, I remember I saw him, or in the last of August.

Q. Do you recall going to Dr. Tracey?

A. I do.

Q. Before going to Dr. Tracey, had you heard of statements made by anybody of and concerning Binney's condition?

A. Yes, sir.

Q. And was it in consequence of those statements that you went to Dr. Tracey?

A. Yes, sir.

Q. Did you have a talk with Dr. Tracey of and concerning Binney's condition?

A. Yes, sir.

Q. And after seeing Dr. Tracey did you call upon Binney Earl?

A. I did.

Q. Did you have a talk with him?

A. I did.

Q. Did you tell him what you had learned?

A. Yes, sir.

Q. And what did you tell him?

A. I told him I had been to Dr. Tracey and talked with Dr. Tracey and had asked Dr. Tracey what was the matter with Binney, and Dr. Tracey had said he would not commit himself, and I asked Dr. Tracey if he had the gonorrhoea, and he said he would not commit himself, and I knew if he did not commit himself ——

Mr. Gaskill: Objected to; I object to the statement "and I knew if he did not commit himself."

Q. Is that what you said to Binney Earl?

A. I told Binney Earl that when I went back—I told Binney Earl that if Dr. Tracey would not commit himself, that he must have the gonorrhoea, and I asked him if he did have it, and he said then that he did have it, and Dr. Tracey also intimated to me—I told Binney that Dr. Tracey had said he caught it from my sister; I told Binney that.

Q. Whom did you tell that to?

A. I told Binney that Dr. Tracey had told me that Binney intimated that he caught it from my sister, and Binney said that was not so; he said his mother said that, and it was not so; he said that Mrs. Earl wanted him to say that; that was the conversation.

Q. Did Binney say anything else to you that you recall?

A. I do not recall.

Q. Didn't he say where he got it from?

A. He said he did not know.

Q. Did he say anything else?

A. No, sir; only he said he knew he did not get it from my sister; we had a talk about that.

Q. Did he say anything about a toilet?

A. Yes, sir; he said he might have caught it from a toilet, and I told him I did not think that was possible.

Q. What did he say to that, what further did he say about it?

A. I don't remember now.

By the Court:

Q. Did he make any other remark when he said that he got it from the toilet?

A. I do not remember.

Further direct.

Q. Did he say anything about Chester or your mother?

A. Yes, sir.

Q. What did he say about that?

A. He told me not to tell Chester; he said that he was afraid Chester would come down and kill him, and he did not want me to tell mother, because it would worry her, he said.

No cross-examination.

PETITIONER RESTS.

Mr. Gaskill: I ask permission to recall Mrs. Earl, the petitioner, for two questions.

Mr. Backes: The petitioner has rested.

The Court: I will allow it.

IRMA LEIGH EARL, recalled.

Cross-examination.

By Mr. Gaskill:

Q. Mrs. Earl, you knew of this escapade of Binney's with the woman, to Baltimore and so on, and his arrest there?

A. I read of it in the papers.

Q. You knew of the fact at the time you married him?

A. His mother came to deny it.

Q. You had heard of that fact when you married him?

A. Yes, sir.

Q. Now, I wish to show you a letter. Mr. Goulard's name is Alexander, isn't it?

A. Yes, sir.

Q. You know his handwriting, don't you?

A. Yes, sir.

Q. Is not that in his handwriting (showing witness a paper)?

A. It looks like it.

Mr. Gaskill: I want to offer this.

Mr. Backes: Let me see it first, please.

(Mr. Gaskill hands it to Mr. Backes.)

Mr. Backes: I should like to examine on this.

The Court: Very well.

By Mr. Backes:

Q. Did you know other than from newspapers of the McConahan escapade?

A. No, sir, I did not.

Q. Did Mrs. Earl, Binney's mother, speak of it to you, before your marriage?

A. Yes, sir; she came to me and said that it was not true, that it was just a false report, and her father also told me it was not so.

Q. Whose father?

A. Mrs. Earl's father, and he said "The devil is never as black as he is painted," and asked me if I would let him call again.

Q. And you believed the mother, of course?

A. Naturally, I would.

Q. Did you ever see this letter before today?

A. No, sir; I never saw that at all; it looks like his writing.

Q. But do you know his writing?

A. He wrote one letter after he left there, thanking me; it looks like his writing, but I could not swear to it.

Q. You never saw this letter before in your life?

A. No, sir; I never did.

Mr. Backes: I object to this going in evidence.

Mr. Gaskill: I will trace the letter further before I offer it. I have nothing further, Mrs. Earl.

PETITIONER RESTS.

DEFENSE.

BINNEY WOODWARD EARL, the defendant, sworn in his own behalf, testified as follows:

Direct examination.

By Mr. Gaskill:

Q. You are the defendant in this case?
A. I am, yes, sir.
Q. And you were married by the Rev. James Stoddart, rector of the St. Andrews' Church, of Mt. Holly, to the petitioner, as has been testified?
A. Yes, sir.
Q. Since your marriage to the petitioner, have you had sexual intercourse with any other woman than your wife?
A. I have not.
Q. Did you contract any secret disease since your marriage as the result of intercourse with any other woman than your wife?
A. I have not.
Q. You have known the petitioner for quite a number of years?
A. I have, yes, sir.
Q. You were children together?
A. We were.
Q. Before you were married had you communicated to your mother or to Irma's mother, the intention on the part of you two to get married?
A. To my mother, yes.
Q. She knew that you intended to marry Irma?
A. Yes, sir.
Q. Did she know that you were going to Mt. Holly to the Rev. Mr. Stoddart for that purpose?
A. She did not.

Q. Then, the marriage itself was a secret marriage, was it?

A. It was, yes, sir.

Q. After your marriage, where did you go?

A. We went directly that night to Moorestown, New Jersey; we stayed there over night, and went to Point Pleasant, New Jersey, the following day.

Q. And how long did you remain at Point Pleasant?

A. Just over night, if I recall it correctly.

Q. Then what did you do?

A. We went to Philadelphia by train and spent one night there.

Q. And from there?

A. We returned in company with Mrs. Thompson, to Mrs. Leigh's house—my wife's mother's house.

Q. Who was Mrs. Thompson?

A. She is some relative of my wife.

Q. Then she went with you and Irma from Philadelphia to your wife's mother's home on this third or fourth day after the marriage?

A. She did.

Q. How old are you?

A. Twenty-five.

Q. Well, after you had made your explanation concerning the marriage at Mrs. Leigh's, where did you go?

A. We went to Atlantic City, to Atlantic City.

Q. Before you went to Atlantic City did you visit your mother?

A. I did, yes, sir.

Q. With your wife?

A. No, sir.

Q. You left her at her mother's, did you?

A. Yes, sir.

Q. And you went and saw your mother?

A. Yes, sir.

Q. How long were you in Atlantic City?

A. As near as I can recollect, ten days.

Q. Where did you stay while in Atlantic City?
A. At the Muncaster.
Q. Well, how long did you remain in Atlantic City?
A. As close as I can remember, it was for ten days.
Q. And from Atlantic City, where did you go?
A. We went back to Burlington.
Q. And where did you go to there?
A. If I recollect correctly, we went to Mrs. Leigh's first.
Q. How long did you remain there at Mrs. Leigh's?
A. We were there for a number of days, but I don't remember how many.
Q. While there, was anything said by Mrs. Leigh, or any member of Irma's family, concerning their satisfaction or dissatisfaction with the marriage?
A. There was.
Q. What was it?

Mr. Backes: Objected to.

The Court: I will allow the question, and will deal with it on final hearing.

Q. What was said, and by whom?
A. It was said by Mrs. Leigh, that she did not approve of the marriage; she wanted to know how much I would give ——

Mr. Backes: I object to any statement made by Mrs. Leigh.

Mr. Gaskill: I am not accustomed to trying cases this way; I have always understood that when the Court rules, that counsel is bound by it.

Mr. Backes: There was another question asked, and I objected to that.

A. How much I would give her if she lived apart from me, separated us ——

Q. Did you consent to any separation on a money basis?

A. I did not.

Q. Was any such effort as that made afterwards by Mrs. Leigh, the mother of Irma?

A. No, sir.

Q. Or by the doctor?

A. Yes, sir.

Q. Where was that?

A. At Mrs. Leigh's residence on Locust Avenue.

Q. And what was it he said?

Mr. Backes: Objected to for the same reason, and because it is immaterial to this issue.

The Court: I will deal with it on final hearing, and I will allow the question.

A. He wanted to know how much I would give his sister if she left me.

Q. What answer did you make?

Mr. Backes: Objected to for the same reason.

The Court: I make the same ruling.

A. None.

Q. After this, did you and your wife go anywhere on a visit?

A. Not that I recall.

Q. Where did you live then, from that time on?

A. Up until, I think it was December, we lived at my mother's, on Union Street.

Q. And was your wife living there with you?

A. She was.

Q. Now, how long did you and your wife live at

your mother's on Union Street, in Burlington?

A. I do not recollect the exact time.

Q. Some months?

A. I think so, about two, I should say.

Q. Where then did you go?

A. We moved into our new home at Edgewater Park.

Q. Who built that home, you or someone else?

A. My mother built it for us to live in.

Q. Then, you and your wife started housekeeping there?

A. Yes, sir.

Q. Now, about when was that?

A. That was in December, I do not recollect the date.

Q. Of what year?

A. Nineteen hundred and nine.

Q. Who constituted your household besides yourself and your wife?

A. Lizzie Bright, a cook, and Mark Whitfield; Mark Whitfield was the outside man.

Q. How long did you and your wife continue to live in this Edgewater house?

A. Until about the first of October.

Q. Of what year?

A. Nineteen hundred and eleven.

Q. This last year?

A. Yes, sir.

Q. Who left the house first—you or your wife?

A. I did.

Q. And where did you go?

A. To my mother's.

Q. In Burlington?

A. Yes, sir.

Q. What was the occasion of your leaving?

A. My wife took a friend in the automobile to Columbus Inn, and I accompanied them; I got as far as Burlington, and I was too ill to continue, and my wife did not want me to go either ——

Q. Did you go on from Burlington to Columbus Inn with your wife, and this friend?

A. No, sir.

Q. Did they go on?

A. They did.

Q. Who was the friend?

A. Miss Kein, of Edgewater Park.

Q. What was there in that that led you to leave your home?

Mr. Backes: I object now; the question is very suggestive.

The Court: That is too suggestive.

Q. Continue, and tell us why you left your home at the time you stated.

A. Because I was too ill to return.

Q. It was because of your illness then, was it?

A. Yes, sir.

Q. Where did you go then in Burlington?

A. I stayed at my mother's house.

Q. How long did you remain there?

A. As near as I can remember, for two weeks.

Q. Were you confined to your bed?

A. Part of the time to my bed, and part of the time I could go around the house.

Q. This was in October last?

A. Yes, sir.

Q. What was the nature of your illness?

A. Nervous prostration.

Q. Did your wife visit you during your illness?

A. She did not.

Q. Did she send you any messages at all?

A. Not that I recollect.

Q. Did you send her any word as to your illness?

A. I did.

Q. And the cause of your absence?

A. I did.
Q. By letter?
A. I did.

Mr. Gaskill: I ask the counsel to produce any communications; I now notify you to produce them.

Mr. Backes: I am not hearing you.

Mr. Gaskill: I now call upon counsel for the petitioner to produce any and all communications sent by the defendant to the petitioner during the month of October, 1911.

The Court: Have you any such communications, Mr. Backes?

Mr. Backes: I don't know, sir; there has been no notice to produce anything. Notice to produce, would have brought anything that you desired, if we had it.

The Court: I think you have to give notice.

Mr. Gaskill: I now give the notice in open court, and along with it I request that search shall be made by counsel and his client for the letters, that they be produced to the court.

The Court: I shall make such an order.

Mr. Backes: I submit that your Honor has no power to make such an order. The practice in New Jersey, including Camden, is that, if one desires the opposite party to produce papers he must notify them to produce, and upon the failure to produce he may introduce secondary evidence; if he desires the papers themselves, he must go further and serve a subpoena duces tecum, and the Court has no power to direct me to make a search and produce papers.

Mr. Gaskill: As the result of some thirty odd years of practice, I beg leave to correct the gentleman. (Continues argument.)

The Court: It is understood then, that that request is made to you in open court, and you say that you cannot find any papers?

Mr. Backes: No; I simply deny your Honor's power to direct me to search or to produce any papers.

Mr. Gaskill: May I put upon the record a question to the gentleman representing the petitioner in this case: will he or not produce any such letters as are in his possession, or in the possession of his client?

Mr. Backes: I do not have to answer; you may put it on the record.

Q. How many such communications did you send, Binney?

A. I do not remember exactly, four or five, I should say.

Q. Now, upon the determination of your illness at the expiration of the period which you have named, what did you do about returning to your home?

A. I sent a note requesting my wife's return.

Q. Had you learned, that, in the meantime, she had left her home?

A. I had learned that she was staying at the home of her mother during my absence.

Q. Did she return to the home?

A. No, sir.

Q. What did you do then?

A. I returned.

Q. How long did you remain there?

A. I don't exactly recall—one or two days.

Q. Whom did you find there?

A. At first I found my wife there, packing her belongings.

Q. And what took place between you and your wife when you found her thus engaged?

A. I asked her what she was going to do.

Q. What answer did she make?

A. She said, "Well, you see I am packing," that was all.

Q. Did nothing further take place between you at that time?-

A. Nothing.

Q. Did she give any reason why she was packing?

A. She did not.

Q. Did she leave the house that day with her belongings?

A. Some of them, yes, sir,—she left.

Q. Did she ever return?

A. She did not, not to my knowledge.

Q. How long did you remain there?

A. One or two days, to the best of my knowledge.

Q. Where did you then go?

A. Back to my mother's.

Q. And where have you lived since?

A. With my mother.

Q. At first in Burlington?

A. Yes, sir.

Q. Did your mother afterwards build a house at Edgewater, adjoining the one she had built for you and your wife?

A. Yes, sir.

Q. And where are you now living?

A. With my mother, in that new house at Edgewater.

Q. Now, do you know one Alexander Goulard?

A. I do.

Q. Did he visit your home?

A. He did.

Q. When?

A. In the winter of 1909 and 1910, to the best of my recollection.

Q. Nineteen hundred nine-1910, you mean?

A. Yes, sir.

Q. Had you ever met him before?

A. I had not.

Q. How were you introduced to him, and by whom?

A. My wife brought him home to supper one night, and introduced me to him.

Q. In what manner?

A. As an old schoolmate of hers.

Q. How long did he remain there?

A. That night.

Q. What became of him the next day?

A. He went somewhere, I don't know where, and returned.

Q. Who, if anyone, went with him?

A. My wife.

Q. What time did he and your wife get back?

A. Before supper, before six o'clock, to the best of my knowledge.

Q. What took place that evening there at your house, after supper?

A. We sat around and talked, and finally my wife complained of having a headache, and said she wanted to retire.

Q. Before that, did he make any complaint about his neck, or any part of his body hurting him?

A. Yes, sir.

Q. What, if anything, did your wife do?

A. After a while she massaged his neck with some type of liniment.

Q. What did he do by way of fixing his clothing?

A. He took his outing shirt off.

Q. Did you make any protest against this?

A. I did.

Q. How long did he remain?

A. That night, and if I recollect correctly, he was there to the following supper.

Q. Where were these two, your wife and Mr. Goulard, when you went to bed that night?

A. My wife went to bed with me; she went in her room and I went to bed in my room.

Q. You did not occupy the same room, then?

A. Not that night, no, sir.

Q. Well, after you had gone to bed, what, if anything, did you notice?

A. I heard someone going downstairs, and I did not understand it, and so I got up and did not wait to put my underclothes on, and I put on a suit of clothes and my shoes, my outing shirt and collar, and I went downstairs in the library.

Q. What did you do when you got down there?

A. My wife was sitting on the floor, with her hair down; her dress was very much mussed up; she had no shoes on, and one stocking was partly down, and she was at the feet of Alexander Goulard; he was sitting at the head of the table.

Q. Did you hear any of the conversation between them?

A. Not that night.

Q. Did you afterwards?

A. Yes, sir.

Q. Well, right here, let us have it.

A. He was coaxing her ——

By the Court:

Q. When—give us the date when and where it was.

A. I cannot give you the exact date, but to the best of my ability it was in the winter of 1909-1910, the same winter.

Q. And about how long after he was there at your house was it?

A. During that same period.

Further direct.

Q. Now, then, tell us what you heard them say.

A. I do not recollect his exact language; he was asking her to elope with him and leave me ——

Q. Proceed.

A. She said she did not care for me, and they knew they could get along together. Goulard then said to her, that the only one that might object would be her father.

Q. What did you do then?

A. I waited until the conversation was over, and I talked it over with my wife and I reprimanded her for it.

Q. And what promise, if any, did she make?

A. She promised to behave herself and let Alexander Goulard alone.

Q. What further took place while Goulard was there at the house?

A. I requested him to leave; I told my wife that I wanted him to leave, that his conduct was not right; he did not leave until after supper; the date I do not recollect; Mr. Leigh told me if I had any trouble and he did not go, to telephone to him, and I did telephone to Mr. Leigh.

Q. That is, Irma's father?

A. Yes, sir.

Q. And did he come over there to the house?

A. Yes, sir, he did.

Q. And did Goulard leave then?

A. Mr. Leigh told me he put him out.

Q. Were you there at the time?

A. I was not; I went to meet Mr. Leigh at the trolley that he was supposed to come down on.

Q. And did you miss him?

A. I missed him; I went a block below the street that he got off.

Q. And when you got back to the house, whom did you find there?

A. I did not go back direct to the house from there; I went to Burlington to the Metropolitan Inn where Mr. and Mrs. Leigh were boarding at the time.

Q. Was Irma along with you?

A. No, sir.

Q. Then, when did you go back home?

A. Immediately afterwards.

Q. What took place between you and your wife when you got back home after you had seen Mr. and Mrs. Leigh at the hotel?

A. She simply was very angry, and attempted to keep me out of her room when I went to have a conversation with her.

Q. Binney, I show you the letter that I showed your wife a few minutes ago, and I ask you if you have seen that before?

A. I have, yes, sir, I found that letter on her des

Q. When did you find that?

A. In October; I cannot give you the date.

Q. Before or after she had left?

A. Before.

Q. And you have kept it ever since?

A. I have; I had a number, and returned them.

Q. Have you ever seen them ——

A. I had a number of letters from this man, but I thought it was dishonorable to keep them, and I returned them.

By the Court:

Q. You had, yourself?

A. Yes, that were written to my wife.

Q. Where did you find those letters which you speak of as a number which you returned to your wife?

A. In a pigeon-hole in her desk.

Q. Was that desk a private desk of hers, or was it a common desk in which both of you kept your stationery?

A. It was common to a certain extent; it was not locked, it was always open.

Further direct.

Q. How many letters, signed by Alexander Goulard, did you return to your wife?

A. Ten or fifteen, in the neighborhood of fifteen.

Q. How did you return them to her?

A. I took them myself and placed them back in the desk where I found them.

Q. You did not give them to her personally?

A. No.

Q. And after she had left, were the letters there in the desk or had they been removed?

A. They were not in the desk.

Q. You have not seen them since?

A. Only remnants of them.

Q. How long before the time you were taken sick in October of 1911 was it, that you found this number of letters in the pigeon-hole of the desk that you speak of?

A. I should judge about a week before I left and went to my mother's.

Q. Is the letter which you hold in your hand in the same handwriting as those letters?

A. It is, yes.

Mr. Gaskill: I shall offer that, subject to cross-examination.

Mr. Backes: Objected to; I do not want to cross-examine; I object to it.

Mr. Gaskill: I then offer the letter.

Mr. Backes: It has not been brought to the hands of Mrs. Leigh, the petitioner; how can it be relevant in the case?

The Court: I overrule the offer; it won't be received in evidence now.

Q. Mr. Earl, what intention did you communicate to your wife as to your future conduct as the result of this Goulard episode?

A. I told her if she would behave herself and let Goulard alone, that I would forgive her this time.

Q. Did Mrs. Leigh take any part in an attempted reconciliation then?

A. She did; she urged it.

Q. In your presence and in the presence of your wife; just tell us what was said, either by Mrs. Leigh or by Irma with reference to this.

A. Mrs. Leigh said that she was very sorry that this thing had turned up, and that she wanted Irma to forget it, and wanted me to forgive Irma for any break that she had made; she said that in the presence of my mother, my wife and myself.

Q. Did you ever see your wife and Mr. Goulard together after that?

A. No.

Q. Did you ever have any conversation after that time with your wife concerning her meeting Goulard?

A. I did.

Q. What was it?

A. She told me she had seen him at Atlantic City right after this time, and I remonstrated with her for having done it.

Q. And what, if anything, did she ever say about lunching with him?

A. She told me on her return from Philadelphia one day last spring, the spring of 1911, that she had taken lunch with Mr. Goulard.

Q. Where?

A. She did not say where, excepting that it was in Philadelphia.

Q. Had she anything with her?

A. Yes, she had a little flower of some sort; it might have been a rose; I do not exactly recollect.

Q. Did she say where she got it?

A. She did not.

By the Court:

Q. She came home and told you that she had been out with him?

A. She did.

Further direct.

Q. These letters which you say you saw in your wife's desk and which were afterwards returned by you, do you remember the manner in which your wife was addressed in any of those letters?

A. I do.

Mr. Backes: Objected to.

The Court: The objection is sustained.

Mr. Gaskill: I understand no notice has been given for the production of these letters. This is a different set of letters that we spoke of before. I am now giving notice that I ask for the production of any and all letters that Mrs. Earl, the petitioner, received from Mr. Goulard, and which the witness has testified were in the desk.

The Court: You may take notice of that, Mr. Roberts, and I make the same direction as heretofore.

Mr. Gaskill: I take it then, that the time is premature for me to attempt to prove the contents of the letter.

The Court: Yes.

Q. After this occurrence that you have last spoken of, was there a visit made by you and your wife, or either of you, to New York?

A. No, sir.

Mr. Backes: Objected to.

Q. The State of New York?

Mr. Backes: He is prying into something that apparently does not exist; "since this last occurrence," what do you have reference to?

Mr. Gaskill: The record—I withdraw that question.

Q. After the occasion of her return from Philadelphia, when she said she had been at luncheon with Mr. Goulard, was there any conversation between you, or arrangement between you and your wife concerning a visit away from home to New York, or New York State?

A. She spoke of going to New York State to Nyack, New York, and I said, "Well, if you are going, I will go too."

Q. When was it that this Lizzie Bright, the cook

Q. Did she consent to that?

A. No.

Q. And did either of you go?

A. No.

that you speak of, left your employ?

A. During the time that Alexander Goulard was at the house.

Q. In the winter of 1909-1910?

A. Yes, sir.

Q. Who took her place as cook?

A. Mark Whitfield—who worked outside.

Q. He was then changed from outdoor work to indoor work?

A. At my wife's request, yes.

By the Court:

Q. Was he changed from outdoor to indoor work?

A. He was, yes.

Further direct.

Q. How came he to be installed as an indoor servant?

A. On account of his excellent cooking ability.

Q. Who did that—who brought him in the house?

A. My wife.

Q. And how long did Mark Whitfield remain an indoor servant of yours?

A. Until October—the exact date I don't remember—of 1911.

Q. How long before you were taken sick, at the time you attempted to take this trip to Columbus Inn with your wife and her lady friend?

A. He had not left then.

Q. Then, do I understand he was still an indoor servant of your family on the day that you and your wife and her friend started on that trip to Columbus Inn?

A. Yes, sir; he was; he drove the car that day.

Q. Then he continued on with them after you got out at Burlington?

A. Yes, sir.

Q. After Mark Whitfield became the indoor servant, whom did you employ to do the outdoor work?

A. William Wright.

Q. When did you engage him?

A. I don't remember the exact date, but I engaged him in March, 1911.

Q. And did he become a member of your family and live at the house there?

A. No, he lived in Beverly.

Q. Did he take his meals at your house?

A. No, sir.

Q. On any occasion when your wife was present did you rebuke Mark Whitfield for any of his work or conduct about the house, and if so, what part in it did your wife take?

Mr. Backes: Objected to, that calls for a conclusion.

Q. State what took place.

A. He was slightly impertinent to me on several occasions, and my wife upheld him in it.

Mr. Backes: I ask that that be stricken out.

The Court: Strike it out, strike the answer out.

Q. After Mark Whitfield became the indoor servant at your house, did you ever, in the presence of your wife, threaten to discharge him?

A. I did.

Q. And what reply did your wife make, if any, to those threats made in her presence?

A. She said, "If you discharge Mark Whitfield, I will get a divorce."

Q. How many times did that occur?

A. I don't remember,—it was several times.

Q. Was there any reason given by your wife for her remarks?

A. Yes, sir; she said that he was an excellent servant and she did not want to part with him.

Q. Had you, at that time, any suspicions of any improper relations between your wife and Mark Whitfield?

Mr. Backes: Objected to.

Mr. Gaskill: Your Honor remembers, that by the pleadings in this case a counter-suit has been brought, a cross-petition, with this Mark Whitfield named as co-respondent; now, I propose to show the facts and circumstances on which that is based, and this is the starting point here, and it seems to me entirely proper to show that up to this time the witness had not observed anything that was suspicious in the conduct of these two. Now, from this time on comes a relation of these circumstances, and it struck me that it was a proper introduction to it, and that was the only purpose of it.

The Court: I thought it was leading.

Q. Now, Mr. Earl, please relate in your own way, all that you observed from this time on concerning the relations between your wife and Mark Whitfield.

Mr. Backes: I object.

Q. When was it that your wife threatened a divorce if you discharged Mark Whitefield?

A. In the early part of June, 1911.

Q. And on what other occasion and about what times did she make a similar threat?

A. On several occasions, but I do not recollect the date.

Q. Subsequent to this?

A. Yes, after this.

Q. Now, then, from the early part of June of 1911 up to October of 1911, tell us what you had observed concerning the relations of your wife and Mark Whitfield, or their conduct, one towards the other.

A. She remained on the porch, the side veranda, one evening, after dark, with me, when Mark Whitfield came out of the house onto the porch, and she had

only an undershirt, a kimono, a pair of stockings and a pair of slippers on. I told Mark that he could not come out, as my wife was not dressed. Mrs. Leigh was with me at that time. Mrs. Leigh said, in the presence of my wife and myself, "Come on out, Markie, dear, you are a member of the family."

Q. What did your wife say, if anything?

A. She said that I was very disagreeable.

Q. Did he come out?

A. Yes, sir.

Q. And remained with the party there on the porch?

A. Yes, sir.

Q. How long?

A. I could not exactly tell you; for half an hour or so.

Q. State any other facts or circumstances. Was there ever any occasion, Binney, when you came home late at night in the automobile?

A. There was one occasion, yes; I broke down, and I arrived home late with my man, William Wright.

Q. About what time of night was it?

A. I should say it was after one o'clock at night.

Q. And when was it?

A. I don't recollect the date.

Q. Was it in the spring, summer, fall or winter?

A. It was in the spring, to the best of my knowledge.

Q. What did you see?

A. When we arrived at the house, we could not get in, and we knocked on the side door and rang the front doorbell, and the light was lighted inside the house, and there is a little window in the top of the front door, allowing anyone to see through to the front stairs; down those stairs came Mark Whitfield.

Q. How was he dressed?

A. He had on an outing shirt, without a collar, his sleeves were rolled up; he had on a pair of trousers and a pair of rubber-soled canvas shoes.

Q. Was Mark Whitfield's bedroom in the second story of the house?

A. No, sir, it was next to the kitchen on the first floor of the house.

Q. After you saw him come down the stairs that way, did you get in the house?

A. Yes, sir, he admitted us.

Q. Did you see your wife?

A. I went upstairs to my wife.

Q. Did you have any conversation with her?

A. I did.

Q. How was she dressed when you got upstairs?

A. Her hair was down, and she had on a kimono, an undershirt and a pair of slippers.

Q. What took place between you and her?

A. I asked her what she had Mark Whitfield upstairs for, and she said, "Now, don't be unreasonable; I had him here because I am afraid to stay alone."

Q. Did you, at this time, own an automobile?

A. Yes, sir.

Q. Where was it kept?

A. In my garage at the foot of my place.

Q. That is the place where you were living with your wife and where Mark Whitfield was the servant?

A. Yes, sir.

Q. During the time that Mark Whitfield was there as a servant, state whether or not the automobile, when you went out in it, ever became out of order.

A. It did, constantly.

Q. What did you find to be the matter with it?

A. On attempting to start that machine, I would find that the gasoline was shut off; that the needle valve in the carbureter was opened too wide, emitting too rich a mixture, or it was shut off altogether, or the wires were crossed on the cylinder, making it back-fire.

Q. Did you ever find any dirt or gravel in the machinery?

A. Yes, sir.

Q. In the presence of your wife did you ever speak to Mark Whitfield about that, or complain of that condition of your automobile?

A. I complained of the condition of the automobile in the presence of Mark Whitfield and my wife.

Q. What did you say in the presence of your wife, and what did she say, if anything?

Mr. Backes: When and where was this?

Q. Where was it that you said this?

A. In front of my garage, in my place.

Q. When?

A. In the spring or early summer of 1911.

Q. Now, what was it that was said?

A. I told my wife that that car never got in that condition by itself, and I told her aside, not out loud, that I believed that Mark must have something to do with it, as there was no one else to do it that I could see, and that I was going to discharge him, and she said, "If you discharge Mark Whitfield, I will sue you for divorce."

Q. Was this before or after the time when you came home late and Mark came down the stairs, as you have described?

A. I do not recollect.

Q. Binney, was your wife ill at times after your marriage?

A. Yes, sir.

Q. When?

A. In the early part of June, 1911.

Q. What was it that you noticed about her condition?

A. She complained to me of almost screaming when she urinated.

Q. And what did she say?

A. I told her she could go and get medical attention, and she refused; she said she did not like to do so.

Q. At that time had you had any pain in urination?

A. I had none.

Q. Or any inflammation or discomfort in the private parts at all?

A. I had none.

Q. After that you had?

A. Yes, after the first of July.

Q. Did you know what was the matter with your wife?

A. I did not.

Q. Who was your family physician?

A. At that time Dr. George Tracey, of Beverly.

Q. At any time prior to feeling discomfort yourself, did you succeed in getting your wife to accept medical attention?

A. I did not succeed in getting her to do so.

Q. When was it that you first felt any discomfort?

A. In the very early part of July; I cannot tell you the exact date, I don't remember.

Q. What did you do?

A. I immediately went to Dr. George Tracey.

Q. Did you have an examination made?

A. He looked at me and he asked me several questions.

Q. Did he treat you?

A. He came the following day and prescribed for me.

Q. Did you at that time, obtain any medicines for your wife?

A. Shortly afterwards, yes,—at that time, no.

Q. How soon afterwards did you get medicines for your wife?

A. Four or five days.

Q. And from whom did you get them?

A. Dr. Whittaker, he was Dr. Tracey's substitute when he went on his vacation.

Q. Did you describe to Dr. Tracey, at the time you went to him for yourself, the complaint that your wife had made; do not tell us what you said, but as a fact did you do so?

A. I did, yes.

Q. And did your wife take these medicines that you brought home to her from Dr. Whittaker?

A. She did.

Q. Did you ever have any conversation with your wife concerning her condition on your condition?

A. Several of them.

Q. Tell us when the first one took place and when it was.

A. I don't remember when the first one took place; it was in June; it was over her condition.

Q. What was it was said?

A. I asked her to have medical attention, and she said she did not know what was the matter with her, and seemed to be greatly worried about her condition.

Q. Did she attribute her condition to any cause?

Mr. Backes: We object to that as leading; it calls for a conclusion.

Q. Did she say anything to which she attributed her condition, at that time?

A. No, sir.

Q. Did she later on?

A. She did, yes, sir.

Q. When was that?

A. About the middle of July.

Q. What was it she said then?

A. She thought she had the same thing that I did, and that she had given it to me.

Q. Was that before or after you had taken medicines to her?

A. That was after, if I recollect correctly.

Q. Who took care of your wife during her illness?

A. I did.

Q. Was she confined to her bed or to her room?

A. No, sir.

Q. What care or treatment did she require?

A. I mixed the solution for her douches, for her, I filled the fountain syringe, and aided her in every way that I could; I do not exactly remember all the things I did.

Q. And who took care of you when you were sick?

A. I did.

Q. Which one of you got well first?

A. I did, to the best of my knowledge.

By the Court:

Q. Where did you get these prescriptions filled?

A. From the Warren Street pharmacy, in Beverly.

Q. Who gave you the prescriptions?

A. Dr. Whittaker.

Further direct.

Q. At the time during this period, did your wife accuse you of infidelity?

A. She never did.

Q. Did she ever accuse you during this period of being the occasion of her illness?

A. She did not.

Q. Was anyone present at any time when your wife made these remarks, or this remark, that she must have given it to you?

A. My mother was.

Q. When was that?

A. The exact date I do not remember.

Q. Where was it?

A. It was on the side porch of our house at Edgewater.

Q. At what season of the year?

A. It was August, if I remember correctly.

Q. Before or after your mother had been away on her summer trip to the seashore?

A. It was after she came back.

Q. And what was it that Irma said to you or to your mother, on that occasion?

A. She said that she was sure that she had given it to me. She did not know where she got it. She might have gotten it from the toilet, she said.

Q. Had you ever mentioned getting the disease from a toilet prior to that time?

A. (No answer.)

Q. Do you remember any conversation between your wife and your mother concerning this matter, on the pavement at Burlington, when you were there in the automobile, or she was there?

A. I do not recollect the entire conversation.

By the Court:

Q. You remember a conversation?

A. I do remember a conversation.

Further direct.

Q. What time did it occur?

A. I don't remember.

Q. Can you tell the year it occurred in?

A. Nineteen hundred and eleven.

Q. Before or after your mother came back from the seashore?

A. Long afterwards.

By the Court:

Q. When did your mother come back from the seashore?

A. I do not recollect the exact date or the month.

Further direct.

Q. As near as you can recall, what was the conversation?

A. If I recollect correctly, it was in reference to Mark's impertinence to me.

Q. Do you recollect the conversation?

A. I do not.

Mr. Backes: Then I ask that his answer be stricken out.

The Court: It should be stricken out in reference to Mark's impertinence.

Q. Binney, you were in court at the last hearing of this case when Mr. Wright, your man, was examined, concerning an automobile trip to Philadelphia?

A. I was in court, yes, sir.

Q. You heard the description of a certain brick house given, and your going in the house?

A. I did.

Q. Whose house was that?

A. That was Dr. John Whittaker's mother's house, a Mrs. Shoemaker.

Q. Did Dr. Whittaker live there with his mother?

A. Yes, sir, to the best of my knowledge.

Q. For what purpose did you go to that house that day?

A. To find Dr. John Whittaker.

Q. Was he at home?

A. No, sir, he was not.

Q. Did you remain there?

A. Only for about an hour.

Q. And for what purpose?

A. For his mother to get her traveling things on to accompany me to where Dr. Whittaker was.

Q. And did you go from that house to where Dr. Whittaker was?

A. Yes, sir.

Q. And where was that?

A. To Fortescue, New Jersey.

Q. Did the doctor's mother go with you?

A. She did.

Q. And did you see the doctor at Fortescue?

A. I met him there.

Q. Do you know Dr. Chester Leigh, the brother of your wife?

A. Yes.

Q. Did he visit you at your home in July last?

A. He did, yes.

Q. Do you remember the occasion when an arrangement was made for your wife to go to Philadelphia to consult a specialist?

A. I do, yes.

Q. Who accompanied her on that occasion?

A. Dr. George Tracey, Dr. Chester Leigh—at my request.

Q. Why didn't you go?

A. I was too ill to go.

Q. And who requested Dr. Leigh to go?

A. I did.

Q. And how did you make that request?

A. On the 'phone; I called him up.

Q. Where was the 'phone from which you spoke?

A. In my library, in my house.

Q. And was your wife present?

A. She was.

Q. Was there a booth there?

A. It was an open 'phone on the book shelf.

Q. Before or after that, did you have a talk with Dr. Leigh in your yard, at Edgewater Park?

A. Yes, sir.

Q. Was it before or after?

A. It was before.

Q. Whereabouts was this talk?

A. It was on the little steps leading to my sunken garden at my place.

Q. Did you, on that occasion, say to Chester Leigh, "Chester, I have the gonorrhoea; I know that I gave it to your sister, but I don't know how I got it; Dr. Tracey told me I might have gotten it from a toilet, and when I said this, he laughed."

A. I did not laugh.

Q. Now, then, did you tell Dr. Leigh this?

A. I did not tell that to Dr. Leigh.

Q. What did you say to Dr. Leigh on that occasion?

A. That I did not know how I got it.

Q. And on the same occasion, I think it is, did you, on the same occasion or at any other time, say to Dr. Leigh, "I want you to know that I gave it to your sister, but I did not get it from a woman"?

A. No, sir.

Cross-examination.

By Mr. Backes:

Q. When you were sued in this case, whom did you retain as counsel?

A. Eckard P. Budd and Judge Gaskill.

Q. Did you tell to either Eckard P. Budd or to your counsel, Mr. Gaskill, that your wife was afflicted with the gonorrhoea before you contracted it?

A. I did, yes, sir.

Q. Did you tell them all that you have here testified to concerning Mark Whitfield's relations to your household?

A. I did.

Q. And the conduct of your wife and Mark Whitfield as you here related it?

A. I did.

Q. Did you also tell them of the coming home by you and your man William, and seeing Mark come downstairs, and all that?

A. I did, yes, sir.

Q. In fact, you told them all that you have testified to here, didn't you?

A. I told them all the truth.

Q. And you told them all of that immediately after you were served with the petition and citation in this case, didn't you?

A. I did.
Q. Where?
A. In Mr. Budd's office in Mt. Holly.
Q. Did you know that no cross-petition was filed in this case until two days before the first hearing?
A. I did, yes, sir.
Q. And long before that hearing, six months before that hearing, you had told Mr. Budd and Mr. Gaskill all you have testified to here?
A. That is right.

Mr. Backes: So, somebody has been imposing on your honor.

Mr. Gaskill: Wait until I call the rest of my witnesses, and you will find out.

The Court: Proceed with your examination.

Q. You spoke to your mother about the contemplated marriage of you and Miss Leigh, didn't you?
A. I did, yes.
Q. You told her you were going to be married?
A. Yes.
Q. You told her when you were going to be married?
A. I did not.
Q. And you told her when you were going to be married?
A. No.
Q. When did you tell her you were going to be married?
A. I did not tell her anything as to details.
Q. You just told her you were going to be married?
A. Yes.
Q. How long before you actually got married did you tell her you were going to be married?
A. Years before.
Q. And how old were you when you got married?

A. I have been married since the 28th of March, 1909, and I am 25 years old now.

Q. How long have you been married?

A. I have been married three years.

Q. Now, how old were you when you were married?

A. Twenty-two.

Q. And you had a mind to marry this young girl years before that?

A. Yes, sir.

Q. And how many years before?

A. I cannot recollect.

Q. Ten or twelve or fifteen years?

A. No, not that long; I think I met my wife in the latter part of 1903; I am not positive.

Q. And immediately at that time, you concluded you would marry her?

A. Yes, very shortly afterwards.

Q. How old were you then, Binney?

A. Sixteen or seventeen.

Q. And your wife had short dresses on, didn't she?

A. Yes, sir.

Q. You were both school children at that time?

A. We were friends.

Q. You were both school children?

A. I did not go to school.

Q. Did you never go to school?

A. No.

Q. When was it that you spoke to your mother about marrying this girl next before you did marry her?

A. I don't recollect.

Q. The day before, wasn't it?

A. I don't think so.

Q. You told your mother you were going to be married the next day, didn't you?

A. No.

Q. She advised you to marry this girl?

A. No, she never advised me to marry her.

Q. Now, you went to Mrs. Leigh's house, that is, your mother's house, mother-in-law's house, seven or eight days after you were married, the first time, didn't you?

A. I don't think it was that long, but I did go to the house.

Q. You had known Mrs. Leigh for a great many years before that time?

A. I had known her since 1903 or 1904.

Q. And had you courted her daughter at her house?

A. I had.

Q. Were you supposed to be her accepted suitor, accepted by the family, up to the time you married her?

A. I had not had the family's views on it, so I did not know.

Q. You did not consult with them at all?

A. No, sir.

Q. Now, what was it you first said to Mrs. Leigh after you returned with her daughter, she then being your wife?

A. I don't recollect.

Q. Did you inform her of the marriage?

A. Certainly I did.

Q. Did you, at that time, inform her?

A. She knew we were married; I did not inform her.

Q. How did you know that she knew it?

A. I believe that Dr. Blair, of Burlington, took the message to Mrs. Leigh's house from me.

Q. From you?

A. Yes, sir.

Q. Where were you then?

A. In Dr. Blair's office in Burlington.

Q. When was it, in reference to your marriage?

A. It was the night that I was married.

Q. You were married at what time of the day?

A. I should judge in the neighborhood of nine o'clock at night; I cannot remember.

Q. And that same evening you notified Mrs. Leigh, through Dr. Blair?

A. Yes.

Q. When you arrived at Mrs. Leigh's house, did she greet you in a friendly way?

A. No, sir, she said that she seriously objected to the marriage.

Q. But she said at that time that the marriage was over, it had been accomplished, and she was going to make the best of it?

A. I believe she said she was going to make the best of it.

Q. She said that she objected to the marriage of a scapegrace like you to her daughter, but, the marriage having been accomplished, having been performed, she was going to make the best of it?

A. I don't recollect that conversation.

Q. She said at that time that you had a past, that you had an unsavory history, and because of your past life she objected to you, a vagabond, marrying her pure daughter, but because the marriage had been performed, she was going to make the best of it; is not that what she said?

A. There was no such conversation.

Q. You won't deny that she did say it?

A. I deny it.

Q. You deny it whether it is true or not?

A. I believe my denial to be true when I deny it.

Q. And when was it she said anything to you about money?

A. In her house, just after our return from being married.

Q. I thought you just told me that she was going to make the best of it, although she did not like you, although she knew of your past, she said she was going to make the best of it?

A. She contradicted herself.

Q. Apparently, you are doing that; which is the truth? Did she say to you that she was going to make the best of it?

A. Not to my recollection.

Q. You just told us a minute ago, that she said she was going to make the best of it; have you forgotten that?

A. No, sir.

Q. Have you forgotten you made such a statement?

A. No, sir.

Q. Did you make such a statement, did you make the statement within the last five minutes that Mrs. Leigh said she was going to make the best of the marriage?

A. I think I did.

Q. Was it true?

A. Yes, sir.

Q. Why do you say now, then, that that did not happen?

A. I did not say it did not happen.

Q. Within the last two minutes you just said that Mrs. Leigh did not make such a statement; now, which is the fact?

A. I did not understand this question.

Q. Did she make the statement, or didn't she make the statement that she, Mrs. Leigh, the mother of your then young wife, that she was going to make the best of the marriage, although she did not approve of it?

A. At one time she did, and at another time she did not.

Q. Do you mean to say, that at the same interview, at one time she said she did, and then at another time she said she did not; do you mean that?

A. Yes, I do mean that.

Q. Well, how long did this interview last?

A. For several minutes.

Q. What was the first thing that was said?

A. The first words I do not recollect.

Q. The first thing I said, give us the substance.

A. We simply went into the house.

Q. Now, Binney, you know what I said to you; I said, what was the first thing that was said?

A. I just told you I don't recollect.

Q. You told me you did not remember the words.

A. I do not recollect.

Q. Who spoke first?

A. I do not recollect.

Q. Was the first words that were uttered, words of greeting?

A. I do not recollect.

Q. Did anyone say, "Hello" to you, "Binney"?

A. Not to my knowledge.

Q. Did you address Mrs. Leigh?

A. I do not recollect.

Q. Who let you in the house?

A. I do not recollect.

Q. Do you remember going to the house at all?

A. Yes, sir.

Q. Whom did you go with?

A. My wife.

Q. Whom did you meet there?

A. Her mother.

Q. Who else went with you?

A. Mrs. Earl Thompson.

Q. Did she go with you as a sort of fender, as a body-guard?

A. No, sir.

Q. Were you afraid to go?

A. No, sir.

Q. Did she go there to break the news or to break the ice for you?

A. I don't know what her intention was.

Q. You invited her to go?

A. I did not.

Q. Who did?

A. She invited herself to go.

Q. And you acquiesced, of course?
A. Certainly.
Q. As a gentleman would when a lady imposed herself on him? Is that the reason you acquiesced?
A. I had no objection to her accompanying me.
Q. Was she a young lady or an elder lady, or middle-aged, or what?
A. She was middle-aged.
Q. Where was it that you first saw Mrs. Leigh?
A. At her house.
Q. Where, in her house?
A. I do not recollect.
Q. Is Mrs. Earl Thompson here this morning?
A. Not to my knowledge.
Q. Did your then mother-in-law kiss you?
A. I do not recollect.
Q. Did she ever kiss you before you were married?
A. Not to my knowledge.
Q. She has kissed you after your marriage?
A. I do not recollect.
Q. Did you ever kiss your mother-in-law?
A. I do not recollect.
Q. Don't you remember when you first went home with your wife, that you went up and spoke to Mrs. Leigh and kissed her?
A. I do not recollect.
Q. You do not say that did not happen, do you?
A. No, sir, but I do not recollect it having happened.
Q. Now, what was the first subject matter that you discussed with Mrs. Leigh upon that visit?
A. I do not recollect, I do not remember these details.
Q. And what was the first thing that Mrs. Leigh said to you of and concerning the marriage?
A. I do not recollect.
Q. What was the next thing she said?
A. I do not recollect.

Q. And what then did she say?

A. I do not know.

Q. What followed after that?

A. I do not know.

Q. What was the last thing she spoke of?

A. I do not know.

Q. Has anyone told you to say you do not recollect and you do not know?

A. No.

Q. Did anyone suggest to you that that would be a good way to avoid involving yourself?

A. No.

Q. Then you do not recollect anything that occurred on the visit by you to Mrs. Leigh, when you were accompanied the first time by your wife and also by Mrs. Earl Thompson?

A. I do not recollect exactly what took place.

Q. Where did you meet Dr. Leigh when he tried to hold you up?

A. Explain your question; I do not understand it.

Q. Where was it that Dr. Leigh suggested that for a money consideration your wife would live apart from you?

A. In Mrs. Leigh's house at Locust Avenue.

Q. you regarded that as a hold-up?

A. A demand for money.

Q. And you understood when I asked you where Dr. Leigh was when he tried to hold you up, didn't you?

Q. Who was present at that time?

A. Mrs. Leigh.

Q. Anyone else?

A. I do not recollect.

Q. Your wife was there, wasn't she?

A. I do not recollect.

Q. You told us your wife was there; now, have you forgotten that?

A. My wife was at that house, but whether she was present when Dr. Leigh made this direct demand on me, I do not know.

Q. You said your wife was present and that this was said in your wife's hearing; have you forgotten that already?

A. No, sir.

Q. Was your wife present?

A. On some occasions, yes.

Q. Was your wife present when Dr. Leigh made this unusual demand?

A. I do not think she was.

Q. Have you forgotten that you testified that she was present, that she heard it?

A. She has heard him before.

Q. I ask you whether you have forgotten that on your direct examination you said that your wife was present at the time Dr. Leigh demanded money from you as the consideration for your wife living apart from you; I am speaking of the first conversation when, you say, it occurred in the presence of Mrs. Leigh, your wife's mother?

A. I do not recollect.

Q. You do not recollect what?

A. That she was present at the first conversation.

Q. Where did the first one happen?

A. In her house.

Q. Whose house?

A. Mrs. Leigh's.

Q. You were living there at that time?

A. No, we had just returned from being married.

Q. How long did you stay at Mrs. Leigh's house after you called there the first time?

A. A few hours, as far as I can recollect.

Q. And was it during that few hours that Dr. Chester Leigh made this demand upon you?

A. It was, yes.

Q. Dr. Leigh lives in Trenton, doesn't he?

A. He does, yes.

Q. He lived in Trenton at that time?

A. To the best of my knowledge, yes.

Q. Have you forgotten your marriage date, March 28th, 1909; this was on the 29th day of March, 1909?

A. I am not sure of that date.

Q. You were married on the 28th of March, 1909?

A. Yes.

Q. In the evening, about nine o'clock?

A. Yes.

Q. When was it that you came back to Mrs. Leigh's house?

A. About two days later.

Q. You think then, it was on the 30th of March?

A. Probably; I am not sure.

Q. It is very important that I should know; Dr. Leigh you know to be an oculist in Trenton, and he was at that time?

A. I don't know.

Q. What! Do you realize you are on oath?

Mr. Gaskill: I object to this sort of cross-examination.

The Court: The objection is sustained.

Q. Do you mean, you did not, at that time, know that Dr. Leigh was an oculist in Trenton?

A. I have nothing to refresh my mind that he was; nothing to prove it in my own mind.

Q. How long had you known Dr. Leigh?

A. About 1903 or 1904.

Q. And where did you meet him?

A. I do not recollect.

Q. Where did you see him, your earliest recollection?

A. I do not recollect.

Q. Did you never see him in Trenton?

A. Yes.

Q. You were at his office?
A. Once or twice.
Q. You were at his office before you were married?
A. Once, to my knowledge.
Q. You knew him to be a physician?
A. I did, yes.
Q. You knew him to be an oculist?
A. I did not.
Q. What is an oculist?
A. It is a physician whose specialty is the eyes—optical work.
Q. Now, on March 28th, after you were married, you went to Moorestown, New Jersey?
A. Yes, sir.
Q. And you left there March 29th in the morning, and went to Philadelphia?
A. Yes; I went to Point Pleasant, New Jersey, by automobile.
Q. You spent the night of the 29th there?
A. Yes, sir.
Q. What time did you get there?
A. I do not recollect.
Q. Where were you?
A. I was at the Pine Bluff Inn.
Q. You left there on the 30th—the next day?
A. I did, yes.
Q. And you went to Mrs. Leigh's house?
A. No, I went to Philadelphia to Mrs. Earl Thompson's house.
Q. What time did you arrive there on the 30th?
A. I do not know.
Q. Morning, afternoon or night?
A. I do not recollect.
Q. Oh, now, that is too bad. When did you leave Point Pleasant to go to Philadelphia?
A. I left in the daytime, but I do not recollect the hour.

Q. Of course, you were just recently married; now, have you an idea when it was that you got to Mrs. Earl Thompson's house in Philadelphia on the 30th?

A. I have no recollection.

Q. Did you get there in the daytime or night time?

A. I have no recollection.

Q. How long did you stay there?

A. Over night.

Q. You did stay, then, the night of the 30th?

A. Yes.

Q. And you left there on the 31st?

A. Yes.

Q. In the morning?

A. I do not remember.

Q. Where did you go to?

A. Burlington, New Jersey, to Mrs. Leigh's residence.

Q. You do not remember whether you left in the morning of the 31st or the afternoon or the evening of the 31st, do you, you have no recollection?

A. I know it was not the evening, but I do not recollect the hour of the day.

Q. Now, we have got as far as the 31st in the afternoon, at Mrs. Leigh's; is that right?

A. Yes.

Q. About what hour?

A. I have no recollection.

Q. Have you no idea at all?

A. I have absolutely none.

Q. Do you know whether it was before six o'clock that you arrived at Mrs. Leigh's house on the 31st?

A. It was in daylight.

Q. Was it after twelve o'clock?

A. I do not remember.

Q. Did you come through in your automobile?

A. No, I came up by train.

Q. How did you go from Point Pleasant to Philadelphia?

A. By train.

Q. Do you remember what time you left Philadelphia for Burlington, what train?

A. I do not.

Q. Did you go direct from the depot to Mrs. Leigh's house?

A. I did, yes.

Q. Well, now, cannot you fix a time nearer than sometime between twelve and six o'clock of the 31st?

A. I cannot recollect.

Q. You were only there about ten minutes in the house?

A. No.

Q. How much longer were you there?

A. I do not recollect.

Q. And it was at the same time, I suppose, that Mrs. Leigh made this money demand on you, that Dr. Chester Leigh made a like demand, is that right, or don't you recollect?

A. I do not recollect.

Q. What is the first thing that Dr. Leigh said to you?

A. I do not recollect the first words.

Q. What was your reply, that you made to that which you do not recollect?

A. I do not recollect the words, and, therefore, I do not recollect the reply.

Q. You do not recall any of the words that were used either by you or by Dr. Chester Leigh during that interview of March 31st?

A. I do not recollect the exact language used.

Q. You do not recall the subject matter either, do you?

A. I do.

Q. Now, was Mrs. Leigh there when the doctor made this money demand on you?

A. Which money demand, the first, second or third?

Q. Did he make other money demands at the same interview?

A. Yes.

Q. And he made none after that interview on the afternoon of March 31st, 1909?

A. I do not recollect whether it was afternoon or morning.

Q. You have told us that you did not get into Mrs. Leigh's house until after twelve o'clock?

A. I told you I did not recollect the exact time of day, I do not.

Q. But you told me that it was between twelve and before six o'clock in daylight, that you were at Mrs. Leigh's house; do you withdraw that now; do you care to correct it?

A. I am not positive; I want to tell the truth.

Q. You are not positive of what?

A. As to whether I was there between twelve at noon and six o'clock at night, or whether I was there in the morning or afternoon; I do not know when I was there, to tell the truth.

Q. But you spent the night at Philadelphia with Mrs. Earl?

A. I did, the preceding night.

Q. The night of the 30th?

A. Yes.

Q. You had breakfast at her house the next morning?

A. I think so.

Q. Do you recollect?

A. Not fully.

Q. Do you remember what time you got up the next morning?

A. I do not.

Q. Well, you did not make direct for the railroad station after you did waken up, did you?

A. No, sir.

Q. The likelihood is, that it was in the afternoon that you went to Mrs. Leigh's house, where you say that you had interviews with Mrs. Leigh and with Dr. Chester Leigh, is that so?

A. Mr. Backes, I do not recollect.

Q. Now, you were quite angry, Binney, were you not, with your wife, when you saw all these things going on with Mr. Goulard?

A. Yes.

Q. You threatened to leave your wife, threatened to get a divorce from her, didn't you?

A. No.

Q. Nothing like that?

A. Not that particular wording.

Q. You were not angry enough to leave your wife?

A. I was not as angry as I was heart-broken.

Q. Was that the first occurrence that pierced your heart after your marriage?

A. Yes, sir.

Q. And when do you say that it occurred?

A. In the winter of 1909 and 1910, the month and date I do not recollect.

Q. You had been married less than a year at that time?

A. Yes.

Q. Had you ever heard of Mr. Goulard before he visited your house?

A. I had not.

Q. Had your wife ever spoken to you of him?

A. She had not.

Q. Now, you say she brought him home to your house?

A. She did.

Q. What time of day?

A. Before supper time, before six o'clock.

Q. At that time you were living in Edgewater?

A. I was.

Q. Were you at home when she brought him?

A. I was.

Q. She did not bring him—he accompanied her ——

A. She told me she had brought him home to supper.

Q. She introduced him to you?

A. She did, yes.

Q. That was not anything unusual for your wife to do, was it, to bring a man home to have supper with you?

A. It was.

Q. Did you regard it as an unusual thing?

A. Not at first.

Q. Did you regard it with suspicion, that your wife should be womanly enough to bring a friend of hers to your own home to sit at your board?

A. I did not.

Q. When Mr. Goulard was introduced, you, of course, conducted yourself as one should in his own household?

A. I conducted myself in a proper way.

Q. Well, you entertained Mr. Goulard the first evening that he was at your house, didn't you?

A. To the best of my ability.

Q. You made him welcome?

A. Certainly; he was a friend of my wife's.

Q. And during that evening they discussed their school days and the occurrences of their school days, didn't they?

A. I recollect no such conversation.

Q. But you were informed by your wife and by Mr. Goulard, and by their conversation, that they had been schoolmates?

A. My wife spoke of it; he never did.

Q. Did your wife speak of it in his presence?

A. No.

Q. It came up in conversation that Mr. Goulard and your wife were school children together in Burlington?

A. No.

Q. They talked about it, didn't they?

A. No.

Q. Did you ask Mr. Goulard where he met your wife?

A. I did not.

Q. Did he tell you?

A. He did not.

Q. You did not think it was simply a pick-up, did you?

A. I did not.

Q. But from the conversation that was carried on during the evening, you gleaned that they had been old friends, didn't you?

A. I did not.

Q. Well, could not you, from their conversation ——

A. I did not ask.

Q. Well, but could not you, from their conversation —from their talk?

A. No.

Q. From what the subject was that they were discussing, could not you judge for yourself that they had been old friends and schoolmates?

A. No, sir.

Q. Did you assume from their conversation that they were newly made friends?

A. I did.

Q. Newly made to the extent that your wife got acquainted with Mr. Goulard, shortly, and on the same day that she brought him to your house, is that right?

A. Yes, that is correct.

Q. How long did you stay up that night?

A. About ten or eleven o'clock; I don't recollect the exact hour.

Q. Where did you think your wife picked this man up, if you thought they were newly made friends?

A. I did not think she picked him up.

Q. Did you think he picked her up?

A. No.

Q. You ran your own household in those days, didn't you?

A. Of course.

Q. You were the master of the shebang?

A. Yes.

Q. And still you did not ask your wife where it was that she, that day, had met Mr. Goulard?

A. My wife took me aside and told me.

Q. Did you believe your wife?

A. Certainly.

Q. She told you on the side that they were old friends, is that right?

A. She told me aside that she had met him and knew him slightly at the Burlington College, but had never seen him since then up to date.

Q. Did she do that covertly?

A. She took me aside and told me that.

Q. Did she take you aside in the same room?

A. No.

Q. Did she take you in another room?

A. Yes.

Q. How soon after she got home did she do that?

A. I do not recollect.

Q. But you did then believe what your wife told you, that she was an old friend, or this man was an old friend of hers, didn't you?

A. I believed what she told me, that she had met him.

Q. Why did you, a moment ago, say that you believed that he was a newly-made friend?

A. On account of the conversation; the conversation was not that of old friends.

Q. Then you did not believe your wife?

A. My wife had not then told me.

Q. When was it that your wife told you that she met this man—was it the next day?

A. No, sir, that same night, but I do not recollect the hour.

Q. Was it towards bedtime?

A. It was before bedtime.

Q. You invited Mr. Goulard to remain over night, didn't you?

A. My wife did.

Q. You invited Mr. Goulard to remain over night, didn't you?

A. My wife did first, and then I did, of course.

Q. I thought you were master of the organization?

A. There was no reason why I should not, that I could see, at that time.

Q. But from the conversation, you assumed that they were newly-made friends; now, I am asking you whether it was your practice to entertain men whom you regarded as new acquaintances of your wife, by keeping them over night in your house?

A. I certainly did; I treat my own friends, and I do not see anything wrong in that, Mr. Backes.

Q. What, a pick-up?

A. No, I have not said a "pick-up" ——

Q. You said you regarded him as a new acquaintance?

A. Yes.

Q. And I say to you, is it your practice to entertain your wife's newly-made acquaintances that she should bring home, by lodging and by feeding them, and by keeping them there?

A. Certainly.

Q. Nothing occurred the first night that raised your suspicions?

A. Yes.

Q. What was it?

A. Later on in the evening, her extreme familiarity with Goulard.

Q. What was that like?

A. She said, in the presence of Alexander Goulard, that she would like to kiss him.

Q. Were you there?

A. Yes.

Q. Why didn't you say, "Irma, I have got a face, come and kiss this"?

A. I reprimanded her.

Q. Right in front of this man?

A. Yes.

Q. Was she teasing you?

A. No.

Q. This was before bedtime when she said she would like to kiss Mr. Goulard?

A. Yes.

Q. Where were the three of you?

A. In the library of my house.

Q. Anyone else there?

A. No, sir.

Q. What was Mr. Goulard doing at the time?

A. He was making out some accounts.

Q. What were you doing?

A. I was talking to him between times.

Q. And what was your wife doing?

A. Nothing.

Q. And spontaneously she said, "I would like to kiss you, Alexander"?

A. She came over to me and said it in a rather undertone.

Q. What did she say to you?

A. That she would like to kiss Alexander.

Q. But she did not say that to Alexander?

A. She said it loud enough for him to hear it.

Q. She said it to you?

A. Yes, sir.

Q. She said, "Binney, I would like to kiss Alexander Goulard." In as loud a tone as that?

A. No.

Q. Did she say what moved her to that desire?

A. She did not.

Q. Well, now, give us in about the tone of voice that she said it, and illustrate how near she was to him when she said it; take Mr. Roberts and show us.

A. She was about a foot away from me; Mr. Goulard was, maybe, at the length of this desk away.

Q. Did she kiss you at the time she said that?

A. No, sir.

Q. She just had kissed you then?

A. No, sir.

Q. Or kissed you afterwards?

A. No, sir.

Q. What did you say then, Binney, when your wife asked your permission for this innocent pastime?

A. I reprimanded her and told her I did not think that was the way for a lady to act before a man who was a short acquaintance.

Q. You did not think it was right to kiss right off-handed?

A. No.

Q. Are those the same words that you employed then?

A. Practically; I do not recollect the exact language.

Q. Was your wife abashed, or was she duly humiliated by the way you reprimanded her?

A. She said that I was disagreeable, unnecessarily, for reprimanding her for making that remark.

Q. Did she make this statement in a spirit of fun?

A. It did not look so to me.

Q. It made you mad?

A. It simply surprised me greatly.

Q. And it raised your blood, too, didn't it?

A. I knew that was not the proper thing to do.

Q. It roused your manhood in you?

A. Yes, sir.

Q. And you became very angry?

A. I was angry.

Q. What did Goulard say when he heard that your wife wanted to kiss him?

A. He said nothing; he looked up and proceeded with his work.

Q. Did your wife say that loud enough for Goulard to hear?

A. I don't know whether he heard it or not.

Q. Do you think Goulard heard this statement of your wife to you, that she would like to kiss Goulard?

A. I don't know whether he heard it or not.

Q. Well, when your wife made the statement to you, you say he looked up?

A. Yes, certainly, she made it much louder.

Q. She made it a second time?

A. No, sir.

Q. And when you reprimanded her, he again looked up?

A. I don't doubt but what he heard it.

Q. Well, what did you say to Mr. Goulard after reprimanding your wife for her unladylike demand?

A. I said nothing to him.

Q. In what other manner was your wife familiar that night towards Mr. Goulard?

A. She complained to me of having a headache, and wanted to retire early.

Q. Was she after she did not get your permission to kiss Goulard?

A. Yes.

Q. How long after she was deprived of that by you?

A. Possibly half an hour.

Q. And during all of this time you were sitting talking to Mr. Goulard?

A. Not all the time.

Q. Did you continue the conversation after this request of your wife's?

A. I treated Mr. Goulard the same.

Q. You treated him the same, eh?

A. Yes, sir.

Q. Now, you, of course, did not at all fancy your wife's statement, because you thought there was something wrong between the two, didn't you, or that there might be?

A. I did not think it was the proper thing to say; if it had been said to a well-known friend in a joking way, I might have passed it.

Q. But you surmised from that statement made by your wife, that there must be something wrong between the two?

A. No, I did not, not at that time.

Q. And notwithstanding your wife's request, which greatly angered you, you continued your invitation to Mr. Goulard to remain as a guest at your house that night?

A. Mr. Goulard had done nothing and said nothing to me.

Mr. Gaskill: I would like to have this letter marked for identification, and let it appear on the record at the time your Honor ruled against it.

Marked "Exhibit DA1½ for identification."

Recess to 2 P. M.

After Recess.

BINNEY WOODWARD EARL resumes the witness stand.

Cross-examination (continued).

By Mr. Backes:

Q. On the night that Mr. Goulard was first at your house—I mean the first night of this only visit, did you inform him when bedtime was?

A. I did not.

Q. Who intimated that to him?

A. Explain that.

Q. Who intimated that it was time to retire?

A. To him?

Q. To the assembly?

A. No one.

Q. A sort of mutual action on the part of the three of you?

A. No, my wife said that she had such a terrible headache that she said she would retire.

Q. Was Goulard at your house for two nights?

A. For two or three nights, and maybe more.

Q. Two or three nights that he slept at your house?

A. Yes.

Q. Now, Mr. Goulard likewise complained of some ailment, did he, on this first night?

A. Of his neck.

Q. On the first night?

A. Yes.

Q. Did he do that before your wife expressed her desire to kiss him?

A. I don't remember.

Q. Now, try to remember; you say that so often; just try; can you remember?

A. I cannot.

Q. Well, after your wife was properly settled by your reprimanding her, did she continue in good humor with you and Mr. Goulard?

A. Yes.

Q. Did she after that, massage his neck?

A. She did.

Q. And you did not protest against that?

A. I did.

Q. What did you say?

A. I told her that was not the proper thing for her to do, in my opinion.

Q. Were you looking on while she was massaging him?

A. I did, yes, sir.

Q. What had he on?

A. He had his outing shirt off.

Q. This was in the winter time?

A. Yes, sir.

Q. You think Goulard had on an outing shirt in the winter time?

A. He did.

Q. He had no coat or vest?

A. He had not.

Q. He came to your house in an outing shirt only?

A. No.

Q. What had he on when he came to your house?

A. I don't remember exactly what his dress was; I know he had an overcoat on.

Q. And an under-coat?

A. I presume so.

Q. Now, he complained of sunburn on the neck, didn't he?

A. No.

Q. Or a bee sting?

A. No, he complained of some lifelong complaint in his neck, some stiffness.

Q. And your wife proffered herself as a nurse to wipe out this lifelong illness, in your presence?

A. Yes.

Q. After she had said she would like to kiss him?

A. Yes, sir.

Q. And that made you very angry?

A. Not so angry as that it hurt my feelings.

Q. It hurt your feelings more than it angered you, when she expressed her desire to kiss Mr. Goulard?

A. Yes.

Q. You were not, as a husband, outraged by either this statement of your wife, or by her rubbing his neck; it did not outrage you at all?

A. I was angry, but I was more hurt than angry.

Q. And did you smother your hurt?

A. I did not.

Q. Did he remove his outing shirt?

A. He did.

Q. He first removed his coat?

A. I did not see him remove his coat.

Q. He was not sitting in your library with his coat and vest off?

A. No, sir.

Q. When he complained of the stiffness in his neck, whom did he complain to?

A. To my wife and myself.

Q. At the time that your wife complained of having a headache?

A. Before that.

Q. Then it was that your wife offered to get this liniment?

A. She offered to massage his neck.

Q. And she did it with liniment?

A. Yes.

Q. While you were looking on?

A. She went upstairs, and I remained downstairs.

Q. Who went upstairs?

A. Alexander Goulard.

Q. And your wife?
A. Yes.
Q. And you stayed downstairs?
A. Yes, sir.
Q. And were you ordered to stay downstairs by your wife?
A. No.
Q. Were you in a pet, that you did not go upstairs?
A. I don't understand the expression.
Q. Were you miffed?
A. I do not understand you.
Q. Were you piqued?
A. I do not understand you.
Q. Were you angered when your wife and this stranger went upstairs?
A. No.
Q. You had protested to your wife before she went upstairs, hadn't you?
A. Certainly, I had.
Q. And what did you say to her?
A. I told her that it was not the proper thing, in my opinion, to say that she wanted to kiss Alexander Goulard.
Q. We got by that period; we have got now to the neck rubbing; what did you say when she offered to rub his neck?
A. I don't remember.
Q. What you did say, you said before they went upstairs, didn't you?
A. Yes.
Q. He took his coat and vest off downstairs?
A. No.
Q. Took it off upstairs?
A. I did not see him take it off.
Q. Where did they go upstairs, so far as you could tell from downstairs?
A. He went in his room, and my wife went in her room.

Q. Well, she did not give him the absent treatment; she did not rub his neck, she being in her room and he being in his, did she?

A. No.

Q. Did they get together?

A. He came out of his room without his coat or vest, and without his outing shirt.

Q. And went where?

A. And went as far as the middle of the hall, and she met him there with this bottle, and massaged his neck there.

Q. In the hall?

A. Yes.

Q. Did you see all this?

A. Yes.

Q. Did you say anything to her?

A. Not then.

Q. You had said something to her before that?

A. Yes, but not then.

Q. But before they went upstairs, you protested against it?

A. I told her it was not the proper thing to do.

Q. Did you tell her that in the presence of Mr. Goulard?

A. Yes.

Q. Do you mean to say that Goulard then did not heed your admonition?

A. He told me that he would not allow her to massage his neck.

Q. He told you that before he went upstairs?

A. Yes.

Q. And then he walked up first?

A. Yes.

Q. And your wife followed him?

A. Yes.

Q. You knew what they were going up for?

A. I did not.

Q. Were they going up to do just this very thing as your wife informed you that they were?

A. He did not tell me so.

Q. Your wife did, though?

A. She did not.

Q. She invited him to go upstairs, didn't she?

A. Yes, and the matter was dropped thereafter until they did go upstairs.

Q. Was this rubbing of the neck done apparently, secretly, covertly?

A. No.

Q. It was done openly, while you were looking?

A. Yes.

Q. Did they know you saw it?

A. Yes.

Q. They saw you there?

A. Yes.

Q. What became of Mr. Goulard after your wife operated upon him in the hallway upstairs?

A. He put on his vest, shirt, and his coat and collar, upstairs.

Q. And came downstairs?

A. Yes, and so did she.

Q. Why didn't you open the front door and tell him to get out?

A. Because I wanted to reprimand her.

Q. But if an offence of this kind against your wishes had been done by a stranger in your house, why didn't you order him out?

A. He protested against this treatment.

Q. Who did?

A. Mr. Goulard did.

Q. Goulard went into his room with his coat on and his vest on—that is the way you saw him last dressed?

A. Yes.

Q. And he came out with his coat off, his vest off and his shirt off?

A. Yes.

Q. Do you call that a protest?

A. He protested.

Q. And willingly submitted?

A. And finally submitted.

Q. Well, did you show your ill will to either your wife or Mr. Goulard when they came downstairs?

A. To my wife, yes.

Q. That was in the presence of Mr. Goulard?

A. It was not, no.

Q. What did you say to Mr. Goulard about it?

A. Nothing, then.

Q. Did you say anything to him that evening?

A. I did.

Q. What?

A. When my wife came downstairs again—after I had retired ——

Q. No,—before you retired, did you say anything to Mr. Goulard about your wife rubbing his neck after you had admonished her not to do it,—in his presence?

A. No.

Q. How long did you stay around before the three of you retired, eh?

A. I suppose it might be half an hour before my wife and myself went upstairs.

Q. Did you leave Mr. Goulard downstairs when you two went up?

A. We did.

Q. Your wife did not seem to have much of a headache, did she?

A. She complained of having a very severe headache.

Q. Who suggested going to bed?

A. She did.

Q. And you accompanied her?

A. Yes.

Q. Did she invite you to do it?

A. No.

Q. And you left the stranger sitting up?

A. Yes; he had some accounts to do.

Q. He evidently had been doing some accounts all the evening, hadn't he; he was not bothering very much about entertaining you or your wife?

A. He was pretty busy, and I told him to go ahead and do his business.

Q. And that was, from approximately seven o'clock until ten o'clock?

A. That is the idea.

Q. And still you harbored him in your house that night?

A. Yes.

Q. How many bedrooms did you have?

A. Three.

Q. Upstairs?

A. Yes.

Q. Where was the cook's?

A. Next to the kitchen, on the first floor of the house.

Q. Where was your man sleeping?

A. I don't know; he was not at the place.

Q. Who was your man at that time; just think it over; who was working for you at that time?

A. Lizzie Bright was the cook.

Q. Yes; come on now ——

A. Mark Whitfield.

Q. And Mark Whitfield's room was on the first floor adjoining the kitchen, wasn't it?

A. Yes, sir.

Q. And he slept there that night, didn't he?

A. I suppose so.

Q. And the cook had one of the rooms upstairs, didn't she?

A. Yes.

Q. Goulard slept in one room, didn't he?

A. Yes.

Q. And you slept in the other one with your wife that night, didn't you, or did you sleep on the floor or in the coal bin?

A. I don't remember.

Q. You what; you don't remember where you slept?

A. No.

Q. You told, on direct examination, that you and your wife did not sleep together that night; do you recall making that statement?

A. I do.

Q. And now you say you don't remember where you slept?

A. I don't remember in what room I slept.

Q. Do you repeat now, that you did not sleep with your wife that night?

A. I do.

Q. And you had but three bedrooms on the second floor, one downstairs, Whitfield occupying his downstairs, Goulard occupying one room upstairs, the cook in another room upstairs; did your wife sleep in her room?

A. She slept in her room; I do not know where Lizzie Bright, the cook, slept.

Q. Did Lizzie Bright, the cook, have any other place to sleep other than in one of the three rooms upstairs, or with Mark Whitfield?

A. I do not recall her being there that night all night.

Q. But on direct examination you said that she was, —now, which is the fact; you see this is very important; now if you only had three rooms, and the cook and Goulard each occupied a room, and your wife occupied one, I would like to know where you slept?

A. I don't remember.

Q. You did not sleep in the coal bin, did you?

A. No.

Q. You did not sleep on the front doormat, did you?

A. No.

Q. And you did not sleep downstairs on a lounge?

A. No.

Q. You did not sleep outside of a bed, did you?

A. No.

Q. And you only had four beds in the house?

A. That is all.

Q. Did you miss your wife at any time during the night?

A. Yes, I did.

Q. After you retired?

A. Yes.

Q. You missed her from your bed?

A. Yes.

Q. You woke up?

A. I was not asleep yet.

Q. Who went into bed first?

A. I don't know.

Q. On which side of the bed did you sleep that night?

A. I don't know.

Q. Was your bed banked up against the wall?

A. The headboard was towards the wall.

Q. Was either side up against the wall?

A. Both sides were open.

Q. Did you sleep on the left or the right side that night?

A. I don't remember.

Q. Where did your wife sleep?

A. In her room; she went to bed there first.

Q. She did not go in the cook's bedroom, did she?

A. No.

Q. And she did not sleep with Mr. Goulard, did she?

A. No, not to my knowledge.

Q. Now, what do you recall as to her room as distinguished from yours?

A. My room is on one side of the house, and her room is on the other side of the house, adjoining and communicating.

Q. Now, where was Mr. Goulard's room?

A. It was the north room of the house at the end of the hall.

Q. That was the cook's room?

A. Yes.

Q. Do you think he slept with the cook that night?

A. I don't remember where the cook went that night.

Q. Do you think he slept with the cook that night?

A. No.

Q. Is the cook a black or a white woman?

A. A white woman.

Q. After you went upstairs, did you get undressed immediately?

A. Yes.

Q. Did you kiss your wife that night?

A. No.

Q. She was rather kissable that night, wasn't she?

A. If I had seen fit to do so, I should have done so.

Q. How long had you been in your room before you again came downstairs?

A. I should judge half an hour.

Q. You had fully retired, had you?

A. Yes.

Q. And then you heard the rustle of skirts in the hallway?

A. Yes, and footsteps on the stairs.

Q. Footsteps on the stairs?

A. Yes, very light footsteps, and I got up, put on a suit of clothes without any underclothes, and went downstairs.

Q. And was the downstairs room fully lighted?

A. Yes.

Q. Is the stairway an open stairway?

A. Yes.

Q. And does this stairway lead in the room in which you found your wife and Mr. Goulard?

A. It did not, no, sir.

Q. Did your stairway come down in the living hall?

A. Yes.

Q. And they were not in the living hall?

A. No.

Q. Goulard was in the same room in which you left him before you went upstairs?

A. Yes, he was.

Q. Did you step lightly down the steps?

A. I did not.

Q. You whistled coming down the stairs?

A. No, sir.

Q. You gave audible sounds of your coming?

A. I said nothing, but just came downstairs.

Q. And from the point on the stairs, in coming down, could you see in the room in which they were?

A. I could not.

Q. You had to go as far as the door?

A. Yes.

Q. Did you go in the room?

A. Yes.

Q. What was Mr. Goulard doing?

A. He was still working on his accounts.

Q. And your wife was on the floor?

A. Yes, sir; she was dressed, with her hair down, and one stocking part way down, showing her bare leg, and she had no shoes on.

Q. How was she dressed; did she have a kimono on?

A. No, sir, she had a dress on of some sort.

Q. Long skirts?

A. Yes.

Q. All the way down to the ground?

A. No; they were up as high as her knees; they were long skirts, but they were pulled up.

Q. While she was on the floor they were pulled up and exposed her bare leg?

A. Yes.

Q. Of course, Mr. Goulard was laboring; he was not watching legs?

A. He looked to me as if he was taking her fairly in when I saw them.

Q. I thought you said he was writing on his accounts?

A. He had his accounts right in front of him, and he had a pen in his hand, but he was looking directly at my wife.

Q. Was he talking to her?

A. Yes, sir.

Q. Who apprised them of your presence?

A. I did; I came in the room.

Q. Did they hear you before you came?

A. I suppose they did.

Q. Your wife did not make any move to get up from the floor when you came in?

A. No.

Q. And Mr. Goulard did not make any attempt to stop attending to his accounts?

A. No.

Q. What did you say to them?

A. Nothing.

Q. You thought it was rather funny that your wife should be down there, sitting at the knee of a stranger?

A. I was so surprised and so disgusted that I could not talk.

Q. How long did you remain in the room?

A. In the neighborhood of 15 minutes.

Q. And so disgusted and surprised that you were paralyzed, so far as the subject was concerned?

A. I did not know what to say.

Q. For 15 minutes you did not know what to say?

A. I did not.

Q. Did you stand there or sit down?

A. I sat down and looked at them.

By the Court:

Q. You sat down and looked at your wife and Mr. Goulard?

A. Yes.

Q. For 15 minutes?

A. Yes.

Further cross.

Q. Then you went back to your room?
A. No.
Q. Did your wife go back?
A. I sent my wife upstairs.
Q. What did you say to your wife when you sent her upstairs?
A. I told her it was no way for a lady to act, a married woman, and the place for her was to go to her room.
Q. Then, for the first time that evening, you asserted your mastership of that household and directed your wife to go to her bed?
A. Yes.
Q. That was the first time?
A. Yes.
Q. What conversation did you have with Mr. Goulard before you assumed the mastery that evening; what talk did you have with him?
A. We discussed mechanics.
Q. What,—do you mean that you came downstairs and saw your wife in undress in front of this stranger, and you discussed mechanics with him?
A. I don't understand the question.
Q. I am asking you when you came downstairs, after you had retired, and saw your wife with Mr. Goulard, what did you discuss—did you discuss mechanics?
A. No; I told Mr. Goulard to get out of my house.
Q. Did you?
A. Yes.
Q. Right away?
A. Instantly, after I had told her to go upstairs.
Q. That was 15 minutes after you came downstairs?
A. Yes.
Q. Now, during the first 15 minutes what conversation did you have with him?
A. Absolutely none.

Q. Did you sit there in silence for 15 minutes?
A. I did.
Q. With your eyes open or shut?
A. Open.
Q. Thinking?
A. Yes.
Q. What to do?
A. Yes.
Q. Now, I suppose your wife immediately obeyed you?
A. She did, yes.
Q. She went to bed?
A. Yes.
Q. Your bed?
A. Her bed.
Q. You slept with her?
A. I did not.
Q. When you ordered Goulard out of your house, what did he say?
A. He said he did not mean to make any trouble.
Q. Why didn't you take him by the back part of the pants and throw him out of the door?
A. My physical condition was such that I could not do it.
Q. Was it because you had gonorrhoea at that time?
A. No.
Q. At that time you had not contracted it?
A. No.
Q. What was the matter with your physical condition in the winter of 1909-1910?
A. General weakness—irregular circulation.
Q. What else?
A. Nothing.
Q. Up to the time you became so afflicted, you were a pretty husky boy?
A. No.
Q. What is your weight?
A. About 130.

Q. What is your height?

A. Six feet one and a half inches.

Q. How big a fellow was Goulard?

A. Short and stout.

Q. Was he any bigger than Clinton, little Clinton (indicating Clinton Leigh)?

A. He was thicker set than Clinton.

Q. And it was because of your physical condition that you did not insist upon this stranger obeying your order and leaving this house?

A. I could not put him out.

Q. It was because of your physical condition that you did not insist upon enforcing your orders?

A. That is correct.

Q. And he told you he would not go out?

A. No, he apologized.

Q. And you accepted his apology, did you?

A. No.

Q. What did you do?

A. I talked it over with him, and I told him for that night I would let it go until the next day.

Q. You thought your wife had been doing wrong with him?

A. Yes.

Q. And you talked your wife's perfidy over with a stranger?

A. I don't understand your question.

Q. (Question read.)

A. No, I talked over his conduct towards my wife to him.

Q. And you thought that he had, during that evening, and after you had retired, you thought that he had seduced your wife, didn't you?

A. I did not.

Q. You did not think your wife had done wrong with him?

A. I did not think my wife had intercourse with him.

Q. Can you explain why a man six feet and more tall, weighing 130 pounds, the husband of a young married woman, who had been circumstanced as you were that night, did not take this man Goulard and cast him out of the house; can you explain that, other than that you were a physical coward?

A. I was physically incompetent.

Q. How near neighbors have you got?

A. Within 35 or 40 feet.

Q. Men?

A. No, women.

Q. Any men in your neighborhood?

A. Yes.

Q. A policeman in the neighborhood?

A. No.

Q. Constables?

A. No.

Q. Did you even ask Goulard to leave your house?

A. Yes.

Q. And then he said that he meant no wrong?

A. He did.

Q. Then, after that, did you tell him to get out?

A. No.

Q. You had breakfast with Goulard the next morning, didn't you?

A. I cannot remember.

Q. Just try.

A. I don't remember.

Q. You had your automobile too, at that time, didn't you?

A. I think I did.

Q. You took him out driving that day, didn't you?

A. I don't remember.

Q. Just try to think—don't you remember taking Goulard out automobile riding that day?

A. I did not take him out.

Q. Did you take your wife out that day?

A. I don't remember.

Q. You do not recollect?
A. I do not remember.
Q. Did you go home to lunch?
A. Do you mean, did he stay to lunch?
Q. No.
A. I did not go out.
Q. Did your wife?
A. I don't remember.
Q. Goulard had lunch with you that day?
A. I don't remember.
Q. He had his breakfast at your house, didn't he?
A. I don't remember.
Q. You saw him after breakfast, didn't you?
A. I think I did.
Q. Now, will Mark Whitfield stand up? (A man stands up in the audience.) This is Mark Whitfield, isn't it?
A. Yes, it is.
Q. He is a pretty husky man?
A. Yes.
Q. He was in your house on the night that Goulard was there?
A. He was, yes.
Q. And if your physical condition was such that you could not drive Goulard out, why didn't you get this big husky helper that you had in the house to throw him out?
A. I did not wish outsiders to know about it.
Q. How near was this room in which you found Mr. Goulard and your wife to the room occupied by Mark Whitfield?
A. There was a partition between.
Q. And a very narrow partition?
A. Yes.
Q. So that any loud discussion in the room in which Goulard and your wife were, could be heard in his room?
A. A loud discussion could be heard.

Q. And if you were heated upon this night, angry at your wife, you were not speaking in quiet words, in soothing terms?

A. I was not talking in a loud manner.

Q. Now, Mr. Goulard came back to your house that night before dinner?

A. Yes.

Q. At your invitation?

A. No.

Q. With your permission?

A. No.

Q. Against your desires?

A. Yes.

Q. Against your protest?

A. Yes.

Q. Why didn't you tell him to get out?

A. Because I was not physically capable of putting him out.

Q. Mark was in the house, why didn't you tell him to put him out?

A. Because he is an outsider.

Q. Did you give Mr. Goulard to understand that he was not welcome to dinner that night?

A. I did.

Q. And, of course, Goulard said he did not care what you said?

A. I don't remember.

Q. He simply cast you aside?

A. He was indifferent.

Q. Did you three sit down at the table together?

A. I don't remember.

Q. Now, tell me, Binney, who does the carving at your table?

A. I do, when there is any to be done.

Q. Did you have a roast that night for dinner?

A. I don't remember.

Q. You had meat, didn't you?

A. I don't remember.

Q. Who served the main plate, as a general thing?

A. Sometimes Lizzie Bright, the cook.

Q. I mean the main plate, where you put your roast meat on—the meat for the guest—the meat and one vegetable?

A. Sometimes Lizzie Bright, the cook.

Q. You were in the habit of doing the carving?

A. Yes.

Q. If you did the carving that night, and Goulard was at your table, you helped him to his food, didn't you?

A. I don't remember.

Q. I say, if you did the carving that night, it was your custom and you say Goulard was at your table, then you helped him at your table, helped him to the food?

A. I would.

Q. Notwithstanding the fact that you told him he was not welcome there and was not wanted there?

A. Mr. Leigh advised me what to do.

Q. Mr. Leigh?

A. My wife's father.

Q. Mr. Leigh had not come on the scene yet, had he?

A. Mr. Leigh knew all of this.

Q. Did you go to Mr. Leigh's?

A. I had seen him constantly.

Q. Now, after dinner on this second night, did you entertain this man in the same room?

A. I did not, no.

Q. You were in the room with him, were you not?

A. No, I went out.

Q. You left your wife alone with this man whom you suspected?

A. I went out to send word to her father.

Q. That was after dinner on the second night?

A. I don't remember whether it was the first, or second or third night.

Q. Why, the first night, according to your testimony, you went downstairs and found your wife in this compromising position, and then you ordered your wife to bed and you went to bed, and the next morning you got up and had breakfast; now, it was not that night, was it?

A. No, it was the second or third night.

Q. This man Goulard did not come back after you had been advised by Leigh, Senior?

A. Mr. Leigh said to put him out.

Q. So that he was entertained at your house after dinner on the second night?

A. Not by me.

Q. By whom?

A. By my wife.

Q. Until when?

A. Until Mr. Leigh put him out.

Q. He slept there two nights before Mr. Leigh put him out, didn't he?

A. The number of days that he was there, I am not positive of.

Q. You are not positive you put him out the second night, are you?

A. No, but I know he was put out.

Q. He was probably put out the third night?

A. Probably.

Q. Where did he sleep the second night?

A. In the same room he occupied before.

Q. With the cook?

A. I don't know where the cook was.

Q. And did he have breakfast with you the following morning?

A. I don't remember.

Q. Now, did you, during the three days that he was at your house, constantly tell him to go and he refused to go?

A. I did, the last two, yes.

Q. Urging him to go?

A. Yes.

Q. What time of the night was it that he was put out by Mr. Leigh?

A. I don't know.

Q. How did he put him out?

A. I don't know.

Q. You don't know, then, that he was put out?

A. Mr. Leigh told me that he had put him out.

Q. Mr. Leigh is now dead?

A. Yes.

Q. Well, the last you saw of Mr. Goulard was at your house?

A. Yes.

Q. That was what time on the evening of the third day of his visit?

A. I don't remember.

Q. And what time of the third day was it that you last saw him?

A. I don't remember.

Q. Morning, noon or night?

A. Night, most likely.

Q. I did not ask you that; you ought to know; where was Mr. Goulard when you last saw him on the third day?

A. At my house.

Q. And you left your house and went to Burlington to see Mr. Leigh?

A. I 'phoned to Mr. Leigh from my neighbor's house.

Q. And then, after 'phoning to Mr. Leigh, you met him at the trolley, is that right?

A. No.

Q. Where did you meet him?

A. Not until he returned to Burlington.

Q. Then, after you telephoned him you went to Burlington?

A. Yes.

Q. Leaving this intermeddler, leaving this family destroyer with your wife alone in your house?

A. I went to meet Mr. Leigh.

Q. How long were you gone between the time you left Goulard in your house until you saw Mr. Leigh?

A. In the neighborhood of an hour and a half.

Q. You did not return to your home that evening?

A. I did.

Q. What time?

A. Direct from Burlington to my house; I do not remember the time.

Q. And then Goulard had gone, had he?

A. Yes, sir.

Q. Did you have a talk with your wife about him?

A. Yes.

Q. And your wife was in a good humor, I suppose?

A. No.

Q. And you were not in a good humor?

A. No.

Q. Was a reconciliation shortly effected between the two of you?

A. Yes.

Q. And you slept together that night?

A. No.

Q. And when was the reconciliation had?

A. Several days afterwards.

Q. And you were the one that begged for water?

A. I was not.

Q. You were at the household of Mr. and Mrs. Leigh, the parents of your wife, within a day or two after this occurrence, at Burlington, were you not?

A. Yes.

Q. And there, in the presence of Mr. and Mrs. Leigh, and to them, you said that your conduct and the calling by you upon Mr. Leigh, was a mad fit of jealousy?

A. I did not.

Q. And you were willing to go before any lawyer and make an affidavit that your conduct because of Mr. Goulard's presence in your house, was simply in a mad fit of jealousy, and the result of jealousy, and the

result of unfounded jealousy; is that right?

A. It is not.

Q. Nothing of that kind occurred?

A. No.

Q. It was in an hotel—I am asking you now—in an hotel in Burlington where Mr. and Mrs. Leigh resided —in the evening, within two or three days after this happening—in the presence of Mrs. Leigh and Clinton Leigh, didn't you say that your conduct towards your wife, because of the presence of Mr. Goulard, was simply jealousy, and it was in a fit of jealousy that you did what was done, or words to that effect?

A. I did not.

Q. Do you know the night of the week that Mr. Goulard came to your house?

A. I do not.

Q. Don't you know that it was on a Saturday night?

A. I don't remember.

Q. Don't you know as a fact, that he was only at your house one night?

A. He was there more than one—he was there two or three times—maybe more.

Q. Two or three nights consecutively?

A. Yes.

Q. I show you "Exhibit DA1½ for identification;" is that writing in your handwriting?

A. It is not in my handwriting; it is Alexander Goulard's.

The Court: Strike the latter part of that out as not responsive.

Q. Did you get anyone to write that letter?

A. I did not.

Q. Did you ever see Mr. Goulard write?

A. I have.

Q. Where?

A. In my library, when he was making out his accounts.

Q. You only saw him once?

A. I saw all his accounts there made out in his own handwriting.

Q. When, with reference to Mr. Goulard's departure from your house was it, that your wife informed you that she saw him in Atlantic City?

A. After.

Q. How long after?

A. A few days.

Q. Did your wife go to Atlantic City?

A. Yes, with me.

Q. That was after the reconciliation, then, I take it?

A. Yes.

Q. Well, what day of the week did you go to Atlantic City?

A. I don't remember.

Q. Where did you stop? At what house?

A. The Wiltshire.

Q. Did you register?

A. Yes.

Q. Did you register under the date that you went there?

A. Yes.

Q. You think that was two or three days after Goulard's going from your house that you took your wife to Atlantic City?

A. I think it was longer than that.

Q. How much longer?

A. A week.

Q. Did you go the early or the latter part of the week, to Atlantic City?

A. I don't remember.

Q. How long did you stay?

A. A week or ten days.

Q. And she said she saw him on the boardwalk?

A. I saw him on the boardwalk.

Q. She said that she saw him too—is that right?
A. I don't remember.
Q. Did you salute him?
A. No.
Q. Did you pass him?
A. Together—no.
Q. Did you pass him close enough to salute him?
A. No.
Q. Did he see you, do you know?
A. I think so.
Q. Now, was your wife with him when you saw him?
A. No.
Q. Mr. Goulard went down to see your mother at Atlantic City, didn't he?
A. No.
Q. Was your mother down with you?
A. Yes.
Q. He saw your mother at Atlantic City, to your knowledge, didn't he?
A. He called her on the 'phone.
Q. And told her what kind of conduct you displayed at your house?
A. He did not.
Q. He did not know your mother before his visit to your house, did he, to your knowledge?
A. No.
Q. You know what the subject of conversation was between him and your mother?
A. Yes, I do.
Q. You were the subject, were you not?
A. No, not directly.
Q. Where did your wife say that she saw Goulard in Atlantic City?
A. She did not say where.
Q. She did not impress you that she saw him to speak to him?
A. Yes.
Q. Did she tell you that she spoke to him?

A. Yes.

Q. Did she tell you that she had a conversation with him?

A. Yes.

Q. On the boardwalk?

A. She did not say where.

Q. How long after she saw him did she tell you?

A. I don't know.

Q. I thought maybe you did—was it daytime or nighttime that she told you she saw him?

A. I don't remember.

Q. You must remember something about it; you remember her telling you; now, did she tell you in the daytime or not?

A. I do not remember.

Q. Did she tell you whether she saw him in daytime or nighttime?

A. She did not.

Q. She apparently made no secret of it?

A. She did not.

Q. And you did not chide her at that time, or chastise her, or find fault with her for talking to him?

A. I did, yes.

Q. Then, in the spring of 1911, she told you that he took lunch with her where?

A. In Philadelphia.

Q. Where, in Philadelphia?

A. She did not tell me.

Q. Had your wife been to Philadelphia before she told you—on the same day?

A. Yes.

Q. And upon her return home she told you she had met Mr. Goulard and had had lunch with him?

A. Yes, sir.

Q. She returned home in daylight, I suppose?

A. Yes.

Q. She went to Philadelphia in daylight, I suppose?

A. Yes.

Q. And, of course, you had another fuss over that, didn't you?

A. Slightly.

Q. How many letters do you say that you returned to their depository because you regarded it as dishonorable to hold them?

A. Ten or fifteen, more likely fifteen.

Q. Why did you hold out one?

A. I was going to show it to her, and remind her of the fact that I had forbidden any correspondence between the two.

Q. Why could not that have been made more impressive by showing her the eleven or the sixteen; can you explain that?

A. I took those and read them.

Q. And then put them back on the desk?

A. Put them back in the desk.

Q. Because it violated and outraged your sense of honor?

A. I did not think it honorable to keep them.

Q. But you did think it was not so much dishonor to keep but one?

A. I took the one after I had returned the ten or fifteen.

Q. You abstracted one of the ten or fifteen to show to her?

A. No; I found this letter separate, after that, on her desk.

Q. You were then looking for the other ten or fifteen, and did not find them?

A. I did not look for them; I just saw it.

Q. You were looking for the other ten or fifteen and did not find them?

A. I was not looking for the others; I just saw this one and took possession of it.

Q. What for; why didn't you keep the others?

A. I told you I wanted to show it to her to remind her of the fact that I had forbidden the correspondence.

Q. Now, how long after you had returned the ten or fifteen was it, that you found this one?

A. I do not remember how long.

Q. When you found the ten or fifteen, you were more incensed than when you found one letter, were you not?

A. Yes.

Q. Why did not you then present these ten or fifteen letters to your wife, in order to remind her of your wishes?

A. I do not remember why I did not.

Q. Now, you told your wife that you would forgive her conduct with Goulard at the instance of her mother, is that right?

A. She promised to behave herself.

Q. She had not misbehaved up to that time?

A. I call that misbehavior.

Q. And then she promised to be good?

A. Yes.

Q. And then you said, "I forgive you"?

A. I said I would forgive her and give her another trial.

Q. If she ever did anything like that again, you would divorce her?

A. I did not say that.

Q. You were constantly threatening this poor girl with privation, if she did not do as you told her?

A. I never threatened her.

Q. You were constantly saying to her, "I am the son of a millionaire, and I shall be a millionaire myself some day, and unless you do as I want you to do, I will drive you out;" that has been your threat to her ever since you have been married, hasn't it?

A. It has not.

Q. Have not you said that at least a dozen times to your wife during the period of your married life?

A. No.

Q. And haven't you constantly held over her head that you are the son of wealthy parents, and she was

a poor girl, and unless she did your bidding, that you would deprive her of the advantages of money that you had?

A. I never did, no, sir.

Q. Didn't you do that in the presence of Mrs. Leigh?

A. I did not.

Q. At Mrs. Leigh's home?

A. I did not.

Q. And didn't you do it in your home in the presence of Mrs. Leigh and in the presence of Chester Leigh?

A. I did not.

Q. Did you ever have the gonorrhoea before this time?

A. No.

Q. It was not because you did not have the opportunity, was it?

A. No, I always protected myself.

Q. Do you know Mrs. McConahan?

A. I knew Margaret McConahey.

Q. You have seen her since you were married?

A. Never, since I have been married.

Q. Didn't you give her $3.00?

A. No.

Q. Just think it over?

A. No, I did not.

Q. Did you communicate with her?

A. No.

Q. Do you know where she is?

A. No.

Q. Do you know the Richardson Hotel?

A. I do.

Q. You have seen her since you were married?

A. I have not.

Q. You have never seen her?

A. I have seen her on the street.

Q. Did you ever give her $2.00?

A. No.

Q. Now, you felt an unpleasantness in the parts about what time?

A. After the first of July.

Q. Not before that, eh?

A. No.

Q. Do you remember Clinton Leigh coming to your house with some peas in the middle of June, and your then complaining to him that you had bladder trouble?

A. I don't remember any such thing.

Q. You think that you were the last—as between yourself and your wife—that you were the last one, as between your wife and yourself, you were the last one to be infected, and the first one to be cured of the gonorrhoea?

A. I was the last one to be infected.

Q. And the first one to be cured?

A. As far as I know, yes.

Q. You were very sick on the Fourth of July, were you not?

A. I was ill.

Q. You were very sick?

A. I was.

Q. Around the parts?

A. Explain yourself more fully.

Q. (Question read.)

A. I was just a little so, not acutely, sick in my private parts, but not acutely.

Q. What do you mean by "not acutely"?

A. Not severely.

Q. Any swelling?

A. No.

Q. Any redness?

A. No.

Q. How long had you been dripping before the Fourth of July?

A. Just about started.

Q. Of course, you did not know what it was?

A. No, I did not.

Q. You did not even suspect what it was?

A. Not when I first got it.

Q. I mean on the Fourth of July; you had an engagement to go to Mt. Holly to the fair?

A. Yes.

Q. And you were so sick at that time that you complained that the automobile riding would hurt you?

A. I could not stand the heat.

Q. What—from gonorrhoea?

A. The heat of the sun—the atmospheric heat; I could not stand it.

Q. Because of your gonorrhoea?

A. Because of my complete physical condition.

Q. Did you have anything else worse than the gonorrhoea?

A. No.

Q. How long had you been in that complete physical condition that you describe?

A. Four months—irregular circulation.

Q. In the parts?

A. No.

Q. Had you doctored with anyone for this irregular circulation before the Fourth of July?

A. Yes, for irregular circulation, yes.

Q. With whom?

A. Dr. Biggs, Dr. Mulford, Dr. Darkhan and Dr. Tracey.

Q. All about irregular circulation?

A. Yes.

Q. All about the period of 1911—the summer of 1911?

A. Previous to the summer of 1911, and up to that time.

Q. I mean, during the months of June and July did you doctor with all of these people for irregular circulation?

A. I doctored with Dr. Tracey for irregular circulation.

Q. Now, the irregular circulation did not prevent you, because of the heat, from going to the fair at Mt. Holly, did it?

A. It did.

Q. Did not you refrain from going to the fair because the movement of the automobile would hurt you in the parts?

A. No.

Q. Didn't you say so to Clinton?

A. No.

Q. You were complaining all that day about the gonorrhoea?

A. I was, yes.

Q. It was about the end of July that your wife said she thought she had the same thing that you had?

A. Several times during July.

Q. The first time was about the end of July that she said she thought she had the same thing that you had?

A. She said so the instant that I got it; she said, "You must have caught this thing from me, whatever this thing is."

Q. You thought it was inflammation of the bladder, didn't you?

A. At first ——

Q. But you suffered from this quite some days before you went to see Dr. Tracey?

A. Very, very few.

Q. Quite some days, didn't you?

A. No.

Q. How many days?

A. One or two.

Q. Do you mean to say that you only felt a burning or itching sensation at the end of your penis one or two days before you went to see Dr. Tracey?

A. Yes.

Q. And you went to see Dr. Tracey on the 5th of July?

A. I don't recollect the date in July.

Q. At that time, within two days afterwards, you were discharging?

A. That is about it.

Q. On the Fourth of July you had such discharge that it came through your trousers, didn't it?

A. No.

Q. What—on the 5th?

A. No.

Q. Do you remember when it was that you went to Dr. Tracey's?

A. After the first of July, the day I do not remember.

Q. And he told you it was gonorrhoea?

A. He told me he thought it was; he did not know.

Q. He treated you for gonorrhoea, didn't he?

A. I suppose he did; I don't know.

Q. He gave you pretty bitter medicine—capaiva; is not that what they call it?

The Court: It is immaterial whether it was bitter or not.

Q. As you understand it, didn't he treat you at once for gonorrhoea?

A. He said he did not know what it once; he gave me some medicine; I don't know what it was.

Q. Didn't you at that time tell him you got it from your wife?

A. I think I did.

Q. Even though you didn't know what it was?

A. I did not know what it was.

Q. You half suspected it was it?

A. I did not know.

Q. You half suspected that?

A. I did not know.

Q. You told Chester and Clinton and your wife and your mother-in-law and your own mother, that you thought you had it?

A. I may have; I do not recall.

Q. And if you did say that, you really believed it, didn't you?

A. Certainly.

Q. And when you went to Dr. Tracey, believing that you had it, you told him you thought you had gotten it from your wife?

A. I do not recall telling Dr. Tracey that I had it.

Q. Well, whatever, up to that time, you believed you had, you told Dr. Tracey that you thought you had got it from your wife?

A. I told Dr. Tracey I thought I had got it from my wife.

Q. That you had got what from your wife?

A. Whatever was the matter with me.

Q. You thought it was the clap, didn't you?

A. No, sir.

Q. When did you come to believe that it was?

A. Dr. Tracey, at no time, told me positively that it was the gonorrhoea.

Q. How long did you treat with Dr. Tracey?

A. The length of the time I do not recollect.

Q. When did you become convinced that you were suffering from gonorrhoea?

A. After my wife was examined by Dr. Krusen.

Q. And when she reported to you that Dr. Krusen had said that she had the gonorrhoea, then you were satisfied that she had?

A. Yes.

Q. And also satisfied that you had it?

A. Yes.

Q. And being a perfectly continent married man, you also were convinced that you got it from your wife?

A. Yes.

Q. And you know very well that that is a disorder that cannot be, ordinarily, contracted innocently?

A. I was told by Dr. Steele, a specialist, that it can be contracted on a toilet.

Q. Provided you took a girl with you?

A. No.

Q. Who is Dr. Steele?

A. Dr. William Steele, of North Broad Street, Philadelphia.

Q. When did you go to him?

A. I do not recall the date.

Q. When, with reference to the Fourth of July?

A. Sometime afterwards.

Q. Before your wife went to Dr. Krusen?

A. Yes.

Q. Before you were convinced that you had it?

A. Yes.

Q. Did you ask Dr. Steele whether it could be contracted from a toilet?

A. I did.

Q. You told Dr. Steele you thought that was the way you got it?

A. I did not.

Q. You asked him whether a man could contract it in a toilet?

A. Yes, or if a woman could contract it in a toilet.

Q. That is, the gonorrhoea?

A. Yes.

Q. That is before you were convinced that you had it?

A. Yes.

Q. Why did you ask him?

A. Because Dr. Steele told me, that to all appearances it was the gonorrhoea.

Q. Well, he satisfied you that you had it?

A. He satisfied me thoroughly well, yes, sir.

Q. Believing that your wife gave it to you, why didn't you leave her?

A. Because Dr. John Whittaker, Dr. George Tracey and Dr. Steele all told me that it could be gotten on a toilet.

Q. Unaccompanied ——

A. Yes, sir, unaccompanied, on a toilet.

By the Court:

Q. When did your wife first speak to you of your troubles?

A. In the early part of June, I should say the first week in June.

Further cross.

Q. Now, what gives you the impression that it was the first week in June; what is there in the circumstances that justifies you in saying that it was in the first week in June?

A. Because, on the 10th of June my mother, Mrs. Earl, had made the first payment on her new house, and came to my house very much elated at the fact that she had started hers, and she was sorry to know that Irma was suffering so, and I then told my mother that she had been suffering for some days before that.

Q. You slept with your wife during the month of June?

A. I did—but I had no intercourse but once during the month of June.

Q. Didn't you?

A. No.

Q. Did you have between the time that your wife first complained to you and the day that your mother spoke to you about it, namely, the tenth of June, have intercourse with her?

A. No, sir.

Q. You slept with your wife every night, didn't you?

A. Yes.

Q. And when was it that you had the intercourse with her?

A. The latter part of June.

Q. What time in the latter part of June?

A. I do not recollect the exact date.

Q. I do not suppose you do; was it about the 20th?

A. Yes, sir; maybe.

Q. Was it before the 20th?

A. Perhaps so.

Q. Your best recollection is, that the last time before the Fourth of July was before the 20th of June?

A. I have no way to fix the date in my mind.

Q. Your best recollection is, that it was before the 20th of June?

A. Around the 20th of June, some few days before the first of July; several days.

Q. Several days before the 20th of June too?

A. No, I said the latter part of June, and that is as close as I can get.

Q. You said also, about the 20th of June; do you want to withdraw that?

A. It was about that time.

Q. And only once?

A. Yes.

Q. That was because of your illness?

A. No, sir, because of my wife's illness.

Q. Your wife had medical treatment for ailment of the parts, the first time after you went to Dr. Tracey, is that right?

A. She had treatment; she was examined; of course, she had treatment and finally was examined.

Q. It was all after you went to Dr. Tracey?

A. Yes, sir.

Q. All after the 4th of July?

A. Yes, she was examined. She refused medical attention.

Q. Well, after the 4th of July, you went to Dr. Tracey's?

A. After the first of July, I went to Dr. Tracey's.

Q. That was on the 9th of July that you first went there?

A. I do not recollect the date.

Q. And it was after that, that Mrs. Earl, your wife, refused medical treatment, wasn't it?

A. She refused it before that.

Q. When, before?

A. In the early part of June.

Q. When she first complained of illness in the parts, is that right?

A. Yes.

Q. She did not treat herself, to your knowledge?

A. No.

Q. And as a fact, there was no treatment of Mrs. Earl by herself or by medical men, until after your visit to Dr. Tracey's?

A. That is correct.

Q. Dr. Tracey prescribed for your wife through you?

A. He advised.

Q. He gave medicine for your wife, to you?

A. No, Dr. Whittaker did that.

Q. How many visits did you make to Dr. Tracey?

A. I don't remember.

Q. The first time you went there, you went with your wife?

A. I did, yes.

Q. In the automobile?

A. Yes.

Q. When you came out to the automobile, you told her what Dr. Tracey said?

A. I told her Dr. Tracey said he thought I had the gonorrhoea.

Q. And you, of course, told your wife that you told Dr. Tracey that she had given it to you?

A. I don't remember about that.

Q. Did you go to see Dr. Tracey again, or did he come to see you before he went away on his vacation?

A. He came to see me.

Q. At any time that he came to see you, did he treat your wife?

A. No, he simply advised the treatment.

Q. What advice did he give?

A. That she be given a douche; that she take a douche.

Q. Did he prescribe medicine?

A. No, sir, not at that time.

Q. What kind of a douche did he prescribe for her?

A. He did not prescribe, he advised.

Q. What kind of a douche did he advise?

A. He did not name it.

Q. He advised what douche—water?

A. He did not say.

Q. What did you understand him to mean?

A. That it would be advisable for her to have a douche.

Q. What did you understand the douche to be that he advised?

A. I did not know.

Q. Did you know what a douche was?

A. A douche is an injection of some drug, water, or some prescription of some type.

Q. Did he advise no medicines in the douche?

A. He did not say.

Q. He only advised this douche as a matter of cleanliness, as you understood it?

A. No, sir.

Q. Did he give you medicine?

A. Yes.

Q. And he gave you gonorrhoea medicine, didn't he?

A. I don't know.

Q. He gave you what you understood to be gonorrhoea medicine?

A. He said he did not know what I had.

Q. He gave you what you understood to be medicine for gonorrhoea?

A. I did not understand it to be medicine for gonorrhoea.

Q. Didn't you understand that he was treating you for gonorrhoea from the very first?

A. No.

Q. You came out and told your wife that the doctor thought you had the gonorrhoea?

A. He thought I had it.

Q. And then he gave you medicine?

A. Yes.

Q. And what did you think he was giving you medicine for?

A. For whatever he thought it was.

Q. And, thinking that was gonorrhoea, you thought he was giving you medicine for gonorrhoea?

A. If he thought it was gonorrhoea, I must have thought so.

Q. And when he came to your house three or four times thereafter, he gave no prescription and no treatment of a medical character for your wife's condition?

A. He advised it; he advised medicine besides the douche.

Q. When did he advise medicine?

A. After his first visit.

Q. How long after his first visit?

A. I do not recall.

Q. You know that you said just five minutes ago, within the last five minutes, that the first one to prescribe medicine was Dr. Whittaker?

A. For my wife, yes.

Q. Dr. Tracey did not, during the number of visits that he made at your house, extending over a period of five or six days, prescribe medicine for your wife?

A. He advised it—not prescribed it; he advised that she be given a course of treatment because of her condition.

Q. A course of treatment of what?

A. Whatever he thought was necessary.

Q. What did he advise?

A. He advised that she be examined by him or a specialist, as I asked him to have her examined.

Q. That you did not ask until after Dr. Tracey returned from his vacation, did you?

A. I did, yes.

Q. Do you recall Dr. Tracey's statement?

A. I do, yes.

Q. Dr. Tracey returned from his vacation about the 30th of July, didn't he?

A. I believe it was about that date.

Q. And then it was that you suggested that they go with your wife to Philadelphia to a specialist, wasn't it?

A. I insisted upon it.

Q. That was the first you insisted upon it?

A. No,—in June, the early part of June.

Q. Then, in June, only to your wife did you insist upon it?

A. Yes.

Q. And during the visit of Dr. Tracey to your house, treating you for gonorrhoea, after the 5th of July, you did not insist upon it until after Dr. Tracey's return, did you?

A. She refused it until ——

Q. You did not insist upon it until Dr. Tracey's return, did you?

A. She refused to be treated.

Q. Why, Dr. Tracey, you say, before he left, advised douches?

A. He did, and other medicine.

Q. What other medicine?

A. I don't know.

Q. Did you get it?

A. No, but he advised it and she refused to accept treatment from him.

Q. Do you recall what he prescribed, what he advised in the nature of medicine?

A. No.

Q. Do you know what he prescribed for you?

A. I do not.

Q. Liquids?

A. Yes and capsules and pills and a douche; their ingredients I do not know.

Q. Dr. Tracey examined your wife after his return from his vacation, didn't he?

A. Dr. Krusen did.

Q. (Question read.)

A. Not to my knowledge.

Q. And during the doctor's vacation, which began on the 9th of July, a young doctor by the name of Whittaker was in charge of his practice?

A. Yes.

Q. Your wife would not submit to this young man examining her, would she?

A. No, nor any other physician.

Mr. Backes: I move that the latter part of the answer be stricken out, as volunteered.

The Court: It is not responsive.

Mr. Gaskill: It is a full answer.

The Court: I think I will let it stand, Mr. Backes, "nor any physician" he said.

Q. During Dr. Tracey's absence, your wife said she would wait until the family doctor, Dr. Tracey, returned; is not that so?

A. I do not recall.

Q. And the very day that Dr. Tracey returned, your wife sent for him and he came to the house, and there it was arranged that the following day they go to the specialist in Philadelphia; is not that so?

A. I communicated with Dr. Tracey.

Q. On the very day of his return?

A. I do not recollect about that.

Q. And immediately they went to Philadelphia to this specialist—went there the following day?

A. I believe so.

Q. Dr. Tracey, when he advised the douche, stated that it was a preventive douche, didn't he?

A. No.

Q. He stated that the douche was a preventive, didn't he?

A. He did not.

Q. Or words to that effect?

A. No, sir.

Q. Did Dr. Mulford ever attend your wife?

A. Yes.

Q. During what period?

A. On several occasions.

Q. Did Dr. Mulford attend her during June, 1911?

A. Yes; once for hemorrhoids.

Q. Do you know that Dr. Mulford treated your wife for hemorrhoids on June 13, 1911, and June 14 and June 16?

A. I do not recollect the number of times; I know that he treated my wife for hemorrhoids.

Q. On the 14th of June?

A. I do not remember the date.

Q. On the 10th, the 13th, the 15th and the 16th of June?

A. I do not remember the dates.

Q. Do you mean to say that at that time she had complained to your mother or to you, of disorder of the parts?

A. She had complained to me of disorder of the parts from the early part of June.

Q. And on the 13th of June, if that be the day that Dr. Mulford treated your wife, you knew then that she was suffering from hemorrhoids?

A. I did, I suppose.

Q. And you knew what hemorrhoids were, didn't you?

A. Their general nature, yes.

Q. And she submitted herself to his examination?

A. For hemorrhoids, yes.

Q. Were you with her when she went to see Dr. Mulford?

A. I was not

Q. You were informed that he examined your wife?

A. I was, yes.

Q. That he made a physical examination of your wife, a digital examination ——

A. I was informed that he made an examination for hemorrhoids; I know nothing else.

Q. A digital examination, an examination with the finger?

A. I don't know any of the details.

Q. Her mother went with her to Dr. Mulford, to your knowledge?

A. To my knowledge, yes.

Q. Her mother went to Dr. Mulford's office with your wife, so that your wife submitted herself to examination,—to your knowledge?

A. I was not home that day.

Mr. Gaskill: I am not objecting to this line of examination, because anything that will throw light on this transaction will be welcome, but I submit it is irregular and incompetent

The Court: I shall allow it, subject to any objection you wish to make.

Mr. Gaskill: My objection is, that he is examining this man about something that he has no knowledge of, except as it was told him by someone else.

The Court: I will allow the question, subject to the objection, and will deal with it on final hearing.

Mr. Gaskill: I make the further objection, because the best and most competent testimony is the testimony of Dr. Mulford, the physician, and who is in the

room, and the character of the examination that he made, and what he examined her for, will appear clearly and distinctly, and not by way of inference or innuendo; I make that objection.

Mr. Backes: This goes to the integrity of this witness, the honesty of his statements; he said his wife had gonorrhoea in the early part of June.

The Court: The witness has testified that during the month of June his wife was suffering from the symptoms of gonorrhoea; it appears now from his statement, that she was being treated for hemorrhoids by Dr. Mulford; I will allow the questions for what they are worth, and will deal with them on final hearing.

Q. Your wife consulted Dr. Mulford at your instance, didn't she?

A. I do not recollect telling her ——

Q. Didn't you suggest that she go to see Dr. Mulford?

A. I do not recollect it.

Q. Before she saw Dr. Mulford, you knew she was suffering from these hemorrhoids?

A. I did not.

Q. Who first informed you?

A. She informed me.

Q. And then you told her to go and see the doctor?

A. I daresay I did.

Q. You told her to go and see Dr. Mulford?

A. I daresay I did.

Q. And she did not hesitate to go?

A. Not as far as I know.

Q. You know that she did not go to Dr. Mulford at all, but Dr. Mulford came to your house and examined your wife at the time when your mother was present; do you remember that?

A. I do not remember my mother being present, but I was not home.

Q. At the time when her mother was present?

A. I don't know whether her mother was present or not.

Q. Do you remember a day when Dr. Mulford came to your house and you were down in the summer house?

A. No particular day, no, sir.

Q. I don't ask you that; I ask you if you remember the occasion?

A. Two or three of them.

Q. You were each time in the summer house, or in this dugout?

A. I don't recall.

Q. Each time when Dr. Mulford came you were in the summer house?

A. I don't know where I was.

Q. How many times were you in the summer house when Dr. Mulford came to treat your wife?

A. I don't know.

Q. Don't you remember Dr. Mulford, upon his first coming, came in the morning and saw you in the summer house, and then made an appointment to come back in the afternoon to make a physical examination of your wife?

A. I remember no such time.

Mr. Backes: I ask permission to put Dr. Mulford on, simply to fix dates.

Mr. Gaskill: He won't be excused with that, because I shall ask him about the examination.

The Court: Then he will have to come to-morrow.

Adjourned to June 13th, 1912, that is tomorrow, and all witnesses must return tomorrow on the subpoena that has been already served.

Continuation of the taking of testimony in the above-entitled cause, before Hon. Vivian M. Lewis, Vice-Chancellor, at the State House, Trenton, New Jersey, on June thirteenth, nineteen hundred and twelve, at ten-thirty A. M.

APPEARANCES:

JOHN H. BACKES, ESQ., for the Petitioner.

JOSEPH H. GASKILL, ESQ., for the Defendant.

Mr. Backes: We will suspend cross-examination of Binney Earl, for the purpose of putting Dr. Mulford on.

DR. EPHRAIM R. MULFORD, sworn in behalf of the petitioner, testified as follows:

Direct examination.

By Mr. Backes:

Q. You are a physician, practicing in Burlington County?
A. Yes, sir.
Q. Where are you located?
A. Burlington City.
Q. Do you know Mrs. Earl, the petitioner in this cause, and her husband?
A. Yes, sir.
Q. You have known her how long, approximately?
A. Three years.

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Q. Did you treat her in the month of June of last year?

A. I did, sir.

Q. Professionally?

A. Yes, sir.

Q. For what?

A. Hemorrhoids.

Q. Did you make a physical, digital examination of Mrs. Earl?

A. I did, sir.

Q. When?

A. On the 13th of June.

Q. Where?

A. At her home in Edgewater.

Q. Who was present?

A. Mrs. Leigh—Mrs. Earl's mother.

Q. Was Binney Earl there?

A. No, sir.

Q. Did you see him that day?

A. I cannot say definitely.

Q. Did you call more than once that day?

A. No, sir.

Q. When did you next treat Mrs. Earl?

A. Two days following—the 15th.

Q. For the same trouble?

A. Yes, sir.

Q. And when next?

A. On the 16th.

Q. And when next—for the same trouble?

A. I don't think I saw her any more for the same trouble.

Q. Did her illness submit to your treatment?

A. Yes, sir.

Q. Promptly?

A. Yes, sir.

Q. And when you had finished, she was on the road to recovery from that trouble?

A. She was sitting up, yes, sir.

Q. How seriously ill was she?

A. She was confined to bed when I first saw her; no, I will modify that—I saw her on the 12th, and Mrs. Earl was in the summer garden, and she told me of her symptoms, and I advised her to go to bed, and she went to bed on my recommendation.

Q. And remained there until the 16th, when you made your last visit?

A. Yes, sir.

Q. Had she then fully recovered?

A. No, sir.

Q. In the ordinary course of events, assuming that she was progressing towards recovery how long would it have taken ——

A. About ten days or two weeks after that time.

Cross-examination.

By Mr. Gaskill:

Q. Explain to the Vice-Chancellor the manner in which you made this examination and what examination you made.

A. I simply made an examination for hemorrhoids, examining her rectum only.

Q. Did you make any examination of the vagina or of the private parts at all?

A. I did not.

Q. Were they exposed?

A. No, sir.

Q. Tell us how they were protected at the time you made the examination of the rectum?

A. The vagina and all the parts except the rectum, were covered by towels.

By Mr. Backes:

Q. You mean the vulva?

A. Yes, sir; and all the external parts were covered by towels, and I examined the rectum only.

Further cross.

Q. From the examination of the rectum you made there that day, could you determine whether or not at that time she was suffering from any secret disease?

A. I could not, sir.

Q. Did she complain at that time of anything else but the hemorrhoids?

A. She complained of an irritation of her bladder, yes, sir.

Q. What effect would either gonorrhoea or hemorrhoids have upon such a condition as that she described?

A. The hemorrhoids would account all right for the irritation of her bladder.

Q. And would gonorrhoea also account for it?

A. Yes, sir; I think so.

Mr. Gaskill: Now, there is one matter, if your Honor please, that is not cross-examination; I would like to make the doctor my own witness in that respect.

The Court: Very well.

Q. Doctor, you have attended Binney Earl for some years back, haven't you?

A. Yes, sir.

Q. Something has been said in this case about his circulation, his physical condition; will you please describe to the Vice-Chancellor what that is, from your observation and treatment?

A. I will try to make it intelligent without using technical terms ——

Q. That is what we want.

A. Well, he has a deficient nerve supply throughout his whole body, and he has attacks of severe headache, really a nervous headache, which is due to an unequal blood supply to the brain.

Q. His heart does not make enough blood?

A. It does not force it through hard enough; the nerve supply to the arteries is deficient.

Q. Now, what effect does that have, what effect does that condition have upon his general physical health and strength?

A. He would have a general deficient nerve supply through his whole body; his nervous equilibrium would be disturbed.

Q. What effect would excitement have upon him?

A. That would necessarily aggravate it.

Q. How about his strength?

A. During excitement do you mean?

Q. Yes.

A. It would make him shaky.

Q. Would there be a collapse physically?

A. Yes, sir; I think you might say so.

Q. What about his digestion?

A. He has always had—since I have known him—very poor digestion, especially his intestinal digestion is deficient.

Q. What about his eyesight?

A. As far as I know, Judge, his eyesight is normal.

Q. What effect would this nervous deficiency that you speak of, or lack of blood supply, have upon his sight?

A. Well, a nervous distribution of blood to his brain would affect his whole brain, of course, his eyes would be affected in the same way.

Q. Have you ever seen him unconscious?

A. No, sir; not unconscious; I have seen him in a state of collapse.

Q. What do you mean?

A. When he has had these attacks; I have treated him when he was very weak, and he was shaky and nervous.

Q. Did you treat him yesterday after court?

A. Yes, sir.

Q. How, and for what?

A. I treated him with electricity; he complained of this nervousness in the back of his brain and in his spinal cord, and I treated him with electricity to even up the circulation.

Q. Do you know whether or not his vision is obscured or obliterated during these attacks?

A. He complains of not being able to see well during those attacks.

Q. And is the treatment you are giving him, the electrical treatment, is that for that cause?

A. Not directly, sir; the electricity, the object of that is to even up this circulation of his brain, and it evens up the nerve supply of the circulation.

Q. How often do you administer this treatment?

A. I suppose on an average of twice a week.

Cross-examination.

By Mr. Backes:

Q. Well, outside of the ailments that you have described that Binney is troubled with, he is all right, isn't he?

A. He has not any organic weakness.

Q. Has he any organic trouble of the heart?

A. No, sir; he has a weak heart.

Q. Is the lack of proper distribution of the blood supply to the brain due to the weakness of the heart?

A. No, sir; it is due to nerve weakness.

Q. Is not that organic?

A. No, sir; I don't think it is an organic weakness, just a functional weakness.

Q. In other words, the heart is all right, but it does not exercise or discharge its proper functions?

A. That is right.

Q. Now, these spells of unconsciousness that you have spoken of, or fainting spells, are pseudo, are they not?

A. No, sir.

Q. You never saw him in a state of coma?

A. No, sir; I have seen him in a state of physical and mental collapse.

Q. Now, this lack of proper distribution of the blood to the brain, is the same trouble that all of the inmates at the New Jersey State Hospital of Trenton are suffering from; is not that so?

A. I don't know.

Q. Isn't it a fact that inmates of asylums for the insane are people who are sufferers from a lack of proper distribution of blood to brain?

A. Well, I don't know how to answer that question intelligently.

Q. Isn't it a fact that people who are insane, suffer from a lack of proper blood distribution to the brain?

A. Usually, people that are insane have some organic trouble with their brain, and some have functional trouble.

Q. And when the trouble is functional, then it is due to the lack of proper blood nourishment?

A. I should say so.

Q. And that is just what Binney is suffering from; doesn't it unbalance him when the blood is not properly distributing itself to the brain?

A. Yes, sir; temporarily.

Q. And renders him insane at that time?

A. I could not say he was insane at that time.

Q. If a man is not properly balanced because of an improper distribution of blood to the brain, then, for the time being he is not sane, is he?

A. Do you mean that to apply to this particular case or in general?

Q. At the time when the blood is not circulating properly in the brain, a sufferer from that disorder is not sane, is he?

A. You could say he was in a state of collapse.

Q. Could he suffer then from delusions?

A. No, sir.

Q. Well, when he is suffering at the time from an improper distribution of blood to the brain, his judgment of things then present to him is not as sound as when the blood is being properly served?

A. No, sir.

Q. Sometimes he may be off, is that right, way off his center?

A. For the time being, I should say so.

Q. And the greater this disturbance, the greater the attack of non-supply of blood to the brain, the greater are his false impressions of things, false conceptions of things; does not that follow?

A. I should say so.

Q. And you say great excitement produces that condition?

A. Yes, sir.

Q. Was he in that condition yesterday afternoon when he left here?

A. No, sir; he was not in a state of collapse.

Q. The blood was fairly supplying the brain, was it?

A. Yes, sir.

Q. Not to its proper and normal capacity?

A. No, sir.

Q. Did you think it was while he was on the witness stand yesterday?

A. Why, he seemed to be very normal.

Q. You would have thought the blood was being supplied properly during the trial?

A. Yes, sir.

Q. Then, what stopped it after the hearing was over?

A. He was just simply exhausted.

Q. You have examined him this morning?

A. No, sir; I saw him coming up on the train.
Q. The blood is supplying itself sufficiently to the brain this morning?
A. I think he is in very fair condition.

BINNEY WOODWARD EARL resumes the witness stand.

Cross-examination (continued).

By Mr. Backes:

Q. Do you feel pretty well this morning, Binney?
A. Yes.
Q. As well as you did yesterday?
A. I do.
Q. Will you give me the address of Dr. Steele, of Philadelphia, whom you consulted?
A. He is named Dr. William Steele, North Broad Street, Philadelphia.
Q. What number on North Broad Street?
A. I don't know.
Q. About where on North Broad Street?
A. On the left-hand side of North Broad Street, going north.
Q. Do you know the nearest cross street?
A. I don't know.
Q. How often were you to him?
A. Once or twice.
Q. Did you go down by train?
A. I went by automobile.
Q. Do you know where Arch Street is?
A. Yes, sir.
Q. At a point where it crosses Broad?
A. No, sir.
Q. I would like to have, as near as you can give us, the location of this Dr. Steele.

A. I cannot tell you, I don't know.
Q. Is there more than one Dr. Steele?
A. I don't know.
Q. Is there more than one Dr. Steele that you know?
A. No, sir.
Q. How old is Dr. Steele?
A. I don't know.
Q. How old does he appear to you?
A. He is middle-aged.
Q. A man about 40?
A. I don't know.
Q. What do you call middle-aged?
A. Between 35 and 40.
Q. Will you tell me where your wife lived during the year or two before you were married, and where she lived at the time you were married?
A. On Locust Avenue, Burlington.
Q. Mrs. Leigh had forbidden you the house?
A. She had not.
Q. She had refused to permit you to come to see her daughter?
A. She had not.
Q. You knew that she was opposed to your marriage, didn't you?
A. She never told me so.
Q. But you knew it, didn't you?
A. I did not.
Q. Why did you run away secretly, if you did not?
A. Because I wanted to run away.
Q. But you did not ask Mrs. Leigh's permission?
A. I did not.
Q. And when you returned to Mrs. Leigh's she was very much incensed at the fact that you married her daughter?
A. She did not like the marriage.
Q. And her son, Chester Leigh, did not like the marriage?
A. No, sir.

Q. Did they, after the marriage, offer you money not to live with Irma?

A. No.

Q. They wanted money, as I understand it, they wanted money from you, and they wanted to induce you not to live with Irma?

A. They wanted money from me for their daughter to live apart from me.

Q. But you did not want to live apart from her?

A. No, sir.

Q. And the girl did not either, as far as you know?

A. No.

Q. And then they wanted money from you to induce you to do a thing that you did not want to do and your wife did not want to do?

A. Yes.

Q. They did not want money from you for their consent that you live with the daughter, but they wanted money from you for your wife, and that you live apart?

A. Yes.

Q. A thing that you did not want and your wife did not want, as you then understood it?

A. That is correct.

Q. I omitted to ask you yesterday when it was that you heard Goulard ask your wife to elope with him; when was it, was that on the first night?

A. As I recollect, that was on the second.

Q. And where did that occur—I did not get that yesterday.

A. That occurred in my house at Edgewater Park.

Q. Day or night?

A. Day.

Q. What time of day?

A. I don't know.

Q. Where, in your house?

A. At the foot of the stairs in the cozy corner.

Q. Morning or afternoon?

A. I do not recollect.

Q. Where were you when you saw them at the foot of the cozy corner, when this was going on?

A. I was in the bath room at first; I heard the conversation and came to the top of the stairs.

Q. What did you say?

A. Nothing; I took it in and listened to it.

Q. Did you say anything to Mr. Goulard about it?

A. Not at the time, no, sir.

Q. Did you at all?

A. Yes.

Q. When?

A. In the Metropolitan Hotel at Burlington, before we went to Atlantic City.

Q. When was that?

A. Several days later.

Q. He stayed at your house that night and the following night, didn't he?

A. He stayed that night, I believe.

Q. He stayed the night of the very day that you say you heard him invite your wife to run away with him?

A. I cannot say positively.

Q. And your wife said that she thought that they would be happy if they ran away together?

A. Yes, sir.

Q. And you were afraid they would, were you not?

A. No.

Q. No? Why didn't you put this man out of your house when you heard him give this invitation to your wife?

A. Because I was not physically able to put him out.

Q. Why didn't you ask the cook, Whitfield?

A. Because he was in my employ, and not the man to go to with family troubles.

Q. This was a very serious family trouble, wasn't it; you were on the brink, if your story is true, of not having any family?

A. Not even in that case, would I go to a servant.

Q. You preferred to submit to circumstances, because of your weakened physical condition?

A. And to advise Mr. Leigh of the fact.

Q. But you did not advise him until the following night, did you?

A. I had seen Mr. Leigh and talked with him, but the dates I do not remember.

Q. But you did not see Mr. Leigh until the following night, about Goulard, did you?

A. As I recollect, it was the following night.

Q. So he continued in your house for at least twenty-four hours after you heard him make this vicious offer to your wife to run away with him?

A. I do not recollect that he was there in the daytime; I do not recollect whether he was there in the daytime, the following day, I do not remember.

By the Court:

Q. Are you dealing with the third day now?

A. Yes, sir.

Further cross.

Q. The first night was Saturday night, wasn't it?

A. I don't remember.

Q. The second night was Sunday night, and the third, was Monday night, and it was on the second day that you heard him make this offer to your wife?

A. To the best of my recollection.

Q. Have you any recollection upon it at all?

A. Certainly.

Q. And, of course, I suppose you reprimanded your wife?

A. I did.

Q. Just by talking to her, I suppose?

A. I did.

Q. Why didn't you reprimand Mr. Goulard?

A. Because I was not physically able to do so.

Q. You talked to him, didn't you?

A. Yes.

Q. Not in your own house?

A. I did.

Q. Did you—after you heard this offer of elopement, this offer of elopement made to your wife, did you say anything to Goulard, in your house?

A. Yes, but not at that time.

Q. You just told me a minute ago, that the first time you said anything was in the inn at Burlington; now, I am asking you if you desire to correct that?

A. I do not remember positively.

Q. You do not remember what positively?

A. Whether I spoke to him in my house or at the Metropolitan Inn; I think it was both; I am not positive.

Q. What did you say to him in your house after you heard him make this offer to your wife?

A. I do not remember the exact conversation.

Q. Did you slap him on the wrist, or something of that kind?

A. No, sir.

Q. Did you strike him?

A. No.

Q. Well, what reprimanding language did you use to him?

A. I don't remember the exact language.

Q. You did not have an imperfect rush of blood to the brain about that time, so that you cannot remember?

A. Not to my knowledge.

Q. It was a day or two before your wife went to Dr. Crusen in Philadelphia, that you said to Dr. Chester Leigh that you had the disorder and did not know where you got it from; is not that so?

A. I do not recollect that conversation.

Q. You do not recollect making that statement?

A. No, sir; not in that language.

Q. You said on your direct examination, that you did say to Dr. Leigh that you had the disorder but you did not know where you got it from; do you recall making such a statement?

A. I am not positive about that.

Q. If you made it, was it true?
A. Yes, sir.
Q. When was it you said to Dr. Leigh that you had the disorder but you did not know where you had got it from?
A. I don't know the date.
Q. Wasn't it a day or two after your wife had returned from Dr. Crusen's?
A. I think it was before.
Q. How long before?
A. I don't know.
Q. It was after Dr. Tracey had gone on his vacation?
A. Yes, sir.
Q. It was after your wife came from Dr. Crusen's at Philadelphia that you became convinced that you had the disorder, is that right?
A. That is right.
Q. And it was after your wife came from Dr. Crusen's in Philadelphia, that you say she said she must have given it to you?
A. She did say so.
Q. I am speaking now as to periods of time—that was after she came from Dr. Crusen's?
A. It was before and after.
Q. You did not know what she had before, did you?
A. No, sir.
Q. And it was only after she came home from Dr. Crusen's that you were convinced what she had, and then it was you say that she said that she must have given it to you?
A. When she returned from Dr. Crusen's, I was convinced that it was the disease that she had.
Q. It was then that you say she said that she got it and must have given it to you?
A. She did say that.
Q. And that was the time, wasn't it?
A. I do not recollect the number of times.
Q. That was the first time, wasn't it?

A. No, sir.

Q. When was the first time?

A. In the early part of July, 1911.

Q. You did not know what you had at that time, did you?

A. No.

Q. You knew your wife had the hemorrhoids?

A. I did.

Q. You knew that Dr. Mulford was treating her for hemorrhoids?

A. Yes, sir.

Q. You did not suspect that you had hemorrhoids, did you?

A. No, sir—there were two things ——

Q. Wait, wait—it is a fact, isn't it, that after you raised this fuss at your home, concerning the visit of Mr. Goulard, that your wife, all during the rest of her married life with you never had, at your house, young company; is not that so?

A. She did not.

Q. And she told you, didn't she, at the time that you raised this fuss, and after the fuss, that she would never have young company at the house again because of your conduct?

A. She told me so.

Q. And she kept her word, didn't she?

A. In reference to two men, yes.

Q. Do you remember, Binney, after your visit to Dr. Steele's, you returned home to your house and there found Mrs. Leigh, your mother-in-law?

A. I do.

Q. You lay down on the bed?

A. I did.

Q. And you cried, didn't you?

A. I did not.

Q. And you asked Mrs. Leigh to come over and hold your hand?

A. I never did.

Q. And hold your head?

A. I never did.

Q. And she said "no," that she was disgusted with you?

A. She did not.

Q. And you then said to her that you had returned from your mother's, that you had been to your mother's, just been there, and that your mother wanted you to say, persuaded you, or attempted to persuade you to say that your wife gave the disorder to you, and you said you could not do that, because you knew that it was not so; didn't you say that to your mother-in-law in the presence of your wife and while you were lying on the bed?

A. I did not.

Q. You remember all the circumstances of lying on the bed in the presence of your wife and her mother?

A. I remember that much.

Q. Were you physically weak that caused you to lie on the bed?

A. I was exhausted.

Q. When did Mark Whitfield take employment with you?

A. In 1909.

Q. When, in 1909?

A. I don't remember.

Q. Now, do not resort to that; 1909 has twelve months in it; it has four seasons in it; now, do you remember which season it was of 1909?

A. No.

Q. You don't remember whether it was spring, summer, autumn or winter?

A. No.

Q. Do you remember which month it was of 1909?

A. I do not.

Q. Do you remember how long it was after your marriage?

A. I do not.

Q. Do you remember when you were married?

A. I do.

Q. When were you married?

A. The 28th of March, 1909.

Q. And when did you next see Dr. Chester Leigh after that?

A. At his mother's house at Locust Avenue.

Q. And you did not see him until after the following Fourth of July, did you?

A. Yes.

Q. Just think it over.

A. Yes.

Q. Now, you lived with your mother in Burlington City five or six months?

A. I lived at her house with my wife.

Q. For five or six months?

A. I do not recall the length of the time.

Q. Have you no idea?

A. I have not.

Q. You don't know whether you lived with your mother a month or a week, or two months or three months or six months, before you went to housekeeping?

A. I don't recall the time.

Q. When did you go to housekeeping?

A. In the fall of 1909.

Q. Was Mark with you before you went to housekeeping?

A. Yes.

Q. At your mother's home?

A. Wherever I wanted him.

Q. Was he working for you while you lived at your mother's house?

A. Yes.

Q. And then, when you went to housekeeping at Edgewater, in the fall of 1909, Mark went with you and he was your outside man?

A. Yes, sir.

Q. He became your cook when, do you remember?

A. I think in the year—I think in the early part of 1910; I am not positive.

Q. He succeeded which cook?

A. Lizzie Bright.

Q. About the month of February or March of 1910, did he take up the duties of cook?

A. I do not recall the month.

Q. Well, it was right after New Year's, wasn't it?

A. I don't recall the date.

Q. Well, was it before the Fourth of July, 1910, that he became cook; do you recall that?

A. As well as I can recollect, it was.

Q. What became of Lizzie Bright?

A. I discharged her.

Q. At the time of her discharge and Mark's becoming the cook, what other help had you in that house?

A. None.

Q. What other help had you around the house?

A. None.

Q. Who was your chauffeur?

A. I had no car.

Q. Who was your chauffeur, I asked you, at the time that Mark became your cook?

A. I had no chauffeur.

Q. You said you had no car; you could have a chauffeur and not a car; you had an outside man?

A. Yes, Mark.

Q. When Mark became the cook who became your outside man?

A. William McCray.

Q. When did William become employed by you; was it at or about the same time that Mark Whitfield became the cook?

A. I don't remember.

Q. At or about that time?

A. I don't remember.

Q. Try to remember, won't you; cannot you remember?

A. I do not remember.

Q. Well, before Mark was the cook he was the outside man?

A. Yes.

Q. When Mark became the cook he used to be the outside man?

A. Yes.

Q. Then you got an outside man?

A. At some time.

Q. You had to have one immediately, didn't you?

A. No.

Q. You had to have one to look after the outside work?

A. Not immediately.

Q. Well, McCray was the one you got after Mark assumed the cookery?

A. Yes.

Q. How long did McCray stay with you?

A. He stayed, if I recall it correctly, till the early part of 1911.

Q. When, in 1911?

A. The exact month I do not recall.

Q. Well, in the winter?

A. Winter or early spring, I don't know which.

Q. Was it January?

A. It may have been towards spring, I cannot recollect.

Q. It may have been in the winter?

A. It may have been.

Q. It may have been before Christmas of 1910?

A. No.

Q. Before New Year's of 1910?

A. No.

Q. Your wife discharged him, didn't she?

A. No.

Q. Did you see McCray after you discharged him?

A. Yes, several times.

Q. And talked with him, did you?

A. In an offhand way.
Q. Only offhand?
A. Yes.
Q. McCray is in the court room now, this morning?
A. Yes.
Q. Mark's room was downstairs—alongside the kitchen, wasn't it?
A. Yes.
Q. He had no room upstairs?
A. He had not.
Q. Was there a toilet downstairs for Mark's use?
A. There was, yes.
Q. Where?
A. Just outside the kitchen door.
Q. Was there a bath room at that point?
A. No.
Q. Did Mark have the privilege of the use of your bath room, your bath tub?
A. Mrs. Earl gave him the privilege.
Q. Did he have the privilege of the use of your bath tub?
A. Not by me.
Q. And he used your bath tub soon after he became cook, didn't he?
A. I don't remember it.
Q. You say that Mrs. Earl gave him the privilege; I suppose you protested, did you?
A. I do not recall saying anything.
Q. About when was it that Mark came on the front porch when your wife was not as fully dressed as you thought she should be, and you say Mrs. Leigh said, "Come on, Mark, dear, you are one of the family;" when was that?
A. That was in the summer of 1911.
Q. And when was it that you and William, whose name I don't remember now, came home at one o'clock in the morning, and Mark let you in?
A. In the early part of 1911.

Q. When was it that you first threatened to discharge Mark?

A. In the early part of 1911.

Q. So, as far as Mark is concerned, everything dates as of 1911, is that right?

A. That is correct.

Q. From the spring of 1910 until 1911, Mark, so far as you have any criticism to make, deported himself as a servant should in a household?

A. Until 1911.

Q. Yes; now, the first time you threatened to discharge Mark was for what?

A. Because I suspected him of tampering with my car.

Q. Why didn't you fire him?

A. I did not have positive proof that he did it.

Q. Did you have to have proof in order to discharge him?

A. My wife did not want me to discharge him on account of his excellent qualities as a servant.

Q. Is that the only reason that you did not discharge him?

A. Because she did not want me to—yes.

Q. It was not because she threatened to get a divorce from you?

A. She did threaten to get a divorce from me.

Q. But that was not the reason that you refrained from discharging Mark?

A. Not at first.

Q. Who was present when she said that if you discharged Mark she would get a divorce from you?

A. On which occasion?

Q. The first occasion.

A. I don't remember.

Q. Where did it happen?

A. At my house.

Q. Where, in your house?

A. I don't remember.

Q. Where?

A. I don't remember.

Q. Your wife said that she was not going to do the cooking and you could not do the cooking and Mark could, and if you discharged the good cook she would leave you; wasn't it that?

A. No, sir.

Q. And it was because of Mark's excellency as a cook that she said to you that if you discharged him she would get a divorce?

A. Yes.

Q. Did you believe her?

A. Yes.

Q. And, of course, that put fear in your heart, and you did not discharge him?

A. It did not put fear in my heart.

Q. On what grounds did you believe your wife would get a divorce from you if you discharged Mark?

A. I had no idea.

Q. You thought Mark was tampering with your machine?

A. I suspected him.

Q. Did you say anything to Mark about it?

A. I did not, not to my knowledge.

Q. You were afraid to?

A. No.

Q. Mark was a bigger boy than you are, a stronger fellow?

A. That made no difference.

Q. Your physical weakness did not retard you from making any statement of that kind to Mark?

A. No.

Q. Making any complaint about it?

A. No.

Q. What was the next time that your wife threatened to leave you if you discharged Mark?

A. I don't remember.

Q. What was the occasion?

A. I don't remember.

Q. Where did it occur?
A. I don't remember.
Q. In the State of New Jersey?
A. Yes, sir.
Q. County of Burlington?
A. Yes.
Q. At your place of residence?
A. I don't remember.
Q. What did you say to her at the time she said that she would leave you if you discharged Mark?
A. I don't remember.
Q. You have not any recollection of that at all?
A. I have no recollection as to what I said.
Q. Did she say why she would get a divorce from you?
A. I don't remember that conversation.
Q. You do remember there was a second one?
A. There were several such remarks.
Q. You do remember there was a second one?
A. Yes.
Q. Do you remember so distinctly?
A. I remember of her saying so distinctly.
Q. Where was she when she said it?
A. I don't remember.
Q. Was she in bed?
A. I don't remember.
Q. Was she at the table?
A. I don't know.
Q. What did she say, the second time?
A. "If you discharge Mark Whitfield, I will get a divorce."
Q. You remember her saying that distinctly?
A. A number of times.
Q. Do you remember her saying it a second time?
A. Yes.
Q. Where was it she said it then?
A. I don't remember where it was.
Q. Was it at your mother's house?

A. I don't remember where it was.

Q. Now, what did she say to you the third time in expressing that same sentiment?

A. "If you discharge Mark Whitfield, I will get a divorce."

Q. Where did she say that?

A. I don't remember.

Q. Do you think there were more than three times?

A. Fifteen times at least.

Q. Where was one of the fifteen times?

A. In my dining room.

Q. That was the first one?

A. No.

Q. Where was the second one that you recall where she said this?

A. I don't remember where it was said.

Q. But where was the second one that you recall?

A. In my dining room, in my house.

Q. What occurred at that time?

A. It was the morning after Dr. Leigh had been to my house—last fall.

Q. Oh, last fall—that was after Dr. Leigh took you out in the sunken garden, is that right?

A. Yes.

Q. What is this sunken garden?

A. It is a sunken garden.

Q. What is your sunken garden?

A. It is a sunken garden.

Q. A little hole in the ground that you dug?

A. It used to be an old gravel hole at one time; it was cleaned out and made into a sunken garden.

Q. You and Dr. Leigh were in this sunken garden?

A. No, not at that time.

Q. And there is where you had this conversation with the doctor in which you told him about your disorder?

A. On the steps of the sunken garden.

Q. How many steps were there to this sunken garden?

A. I don't know.

Q. How many steps down to your sunken garden?
A. I don't know.
Q. Sixteen or one?
A. Several; I don't know how many.
Q. Have you forgotten?
A. I never did know; I never had occasion to take notice.
Q. You have lived on the premises for three years and had the sunken garden for three years?
A. Yes, part of that time.
Q. Now, you say it was upon Dr. Leigh's visit to you, that you, the second time, threatened to discharge Mark?
A. His last visit to me.
Q. His last visit to you was when?
A. Last fall.
Q. In the month of August?
A. No; I told him about the latter part of September or the early part of October, 1911.
Q. That was the second occasion of your threatening to discharge Mark Whitfield, was it?
A. The following morning.
Q. The first time was when you suspected him, in the spring of 1911, of interfering with your machine; the second time was in the fall of the same year, the day following the visit of Dr. Chester Leigh?
A. The second time that I recall, yes; there were several intermediate times that the remark was made.
Q. And she said that because he was a good cook?
A. She said she liked him personally.
Q. You liked Mark pretty well yourself, didn't you?
A. At first I did.
Q. You liked him all the way through, didn't you?
A. No.
Q. When you took your wife to the Columbus Inn, it was Mark Whitfield who drove you there, wasn't it?
A. I did not go all the way to the Columbus Inn.
Q. When she went to the Columbus Inn and you became prostrated, it was Mark Whitfield that drove you?

A. Are you referring to the trip where she had her friend with her?

Q. Yes.

A. I did not go to the Columbus Inn.

Q. You went up as far as your mother's in the automobile?

A. Yes.

Q. And Mark was driving the car?

A. Yes.

Q. You said yesterday that William was driving it; now, which is correct?

Mr. Gaskill: He did not say any such thing.

Q. Mark Whitfield used to drive you around at night, didn't he?

A. With my wife, yes.

Q. He used to drive you around without your wife, didn't he?

A. No.

Q. When was it that you and Miss Keim and your wife started for the Columbus Inn at Columbus?

A. I don't remember the date.

Q. Well, was it in October?

A. September or October, I don't remember.

Q. You have not any idea?

A. Not as to the exact date.

Q. The early part of October, was it?

A. I should say, the latter part of September.

Q. Up to that time you were on very friendly terms with Mark Whitfield, were you not?

A. No.

By the Court:

Q. What year was that?

A. Nineteen hundred and eleven.

Further cross.

Q. You were on friendly terms with him up to that time, were you not?

A. Not all the time.

Q. Well, you tolerated him in your house as your servant up to that time?

A. Up till about the first of October, yes.

Q. Mark Whitfield was not a chauffeur, but he was your cook, and the running of the machine was extra work, wasn't it?

A. Yes.

Q. And upon frequent occasions, up until this last trip in September or October, you lured Mark Whitfield into running the car for you at night by offering him money?

A. With my wife?

Q. Yes.

A. Yes.

Q. You wanted him to go along and run the machine for you?

A. I had no one to run it but him.

Q. You could run it yourself?

A. Sometimes I was not feeling able to run the car.

Q. But, on frequent occasions when you wanted to go out at night, Mark Whitfield would demur, and then you would persuade him with the shekels?

A. I have never known him to hesitate about going out if I asked him to go.

Q. When you left your wife at your mother's home, you knew that she was then bound for the Columbus Inn with Miss Keim?

A. She told me so.

Q. You had no reason to believe other than that she and Miss Keim were going to the Columbus Inn?

A. No.

Q. And you consented to that?

A. Yes.

Q. With Mark going along?

A. Certainly.
Q. You had no suspicions of your wife, did you?
A. Not at that time.
Q. And not up to that time?
A. No.
Q. Who was in your house on the night that you came home about one o'clock in the morning with William?
A. Mark Whitfield and my wife.
Q. And that was about when?
A. In the early part of 1911.
Q. About when in the early part of 1911?
A. I don't remember.
Q. In the month of June?
A. I don't remember.
Q. Had the winter gone by?
A. Yes.
Q. Was it good weather?
A. Yes.
Q. Where did you and William go that night?
A. I was with Clinton Leigh.
Q. Where did you go?
A. If I recall correctly, we went to Burlington and did some errands.
Q. What time did you leave your home?
A. I don't remember.
Q. Well, when you left your home you left your wife and Mark there alone?
A. I don't remember.
Q. Oh, now try to remember ——
A. I don't remember.
Q. Was it after the time that you first threatened to discharge Mark?
A. Yes.
Q. And you left Mark alone in your house with your wife and you went out and stayed until one o'clock in the morning?
A. The car broke down.
Q. Where did it break down?

A. By the Odd Fellows' Cemetery, just below Burlington; that was in the early part of the night, I don't remember the hour.

Q. It was about 11 o'clock, wasn't it?

A. I don't think it was that late.

Q. Was that the same night that William says he was telephoned to about 11 o'clock that night to come and get you?

A. He was telephoned to by me that night to come and repair the car.

Q. Is it the same occurrence that William speaks about?

A. Yes.

Q. And this car broke down while you were running it?

A. Yes.

Q. Clinton Leigh was in the car with you?

A. Yes.

Q. Do you recall when it was that you left the house that night?

A. I do not recall.

Q. Was it about seven o'clock?

A. I don't know.

Q. How long had you been from your home up until the time the car broke down?

A. I don't know.

Q. Were you gone two or three hours?

A. I don't know.

Q. All during that time you knew Mark was home alone with your wife?

A. I did not know whether he was there or not, I don't remember.

Q. Mark, at that time, had no other home but yours, as far as you know?

A. No, but he constantly went out.

Q. And if he went out, do you mean to say your wife was alone?

A. I don't remember anything about the incidents.

Q. Now, isn't this the fact, that you never went out at night leaving your wife in the house alone, is that so?

A. I never went out at night leaving her alone, without asking her mother to stay with her.

Q. And whenever you went out at night, you always provided a protector for your wife in the shape of her mother?

A. Yes.

Q. Then, on the night that you came home and returned late, you know your wife's mother was in the house with her, wasn't she?

A. No.

Q. Then, that was one of the nights when you did not ask your wife's mother to come down and protect her?

A. I recall nothing of the incidents of that particular night, excepting that I was in the machine and had dirt in the carbureter.

Q. You did not have an imperfect flow of blood to the brain at that time?

A. No.

Q. Then, how is it that you do not remember whether, on that night, you provided your wife with a protector in the shape of her mother?

A. There was no occasion to impress it on my mind.

Q. You told me you never went out at night without having, without sending for her mother to come down and stay with her; is that so?

A. Yes.

Q. And this is one of the nights you did go out?

A. I don't remember.

Q. You don't remember going out?

A. Yes, I went out.

Q. Do you know what you are talking about?

A. Yes.

Q. You say you don't remember going out that night?

A. I do remember going out that night.

Q. Do you remember going out that night with your automobile?

A. I do.

Q. Do you remember that night running it yourself?

A. I do.

Q. Do you remember who was in the automobile with you?

A. Yes.

Q. Who was with you?

A. Clinton Leigh.

Q. Did he leave with you from your house?

A. I don't remember.

Q. Now, if you don't remember whether Clinton Leigh was with you, it may be that you left your house in your car alone?

A. I did not leave my house alone in my car, or wherever it was that I started from.

Q. Whom did you have with you?

A. Clinton Leigh.

Q. Did he start from your house with you?

A. I don't know what house we left; I don't know whether I left my house or whether it was Clinton Leigh's mother's house.

Q. You don't know where you took Clinton on, you mean?

A. Clinton was with me from the start, but I don't know where we started from.

Q. Where was your automobile when you got into that?

A. At my house, as far as I can recall.

Q. And your garage was in the rear of your house?

A. Yes.

Q. Do you recall which house you were at?

A. I do not.

Q. You don't know where you left your wife, do you?

A. I do not recollect about that part.

Q. You had a wife at that time?

A. Certainly.

Q. You remember that, do you?

A. Certainly.

Q. Do you remember having your supper that night?
A. Certainly.
Q. Was your wife home?
A. I suppose I had it; I must have had it.
Q. Do you remember having it?
A. I don't recollect any incident connected with it.
Q. Do you remember your wife being home at supper?
A. I don't recollect anything about that part of it.
Q. Cannot you try to remember something about it?
A. I cannot remember.
Q. Can you tell me how it is that you very distinctly remember Clinton Leigh getting into the car with you, and you don't remember about your wife?
A. He was with me that night.
Q. When, that night, does your earliest recollection begin?
A. During the evening—going around Burlington in the car, and afterwards having it stalled through loose dirt in the carbureter.
Q. That is your earliest recollection?
A. That is all I can recall at present.
Q. Don't you know that before you left that evening and had that evening's meal, your mother-in-law was at your house with you?
A. I don't remember.
Q. You don't say she was not there to supper that night?
A. I recall no facts about the supper.
Q. You do not say that you did not leave her in the house with your wife when you left home, do you?
A. I do not recall any facts about the leaving home.
Q. You do not say that you did not leave your mother-in-law at home with your wife, do you?
A. I don't know.
Q. Answer my question. You don't know whether you don't—you don't say that you did not leave Mrs. Leigh with your wife upon that evening when you went out with Clinton Leigh, do you?

A. I do not.

Q. If you did not leave Mrs. Leigh at your house when you left, did you leave your wife alone?

A. I don't remember where my wife was nor where we left from.

Q. Do you remember where it was that you last saw your wife that evening?

A. I do not.

Q. Did Clinton Leigh go back to your home with you after you got your car moving again?

A. No, I took him to his house.

Q. How far is his house from yours—don't you remember?

A. I don't know the exact distance.

Q. A mile or half a mile?

A. I should say it was almost a mile.

Q. And Clinton Leigh's home is the home of his mother?

A. Yes.

Q. The home of your wife's mother?

A. Yes.

Q. Was your car under its own power when you entered your home?

A. Yes.

Q. What kind of car was it?

A. Pullman, Model "O," 30 horse-power, 4 cylinders

Q. Self-starter, I suppose?

A. No.

Q. You made considerable noise going into your garage, I suppose, the car made the usual noise?

A. Certainly.

Q. Did you blow your horn as you approached your house?

A. Not that I recall.

Q. As you turned in, did you give any signal to your wife that you were coming?

A. I don't remember.

Q. After you broke down, do you remember telephoning to your wife that you had a break-down, and that you would be there as soon as you got things fixed?

A. I don't distinctly recall whether I did or did not.

Q. Did William drive the car into the garage?

A. He was with me; I don't know who drove it into the garage.

Q. Did you both go into the garage, or did he leave you out at the house?

A. I don't remember.

Q. How far is your garage in the rear of your house?

A. About 400 feet.

Q. You do not remember whether you and William went all the way into the garage or not?

A. I do not.

Q. You don't know whether William left you off at the porch, and then he carried the car back into the garage?

A. William was with me at the house just after he came in.

Q. Answer my question, please. You do not remember whether William left you off at the house while he carried the automobile back to the garage, do you?

A. I think he went to the house first, and after I got in, I believe that he took the car back; I am not positive.

Q. Do you think he stood with his car at your side door waiting while you were trying to get in?

A. No, he was with me.

Q. Did he get out of the car with you?

A. Yes.

Q. He let the car stand at the house?

A. Yes, as well as I can remember.

Q. Now, don't you remember that William and you went together back in the garage and then returned?

A. I don't remember doing that.

Q. But you do remember that you and William got out of the car at the house, do you?

A. I remember his being with me at the house; I do not recall exactly ——

Q. How long were you waiting at the door before Mark let you in?

A. We knocked on the side door first; we did not get any response; so we went to the front door and rang the bell.

Q. All during that time your car was under power, was it?

A. I don't recollect whether the engine was running or whether it was not running.

Q. Now, as you approached your house, did you see any lights in your house?

A. I have gas light in the house.

(Question read.)

A. None but one.

Q. Where was that?

A. At the top of the stairs, that lead to the front door.

Q. How far from your house were you when you saw that?

A. I was at the front door.

Q. I mean, as you approached your house, in your machine, did you notice any lights in your house?

A. Not that I recall.

Q. Everything was dark?

A. Yes, sir, as far as I recall.

Q. This light at the top of the stairs, was what?

A. A hanging gas lantern.

Q. And turned low?

A. Medium; it gave sufficient light to fully see the stairs.

Q. Where was Mark when you first saw him that night?

A. He had one hand on the side of the wall leading from my wife's door.

Q. How far was the door from the top of the steps?

A. I should say about 18 or 20 inches.

Q. And to come down the top of the steps you would have to pass that wall, wouldn't you; you would have to pass your wife's door?

A. Yes.

Q. In other words, as you go up your stairs, your wife's room is the first one to the right?

A. Yes.

Q. And your room is where?

A. Next door to it.

Q. The second one to the right?

A. Directly ahead.

Q. And the third—where is the cook's room?

A. Next to the kitchen, on the first floor.

Q. But the woman cook had a room upstairs, where is that?

A. That is the guest room; that is on the left.

Q. Where is your bath room?

A. Directly opposite the front stairs; directly across the hall.

Q. Directly across from your wife's room?

A. Yes.

Q. When you looked in you did not see any light in any part of the house, except this one hanging lantern?

A. That is right.

Q. When do you think this was?

A. I don't remember the date.

Q. Give us the month.

A. I don't remember the month.

Q. Give us the season.

A. It was in the early part of 1911.

Q. Was it spring or summer?

A. Late spring, I think.

Q. Mark had his shoes on?

A. He had a pair of sneaks on—he had a pair of sneaks on, that is, canvas rubber-soled shoes.

Q. And he had his coat off?

A. Yes.

Q. On his arm?

A. No.
Q. Where was his coat?
A. I don't know.
Q. Was he in his shirt sleeves?
A. Yes, he was without a collar.
Q. Did he ever wear a collar around the house?
A. Yes.
Q. Did he have a necktie?
A. No.
Q. Did he have trousers on?
A. Yes.
Q. Now, from the time that you got out of your car until Mark Whitfield let you in, how much time elapsed?
A. I have no idea.
Q. A minute or two, or ten minutes?
A. I have no idea.
Q. Half an hour, do you think you were waiting before you got in?
A. I don't know.
Q. Do you think it was half an hour?
A. I don't know.
Q. Do you think you waited there an hour before you got in?
A. I don't know.
Q. You did not become impatient in waiting?
A. I thought it was peculiar.
Q. Did you become impatient in waiting?
A. Yes.
Q. Did you ring the bell more than once?
A. I knocked first at one door, then went around and rang the front doorbell.
Q. Did you ring more than once?
A. I don't know.
Q. Mark Whitfield walked rapidly downstairs to let you in?
A. He took his time.

Q. But he came directly down from the place you saw him to the front door, and opened the door and let you in?

A. Yes.

Q. What did you say to him?

A. I don't remember.

Q. Did you say, "Hello, Mark"?

A. I don't remember.

Q. "Sorry I kept you up so late"?

A. I don't know what I said to Mark.

Q. Did you say anything to him?

A. I don't know.

Q. Where did Mark go?

A. He went out through the living room.

Q. Apparently to his own room?

A. Apparently so.

Q. Did you follow him out?

A. I did not.

Q. Mark had his hat on?

A. No.

Q. Spectacles?

A. No.

Q. Do you remember saying anything to Wright at the time?

A. No.

Q. You bid good-night to Wright, didn't you?

A. Probably I did.

Q. Where did you leave Wright?

A. At my house.

Q. You took him in the house with you, didn't you?

A. I may have done so.

Q. Don't you remember going in there and getting a drink in there with Wright?

A. I do not recall.

Q. Don't you remember you and Wright and Mark Whitfield being in the dining room and take a drink together, the three of you, before you went upstairs?

A. No.

Q. You were in the habit of drinking beer with Mark out in the kitchen?

A. Occasionally.

Q. You made a companion of him, didn't you?

A. No.

Q. You drank beer with him in the kitchen frequently, didn't you?

A. Mark was present.

Q. And Mark was drinking with you?

A. Occasionally I gave him a bottle of beer.

Q. Don't you recall going into the dining room with William that night, and that Mark was there, and the three of you each having a bottle of beer?

A. I do not recollect it.

Q. It might have happened?

A. I don't recall it.

Q. You do not say it did not happen, do you?

A. I remember no such instance.

Q. You do not say it did not happen that you and Mark and Billy, William, went in your dining room and there each of you had a bottle of beer before you retired, and Mark went into his room and William went out to go to his home?

A. To the best of my ability, I did not.

Q. You do not say it did not happen, though, do you?

A. I don't remember.

Q. You do not say it did not happen, do you?

A. Yes.

Q. Now, which is the truth—that you do not remember that or that it did not happen?

A. It did not happen, as far as I can remember.

Q. But you won't say positively that it did not happen?

A. It did not happen.

Q. Now, which is the truth?

A. It did not happen.

Q. You do not say William did not go in with you and you had a drink, a bottle of beer apiece?

A. He did not.
Q. When Mark let you in, where did you go?
A. I went upstairs directly to my wife's room.
Q. Were the lights out in your wife's room?
A. No.
Q. The lights were burning?
A. Low.
Q. Did you go in the guest's room?
A. No.
Q. Do you remember the next morning at breakfast?
A. I recall no incidents.
Q. Do you remember your wife's mother being to breakfast the next morning?
A. I do not.
Q. Do you say she was not?
A. No, sir.
Q. But you do not say she was not?
A. She was not there to breakfast.
Q. Didn't your wife's mother occupy the guest's room that night?
A. No.
Q. Wasn't your wife's mother in that house when you returned that night?
A. My wife was alone.
Q. You did not see her with Mark, did you?
A. He came out of her room; I saw him come out of her room.
Q. You said the first place you saw him was alongside of the wall leading to the door of your wife's room?
A. He was swinging around the corner of the wall.
Q. Coming out of the room?
A. Yes.
Q. You never saw him do anything of that kind before, did you?
A. No, not at night.
Q. You do not remember whether you reprimanded him or not, do you?
A. I did not reprimand him.

Q. Why didn't you throw him out of the house when he came down to the door, why didn't you say, "Get out, you loafer"?

A. At the time, I did not comprehend the situation.

Q. You what—one o'clock in the morning—a servant, a husky man, coming out of your wife's bedroom—your wife, a young and beautiful woman, and you did not comprehend the situation?

A. I did not comprehend the situation at that instant.

Q. Did you have an absence of a flow of blood to the brain at that time?

A. No.

Q. You were in full possession of your faculties, were you?

A. I was.

Q. You did not even ask Mark what he was doing in your wife's bedroom?

A. No.

Q. William was standing right close by?

A. Yes.

Q. You had, of course, the physical strength to throw Mark Whitfield out, hadn't you?

A. No.

Q. Well, you and William had, hadn't you, between you?

A. Yes.

Q. But you did not even by word of mouth invite Mark to leave your home that night, did you?

A. I had absolute faith in my wife.

Q. Notwithstanding the fact, that at one o'clock in the morning you saw this servant coming out of her bedroom?

A. I did not know why he came out of there; he is accustomed to doing the upstairs work, and he might have been called; I did not know why he was there.

Q. At one o'clock in the morning—doing upstairs work?

A. I did not know why he was there.

Q. Well, all right. Now, your wife told you, so you told us, that she was lonesome and she had Mark reading for her; is that right?

A. She told me she was afraid to stay there, and she had Mark up there reading to her, and I reprimanded her severely; I asked her what she meant by having a servant in her room in the robe that she had on.

Q. Was she in bed at one o'clock in the morning?

A. No.

Q. Where was she?

A. She was standing, when I entered the room, alongside of the bed.

Q. Had the bed been mussed?

A. Yes.

Q. As though somebody had been in it?

A. No.

Q. The covers carried down?

A. No.

Q. Just mussed on top?

A. Yes.

Q. At one o'clock in the morning?

A. Yes.

Q. Is that all the reprimand you gave her?

A. I gave her a severe reprimanding; I asked her if she considered that proper conduct to have Mark in her room with nothing on but an undershirt, a pair of slippers and a kimono.

Q. How do you know that she had all that on?

A. Because I was there and saw it; her kimono was flopping open.

Q. Did she have stockings on?

A. I don't know.

Q. Is that the reprimand that you gave to your wife?

A. A part of it.

Q. You did not beat her, did you?

A. No.

Q. Did you say anything else more severe than that to her?

A. I do not recall.

Q. You were very angry?

A. I was.

Q. Did you go down to see Mark?

A. No.

Q. Why not?

A. I was not physically able, in case I was called upon to use force, to do it.

Q. What time did you waken up the next morning; what time did you get up?

A. I don't remember.

Q. Did Mark cook your breakfast the next morning?

A. Yes.

Q. Did he wait on the table?

A. I don't remember.

Q. Did he cook the luncheon or dinner, or whatever you call the mid-day meal?

A. I don't remember if I was there or not.

Q. He cooked the next night dinner at six o'clock, didn't he?

A. If I was there, yes.

Q. Oh, well, you were there one of the three meals on the following day, were you not?

A. I don't remember.

Q. Did you say anything to Mark about being in your wife's bedroom?

A. I don't remember.

Q. I suppose because you were not physically capable of resisting Mark in case he attacked you?

A. Yes, and my wife promised that she would not do it again, and that she did not mean at that time anything wrong.

Q. Did you think it was advisable to have a good cook, even at the expense of your wife's virtue?

A. No, sir; but I thought that she—well, I did not think she stopped to think of the looks of the thing at that time.

Q. It was not, hardly, looks at one o'clock in the morning, was it; you did not think it was all looks at one o'clock in the morning, did you?

A. Yes, sir; I took my wife's word for it that there was nothing in it.

Q. Notwithstanding your wife had on in the room nothing but a kimono, a short undershirt and stockings, and Mark having nothing on but his shirt, his trousers and his sneak shoes—Mark being in the bedroom with your wife at one o'clock in the morning; still you thought there was nothing wrong, did you?

A. I took her word that there was nothing wrong; that it was simply her indiscretion.

Q. You did not even reprimand Mark?

A. No.

Q. You did not tell him it was indiscreet for him to be in your wife's bedroom?

A. No.

Q. If Mark and your wife were in the house alone, where was the indiscretion, if nobody detected them, in your judgment?

A. Repeat the question, please.

(Question read.)

A. I don't quite understand the question; do you mean when I ——

(Question read.)

A. I detected something later.

Q. No—that night?

A. Well, I passed that night over, on my wife's word.

Q. Was it after that, that you threatened to discharge Mark?

A. I did, yes.

Q. And your wife said she would get a divorce from you if you discharged Mark?

A. She did.

Q. And then you did not discharge him?

A. I ordered his discharge.

Q. And because she said that she would get a divorce from you if you discharged him, you did not enforce it?

A. I enforced it.

Q. When did you discharge Mark?

A. I ordered it through my wife.

Q. And when was it enforced?

A. I do not recall the exact date he left my house.

Q. He did not leave your house until sometime in October, did he?

A. No.

Q. And this occurrence that you have just related was in the early spring?

A. No, the latter part of September or the early part of October.

Q. When was it that you say you detected Mark coming out of your wife's bedroom?

A. That was in the early part of 1911.

Q. Now, I am calling your attention to this, that you did not discharge Mark until the latter part of September or the early part of October, did you?

A. That is correct.

Q. Now, I am asking you, after this night's incidents, you not having reprimanded Mark, when was it that you next directed his discharge, and your wife said that she would get a divorce if you discharged him?

A. Several times, but I do not recall the time.

Q. You did not enforce it at all, did you?

A. Not until the final time.

Q. And the reason you did not, upon these numerous occasions enforce it, was because your wife said she would get a divorce from you?

A. That was the principal reason.

Q. What did you suspect she could get a divorce from you for, on what grounds?

A. I did not know.

Q. Did you believe that she could have done so?

A. No.

Q. Then why didn't you insist?

A. I thought that she would leave me.

Q. And you did not want her to leave you?

A. No, I loved my wife.

Q. Now, after you stopped at your mother's house, and your wife went on to the Columbus Inn with Mark, you returned to your own home, didn't you?

A. I did not, no, sir.

Q. At no time?

A. The latter part of the time—I do not recall the date.

Q. How long were you at your mother's house after this day when you left your wife and Miss Keim to go to the Columbus Inn?

A. Two or three weeks; I do not recall exactly how many.

Q. And during the two or three weeks did you know where your wife was?

A. She was at the bungalow.

Q. You understood that she was at her mother's home?

A. Yes.

Q. That is about how far from where you were?

A. Two miles, I should say.

Q. Did you remain within doors during all the time that you spent at your mother's?

A. The majority of the time I was in bed.

Q. Did you remain indoors during all the time that you were at your mother's house?

A. Not during all the time.

Q. During the first week?

A. I don't remember.

Q. Were you out during the first week—automobiling?

A. I do not remember.

Q. Don't you know as a fact that you were, and that you passed the bungalow?

A. I don't remember on what day, or what week it was.

Q. In going from your mother's house to your house at Edgewater Park, would you have to pass the bungalow?

A. Yes.

Q. Now, don't you recall during the first week, that you passed the bungalow on your way to your own home?

A. I recall passing the bungalow, but as to the week and the day, I don't know.

Q. You had not seen your wife since the time you left her when she was with Miss Keim?

A. No, she refused to come.

Q. You did not stop to see her, did you?

A. I think I stopped once; I sent various notes to her.

Q. After you went to your mother's home, Mark Whitfield continued at the house at Edgewater—your home?

A. For a short time, I believe.

Q. Don't you know?

A. I was not there.

Q. You discharged him, didn't you?

A. I ordered my wife to discharge him.

Q. You ordered your wife to discharge him before you went to your mother's home?

A. Yes.

Q. You ordered her lots of times to discharge him, but she never discharged him during the time you were living together and before you went to your mother's home?

A. I ordered his discharge before I went to my mother's home, but I don't think he went.

Q. About how long before?

A. I don't remember.

Q. Well, a month before—two months before?

A. No, sir, a few days.

Q. But your wife did not discharge him; at least Mark did not leave before you went to your mother's?

A. No.

Q. Now, after you went to your mother's you made a trip back to your home at Edgewater, didn't you?

A. Several times.

Q. And there you saw Mark, didn't you, still in service?

A. No.

Q. Had he gone?

A. He was not there when I was there.

Q. Don't you know he was there at service, and you discharged him?

A. I told my wife to discharge him.

Q. I mean, after you had gone to your mother's home, and during your stay there, upon a trip back to the Edgewater Park house, to your Edgewater Park house, didn't you there see Mark and there tell him that his services were not further needed?

A. No.

Q. You met him there, didn't you?

A. No.

Q. Just think it over; didn't you meet him there and ask him to continue on, that your wife would be back?

A. No.

Q. Where did you see him to ask him that?

A. I did not say that to him.

Q. Or words to that effect?

A. I did not.

Q. What did you say to him?

A. I don't remember.

Q. Where was it you said anything to him after you went to your mother's house?

A. I don't remember.

Q. You do remember having a conversation with him after you went to your mother's house, don't you?

A. I don't remember.

Q. You don't recollect?

A. No.

Q. Now, I want to ask you this: now, about your declining to have Mark out on that porch—Mark was a general servant around your house, wasn't he?

A. Yes.

Q. He cooked, made the beds ——

A. Yes.

Q. He swept?

A. Yes.

Q. He cleaned the bath room?

A. Yes.

Q. He attended to the fires?

A. Yes; sometimes.

Q. He did chamber work generally?

A. He did.

Q. When was it that you and your mother-in-law and your wife were sitting on the side porch, when was that?

A. I do not recall; it was in the summer of 1911, I know.

Q. About what hour of the evening was it?

A. It was just getting dark; I don't know the exact hour.

Q. How near is your next-door neighbor to the side of the house that you are speaking of?

A. There is no neighbor on that side.

Q. Is it a large porch?

A. Medium.

Q. And how do you say your wife was dressed that night?

A. Her hair was down; she had on a kimono, an undershirt, a pair of stockings and slippers; she was sitting in my lap.

Q. Is that all she had on?

A. That is all, yes, sir.

Q. Of course, Mark was fully dressed, wasn't he?

A. He was.

Q. He did not try to sit in your lap, did he?

A. No.

Q. You told Mark not to come out?

A. Yes.

Q. And notwithstanding your directing him not to come out, he did come out?

A. At Mrs. Leigh's request.

Q. Why didn't you protest?

A. Because Mrs. Leigh said that I was unreasonable.

Q. And you believed her?

A. I did not want to argue with her further.

Q. How long did Mark stay on the porch with you?

A. Some time—I don't remember.

Q. About how long?

A. I don't remember.

Q. Your wife continued sitting on your lap during that time; you were hugging her, were you?

A. I simply had my arm around her.

Q. How far was Mark away from you?

A. Eight or ten feet.

Q. Did he enter into the conversation?

A. With Mrs. Leigh.

Q. With you?

A. Not that I recall.

Q. Did he enter into conversation with your wife while she was sitting on your lap?

A. No.

Q. Why didn't you get up and go away?

A. Because I did not want to be everlastingly wrangling with my mother-in-law.

Q. Why didn't you get up and leave your mother-in-law?

A. Because I loved my wife.

Q. Why didn't you go and take her along?

A. It was her mother.

Q. You did not love your wife's mother, eh?

A. Not fully, no.

Q. She was always very kind to you, wasn't she?

A. At first, yes.

Q. Wasn't she always very kind to you until you gave her daughter the gonorrhoea?

A. She was very kind to me then.

Q. And up until that time, anyhow, she was always very kind to you?

A. She had been very kind to me up until I left my wife.

Q. She always treated you nicely, and you were very fond of her up to that time?

A. No.

Q. And she was very fond of you, wasn't she, Binney?

A. I don't know.

Q. Do you know whether you were fond of her?

A. I was not.

Q. Of your mother-in-law?

A. No.

Q. You always treated her nicely, didn't you?

A. Because it is the right thing to do.

Q. To treat your mother-in-law nicely?

A. Any lady.

Q. Now, did you have any conversation with Mark Whitfield while you sat on the porch that night?

A. Not that I recall.

Q. Did you see Mark the next day?

A. I don't remember.

Q. Why didn't you fire Mark Whitfield if he disobeyed you the evening before, why didn't you discharge him the next day?

A. Because my mother-in-law told me that I was unreasonable.

Q. That was that night, eh?

A. Yes, sir.

Q. But the next morning you had time to think it over —did you think you were unreasonable?

A. No, but I did not want to fight.

Q. Why was it that you did not drive him out, eh?

A. I do not remember.

Q. Binney, don't you recall that your wife's door was never locked?

A. At night?
Q. Yes.
A. It was always locked.
Q. Don't you know it was so swollen that you could not lock it?
A. Only for the latter part of 1911, and then only for a short time.
Q. It was so in the spring of 1911, too, wasn't it?
A. Not that I recall.
Q. Don't you know that upon this night you say you came home, that that side door was not fastened?
A. That side door was fastened.
Q. Don't you know it was not fastened?
A. It was fastened.
Q. Don't you know that it was in such a swollen condition that it could not be locked?
A. I don't know it.

Mr. Gaskill: I now call upon counsel, pursuant to notice given yesterday in open court, to produce the notes and letters sent by Binney Earl to his wife during the time he was sick in the month of October, 1911.

Mr. Backes: I only have one letter.

Mr. Gaskill: I call for it in open court, pursuant to the notice; I ask whether counsel refuses to give it to us or not?

Mr. Backes: No, I don't refuse to give it; there is only one letter that we have.

Mr. Gaskill: Well, let us have it.

The Court: We will take a recess at this time to 1.45.

AFTER RECESS, 2 P. M.

Mr. Backes: I desire to resume the cross-examination upon matters that developed this morning.

BINNEY WOODWARD EARL resumes the witness stand.

Cross-examination (continued).

By Mr. Backes:

Q. I show the witness a paper marked "Exhibit 1, June 13": Is this a fair illustration of the floor plan of the second story of your house at Edgewater Park?

Mr. Gaskill: If you consider that at all material, I am perfectly willing, at the next hearing, to produce a diagram made by an architect.

Mr. Backes: I prefer to have it my way.

A. The bedrooms, Mr. Backes ——
Q. Answer my question, will you? (Question read.)
A. All but the stairs.
Q. What is the difficulty with the stairs?
A. In proportion here, this turn comes in the stairs down here—directly down, and the turn is here, and it is only a few steps from that turn to the floor of the living hall.
Q. The front door of your house is directly opposite the upper section of the stairs?
A. The main section.
Q. Leading into the second floor?
A. Yes.

Q. Where is your wife's room?

A. Here (indicating).

Q. Is the opening in this illustration—does the opening leading into this bedroom, fairly point out the location of the door?

A. The door is just about here, where this opening is, where this opening is given, but pointing this way, this is more on an angle here, this partition; this is practically flush; here it is not that much difference, and it is more on an angle; the door faces that way.

Q. Standing at this front door, you cannot see the door leading into your wife's bedroom, can you?

A. Just the edge of the door casing; it is on an angle.

Q. Can you draw an illustration; can you draw a plan?

A. Roughly.

Q. All right, do so.

(Witness draws a plan.)

Q. Locate the front door and mark your wife's bedroom and your bedroom and the guest chamber, also the bath room. Mark by letter "A" the door leading out from your wife's bedroom into the hallway.

(Witness does so.)

Q. Mark by letter "B" where you stood when you saw Mark coming out of her bedroom.

(Witness does so.)

Q. What is the distance from the casing to the stairway, do you know, approximately?

Mr. Gaskill: Referring to the casing on your wife's bedroom door.

A. Two and a half feet, approximately, I should say.

Q. Is that space open or closed?

A. This is closed here; this is the corner of the partition.

Q. From the partition to the partition to the stair rail, as indicated here, is it open?

A. Partly open.

Q. Open in what way?

A. They have a series of uprights there with the rail at the top to match that of the staircase.

Q. How near is the doorway to the partition of your wife's bedroom nearest the stairs?

A. I should judge less than a foot.

Q. Now, this illustration fairly portrays the floor plan of the second floor of your Edgewater house?

A. Yes.

Q. Do you mean to say with this so standing, where you say you stood at point "B", you could see somebody come out of your wife's bedroom?

A. Swing around the corner of that partition.

Q. Do you say you could see anyone come out of your wife's bedroom?

A. Yes.

Q. A person coming out of the room to come downstairs would have to pass the same point?

A. Walk directly past it.

Q. And you actually saw this man in your wife's bedroom?

A. I saw him swinging around the casing with one arm, and come downstairs.

Q. But you actually saw him in your wife's bedroom?

A. I saw him coming out of my wife's bedroom.

Mr. Backes: I ask that this be marked in evidence.

(Marked "Exhibit P2½, June 13.")

Q. Were you ever out, returning with William as late as one o'clock on occasions other than the one you spoke of this morning?

A. No.

Re-direct examination.

By Mr. Gaskill:

Q. Binney, I show you an envelope addressed "Mrs. Binney W. Earl, The Bungalow, Beverly Road," and a letter bearing date the 7th of October, 1911, that was enclosed therein, and I ask you if they are in your handwriting?

A. They are, yes.

Q. Is that one of the letters that you sent to your wife while you were ill at your mother's house?

A. It is.

Mr. Gaskill: I offer that in evidence. The envelope has on the corner, "Return in 5 days to 222 East Union Street, Burlington, N. J.," addressed in handwriting, "Mrs. Binney W. Earl, The Bungalow, Beverly Road." The letter contains the printed heading, "222 East Union Street, Burlington, New Jersey."

Q. Was that your mother's residence at that time?

A. Yes.

Mr. Gaskill: I will read this in the record:

"11 Oct. 1911.

My dear Irma: I am down here at last, although I had a very bad night. The fire is going and I have gotten another cook until your cook can come; we have plenty to eat until you come. Irma, dear, let us forget the past and begin everything new, and be happy. I will send the car for you this afternoon. Remember, dearie, this time we are going to be happy in our little home.

Lovingly,

Binney."

(Marked "Exhibits D-A-B 1 and D-A-B 2.")

Q. Did you receive any reply to that?

A. None.

Q. Did you send any other letters than that while you were sick at your mother's house, to your wife?

A. Several.

Q. What purport; what did they contain?

A. Asking her to come and see me because I was ill at my mother's.

Q. Did she come during the two weeks or so that you were at your mother's house, to visit you?

A. No.

Q. You were asked on cross-examination if you had not stated to Mr. Budd and myself, soon after the petition was filed in this case, the facts and circumstances that you related on the witness stand; do you recall when it was that Mr. Budd and myself first saw the witnesses that you proposed calling in this case?

A. I think it was shortly before the 30th of April, at my house.

Q. At your mother's house in Edgewater Park?

A. Yes.

Q. This case was set down for hearing on May 2nd, Thursday?

A. Yes.

Q. Was it not on the preceding Thursday that we were at your mother's house—Mr. Budd and myself, and there for the first time we talked with the witnesses?

A. It was, yes.

Q. After that conference with the witnesses, was any advice given to you by either of your counsel with reference to a cross-bill?

A. Yes.

Q. And that was the first time?

A. That was the first time.

Q. Was there a stenographer present that day?

A. Yes.

Q. Was there a notice dictated to Mr. Backes and sent off that same evening?

A. Yes.

Q. Binney, when was it with respect to the talk that you had with Dr. Chester Leigh, that he borrowed your automobile—before or afterwards?

A. Afterwards.

Q. Where did he go with the automobile; where did he borrow it to go to?

A. From my house; he told me he was going to Avon, and I loaned it to him.

Q. Had there been any friction between you and the doctor at that time?

A. No.

Q. Had he at that time made any of the remarks attributed to him on the witness stand?

Mr. Backes: Objected to.

Mr. Gaskill: That objection is well taken; I will take it up in order.

Q. Binney, you have spoken about the cook, one Lizzie Bright?

A. Yes, sir.

Q. Is she dead or living?

A. She is dead.

Q. Died before this suit commenced?

A. That I don't know.

Q. Have you made efforts to secure her attendance here?

A. I have.

Q. And you have been unsuccessful?

A. Yes, sir; I found that she was dead.

Q. You have been asked on cross-examination, about certain declarations which it is alleged you made to your wife and your mother-in-law; I want to call your attention specifically to some of these. Now, listen as I read from the record where your wife testified, that on the occasion when you and she went to Dr. Tracey's in Beverly, in the automobile, as follows:

Mr. Backes: I object; that is not the proper way to put a question; the question is not in proper form. The question must be directed to the facts and not to what another witness testified.

Mr. Gaskill: I have had thirty odd years' experience, and that is the first time I ever heard such a proposition as that laid down, but, on the contrary, when you are going to contradict a witness you must contradict the witness in the exact language that they use in making a certain statement, and that is what I propose to do.

The Court: I think the question is in proper form.

Mr. Backes: The proper way to put a question is to the fact, and not whether a prior witness testified to so and so. He may ask whether he did say to his wife such and such a thing, but not preface it by saying, "Your wife so testified;" that is the point of the objection.

The Court: I overrule the objection and will allow the question.

Q. (Reading from page 6 of the testimony): "Ans. He was very much worried when he came out of the office, and he said he knew if my people knew it, that they would take me away from him, and I was so surprised that I did not know what to say as it was such a shock." Did you say any such thing as that to your wife?

A. No.

Q. (Reading from page 9 of the testimony): "Ans. As soon as Dr. Tracey told Mr. Earl what he had, then I said I would go to my brother, who was a physician, and he said he did not want me to tell my brother, because he would make me leave him, and he would not pay my doctor's bill." Did you say any such thing as that?

A. I did not.

Q. Did you say to her not to tell her mother, because she would also make your wife leave you and that she would be worried to death about it?

A. I did not.

The Court: That is the form you prefer, Mr. Backes?

Mr. Backes: That is the correct form. To use the name of a witness as having testified to a certain thing is objectionable because it tends to intimidate.

Mr. Gaskill: I do not think you can intimidate Binney, after the last 24 hours.

Q. Did you say (page 10 of the testimony) to her (this is after her examination by Dr. Crusen); did you say to her that you never expected her to come back again; that you thought her brother would make her leave you?

A. I did not.

Mr. Gaskill: That is at the top of page 11 of the testimony.

Q. Binney, after your wife returned from this microscopic examination of Dr. Crusen in Philadelphia, her mother was informed of what was the matter with her, wasn't she, to your knowledge?

A. I was not informed of the fact.

Q. I did not ask you that —— (Question read.)

A. I don't know.

Q. Now, after you came back from Dr. Crusen's—I mean after Mrs. Earl came back from Dr. Crusen's, your wife, how did she treat you from that time on up to October?

A. She was extremely affectionate and took the best of care of me.

Q. Was she indifferent to you?

A. No, sir.

Q. Was she indifferent to you, and you awfully nice to her?

A. We were nice to each other.

Q. Did you show any more affection than she did?

A. No.

Q. Did you continually ask her after that if she was going to leave you?

A. I did not.

Q. With reference to the talk that you had with Dr. Chester Leigh on the steps leading down to the sunken garden, back of your house (this is page 81), did you say to him, " 'Chester, I have the gonorrhoea,' he said, 'I know that I gave it to your sister,' but, he said, 'I don't know how I got it;' he said, 'Dr. Tracey told me I might have gotten it from a toilet,' and when he told me that he laughed"?

A. I did not.

Q. Did you laugh when you told him what Dr. Tracey said about the toilet?

A. No.

Q. You have already testified, that Dr. Tracey and other physicians said it was possible for a disease to be acquired from a soiled toilet lid?

Mr. Backes: I object, if there is such evidence, it is improper to again repeat it on the witness stand.

Mr. Gaskill: I will read from page 81 of the record in the testimony of Dr. Leigh, his direct examination; the preceding question is then put by Mr. Backes.

Q. "Ques. What happened then? Ans. He said he would like to have me come out under some apple trees that they had there, and have a talk with him; about 75

or 100 feet from the house, and I went with him. Ques. What happened there? Ans. As far as I remember, he said, 'Chester, I have the gonorrhoea;' he said, 'I know that I gave it to your sister,' but he said, 'I don't know how I got it;' he said, 'Dr. Tracey told me I might have gotten it from a toilet,' 'but when he told me that he laughed.' He wanted me to believe that he did not knowingly know where he got it, but the fact was that he had it and that he gave it to my sister." Now, my question is this: Did you say to Dr. Leigh in that conversation, that when Dr. Tracey made that remark to you that Dr. Tracey laughed?

A. No.

Q. Did you in that conversation say to Dr. Chester Leigh (page 82), "I want you to know that I gave it to your sister, but that I did not get it from a woman"?

A. I did not.

Mr. Gaskill: Yesterday, I put on the record a call for the letters that were in Mrs. Earl's desk, written by Alexander Goulard to her.

Mr. Backes: There was but a single letter from Mr. Goulard, and that was a letter written by Mr. Goulard two or three days after his unpleasant visit at Mrs. Earl's house, thanking her for the entertainment, and in it referring to Mr. Earl; that is all there was, and no other communication ever passed between them.

Mr. Gaskill: I call for that letter.

Mr. Backes: We have not got that letter.

Q. Do you recall, Binney, the expressions used by Mr. Goulard in these letters in addressing your wife?

A. Yes.

Mr. Backes: Objected to.

The Court: Objection sustained.

Q. Did he, in any of those letters, address your wife in terms of endearment and affection?

A. Yes, sir.

Mr. Backes: I object.

Mr. Gaskill: I have shown by the witness that in his wife's desk there was a number of letters bearing the signature of Goulard, the man who had been kicked out of this man's house, or put out of this man's house by his father-in-law, to whom he appealed for protection, and that, under his sense of honor he returned those letters and put them back in his wife's desk; now, I have called for those letters and they are not produced, and, having shown that there were such letters and that they were letters from this man, whose conduct in the defendant's house had been of such a character that his father-in-law had put him out, I am entitled to prove, as against the petitioner in this case, the terms of endearment and affection and familiarity used by Goulard in addressing this petitioner's wife, as contained in those letters; having called for the letters, and they not being produced, I have laid the foundation to prove them by secondary evidence.

The Court: My recollection of the matter is, that there was not any proof of these letters ever having come to her possession, and I think for the present, I will allow you to renew those questions later.

Mr. Gaskill: Let me ask a question or two before your Honor rules.

The Court: Very well.

Q. Were the letters which you speak of finding in your wife's desk, in envelopes?

A. Some of them, yes.

Mr. Backes: Objected to as leading.

Q. Were those envelopes opened?

Mr. Backes: Objected to; I ask the answer be stricken out and my objection entertained.

The Court: I think the objection is well taken.

Mr. Gaskill: I propose to show that these letters were in envelopes, envelopes that had been opened; envelopes that bore the address of the wife of this defendant, with United States postage stamps on them, and that this defendant made it a rule not to open his wife's letters; I think I am now entitled to put in secondary evidence.

The Court: I will allow that question that you have just put.

Q. Now, just describe the letters that you found in your wife's desk, and in what condition they were.

The Court: Has not this all been gone over before?

Mr. Backes: He has asked a question and it has not been answered, and he has asked another one, and I now move that it be stricken from the record.

The Court: Which one?

Mr. Backes: The one where counsel asked the witness if these letters contained terms of endearment.

The Court: The answer will be stricken from the record.

Mr. Backes: The question is not for the purpose of laying a foundation, nor does the question lay a foundation; I object to the question and ask your Honor's ruling, whether you overrule it or sustain my objection; my objection goes to this, that it calls for an opinion from the witness as to whether the letter contains words or sentiments of endearment.

The Court: I asked the counsel for the defendant to defer putting the question until he laid the foundation for it, and counsel did defer it, and he has taken up a new line of inquiry now, and that line we will now proceed with.

Q. Now, just describe the letters that you found in your wife's desk, and in what condition they were.

Mr. Backes: Objected to.

The Court: The objection is overruled.

A. They were all bunched together, tied with ribbon, some out of their envelopes, some in their envelopes, but they were all open.

Q. Describe the envelopes.

A. They were envelopes such as hotels use, the majority of them, addressed to my wife at Edgewater Park; the ends torn off of them; some with stamps on and some without stamps on, the other end having been torn off.

Q. Do you know what business Mr. Goulard was in; was he a traveling salesman?

A. Yes.

Q. Now, then, tell us, as far as you can recall, what any of those letters contained.

Mr. Backes: Well, I object.

The Court: I allow the question, subject to your objection, and will deal with it on final hearing.

A. In one letter he said that he was very much surprised to have gotten such a nice letter from my wife; that he enjoyed it immensely, and that it was very difficult to write to a married peach.

Q. Was there anything else that you recall in any of them?

A. Yes—once he asked her whether she would be in New York on or about September 15th, 1911.

Q. How does that date compare with the date that you gave on direct examination concerning the proposed visit of your wife to New York when you wanted to accompany her, and then she abandoned the trip?

Mr. Backes: Objected to as calling for a conclusion.

Mr. Gaskill: I withdraw the question.

Q. What was the date of the proposed visit of your wife to New York, as testified to by you in your direct examination?

A. September 15, 1911.

Q. Now, go on and give us anything else you can recall from any of those letters.

A. One simply said, "Hello, Irma; would enjoy a note from you immensely;" that is as close as I can recall it.

Q. Can you recall anything else?

A. I cannot recall the exact language.

Re-cross examination.

By Mr. Backes:

Q. Binney, in your direct examination, you did not

answer once, "I don't remember;" or, "I don't recollect;" and in your cross-examination you used that at least one hundred times; is your memory better this afternoon than it was yesterday or this morning?

A. It is just the same.

Q. When was it, Binney, that you saw this bundle of letters and so honorably replaced them?

A. Before my wife took her furniture away from my house.

Q. About when?

A. I don't know the date.

Q. About when was it?

A. I don't know the date.

Q. You do not recollect?

A. I don't know.

Q. Well, was it in the year 1911 that you first saw this bundle of letters?

A. Yes.

Q. What season of the year?

A. It was before she left.

Q. Oh, yes; what season of the year was it?

A. The early part of the fall or the latter part of summer.

Q. That is, either in the month of August or the month of September?

A. Yes.

Q. You were living together in the house?

A. In the month of August, yes.

Q. I say, at the time you found the bundle of letters, you were living in the house with your wife, or don't you remember?

A. I don't remember.

Q. Where was your wife, Binney, when you found the letters?

A. I don't know.

Q. Where were you when you found the letters?

A. In her room, standing in front of her desk.

Q. And was your wife in the house at the time?

A. I don't remember.

Q. Did you see your wife in your house after you found the bundle of letters?

A. When she was packing up, yes.

Q. And were you on friendly terms with your wife after you found the letters?

A. No.

Q. Were you on friendly terms at the time you found the letters?

A. Yes.

Q. Did you live with her after you found the letters?

A. I don't quite understand the question.

Q. Did you live with your wife after you found the bundle of letters?

A. Stay with her, do you mean?

Q. I don't care what you want to call it—did you live with her there in the house; did you eat at the same table, under the same roof?

A. I do not recollect; I don't think so.

Q. Now, your memory is slipping on you again, isn't it?

A. No.

Q. You think it was not later than the month of September that you found the bundle of letters, is that right?

A. It was before she left; I don't remember the date.

Q. Well, when did she leave?

A. In October.

Q. When, in October?

A. I don't know the date.

Q. What week in October?

A. I don't know.

Q. Well, she left on the same day that she took this trip to the Columbus Inn, didn't she?

A. She did not.

Q. Don't get excited now, Binney; was your wife back at your home living with you after she made the trip to the Columbus Inn with Miss Keim?

A. I was not back there.

Q. Was your wife back, living there, after she made this trip to the Columbus Inn?

A. I don't know; I was not there.

Q. You know as a fact, that your wife went to her own home from the Columbus Inn, with Miss Keim?

A. She said so.

Q. And, of course, you believed her?

A. I believe so.

Q. Now, can you tell me the date of that Columbus Inn trip?

A. I don't remember.

Q. Was it in September or October?

A. I don't remember.

Q. Was it in November?

A. No.

Q. Was it in October?

A. I don't remember.

Q. Was it the first week in October?

A. I don't remember.

Q. Who told you to say, "I don't remember"?

A. Nobody.

Q. Now, won't you try to help me along a little in this respect; try to remember whether at the time you found the letters in your wife's room you were still living at Edgewater Park in your house there with your wife?

A. I don't remember.

Q. You cannot help me out on that, eh? Was there more than one letter in this bundle that said, "Hello, Irma; would enjoy a note immensely"?

A. Not that I remember—in that exact language.

Q. Was there any letter in the bundle of letters that you discovered, that contained the sentiment, "Hello, Irma; would enjoy a note immensely"?

A. Not that I remember.

Q. Do you remember seeing more than one letter which contained the sentiment, "Hello, Irma; will enjoy a note immensely"?

A. I do not.

Q. Do you say there was only one?

A. That is all I recall, with that exact statement.

Q. Then that letter was one of the bundle of letters tied with this ribbon, was it?

A. I do not recollect it being with that bunch.

Q. Well, was it with the bunch?

A. I don't remember it being with that bunch; I should say "No."

Q. It was not with the bunch?

A. I do not recollect it being there; there were several that started off that way: "Hello, Irma."

Q. How many letters were there: "Very much surprised to get such a nice letter, and it is very difficult to write to a married peach"?

A. There were several in acknowledgment of letters.

Q. Well, how many were there that contained the statement that it was "very difficult to write to a married peach"?

A. Only one, that I recollect.

Q. What did you do with the bundle of letters after you read them?

A. I placed them back in the desk.

Q. All of them?

A. Yes.

Q. Did you speak to your wife about them?

A. No.

Q. Why not?

A. If I recall correctly, she was not at the house at that time.

Q. After you saw her, did you speak to her about them?

A. No, sir.

Q. You did see her after that?

A. Yes, sir.

Q. Were you on friendly terms with your wife?

A. No, sir.

Q. Why was it that you did not purloin these letters?

A. Can you explain the word "purloin"?

Q. Swipe them.

A. Take them, do you mean?

Q. Yes.

A. Because I thought it was dishonorable.

Q. Did you regard these letters from this man to your wife as dishonorable?

A. I did, yes, sir.

Q. Did you regard your wife's conduct in getting these letters as dishonorable?

A. I did.

Q. And you regarded it as dishonorable to take letters that you now pretend were incriminating?

A. Without telling her—yes.

Q. What other communications did you find in her desk besides this bundle of letters?

A. Only the one letter from Mr. Goulard.

Q. Did you find the bundle of letters and one letter at the same time?

A. No, sir.

Q. But, at the time that you discovered this bundle of letters, what other letters did you find in her desk?

A. Nothing.

Q. What else was there in the desk?

A. I don't know.

Q. Well, how did you come to find these letters, Binney?

A. They were right in a pigeon-hole, directly in the front of her desk; the handwriting was within plain view.

Q. The desk was open?

A. It was.

Q. Was it a desk that could be locked?

A. It was.

Q. Was it a drop-front desk?

A. Yes.

Q. And you did not open the desk, of course?

A. I did not.

Q. You would regard that as dishonorable too, wouldn't you?

A. I should.

Q. You did not regard it as dishonorable to snoop around among your wife's letters?

A. I knew she had no right to receive those letters.

Q. But why do you say you would regard it as dishonorable to open your wife's desk, and how do you reason that it was not dishonorable in you to read her letters?

A. Because I had forbidden her to receive those letters.

Q. But they were open in front of you, so you or Mark Whitfield or anyone else who came in the room could see them?

A. I saw them there.

Q. They were right open?

A. They were in the pigeon-hole; the desk was open.

Q. Not concealed?

A. No.

Q. Over what period of time did these letters date?

A. Nineteen hundred and ten, nineteen hundred and eleven.

Q. What was the earliest date?

A. I don't remember.

Q. What was the last date?

A. October 1st, if I recollect correctly.

Q. Then, it was not in September that you first discovered the bundle?

A. I don't remember the exact date of discovering that bundle.

Q. Well, you are quite sure it was not during the month of September, are you not?

A. I am; it was in the early part of October, to the best of my recollection.

Q. Do you think it was before the 10th of October?

A. I don't know.

Q. How soon after you discovered the first bundle of letters, did you discover the second one—the single one?

A. I don't know.

Q. Well, a day or two after—a week or two after?

A. I don't know.

Q. Was it daytime or night that you discovered the single letter?

A. I don't know.

Q. Were you present when you discovered it?

A. I was, yes, sir.

Q. Who else was in the room with you?

A. Nobody.

WILLIAM MCCRAY, sworn in behalf of the defendant, testified as follows:

Direct examination.

By Mr. Gaskill:

Q. Where do you live?

A. Beverly.

Q. In whose employ are you?

A. Mrs. Taylor's, at Edgewater.

Q. How long have you lived with Mrs. Taylor?

A. I think I began working for her somewheres around the first part of April in 1911.

Q. A year ago, then, this April?

A. Yes.

Q. Then you have been there a little over a year?

A. Yes, sir.

Q. What work do you do there?

A. I am her chauffeur.

Mr. Backes: May I, at this time interpose by asking your Honor to take into custody, to impound the letter of October 1st, 1911, signed by Alexander Goulard?

The Court: Give it to the sergeant-at-arms.

Mr. Backes: I desire a photograph to be made of it.

Q. You know Binney Earl?
A. Yes, sir.
Q. And did you know where he lived in Edgewater?
A. Yes, sir.
Q. While he and his wife, the petitioner here, were living together?
A. Yes, sir.
Q. How far is that from Mrs. Taylor's house?
A. It is somewheres around about seven minutes' walk.
Q. Do you go by their place in going to and from your work?
A. No, sir.
Q. Do the places adjoin?
A. No, sir.
Q. You know Mark Whitfield?
A. Yes, sir.
Q. And you knew Mark Whitfield when he worked there at Binney's?
A. Yes, sir.
Q. Did you talk with Mark Whitfield occasionally?
A. Some.
Q. Do you remember the time that Binney and his wife were away—said to be in Florida?
A. Yes, sir.
Q. Mark was there at the house at that time, wasn't he?
A. Yes, sir.
Q. Did Mark Whitfield have any company at that time?
A. Once.
Q. And who was it?

Mr. Backes: Objected to as immaterial—irrelevant and immaterial.

Mr. Gaskill: If your Honor will allow me to come

to the side bar, I will explain to your Honor why it is relevant.

The Court: You may come forward to the side bar.

(Both counsel step forward and talk sotto voice to the Court.)

The Court: I will allow it, subject to the objection, and will deal with it on final hearing.

(Question read.)
A. I could not say.
Q. Man or woman?
A. Woman.
Q. When did you see her, day or night?
A. In the morning.
Q. William, did Mark Whitfield ever make any inquiry of you as to whether he could get medicine for the clap?

Mr. Backes: Objected to.

The Court: The objection is noted, and I will deal with it on final hearing. I will take the testimony.

Q. When was that?

Mr. Backes: Objected to.

A. It was somewhere in the latter part of February.
Q. A year ago this February?
A. In 1911.
Q. Were you able to tell him?
A. Yes, sir; I told him a place.

Mr. Backes: Objected to.
Q. Did you tell him?

A. I told him.

Mr. Backes: Objected to as incompetent, irrelevant and immaterial to the issue.

The Court: The objection is overruled.

Q. Did you have any talk with him afterwards?
A. No, sir.

Cross-examination.

By Mr. Backes:

Q. Where have you lived within the last ten years?
A. I have been living in the world.
Q. What have you got there in your hands?
(Witness was handling a piece of paper.)
A. This is it. (Witness hands paper up to Mr. Backes.) I was looking to see if I had made a mistake in the year.

Mr. Backes: Excuse me for bothering myself with your private affairs; I don't know the lady.

Q. Where in the world have you been living in the last ten years?
A. It is pretty hard for me to say.
Q. Have you been at liberty during all that time?
A. Yes, sir.
Q. And where have you been at liberty during that time?
A. In private families.
Q. Have you been at liberty for the last ten years?
(No answer.)

By Mr. Gaskill:

Q. Have you been locked up, he means?
(No answer.)

Further cross.

Q. Where did you live ten years ago?
A. I could not say.
Q. In Burlington County?
A. No, sir.
Q. How long have you lived in Burlington County?
A. Somewheres around six years.
Q. Where did you first live in Burlington County?
A. At Mr. A. C. Ferguson's—Edgewater.
Q. What did you do for him?
A. I was his butler.
Q. What was his business?
A. If I am not mistaken, I think he is in the wholesale grocery business in Philadelphia.
Q. Is he there now, as far as you know?
A. Yes, sir.
Q. Does he still live in Edgewater?
A. Yes, sir.
Q. How long were you with him?
A. Three years.
Q. From there you went where?
A. To Mr. Binney Earl's.
Q. Three years ago?
A. Yes, sir, from there I went to Mr. Earl's.
Q. How long did you work for Mr. Earl?
A. I went there somewhere around in June.
Q. Of which year?
A. I went there in June, I think, somewheres around in June.
Q. That is three years ago; I think it was in 1910, because I left in February ——
Q. You worked for Mr. Binney Earl how long?
A. I think I was there somewheres around eight months.

Q. From June, 1910, to February, 1911?
A. I think that is right.
Q. Now, where did you work between the time that you left Ferguson and took employment with Mr. Earl?
A. I went to Mr. Earl's ——
Q. And where did you go to after you left Earl's in February of 1911?
A. I went to Mrs. Taylor's.
Q. And you are working there now?
A. Yes, sir.
Q. What is Mrs. Taylor's first name?
A. Mrs. Emmie Taylor.
Q. What is her husband's name?
A. Mr. George.
Q. What does he do for a living?
A. He is dead.
Q. Where did you live before you came to Burlington?
A. I think at Manayunk.
Q. Whom did you work for there?
A. Mr. John F. L. Morris.
Q. And how long did you work for him?
A. Not quite a year; I won't say just how long.
Q. What is his business?
A. I think he is one of the head men of the school.
Q. What is his address in Manayunk?
A. It is at Green Lane on the top of the hill.
Q. Where did you live before that?
A. At Mrs. G. G. Browning's, at Devon, Pennsylvania.
Q. How long were you with her?
A. I was with her four years.
Q. Now, do you remember when it was that Mr. and Mrs. Earl went South during the fall or winter of 1910?
A. Why, I remember when they went, but the time I could not say.
Q. You remember the occasion, but you could not fix the time?
A. I know when they went.
Q. You left their employ on the 18th of February?

A. Yes, sir.

Q. Nineteen hundred and eleven?

A. Yes, sir.

Q. How long had Mr. and Mrs. Earl been gone at that time?

A. I guess quite a little while.

Q. More than two weeks?

A. Oh, yes—you mean before I left?

Q. Yes.

A. Oh, yes, sir, they went before Christmas.

Q. And they returned, as you understand, within a few days after the 18th of February?

A. Well, I could not say the day because I was not there.

Q. Well, you saw Mr. and Mrs. Earl shortly after you quit their service, didn't you?

A. Yes, sir.

Q. What was your business at the Earl's home?

A. I was just a handy man around the house: I worked on the lawn and took care of his automobile for him.

Q. Are you a chauffeur?

A. I am supposed to be, yes, sir.

Q. Did you run Mr. Earl's car for him?

A. Yes, sir.

Q. Was there anyone else in Mr. Earl's employ besides you and Mark Whitfield during the time that he was absent in the South?

A. Mark is the only one that I can remember.

Q. Now, where did you live during the time that they were in the South?

A. I housekeeped in Beverly; I went home at night and worked about the place in the daytime.

Q. Were you ever there at night?

A. Sometimes I would be a little late getting through at night.

Q. What was your usual time for quitting when Mr. Earl was not there?

A. Six o'clock.

Q. Did you ever stay beyond six o'clock during the time Mr. Earl was in the South?

A. Hardly ever.

Q. Do you recall a single instance where you remained after six o'clock?

A. I don't remember it, no, sir.

Q. You say that Mark had a woman that he was paying attention to during the time the Earls were in the South?

A. I did not say that.

Q. Did you say you saw him with a woman once?

A. I did not say that; you asked me did he have any company.

Q. I did not ask you that ——

A. Well, somebody did.

Q. Now, I am asking you whether you saw him in the company of a woman at any time?

A. Once I did.

Q. Was it daytime or night?

A. It was in the morning.

Q. Where did you see the woman?

A. In the kitchen.

Q. What time in the morning was it, William?

A. Somewheres around between eight and nine o'clock.

Q. What were you doing in the kitchen?

A. I brought the mail over from the postoffice.

Q. You had been to the postoffice in the automobile?

A. I stopped there as I came from Beverly and got it.

Q. You were on your way to work?

A. Yes, sir.

Q. And when you arrived there on this morning with the mail, you saw this woman in the house?

A. Yes, sir.

Q. Did you go in the house?

A. I just opened the back door and put the papers in.

Q. And saw the woman there?

A. Yes, sir; I saw her.

Q. Did you peek?

A. I saw the woman all right, in front of me, and I closed the door again.

Q. It was in the winter time?

A. It was pretty cool.

Q. Then, where did you go?

A. To the garage.

Q. Did you work there?

A. Yes, sir.

Q. When did you again return to the house?

A. I got discharged that day.

Q. I did not ask you when you got discharged; I said when did you come back to the house?

A. I don't remember coming back to the house any more that day.

Q. On the day you saw this woman in the kitchen, do you say that was the day you were discharged?

A. Yes, sir.

Q. Now, did you get your discharge late in the day?

A. It was about an hour and a half after I brought the mail over.

Q. And you got that discharge by telegram from Mr. Earl?

A. Yes, sir.

Q. He said he did not want you any more?

A. I don't know who sent it, but I got it.

Q. During that hour you were working down in the garage?

A. Yes, sir.

Q. Who brought you the telegram?

A. Mark Whitfield—the telegram came in care of him.

Q. And when you got the telegram, did you then at once quit your work?

A. Yes, sir.

Q. Where did you go?

A. I don't remember; I know I got off the place.

Q. You did not go back to the house?

A. No, sir; I don't remember going in the house any more that day.

Q. You did not see this woman after the first look that you had at her when you put the mail and the newspapers in the kitchen?

A. No, sir.

Q. And then you only saw her for a second or so?

A. Yes, sir.

Q. Do you know who she was?

A. No, sir.

Q. Describe her.

A. She was pretty stout; I could not say anything about her age.

Q. Was she a white woman?

A. Yes, sir.

Q. Was she dressed?

A. Well, I won't say—I could not say.

Q. She was not undressed?

A. She had some clothes on; she was not naked.

Q. Did she have her street clothes on?

A. I won't say.

Q. Did she have her hat on?

A. No, sir.

Q. Did she have a coat on?

A. No, sir.

Q. Have you ever seen her since?

A. No, sir.

Q. What was the name of the cook; did you know Lizzie Bright?

A. No, sir.

Q. You don't know whether it was Lizzie Bright in the house?

A. No, sir.

Q. How old a looking woman was she?

A. I could not say.

Q. You had a look at her, didn't you; was she a young woman, 20 or 30, or was she a woman 50 or 60?

A. I would not say.

Q. Did she have gray hair?

A. I don't know.

Q. Did she have red hair?

A. I don't know, sir.

Q. Was she a blonde or a brunette?

A. I could not say.

Q. Did she wear glasses or not?

A. I could not say.

Q. Was she light or dark complexioned?

A. I could not say; I just saw it was a woman.

Q. Where was Mark Whitfield?

A. In the house.

Q. And all during that winter from December 24th, 1910, until February 14th, 1911, you did not see any woman in that house when Mark Whitfield was there, except upon the last day, and then you only saw a woman momentarily; you only saw her momentarily, and you cannot describe her?

A. I cannot describe her.

Q. That is correct, that is the only time?

A. Yes, sir.

Q. Did you ask Mark Whitfield about her; you did not speak to Mark about her?

A. That morning I did.

Q. Now, when was it that Mark had a talk with you about the clap?

A. A few days after I got discharged.

Q. How many days?

A. It may have been a couple of weeks; probably it was two weeks after.

Q. Where was it you saw him?

A. At Edgewater postoffice.

Q. Who was there with you at the time?

A. Just our two selves.

Q. And what time of day was it?

A. I won't say; I don't know whether it was morning or afternoon.

Q. Was it in the daytime?

A. Yes, sir.

Q. Whereabouts in the Edgewater postoffice was it?

A. We were outside the postoffice.
Q. Can you give me the day?
A. No, sir, I could not.
Q. What day of the week was it you were discharged?
A. I don't know, sir.
Q. Is there any way you can fix the exact date that you left?
A. On the 18th of February.
Q. Are you absolutely positive about that?
A. Yes, sir.
Q. Is there any way you can fix that?
A. The 18th of February.
Q. Is there any way you can fix it; have you got anything to fix that date; have you any paper or anything to fix to a certainty that it was on the 18th of February you were discharged?
A. Yes, sir.
Q. What have you got?
A. This telegram (handing a telegram to counsel).

Mr. Backes: (Reading the telegram): "February 18, 1911, Fort Myers, Fla., William McCray, care of Mark I. Whitfield, Edgewater Park, New Jersey. Your services not required any longer. Mark, I shall return first week in March. B. D. Earl."

Q. Now, you think it was all of two weeks afterwards you saw Mark at the postoffice?
A. Yes, sir; I think it was.
Q. And he asked you whether you knew where to get clap medicine?
A. Yes, sir.
Q. Did you know?
A. I told him ——
Q. Did you know?
A. Yes, sir; I knew.
Q. You knew where to get that stuff, did you?
A. Yes, sir.

Q. Had you gotten it yourself there?

Mr. Gaskill: Objected to.

The Court: The objection is overruled.

A. Yes, sir; I have got it there myself.

Q. Did he ask you what kind to get; did Mark ask you what kind to get?

A. I won't say whether he asked me or whether I told him.

Q. What kind did you tell him to get?

A. The name of it was "W. S.," that is the only name they have for it, they just call for "W. S."

By the Court:

Q. That is the only name it has ever had?

A. Yes, sir.

Further cross.

Q. Where did you tell him it could be gotten?

A. Tenth and Locust, a drug store, at Philadelphia.

Q. Is it right on the corner of Tenth and Locust Street?

A. Yes, sir.

Q. Which corner?

A. I think it is on the lower corner, on the left-hand side going south, I think so.

Q. Going south on Tenth Street it is on the left-hand side, and you have to cross Locust Street before you get to the store?

A. Yes, sir.

Q. Then that would be the southeast corner?

A. Yes, sir.

Q. Are you in doubt about it?

A. I know the store is there, because I have been to it.

Q. Is that all he said to you?
A. Yes, sir.
Q. Whom did you tell this story to first, William?
A. What story?
Q. What you are telling me now; whom did you ever tell it to?
A. I don't know his name—it was the gentleman sitting right over there (indicating Mr. Reginald Branch)
Q. Do you mean Mr. Reginald Branch?
A. Yes, sir.
Q. When did you tell him?
A. It has not been so long ago.
Q. He sent for you to come to the office?
A. Yes, sir.
Q. And when was it that he sent for you?
A. Well, I am not sure.
Q. Well, about how long ago?
A. I don't think it has been over—I don't think it is quite two weeks ago.
Q. About two weeks ago?
A. Yes, sir.
Q. Whom did he send to you; how did you get word that Mr. Branch wanted to see you?
A. Who came after me—I will tell you in a minute—John Gaines was his name.
Q. Who is John Gaines?
A. That is Mr. Binney Earl's mother's coachman.
Q. Is he a colored man?
A. Yes, sir.
Q. Where does he live now?
A. In Burlington.
Q. And you think it is about two weeks ago?
A. I think so.
Q. Now, try to think.
A. I don't want to make any mistakes; maybe it was not quite two weeks; I know it has not been long; I know that.

Q. Try to think back just when it was; now, tell me as nearly as you can?

A. That is as near as I can tell you.

Q. What fixed it in your mind that it was two weeks ago that Johnnie Gaines came to you and told you that Reginald Branch wanted to see you?

A. Because it has not been any more than about two weeks before I pulled off the Bristol Ferry, driving the automobile; I ran off the ferry, and they stopped me on the street.

Q. You ran off the ferry into the street?

A. Yes, sir.

Q. You did not drop into the water?

A. No, sir; I did not drop into the water.

Q. Where had you been that day?

A. I was over in Pennsylvania to Radnor Hunt's, taking my folks to luncheon.

Q. Where does Radnor Hunt live?

A. In Pennsylvania.

Q. Whereabouts in Pennsylvania?

A. I cannot tell you.

Q. Whom did you take over there?

A. Mrs. Taylor and her sister.

Q. What is her sister's name?

A. Miss Clara and Mrs. Blair.

Q. What is her first name?

A. Mrs. Helen Blair, I think, is her name.

Q. Was there some event over there?

A. Mrs. Taylor's friend gave a luncheon over there.

Q. Is Mrs. Taylor living in Burlington now?

A. In Edgewater, Burlington County.

Q. And it was on that same day, on her return, that John Gaines asked you to come up to Mr. Reginald Branch's office?

A. No, sir, that is the date of the subpœna.

Q. I ask you when it was that John Gaines came and asked you to come up to Mr. Branch's office?

A. That was not the day, no, sir.

Q. How long is it when Gaines asked you to go to Mr. Branch's office?

A. This was about two weeks later that Mr. Gaines came after me.

Q. Who asked you to go to Mr. Branch's office?

A. John Gaines.

Q. How long ago is that?

A. Somewhere about two weeks.

Q. Then it was not on the day that you were in Bristol, Pennsylvania?

A. No, sir.

Q. You were in Bristol, Pennsylvania, two weeks after that?

A. As far as I can make it out, it was about two weeks before that.

Q. Had you told anybody of what Mr. Whitfield asked of you across from the Beverly postoffice, until you told Mr. Branch?

A. He was the only one that I ever told about it.

Q. He was the only one that you ever told, and the first one that you told that Whitfield asked you about getting "clap" medicine, is that right?

A. I told Mart, the only one besides Mart.

Q. You told Mart afterwards?

A. Mart was the first one that I was telling where to get it at.

Q. But Mr. Branch was the first man to whom you told that Mart asked you where he could get clap medicine?

A. Yes, sir.

Q. And it was Johnnie Gaines who came to you and told you that Mr. Branch wanted to see you?

A. No, sir; he came after me, he said he wanted to see me.

Q. And that was two weeks ago?

A. Yes, sir; I think so.

Q. What is it that enables you to fix that it was just two weeks ago, or thereabouts; where were you when Gaines asked you to come to Branch's office?

A. I think I was in the garage, in Mrs. Taylor's garage.

Q. Where is Gaines working now?

A. He works for Mrs. Earl.

Q. Mrs. Earl, Senior?

A. Yes, sir.

Q. What did he say to you?

A. He told me—he called and said he would like to see me.

Q. He told you Mr. Branch would like to see you?

A. Yes, sir.

Q. Did he tell you who Mr. Branch was?

A. Yes, sir.

Q. Did he tell you Mr. Branch was Binney Earl's lawyer?

A. I don't know, but I knew he was a lawyer.

Q. Did he tell you where Mr. Branch's office was?

A. I met him at Mr. Earl's house.

Q. Did he tell you where Mr. Branch's office was?

A. No, sir.

Q. Did you meet Mr. Branch on the same day that Gaines told you that Mr. Branch wanted to see you?

A. That afternoon.

Q. Well, did Gaines fix a time for you to see Mr. Branch?

A. He said to come before I went home—any time after six o'clock, between six and seven o'clock.

Q. He told you what time of day—two weeks ago?

A. Anywheres around between six and seven.

Q. But what time of day was it that he told you to come some time between six and seven to Mrs. Earl's house?

A. It was in the morning.

Q. Did he tell you that Mr. Branch would be there?

A. I won't say about that; I don't remember now.

Q. Did Mr. Gaines say anything else to you?
A. No, sir.
Q. Did he tell you what Mr. Branch wanted?
A. No, sir.
Q. Did he tell you it would be of interest to you to stop there?
A. No, sir.
Q. You were in the garage at Beverly and you were to go to a house in Burlington, to Mrs. Earl's house in Burlington?
A. I was in the garage in Edgewater.
Q. In Mrs. Taylor's garage?
A. Yes, sir.
Q. And how far was that from Mrs. Earl's house—Mrs. Earl, Senior's, house?
A. About seven minutes' walk.
Q. Was it on your way to the depot?
A. No, sir.
Q. It was away from that?
A. Yes, sir.
Q. In the other direction?
A. Yes, sir.
Q. Now, Gaines told you what Branch wanted you to swear to, didn't he?
A. No, sir.
Q. Didn't he say it was about the Binney Earl case?
A. He said he wanted to see me about the case.
Q. Did he mention any money for you?
A. No, sir.
Q. Did he say there was a good thing in it for you?
A. No, sir.
Q. Did he tell you why Branch wanted you?
A. No, sir.
Q. Outside of your being wanted in the Earl case?
A. No, sir.
Q. Did anyone come after you to take you over to the Earl house?
A. No, sir.

Q. When you got there, what did you find?
A. I found Mr. Branch.
Q. Who else?
A. Mrs. Earl and Mr. Earl.
Q. Binney Earl and his mother?
A. Yes, sir.
Q. Where did you find them?
A. They were in the house.
Q. Whereabouts in the house?
A. I don't know.
Q. In the parlor?
A. I don't know.
Q. Was it in the library?
A. It was in the front part of the house.
Q. In the living part of the house; it was not in the kitchen?
A. I think it was in the library.
Q. Was anyone else there besides you four?
A. In the room where we were?
Q. Yes.
A. No, sir.
Q. Who first told you what you were wanted for, what they wanted of you?
A. Why, Mr. Earl; I think Mr. Earl was the first one that spoke.
Q. What did Mr. Earl say?
A. He said he wanted to know if I knew anything about this case.
Q. What did he say?
A. He said he wanted to know if I knew anything about the case.
Q. What case?
A. About him and his wife.
Q. Did he tell you all that?
A. He just said that.
Q. Did you know what case he meant before you went there?
A. No, sir.

Q. What was it he said to you about the case?

A. That is all he said to me.

Q. About what case?

A. Just wanted to know if I knew anything about this case; about him and his wife or Mark, or any of them.

Q. But you had not heard of any trouble between him and his wife up to that time?

A. No, sir.

Q. What did you say?

A. I told him I did not know anything about it.

Q. And is that all that happened?

A. That was all that I said to Mr. Earl.

Q. And then who said something?

A. Then Mr. Branch spoke; he spoke about that disease business; he wanted to know did I know whether Mark had the clap, or not, and of course, ——

Q. What did you say?

A. I told him I did,—that I knew it, if Mark's word was good; that is all I could say.

Q. Mark Whitfield never told you that he had the clap?

A. He did.

Q. And was that the first time that you saw Mr. Branch ——

A. Yes, sir, to talk to.

Q. Was that the first you spoke to Mr. Branch of and concerning Mark Whitfield?

A. Yes, sir.

Q. Mr. Branch told you that if you could tell him something of interest in the matter, of interest to the Binney Earl case he would make it worth while to you?

A. No, sir, he never mentioned it.

Q. How much money were you offered?

A. Never a cent.

Q. How much money were you offered?

A. Not a cent.

Q. What were you to get to make that statement?

A. My carfare and my subpœna up here.

Q. When were you first here?
A. Wednesday, that was yesterday.
Q. Is that the first time you attended upon this trial?
A. Yesterday was the first time I have been here.

Mr. Gaskill: Are you through with this witness?

Mr. Backes: No, I am not.

Mr. Gaskill: I must insist on counsel finishing with this witness; I submit your Honor ought to require this cross-examination to be finished today so that this man may be excused and go back to his employment; it is a discretionary matter entirely.

The Court: I understand that.

Mr. Backes: It will take me longer than the session to get through with this witness.

The Court: This witness will have to come back, Judge Gaskill.

Adjourned to Monday, June 24, 1912, at 10.30 A. M.

Transcript of testimony taken in the above-entitled cause, on the twenty-fourth day of June, nineteen hundred and twelve, at the State House, Trenton, New Jersey, before Vivian M. Lewis, Vice-Chancellor.

APPEARANCES:

JOHN H. BACKES, ESQ., for the Petitioner.

HON. JOSEPH H. GASKILL, of the firm of Gaskill & Gaskill, for the Defendant.

ELLA BURNS, sworn in behalf of the defendant, testified as follows:

Direct examination.

By Mr. Gaskill:

Q. Where do you live?
A. At Edgewater Park.
Q. In whose service are you?
A. Mrs. Charles Rauth.
Q. Do you know the petitioner, Mrs. Irma Earl?
A. I do, sir.
Q. Were you engaged by her at any time to enter her employ as a servant?
A. I was.
Q. When was that?
A. It was about the first of October, last year.
Q. Nineteen hundred and eleven?
A. Yes, sir.
Q. Did you go to the house of Binney and his wife?
A. No, sir, I went to Mrs. Leigh's house, Mrs. Earl's mother's.

Q. How far is that from the house in which Binney and his wife lived?

A. I could not exactly say.

Q. A mile, half a mile, a quarter of a mile?

A. I guess it was a mile.

Q. It is on the road between Edgewater and Burlington?

A. Yes, sir.

Q. Can you tell us when it was that you were there at the house first?

A. It was between the first and the fourth of October, I cannot exactly say.

Q. In the early part of October, between the first and the fourth?

A. Yes, sir.

Q. Who was there at that time?

A. Mrs. Earl and her mother.

Q. What did Mrs. Earl's mother say with reference to her daughter and Binney's living there?

Mr. Backes: Objected to.

The Court: On what grounds?

Mr. Gaskill: I laid the foundation ——

Mr. Backes: I object to it as hearsay: "What did Mrs. Earl's mother say;" what have we got to do with Mrs. Earl's mother? This is a contest between Binney and Irma, and what Binney's mother may have said, or what my mother may have said, would not be relevant in this case.

Mr. Gaskill: I think that the gentleman overlooked the fact that I laid the foundation for contradiction by asking Mrs. Earl's mother, Mrs. Leigh, I am sure I am right—if not, I have the privilege of calling her—whether or not she did not at that time want Binney and his wife to go

back and live together; and, in view of some of the authorities which I propose to produce to your Honor, I will show that that is inconsistent with the knowledge on the part of the mother that her daughter was suffering from a secret disease communicated to her by her husband.

Mr. Backes: I am entirely conscious that Mrs. Leigh so testified. Now, if it is for the purpose of contradicting Mrs. Leigh, then the question must be put direct, and not at this time, "What was said by her;" and when the question is put to her direct, for the purpose of contradicting, I shall then object to it upon a more substantial ground, and that is, that the question that was asked Mrs. Leigh in this case was collateral to the issue, and having had their answer, they are bound by it; that is the rule of evidence.

Mr. Gaskill: I will change the form of the question. I think that part of the gentleman's objection is well taken.

Q. Miss Burns, did Mrs. Leigh, Irma's mother, say to you, in the presence of her daughter Irma, at or about the first of October last, that she wanted Irma and Binney to got back to the house and live together?

Mr. Backes: I object to that for the reasons I have already advanced. That question, your Honor, was collateral to the main issue, brought from the witness, Mrs. Leigh, on a cross-examination, and it being collateral to the issue, the other side is bound by it. My authority for that is Bullock vs. The State—and there are many other cases that will bear me out in it.

Mr. Gaskill: I call your Honor's attention to a statement made by one of the most distinguished Judges that ever sat in New Jersey, Henry W. Green, in the case of

Berckman vs. Berckman, in 16 N. J. Equity, page 122, 1 C. E. Green; and on page 131 and page 132 he comments upon testimony exactly similar to that given by the mother in this case, where she had concealed her knowledge, and her action for a long period of time had been inconsistent with the knowledge which she had; and it is for the purpose of weakening and destroying the testimony of Binney Earl's mother-in-law that I am asking this question. It is not collateral, but it is a direct attack upon the witness's credibility.

Mr. Backes: In the Berckman case there must have been an absence of knowledge or a pretended absence of knowledge by the witness of the facts in issue. Under those circumstances, where a witness denies it, it may be shown that she, in fact, did have knowledge, but that is not so here. It is admitted by Binney Earl that his mother-in-law, Mrs. Leigh, knew that he possessed this disorder, so how can a question of this kind be employed by way of discrediting her?

The Court: I will allow the question, and will deal with it on final hearing.

(Question read.)

A. She did.

Q. Did you visit that house again, Ella?

A. I did, once after that ——

Q. About when was that?

A. Well, I cannot say; it was later; it was about the last of October or November of last year, I think.

Q. Whom did you see there at that time?

(No answer.)

Q. About how long was it, Ella, as near as you can recall, after your other visit?

A. I cannot say.

Q. Maybe this will help fix it; after your first visit between the first and fourth of October, did you go to the hospital for an operation?

A. Yes, sir.
Q. How long were you in the hospital?
A. About nine days.
Q. Now, then, how soon was it after you came out of the hospital that you went there the second time?
A. Well, I came back on the 12th of October, and I went down to Mrs. Earl's on the 13th, and she was packing up then to leave.
Q. Now, was Mrs. Binney Earl's mother there at that time?
A. Yes, sir.
Q. Did Mrs. Earl's mother, at that time, in your hearing, say that Mark Whitfield could have a home with her as long as he lived?
A. No, sir.
Q. You did not hear that?
A. No, sir.
Q. Did you hear any conversation about that matter?
A. No, sir.

No cross-examination.

SMITH HENRY CHINN, sworn in behalf of the defendant, testified as follows:

Direct examination.

By Mr. Gaskill:

Q. Where do you live, Mr. Chinn?
A. Burlington, New Jersey.
Q. What is your business?
A. Barber.
Q. How long have you lived in Burlington?
A. Ten years.

Q. Have you carried on the barber business all that time?

A. I have been employed in it all that time.

Q. Do you know Binney Earl?

A. Yes, sir.

Q. And were you accustomed to doing Binney's barbering work?

A. Yes, sir.

Q. Did you at any time go with him to his home, or go there to his home to do barbering for him?

A. I did, yes, sir.

Q. Which home was it you went to?

A. I went to his home on Union Street, and then, after he married and went to Edgewater, I was called there to shave him.

Q. Do you remember the occasion when he went to Florida?

A. I do.

Q. With reference to that occasion, did you go to the Edgewater house to do any barbering for him?

A. Just before he left, yes, sir.

Q. What time of day was it that you got there?

A. I arrived there about 2.30 in the afternoon.

Q. And did you see Binney there?

A. Yes, sir.

Q. Did you see his wife?

A. I did, yes, sir.

Q. Did you do this tonsorial work, as barbers call it, for Binney that day?

A. Yes, sir.

Q. Whereabouts?

A. In his bath room.

Q. Where is that situate—on which floor of the house?

A. On the second floor.

Q. Did you go to the bath room at once when you got there?

A. No, sir, I had to wait a few minutes.

Q. How long did you wait?

A. I could not say—between five and ten minutes.
Q. Was Binney with you waiting?
A. Yes, sir.
Q. During the time you were waiting, did Binney call to his wife?
A. He called and announced that the barber was there.
Q. Did you know where his wife was at the time?
A. No, sir, she was upstairs, I know that.
Q. Do you know where Mark Whitfield was?
A. No, sir.
Q. Was he downstairs or upstairs?
A. He was upstairs.
Q. After Binney called to his wife that the barber was there, what reply, if any, did his wife make?
A. I think she said something like, "All right, will be down in a minute," or "will be through in a minute."
Q. Did they come down?
A. Yes, sir.
Q. Did they come down together?
A. She came down first, ahead of him, three or four steps.
Q. Did you see where they came from?
A. No, sir.
Q. You could not see the bath room from where you were?
A. No, sir.

No cross-examination.

HENRY A. BROWN, sworn in behalf of the defendant, testified as follows:

Direct examination.

By Mr. Gaskill:

Q. What is your first name?
A. Henry.
Q. Where do you live?

A. Beverly, New Jersey.

Q. What is your profession?

A. Architect.

Q. Have you brought the plans for the Binney Earl house?

A. I did.

Q. Was the house erected in accordance with these plans?

A. It was, yes, sir.

Q. Have you the plans with you?

A. I have, yes, sir.

Q. Do those plans illustrate the stairway of the house and the rooms upstairs?

A. Yes, sir, they do.

Q. Can a person standing at the front door, or just outside the front door, see up those stairs and to the corner of the large bedroom that is at the right?

A. Yes.

Mr. Backes: Objected to, and I ask that the answer be stricken out; my objection came in first. It calls for an answer which must necessarily be the result of experiment, and there is nothing in the case to show that the witness made any experiment.

The Court: I presume it is to be assumed that the architect of the house, having drawn the plans and constructed the house, that he has taken the viewpoint from many places in the house, and I will admit the question.

Mr. Gaskill: I will show that in a moment. I will withdraw that question for the present.

Q. Have you the plans with you?

A. Yes, sir.

Q. Showing the stairway?

A. Yes, sir.

Q. And showing a viewpoint from the front door—of the stairway?

A. Yes, sir.

Q. Please produce those plans, and illustrate them to the Vice-Chancellor; now, just produce those plans.

(Witness produces them.)

Q. How many plans have you produced, and what are they; as you go along, just describe the plans first.

A. Well, I present the general plans of the entire house, and the details of the house, as originally drawn. Then I present a plan of the stairway, giving the viewpoints; the sight lines, I might call them, from the front door up to the door in question.

Q. Have you indicated on the plans the viewpoint and the line?

A. I have.

Q. Just show that, will you? First, put your finger at the front door entrance, on the lower part of the plan.

A. On the floor plan we have a door with a glass in it 15½ inches wide, at a point marked "A."

Mr. Gaskill: The witness has now before him the plan of the stairway of the first and second floor—from the first to the second floor; that will be marked "Exhibit D13."

(It was so marked.)

Q. Now, then, will you just take a pencil and mark the front door with the letter "A"?

(The witness does so.)

Q. Now, then, on the floor plan from letter "A" what is this diagonal line running from "A" to "B"—put a "B" here (indicating)?

A. That is the sight line shown in plan from the opening in the front door to the corner of the second floor hall ——

Q. Now, what is the point "B"?

A. That is there the sight line intersects the corner of the hall wall.

Q. Can you see the door casing or the corner?

A. No, sir.

Q. Now, then, take the upper part of this plan that has been marked "D13;" what does that upper sketch on that sheet show?

A. From the point on the floor to 5 feet 2½ inches on the doorway.

(Marked "A.")

Q. Now, looking up the stairway, what does that dotted line show?

A. That shows the line at which the head room intersects the point of sight; we will call that "D."

Q. Now, where on this upper plan of paper "13" is the point "B" shown in the lower plan?

(Witness marks with the letter "E.")

Q. Now, is that point "E" visible from point "C" looking up the stairway, clearing the head room?

A. It is, yes, sir.

Mr. Gaskill: I offer those plans.

The Court: The stenographer will make a note that I asked the witness whether he could see the door of any bedroom standing immediately facing the front door of the house, and he answered "No."

Q. Mr. Brown, what is there, if anything, between the wall that is marked "E" and the balusters, or the banister of the stairway in the upper hall; is there any partition across there?

A. No, sir.

Q. Let me have some of your other plans; which plan will show that?

A. This one.

Mr. Gaskill: I want also to offer this tracing, which we will have marked "D14."

Q. Now, will you please put the letter "F" on the second story of this plan, which shows that balustrade?

A. That is it.

Q. Running between the upper newel post in the hall, to the side wall?

A. Yes, sir.

Q. Then, just to the right of this, this large bed-chamber, is marked "No. 2"?

A. Yes, sir.

Q. Is that door to the large bed-chamber across the corner as indicated on this plan?

A. Yes, sir, the dimensions are on "D13," or whatever it is numbered, the original drawing.

Q. That doorway cuts across the corner?

A. Yes, sir.

Q. That is a balustrade across there, is it, Mr. Brown?

A. Yes, sir. I should like to say, that the same balustrade that is shown on "D13" is the same as is shown on "D14."

Q. Whereabouts is it, Mr. Brown?

(Witness indicates.)

Q. Right here—in the lower plan on "D13," and I wish you would mark that, please; that had better be marked "G."

(Witness marks it "G.")

Cross-examination.

By Mr. Backes:

Q. When was the sight line shown on "Exhibit D13," from "A" to "B," placed upon "D13"?

A. Part of the drawing was made Saturday afternoon, and part this morning before I came to court.

Q. Was "D13" made for an exhibit in this case?

A. It was.

Q. Then it is not part of the original plan at all?

A. No, sir.

Q. Is "Exhibit D13" made from your plans, or from the actual construction of the house?

A. From the actual construction of the house.

Q. Were you in the house on Saturday?

A. No, sir.

Q. Were you in at any time before you made "Exhibit D13," and after the house was completed?

A. Yes, sir.

Q. When—sometime last week was it?

A. Yes, sir, I think it was Thursday or Friday night.

Q. By the way, Mr. Brown, were you also the constructing architect of this house?

A. I superintended the construction of the house.

Q. And you placed the line to which I have called your attention upon "D13," to emphasize the fact that you could not see any bedroom door on the second floor standing at "A," standing at the front door?

A. To emphasize the fact ——

Q. That you could not see a door leading into any of the bedrooms standing at the front door marked "A" of this plan?

A. No, sir.

Q. What did you put it on for?

A. To show where a person could be seen at the top of the stairway near that door.

Q. Can you tell me which way this house faces?

A. It faces west—do you mean the front of the house?

Q. Yes.

A. Yes, sir.

Q. Then, it is a fact that one standing at the front door marked "A" on "D13," cannot either see the interior of the bedroom south of the hallway, nor the bedroom door, nor the casing of that door—that is right, isn't it?

A. Yes, sir.

Q. The south room to which I have alluded, is the one as you proceed upstairs—is immediately to the right of the stairs?

A. It is, yes, sir.

Q. What is the distance from the balustrade to the wall on the south on the second floor?

A. That is three feet—the stairway being three feet wide.

Q. I mean from the stairway to the wall dividing the southerly room from the hall?

A. Three feet.

Q. And from the balustrade leading upstairs to the point of that wall there is another balustrade?

A. That was the balustrade I thought you meant first ——

Q. I will come over there, and you can see what I mean ——

(Witness examines the drawing.)

Q. From this point, which is, as I view it, the head of the stairs and the balustrade, to the most northerly wall of the southerly room, what is the distance?

A. Three feet.

Q. And what is there between the wall and the door of the balustrade, if anything?

A. A balustrade.

Q. Do the steps, as indicated upon this plan, at the top, reach the main floor of the second story at this point?

A. Yes, sir.

Q. So that when you reach the top of the stairs, the rear of the pointer as shown upon this map, then you are on the main floor of the second stairway, are you?

A. Yes, sir.

Q. Is there a descent from the doorway leading into the southerly chamber to the point where the pointer is, as shown on this map?

A. No, sir, it is all on one floor.

Q. You have the word "down" written upon "D14," at the point that I have indicated; does that mean down as shown by the pointer?

A. Yes, sir.

Q. It does not mean down going from the end of the pointer to the door of the southerly chamber?

A. No, sir.

Q. You are very familiar with the house, are you, Mr. Brown?

A. Yes, sir.

Q. I am showing you a photograph; does that photograph fairly illustrate the front of the house?

A. Yes, sir, as far as I know.

Q. Well, you would take that to be a picture of the house, wouldn't you?

A. Yes, sir.

Q. There is a doorway shown on the front of the house, is that the same doorway that you have marked "A;" is that the location of the same doorway that you have marked "A" on "Exhibit 13"?

A. It is.

Q. Does the glass in the doorway appear on this second picture?

A. It does.

Q. How large is the opening?

A. Fifteen and one-half by fifteen and one-half.

Q. It is a circle, is it?

A. No, sir.

Q. That picture seems to illustrate a circle, does it not?

A. It does not.

Q. The opening is square, but a circle is fitted into the square?

A. No, sir, there are muntins, but it does not form a circle —— If I may show you the drawing.

Q. What kind of glass is there in that opening?

A. Ordinary, double-thick American.

Re-direct examination.

By Mr. Gaskill:

Q. Have you any details of that door here, or anything that shows that glass in the upper part of it?
A. I have.
Q. On this plan that was marked "D13"?
A. No, sir.
Q. Well ——
(Witness points to the front elevation of the house on another plan, and points to the glass in the door.)

Mr. Gaskill: I will have this marked "Exhibit D15."

(So marked.)

Q. I understand that this plan which has been marked "D13" has been made as an exhibit on purpose for this case?
A. It has, yes, sir.
Q. Now, with respect to "Exhibits D14" and "D15," are these plans drawn from which the house was constructed?
A. Yes, sir.
Q. What size are each of those panes of glass, that is, in that upper part of the door—do you recall?
A. I do not; I measured them over all.
Q. Will you leave these with us for this case, Mr. Brown?
A. Yes; may I have them again at some future time?

Mr. Gaskill: Certainly.

Mr. Backes: I offer this photograph in evidence.

Mr. Gaskill: I have no objection to its being offered on my side of the case.

Mr. Backes: I offer it for identification.

Mr. Gaskill: You may offer it in evidence.

Mr. Backes: All right.

(Marked "Exhibit P16.")

Mr. Gaskill: I offer for illustration and as exhibits in the case, the three plans that have been identified by the last witness, "Exhibits D13, D14 and D15."

WILLIAM H. WRIGHT, recalled in behalf of the defendant, testified as follows:

Direct examination.

By Mr. Gaskill:

Q. You have already been sworn as a witness in this case, Mr. Wright?

A. Yes, sir.

Q. Are you still in the employ of Binney Earl?

A. Yes, sir.

Q. And how long have you been in his employ?

A. A year last March.

Q. And generally, what are your duties?

A. Well, running the car, cleaning the car up, and other work around that has to be done.

Q. Gardening?

A. Some little, yes, sir.

Q. Did you, at any time while in the employ of Mr. Earl, find any articles in the car that you took to Binney Earl's wife, and if so, what?

A. Yes, sir; I found two or three small black-headed pins.

Q. What kind of pins were they?

A. I judge they were about one inch long, little black heads on them.

Q. Ordinary black-headed pins?

A. Yes, sir.

Q. Did you ever find anything else in the car besides those that you took to her?

A. No, sir.

Q. Did you ever take any stick-pins to her?

A. No, sir.

Q. Did you ever take to her any other article of feminine wear or apparel, or belongings, than these black-headed pins that you have spoken of?

A. Not to my knowledge, no, sir.

Q. What did you say to Binney's wife when you took these black-headed pins to her?

A. I told her there were some pins that I thought belonged to some of them, that had been in the car, and I asked her if she wanted them, and she said, "No;" she said for me to take them to my wife, and I did not want them, so I threw them away.

Q. When was it you found these black-headed pins that you speak of?

A. It was in the morning; I could not say what month it was.

Q. Who had used the car, to your knowledge, the night before or the day before, can you tell what month it was?

A. No, sir.

Q. You went there in March, 1911?

A. And are there yet?

A. Yes, sir.

Q. And you were there until Binney's wife left in October, 1911?

A. Yes, sir.

Q. Now, when was it with respect to March or October of 1911?

A. Well, it was in the summer time; I could not just say the month.

Q. Had the car been used the day before?

A. Yes, sir.

Q. Were you out in it, do you recall?

A. I don't know if I was or not.

Q. Do you recall who was in the car the day before?

A. No, sir.

Q. Do you know whether Irma's mother had been out in the car the day before?

A. Well, she was out several times, but I could not say.

Q. Do you recall whether or not she was out?

A. No, sir.

Q. While you were running the car between March and October, tell us if anything happened to the car at any time when you were out with Binney.

A. Yes, sir, there was quite a lot happened to it.

Q. Tell us what.

A. The magneto got out of order—the connecting rods were loosened up—the timer got out of commission—it is on the magneto to distribute the sparks to the cylinders.

Q. Did you ever notice any dirt in any parts of the machinery?

A. Yes, sir; after he went to his mother's I had taken the crank case off, and I found gravel in it—small gravel stones.

Q. What was the effect of these different things that you noticed about the car, with reference to its running? Did she ever break down or stop?

A. Yes, sir; she stopped running either on account of the spark not being regular or back firing.

Q. What time would you get home on the nights when this thing occurred?

A. At all hours.

Q. Did you go out with Binney at night?

A. Once in awhile, yes, sir.

Q. For what purpose?

A. Why, I would go to the doctor, or go selling his lamps that he had the agency for—to demonstrate lamps.

Q. Where did you go with him to demonstrate these lamps?

A. I went to Lumberton.

Q. Where else?

A. I believe that is the only place that he demonstrated the lamps.

Q. Did you go out with him on the lamp business on any other nights?

A. Yes, sir, to Bridgeboro and to Burlington and to Riverside and Beverly.

Q. What kind of lamps were these?

A. Gasoline gas lamps.

Q. What time did you get home on these occasions when you were out with him?

A. Sometimes about 11, sometimes 12, and as late as 2 o'clock.

Q. What was it that kept you out as late as two o'clock?

A. That was the night that we were demonstrating that lamp over at Lumberton, and we did not want to leave it there among strangers, for we did not know what would happen to it; we left it there afterwards, though.

Q. Did you bring the lamp home with you?

A. No, sir, we left it there afterwards.

Q. On any of these occasions did the car break down or stop running?

A. I don't remember whether it did or not.

Q. Where did Binney keep his car at first?

A. When I went there to work?

Q. Yes.

A. In his garage at Edgewater.

Q. Did he afterwards keep it at any other place, and if so, where?

A. Well, he always kept it there until after he got sick that time, and took it to his mother's.

Q. After he got sick was it kept in his garage or was it kept up at his mother's at Burlington?

A. It was kept at Burlington at his mother's stable.

Q. Did you run it any during the time it was kept at Burlington?

A. Once in awhile.

Q. Did you notice whether or not these same things which you have spoken of were found with reference to the car after it was kept up at Burlington?

A. No, sir.

Q. Did you ever have any trouble in running it then, day or night?

A. No, sir.

Q. I understand that you are married and that you live with your wife at Beverly?

A. Yes, sir.

Q. And about how far was your home from Binney's house at Edgewater?

A. About a mile and a half.

Q. How did you go back and forth?

A. Walked sometimes, and sometimes went on a trolley.

Q. The trolley ran from Burlington to Edgewater, to Beverly and on down to Camden?

A. Yes, sir.

Q. At any time after you had gone home at night, were you called up by Binney because of anything that had happened to the car?

A. Yes, sir.

By the Court:

Q. Do you remember about the time?

(No answer.)

Further direct.

Q. Fix that as near as you can, William, spring, warm weather or fall.

A. I think I was called up once in July; I could not just say the date.

Q. Where did you find Binney and the car that night?

A. At the Odd Fellows' Cemetery.

Q. That is on the outskirts of Burlington?

A. Yes, sir.

Q. On the road down to Edgewater and Beverly?

A. Yes, sir.

Q. What time of night was it when you got there?

A. About ten o'clock, as near as I can guess at it.

Q. How long did it take you to get the car in working order?

A. About half an hour.

Q. What did you do after you got the car working?

A. We went on down.

Q. Who was with Binney, if anyone?

A. Clinton Leigh.

Q. That is the brother of Binney's wife?

A. Yes, sir.

Q. The young man sitting here?

A. Yes, sir.

Q. Who was driving the car?

A. Mr. Earl.

Q. Did you come on home with Binney?

A. Yes, sir.

Q. Where did you leave Clinton?

A. At his home, at the bungalow.

Q. And where is the bungalow with respect to Binney's house?

A. From Binney's house?

Q. Yes.

A. I should think about one mile, or a mile and a quarter.

Q. Is it on the road from Burlington to Edgewater?

A. Yes, sir.

Q. On the south side of the road?

A. Yes, sir.

Q. Do you know what time it was that you left Clinton at the bungalow?

A. No, sir, not exactly.

Q. Tell us as near as you can.

A. Half-past eleven, I judge.

Q. What did you and Binney do then?

A. We went right on home.

Q. Did you help put up the car?

A. Yes, sir.

Q. Where was the car stored that night?

A. In the garage.

Q. At Edgewater Park?

A. Yes, sir.

Q. Back of Binney's house?

A. Yes, sir.

Q. Were you with Binney when he tried to get in the house that night?

A. Yes, sir.

Q. Was that before or after the car had been put in the garage?

A. That was in.

Q. The car was put up first?

A. Yes, sir.

Q. Did you go with Binney in the house?

A. Yes, sir.

Q. Did you stay with him until he entered the house?

A. Yes, sir.

Q. Where did he first seek entrance to the house?

A. He went in the side door.

Q. What do you mean?

A. That is, facing Mrs. Earl's house as it is now.

Q. That is the south side of the house?

A. Yes, sir.

Q. Did he gain entrance there at that door?

A. Yes, sir.

Q. At the side door or the front door?

A. At the side door.

Q. Which door did Binney go in that night?

A. In the side door.
Q. Does that door have a glass in it?
A. I don't know whether it has or not; I cannot say.
Q. Now, he had no difficulty getting in that night?
A. No, sir.
Q. Who let him in?
A. I don't know who it was let him in that night.
Q. You did not see?
A. No, sir.
Q. You did not see anyone in the house that night?
A. No, sir.
Q. Then you went on home?
A. No, sir.
Q. On any other night were you with Binney when he came home late?
A. Yes, sir.
Q. When was that?
A. Somewhere near the time when we took the car out first and ——
Q. Do you mean when it was new?
A. No, sir; that was before we got the light for it; it was torn down.

By the Court:

Q. What do you mean by the word "first"?
A. That was when we first put the car together; that was the first we took it out.
Q. The car had been dismantled?
A. Yes, sir.

Further direct.

Q. Then you put it together, and then was the first time that you used it after you put it together?
A. Yes, sir, the first we had it on the road.
Q. Now, then, what happened that night?
A. We went out in the afternoon and went to a place we call Tom Edison's.

Q. That is the son of Mr. Edison, the great electrician?

A. Yes, sir.

Q. He lives near Burlington?

A. Yes, sir.

Q. Out at Steven's Station?

A. Yes, sir.

Q. Who was with you?

A. Binney Earl and I.

Q. Anyone else?

A. No, sir.

Q. Proceed.

A. So we went on out there, and while out there there was a thunder gust came up, and we stayed there until the shower was over, and that did not get over until about five o'clock, probably a little later, and on our way in, we had to go through a good bit of water, and the water got on the magneto and short-circuited it, and we had to leave the car at Burlington at his mother's, and we worked there until about 11.30 trying to get it to run, but it would not go, and we came home on the trolley, and we walked on up to the house.

Q. To Binney's house?

A. Yes, sir, and we tried the side door—he did, rather, and no one came, and he went to the front door.

Q. Did you go with him?

A. Yes, sir.

Q. Is that the door that has the glass in it?

A. Yes, sir.

Q. Proceed.

A. He rang the bell, and after awhile Mark Whitfield came down from upstairs, and opened the door, and we both went in.

Q. How was Mark Whitfield dressed?

A. He had on a pair of pants, light shirt and soft-soled shoes.

Q. Did you see Mrs. Earl?

A. No, sir.

Q. Could you see from which direction Mark Whitfield came, as he started down the stairs?

A. I could just see him come along and swing around the corner.

Q. From which direction?

A. I could not say which place he came from.

Q. Did he come from that hall that led to Mr. and Mrs. Earl's room?

A. Yes, sir.

Q. Was anything said?

A. Mrs. Earl asked, "Is that you, Binney;" and he said "Yes," and she said, "Where have you been;" and he said, "I broke down and left the car at my mother's;" and she said, "I had to have Mark up here to keep me company, for I was afraid."

Q. What time of night was that?

A. About 12.30 or 12.45; we got the half-past twelve car at Burlington, I think.

Q. Do you remember an occasion in October when Binney started away on a trip up to Columbus with his wife and a friend of his wife's?

A. Yes, sir, I believe I do.

Q. Were you the chauffeur that was driving the car?

A. No, sir.

Q. Who was?

A. Mark Whitfield.

Q. Those four went away together?

A. Yes, sir.

Q. After you saw Binney in the car start away with that party, when did you next see him, and where?

A. At his mother's.

Q. How soon after?

A. About two hours afterwards.

Q. What were you doing up there; how came you to go up there?

A. He 'phoned for me.

Q. And where was he when you got there?

A. He was at his mother's house.

Q. Whereabouts in the house?

A. I saw him come in the kitchen.

Q. Was he sick or not?

A. I did not notice that.

Q. Did you stay at the house until Mark and Mrs. Earl and her friend came back?

A. No, sir.

Q. What time of day was it when you got up to Binney's mother's house?

A. I think it was in the afternoon, because I went home after I left there; I went from there to my own home.

Q. Did you continue working at the Binney Earl house after that afternoon—around the house?

A. Yes, sir.

Q. Did Binney's wife come back to the house?

A. Not until after I left.

Q. Well, I do not mean with respect to that day, but at any time after that trip to Columbus did you see her there at the house?

A. Yes, sir.

Q. When—how soon after?

A. She was there the next day.

Q. And was she there daily from that time on up to the time she left?

A. Yes, I should say she was.

Q. Who else was there at the house?

A. Well, Mark was there.

Q. Any other servants besides you, doing the outdoor work, and Mark, doing the indoor work?

A. No, sir.

Q. How long, to your knowledge, did Binney's wife remain there—during what period of time—measured by days, weeks or months, after the Columbus trip—the time Binney stepped off at his mother's when you went there to see him?

A. Mr. Earl came down after that.

Q. I am talking about Mrs. Earl, Irma, how long did she remain there at the house while Binney was up at his mother's?

A. When he was sick?

Q. Yes—first, let us get this—how long was Binney up at his mother's, sick, after that Columbus trip?

A. About three weeks.

Q. Now, how much of that time was Irma at the cottage at Edgewater, with Mark as a servant in the house, and you as a servant out of doors?

A. I was only there about two days; I don't know how long they stayed there after that.

Q. Were they there the two days that you were there?

A. Yes, sir.

Q. What did you do?

A. I went up to Mr. Earl's and stayed there with him.

Q. Did you nurse him?

A. No, I just went errands for him.

Q. Did you stay up at Binney's mother's during the whole time of Binney's sickness?

A. Yes, sir.

Q. With the exception of the two days?

A. Yes, sir, but I did not stay at night.

Q. During that time did you go to the Binney Earl house at Edgewater on any errands?

A. Yes, sir.

Q. Whom did you see there on those occasions?

A. I saw Mark there one day.

Q. Did you see Mrs. Earl there, Binney's wife?

A. Yes, sir; I think I saw her once there; I could not say how long after that.

Q. During the time that you were there working, between March and October, was there anything in the conduct or behavior of Mark Whitfield and Binney's wife that attracted your attention, and if so, what was it?

Mr. Backes: Objected to; the thing is so absolutely

loose, or broad; counsel ought to know what he has in mind.

Mr. Gaskill: During the period from March to October—I did not want to lead him.

Mr. Backes: That throws the field too widely open, I submit.

Mr. Gaskill: The question is withdrawn.

Q. Were you ever at the garage back of Binney's house on another occasion when Binney made any complaint to his wife that the car was frequently getting out of order?

A. Yes, sir.

Q. What was it that was said between Binney and his wife on any of those occasions?

A. She wanted to go out in the car, and he said she could not go because the car was out of commission, and she said, "It is funny that the car is always out of commission;" and he said, "It will be out of commission until I get rid of Mark."

Q. What reply did she make?

A. She said that if he got rid of Mark she would sue for divorce.

Q. How many times did that take place in your presence?

A. Once, to my knowledge.

Q. Do you remember stopping at the kitchen door one morning in the summer time while Mark Whitfield was working there, while he was working in the house, while he was in the employ of Mr. and Mrs. Earl?

A. Oh, yes, several times.

Q. Was there a screen door to that kitchen?

A. Yes, sir.

Q. How was that screen door usually fastened?

A. With a hook on the inside.

Q. Could it be opened from the outside?

A. No, sir, I don't believe it could unless you busted the screen.

Q. Did you ever see that screen door hooked when the inside door was open?

A. Yes, sir.

Q. And what, if anything, did you notice in going there on one occasion in the summer time?

A. I noticed it was hooked lots of times.

Q. Did you see any people separate as you came there to that door?

A. One morning I came up there with the mail, and I thought I saw something part, but I could not say what it was; it looked white; I could not say what it was; I just got a glimpse, that was all.

Q. Where was Mark's bedroom?

A. Right next to the kitchen.

Q. Was anyone in the house at that time, to your knowledge?

A. Not to my knowledge, only I saw Mark in the bed afterwards.

Q. What time of morning was it?

A. About seven o'clock, or a little after.

Q. How came you to see him in the bed?

A. I went to his window and poked the mail through the window.

Q. Did he get up and take the mail?

A. No, sir.

Q. How was he dressed?

A. He had a sheet over him.

Q. Did you see Mrs. Earl?

A. No, sir.

Q. Did you hear her?

A. No, sir.

Q. Did you and Mark have any conversation, or did any remarks pass backwards and forward; did you say anything to Mark then, or he to you?

A. No, sir.

Q. Now, was there ever any other time that you went there with the mail and had difficulty in getting in?

A. No, sir.

Q. Did you ever knock at the door?

A. Yes, sir.

Q. Was there any response?

A. He always got up and opened it.

Q. Was there ever an occasion when he did not come out and open the door, and you had to go to the window?

A. After that time, yes, sir.

Q. Just tell us what happened then, without repeating any conversation.

A. I knocked at the door, and he would not get up, and I went to the window and hollered, and he told me to put the mail through the window.

Q. What time of day was that?

A. Somewhere about seven o'clock.

Q. Who told you that?

A. Mark Whitfield.

Q. Was there anyone in the house at that time, that you recognized?

A. I did not see anyone only Mark.

Q. On any of these occasions did you ever see Mrs. Earl, Binney's wife?

A. No, sir, not that early.

Q. When did you ever see her up—when you went with the mail or when you went there on any other errands?

A. I never saw her in the morning, that early.

Q. Where, in the house, did you see her?

A. In the kitchen door.

Q. And who else, if anyone, was in the kitchen?

A. Mark, he was working around the kitchen.

Q. What time of day was it?

A. About ten or eleven o'clock.

Q. In the forenoon?

A. Yes, sir.

Q. Did you notice how either of them were dressed?

A. No, sir, I cannot say.

Q. Did you ever see Mark doing any laundry work or washing?

A. I saw him wash napkins and towels.

Q. What wash have you seen him have, if any, spread out to dry?

A. One day I saw him spread out a suit of underwear.

Q. Was it men's or women's?

A. It looked like women's to me.

Q. Where were you then?

A. At the garage.

Q. What did you do?

A. I came up to get a drink of water to see what it looked like.

Q. Did you want a drink of water when you came up?

A. I did, in a way.

Q. What was it you saw?

A. I saw a suit of underwear.

Q. What kind?

A. Ladies', I think.

Q. Who had it?

A. Mark was spreading it out; he had spread it out, I mean.

Q. In what condition was it, with respect to dampness?

A. It was just wet; it was lying out on the grass.

Q. Did you have some talk with Mark about it?

A. No, sir.

Q. Did you go on to the house?

A. Yes, sir.

Q. Did you see any other wash at the house?

A. No, sir, but I saw some water setting in the basin.

Q. What kind of water?

A. Bloody water, under the sink.

Q. Was this during the time that Binney was sick at his mother's?

A. No, sir; I think Mr. Earl was in bed.

Q. What time of day was it?

A. About nine o'clock.

Q. Well, Mr. Earl was in bed in his own house?

A. Yes, sir.

Q. In addition to the bloody water you saw in the basin, did you see any other articles of apparel or garments besides the underwear that had been washed?

A. No, sir.

Q. Did you, as a matter of fact, call Mark's attention to it?

A. Yes, sir.

Q. What was done with it?

A. He threw it in the sink.

Q. How long was that before Binney's wife left him?

A. I could not say how long it was.

Q. At any time, without repeating what was said—at any time did you and Mark have any conversation in Binney's wife's presence, about Binney being sick or well?

A. Yes, sir.

Q. What did she say or do?

A. She did not say anything.

Q. On that occasion ——

Mr. Backes: Where and when?

Q. Where was it?

A. In the kitchen.

Q. About when was it, as near as you can tell?

A. I could not say; it was during the summer.

By the Court:

Q. What year?

A. Nineteen hundred and eleven.

Further direct.

Q. Now, then, on that occasion, what did Binney's wife say or do?

A. She did not do anything; she just asked how Mr. Earl was, and I naturally gave her a note that he would send down.

Q. Where was Binney at this time?

A. He was at his mother's at Burlington.

Q. What was the matter with him, if anything?

Mr. Backes: I think he is mixed.

Mr. Gaskill: He is now speaking of an occasion when Mark Whitfield and Binney's wife were in the kitchen at Binney's house, and he went there with the note from Binney, who was at that time sick at his mother's, and gave the note to Mrs. Binney Earl, and then I asked him what Mrs. Earl said or did on that occasion.

Mr. Backes: I challenge that statement as not being true.

Mr. Gaskill: The question is withdrawn.

Q. Now, Mr. Wright, just please explain the place and the time and the circumstances with reference to Binney's wife making that inquiry; where was it, and when was it, when she asked you how he was?

A. She was in the kitchen at Edgewater.

Q. Who was with her?

A. Mark Whitfield was there.

Q. Where was Binney?

A. He was at Burlington.

Q. What was his condition there?

A. I could not say.

Q. Had you been waiting on him, attending to him there?

A. Just running errands.

Q. Did you bring any note from Binney to his wife?

A. Yes, sir.

Q. To whom did you give that note?

A. To Mrs. Earl—his wife.

Q. While Mark Whitfield was present, in the kitchen?

A. Yes, sir.

Q. What did she say or do?

A. She just laughed over it, then tore it up and stuck it in the stove.

Q. Do you remember an occasion when you went there with the mail and you saw Mark Whitfield in his pajamas?

A. Yes, sir.

Q. When was that?

A. I have seen him in his pajamas several times.

Q. I am referring to some particular occasion, when the bell from upstairs rang?

A. Yes, sir.

Q. When was that?

A. I could not say what date that was.

Q. Well, with respect to Binney's sickness or going up to his mother's?

A. Mr. Earl was home then.

Q. Was it before that time?

A. Yes, sir.

Q. How long before?

A. Weeks, I guess.

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

A. Just taking the mail over.

Q. What time in the morning was it?

A. Around seven o'clock.

Q. How was Mark dressed?

A. He just had his pajamas on.

Q. Anything else?

A. That is all that I could see.

Q. Did you have some talk with him?

A. I did.

Q. While you were there chatting with him, what occurred?

A. The bell rang.

Q. And after the bell rang, did you hear anybody call?

A. He did not go right away, and then Mrs. Earl called for him.

Q. Did you recognize Binney's wife's voice?

A. Yes, sir.

Q. Where did that voice come from?

A. It sounded as if it came out of the front of the house, but there was a door shut between the dining room and the kitchen.

Q. Was it from the first or the second story?

A. We were on the first floor.

Q. Where did the voice sound as coming from?

A. In the front of the house; I could not say whether it was upstairs or down.

Q. You heard a voice; did you hear what the voice said?

A. She just said, "Mark."

Q. Now, what did Mark do?

A. He went on in the dining room.

Q. From the kitchen?

A. Yes, sir.

Q. Was there a door between the dining room and the kitchen?

A. Yes, sir, a swinging door.

Q. Did that door swing to after him?

A. Yes, sir.

Q. Did he dress himself any more completely before he went in?

A. No, sir.

Q. What, if anything, did you notice about his person before he went in?

A. Well, he had an erection on (and the witness then added something which the Court ordered the stenographer to strike out bodily from the record).

Q. I did not ask you what he said; you say he had an erection?

A. Yes, sir.

Q. In this condition did he go through the dining room door into the dining room?

A. Yes, sir.

Q. How long was he gone?

A. About ten or fifteen minutes.

Q. Were you there when he came back?

A. Yes, sir.

Q. What did you notice then about his person?

A. I did not notice anything.

Q. About this erection?

A. He did not say anything about it.

Q. I mean, what did you notice as to the condition of his person?

A. I could not see anything at all.

Q. Did you have a talk with him before and after he went in through the dining room door?

A. A small conversation, yes.

Q. Did you ever have any conversation with Binney's wife, or was there ever any talk between you with reference to your continuing to work there or leaving there?

A. No, sir.

Q. Do you remember one occasion when you and Binney's wife and Mark were talking about jobs and getting work, and whether it was easy to get work, and so on?

A. No, sir; I don't remember it.

Q. Do you remember any time when you three were present when you spoke about how hard it was for a married man to get a job?

A. Yes, on one occasion I do.

Q. When was that, as near as you can tell us?

A. That was before they had this trouble, before this little trouble started, this fuss, this divorce case, I mean.

Q. Where were you, and who was present?

A. Mrs. Earl and Mrs. Leigh were up at the bungalow, and Mrs. Leigh said that Irma could not stand Binney any longer, that something would have to be done; and Mrs. Leigh said to me, she said, "I don't see how you stand it, William; why don't you go and get another

job?" and I said, "A married man cannot pick up a job every day; I want to hold on to the job I have got;" and that was all that was said.

Q. What did Binney's wife say?

A. She did not say anything.

Q. After Binney had been up to his mother's for two or three weeks in October, as you speak of, was the house at Edgewater reopened, or was it closed?

A. Why, it was closed, I think.

Q. Do you know where Mark Whitfield went when the house at Edgewater was closed?

A. No, sir.

Q. Did you see him anywhere after that?

A. At a distance I saw him.

Q. You did not see him at any house?

A. No, sir.

Q. Did you ever hear Binney's wife say anything about Mark—how she liked him?

A. She said she liked him real well.

Cross-examination.

By Mr. Backes:

Q. Have your wages been increased by Mr. Earl lately?

A. No, sir.

Q. What did you get before Mr. and Mrs. Earl separated?

A. Forty dollars a month.

Q. What do you get now?

A. Forty-five dollars a month.

Q. Do you recall distinctly the trip taken by Mr. and Mrs. Earl and Miss Keim, when Binney Earl stopped at his mother's house and Mrs. Earl and Miss Keim went to Columbus Inn?

A. Yes, sir, I remember that day.

Q. Where did they start from?

A. They started from Edgewater Park.

Mr. Gaskill: Pardon me, there is one question that I omitted; may I ask the witness now?

Mr. Backes: Certainly.

By Mr. Gaskill:

Q. Is Mark Whitfield in the court room now?
A. Yes, sir.
Q. Has he been here in attendance during this trial?
A. Yes, sir, as far as I know.

Further cross.

Q. You know him to be here under my subpœna, don't you?
A. No, sir.
Q. Where, at Edgewater Park did they start from?
A. At Mr. Earl's house.
Q. Did you know, at that time, that they were going to Columbus Inn?
A. No, sir.
Q. From whom did you learn afterwards that they went to the Columbus Inn?
A. From Mr. Earl.
Q. You took them there yourself, didn't you?
A. I took them once, but I don't think I took them the day that I let Mr. Earl out.
Q. Didn't you take Miss Keim, Mrs. Earl and Binney Earl from Edgewater Park to Mrs. Earl, Senior's, house, to Binney's mother's, in Burlington, and there let him out and then go on to Columbus Inn with Mrs. Earl and Miss Keim, and then return from Columbus Inn to Mrs. Earl's mother's house and leave her there, that being the last trip before the separation?

A. The last trip—I have taken them several times, and I think that that was the last trip.

Q. And you took them?

A. I took them that last trip there.

Q. And you let Binney out at his mother's house?

A. I don't remember that.

Q. He was sick after that trip, wasn't he?

A. Yes, sir, he was sick.

Q. The household did not continue at Mr. Earl's home at Edgewater after that trip, did it?

A. I don't think so.

Q. Binney and his wife did not live together after that trip, at Edgewater, did they?

A. He went down home; he was home after that.

Q. At his mother's home?

A. He was at his own home.

Q. Did Binney and his wife live at the Edgewater home after the Columbus Inn trip?

A. I could not say.

Q. Don't you know as a fact, that after the Columbus Inn trip, Mrs. Earl lived at her mother's home?

A. I could not say.

Q. And isn't it a fact, that the notes which you did take from Binney to Mrs. Earl—did you take a certain note to Mrs. Earl after the Columbus Inn trip, to Mr. Earl's Edgewater household?

A. I have taken notes there at the Edgewater house.

Q. How many notes?

A. I could not say.

Q. Do you mean to say that Mrs. Earl then was keeping house, or was she living with her mother?

A. She was there when I gave her the notes; I could not say whether it was after that or before that.

Q. And it was only during the time that you were delivering this message that you saw her there?

A. Yes, sir.

Q. Where did you see her?

A. In the kitchen.

Q. And who was there then?

A. Mark Whitfield.

Q. Did you see Mr. Earl at the Edgewater house after that?

A. Oh, yes.

Q. Was Mark Whitfield there?

A. I could not say whether he was there or not.

Q. Was he still working there?

A. I don't remember whether he was or not.

Q. Do you remember how long Mark continued to work at the Edgewater house, after this Columbus trip?

A. No, sir, I could not say how long he worked there after that.

Q. After the Columbus Inn trip Mr. Earl was quite sick, wasn't he?

A. Yes, sir, I believe he was.

Q. And you attended him, didn't you?

A. No, sir, I did not.

Q. Well, I mean by way of carrying notes for him, and doing his messages and delivering them?

A. Yes, sir.

Q. During that period of time he went out, did he?

A. If he went out, he went out for an hour or so to get fresh air.

Q. Now, after the Columbus Inn trip Mr. and Mrs. Earl did not again live together, did they?

A. I could not say.

Q. Is not that your best recollection?

A. Yes, sir, on that it is.

Q. And after the Columbus Inn trip, Mr. Earl did not again live in the Edgewater house, is not that so?

A. I could not say.

Q. Is not that your best recollection?

A. It is on that, yes, sir.

Q. This automobile of Mr. Earl's was of what make?

A. A Pullman.

Q. An old one or a new one, during the year 1911?

A. I think it was a 1910 model, I am not sure.

Q. It was a machine run in 1909, 1910 and 1911, is that the idea?

A. No, sir, I was not there when they bought the machine.

Q. You have been a chauffeur for how many years?

A. A little over a year.

Q. You know it to be a fact that it is common that magnetos on automobiles get out of order—connecting rods loosen up, and timbers get out of order, and that dirt gets into the machine?

A. Yes, sir, that's so.

Q. That is not anything unusual, is it, for these conditions to happen to a machine that is being run?

A. Not if the oil cups are opened, or something like that.

Q. Mr. Earl's car had not a bottom pan?

A. Yes, sir.

Q. And the purpose of that is to keep the dirt from getting into the machine?

A. Yes, sir.

Q. He sometimes had it off when he was running, didn't he?

A. Yes, sir.

Q. And that would let dirt in?

A. It would let dirt in to a certain extent, yes, sir.

Q. Of course, you know Clinton Leigh; you stated to him that you would leave Binney if he did not stop fooling with his machine?

A. No, sir, I did not.

Q. You know as a fact that Binney was constantly taking some parts of this machinery apart and trying to put them together again?

A. It was his own machine.

Q. Answer the question—was not Binney at all times taking the machine apart and trying to put it together again—taking some parts apart and trying to put them together again?

A. Yes, sir.

Q. Now, at the garage one day, Mrs. Earl said, in reply to a statement of Binney's that the car would be always out of commission as long as they had Mark—that if he, Mr. Earl, should discharge Mark, she would get a divorce; was that statement made by her playfully?

A. Yes, sir.

Q. On the night that the car broke down near Odd Fellow's Cemetery, do you recall the last trolley car from Burlington to Edgewater passing the place where the car broke down?

A. No, sir, I can not.

Q. Do you remember Mark Whitfield being on that car and being hollered at to get off?

A. No, sir.

Q. You say that did not happen?

A. It did not happen when I was there.

Q. Do you say you did not see him; didn't you see Mark Whitfield on the car?

A. The night it was broken down ——

Q. Didn't you and Clinton Leigh and the other men who were standing around, call for Mark to get down off the car to help?

A. No, sir.

Q. Do you say you do not remember the other people doing it?

A. Not while I was there they did not, but I did not get there until ten o'clock.

Q. What time did the last car go down; do you remember seeing the half-past eleven car from Burlington pass the place of the accident?

A. It possibly went past and I took no notice of it, because I was busy working.

Q. When you got home that night, you took the machine, with Binney in it, back to the garage?

A. He was driving the machine.

Q. Well, you two together went back into the garage, and left Clinton Leigh at his home?

A. Yes, sir.

Q. Were any lights burning at Clinton Leigh's house?

A. I don't remember.

Q. Clinton Leigh's house was on the way to Binney Earl's house?

A. Yes, sir.

Q. And when you got back from the garage, which was in the rear of the house, to the dwelling, did Mr. Earl ring the bell or make any call for anybody in the house?

A. No, sir, I think he just went to the side porch and went in the side door.

Q. Unlocking the door?

A. No, sir, it was already unlocked.

Q. It was open, wasn't it?

A. No, sir, it was closed but it was unlocked.

Q. How do you know that it was unlocked?

A. Because he twisted the knob and walked in.

Q. How long was that before the night that you say that you went to Edison's son's place?

A. How long before that?

Q. Yes.

A. It was before.

Q. How long before was it, that you were at Edison's?

A. I could not say.

Q. A day or two?

A. It was a good bit longer than that; I could not just say how long.

Q. A week or two before?

A. I could not hardly say.

Q. On that night the door was not locked, the side door, on the night that you returned from Edison's?

A. That night it was locked.

Q. And this other night that you speak of, it was unlocked, and Binney walked right in?

A. Yes, sir.

Q. You were with Binney the night you came from the cemetery?

A. No, sir.

Q. Didn't you go in there and there see Mark Whitfield in the house?

A. No, sir, not that night.

Q. Did you see Mrs. Earl that night?

A. No, sir.

Q. Did you hear her?

A. I cannot say that I did.

Q. On that night you did not see Whitfield come down the steps, as Mr. Earl testified?

A. Which night was that?

Q. The night you had a breakdown near the Odd Fellows' Cemetery?

A. No, sir.

Q. Now, you delivered the mail in the morning, and usually before the household was up, didn't you?

A. I would be there about seven o'clock or something after.

Q. Mr. and Mrs. Earl did not get up in the morning until a good deal later than that, did they?

A. That is so.

Q. Now, when was it you went to Edison's son's place?

A. That was when we first had the machine out; I could not just say when it was.

Q. For the season?

A. Yes, sir.

Q. You did not, as I recall it, bring that machine home that night?

A. No, sir.

Q. Where did you get a trolley?

A. At Burlington.

Q. How did you get into Burlington from Edison's?

A. Drove the machine in.

Q. Why didn't you bring the machine all the way through?

A. Because it would not run any further; it was short-circuited in the magneto—it was wet.

Q. When did you first notice the machine got out of sorts?

A. We were coming down Union Street in Burlington.

Q. What time did you get home that night?

A. I judge about 12.30 or one o'clock.

Q. You started for Edison's about what time?

A. About six.

Q. I thought you said it was in the afternoon—what time did you start to go out there?

A. It was in the afternoon; I could not say what time.

Q. You just said six o'clock; what do you mean?

A. I understood you to ask what time we left Edison's to come into Burlington.

Q. And you left there at six o'clock?

A. Somewheres about that.

Q. How far is Edison's from Burlington?

A. About three miles.

Q. And you went to smash on Union Street?

A. Well, it was before we got to Union Street.

Q. But you were able to run on to where?

A. Until we got to Union Street, and then we put it in Mrs. Earl's stable yard.

Q. How many miles an hour were you able to run in the disabled condition the machine was?

A. We had no speedometer on there.

Q. You went four miles an hour?

A. Oh, yes.

Q. So you got into Union Street and into Mrs. Earl's place about seven o'clock at night?

A. Probably we might have been there a little sooner.

Q. Where did you go then?

A. We went to work on the machine.

Q. And how long did you work on the machine?

A. Until 10.30, I guess it was, trying to get it running.

Q. Just where did you go?

A. We went up in the house and sat there awhile, and then went on the trolley car to Edgewater; we took the 12.30 car, I think; we missed one.

Q. When you went out in the afternoon, whom did you leave at Mr. Earl's house that afternoon?

A. I don't think there was anyone.

Q. Was Mrs. Earl there?

A. I don't think she was.

Q. Was Mark Whitfield there when you left?

A. Where?

Q. At Mr. Earl's Edgewater Park house.

A. Oh ——

Q. That is what I mean.

A. I don't remember who was there.

Q. You don't say Mrs. Leigh, Mrs. Earl's mother, was not there?

A. I cannot say whether she was or was not.

Q. What was it that caused you to stay and do this work at night?

A. Because he paid me for it.

Q. Did you say to him that tomorrow was another day, and you could do the work better in the daytime?

A. No, sir.

Q. Mrs. Earl was in the habit of using this automobile?

A. Yes, sir.

Q. And when the automobile was out of commission, she was as much discomfitted as Mr. Earl was, as you observed it?

A. I don't know.

Q. She had as much demand for the machine and enjoyed it as much as Mr. Earl did, so far as you observed?

A. As far as I knew, yes.

Q. Did you work by a lantern that night?

A. Yes, sir.

Q. Are you quite sure that it was the half-past twelve car you took?

A. I could not say positively.

Q. Where did you get your supper that night?

A. At Mrs. Earl's.

Q. Did Mr. Earl telephone to his wife?

A. I don't know.

Q. Well, whenever he happened to be out by accident at night longer than was expected, it was his habit to telephone to his wife, wasn't it?

A. I don't know whether he did or not.

Q. Do you know whether he telephoned to Mrs. Leigh, his wife's mother, asking her to come down to the house?

A. I could not say.

Q. On that night you did not approach the house of Mrs. Earl in the automobile, and see a light in Mrs. Earl's room, did you?

A. What night was that?

Q. The night that you were at Edison's.

A. I approached the house?

Q. Yes.

A. Yes, sir, I went in the house that night.

Q. But you did not approach that house in the automobile, and there see lights in the house?

A. No, sir, I did not have any automobile that night.

Q. Is your house on the line of the trolley?

A. My house—where I live myself?

Q. Yes.

A. No, sir.

Q. Is your house nearer to Burlington than the house of Mr. Earl is, Mr. Earl's house in Edgewater Park?

A. No, sir, my house is in Beverly, and his is in Edgewater.

Q. Is Edgewater between Beverly and Burlington.

A. Yes, sir.

Q. You frequently took the car from Edgewater to go to Beverly, didn't you?

A. Not always, because I did not always have the price.

Q. But this house was on the line, or near the line of this trolley line, furthest out than the Edgewater house, is that right?

A. Oh, yes.

Q. Now, they treated you pretty well at Mrs. Earl, Senior's, house, didn't they?

A. I don't know what you mean.

Q. You sat down with the family to have your supper?

A. Where?

Q. At Mrs. Earl, Senior's, house, on the night after your return from Edison's.

A. No, sir, I did not.

Q. And where did you have your meal?

A. Out in the kitchen with the cook.

Q. After the work was over, you went back in the house, didn't you, into Mrs. Earl, Senior's, house?

A. Yes, sir.

Q. How long did you stay there?

A. I was not in there long.

Q. The kitchen is part of the house, isn't it?

A. Yes, sir.

Q. How long were you in the house, kitchen and all, after you quit work that night?

A. I could not say.

Q. About how long?

A. I don't remember.

Q. What were you doing in there?

A. Just sitting there smoking.

Q. With whom?

A. By myself.

Q. From 10.30 on, you were in that house smoking, is that right?

A. On until we got ready to go.

Q. But you had finished your work by 10.30?

A. About that time.

Q. And you had a hard day's work too?

A. Yes, sir.

Q. And then you went into Mr. Earl's mother's house and sat there smoking alone, is that right?
A. Yes, sir.
Q. No one with you?
A. Once in awhile the cook would come out.
Q. There was a car going to your home at 10.30?
A. Yes, sir.
Q. Why didn't you take that?
A. Because I was waiting for Mr. Earl.
Q. Were you ordered to wait for him?
A. Yes, sir.
Q. Why didn't you take the 11.30 car down?
A. Because he was not ready to go.
Q. You had not seen him at all, I suppose?
A. Yes, sir, I had.
Q. Had he been to the place where you were smoking?
A. He was only there once, and he asked me if I would wait.
Q. Is that the only time he asked you to wait during that evening?
A. Yes, sir.
Q. You are quite positive you took the 12.30 car down?
A. I think so.
Q. Were there any passengers on that car?
A. Yes, sir.
Q. Do you know the name of the conductor or the motorman of that car?
A. No, sir.
Q. Why didn't you go right on home?
A. Because I went on home with him.
Q. Why didn't you go on home?
A. Because he asked me to go on with him.
Q. What kind of night was this?
A. A stormy night.
Q. In the summer time?
A. Yes, sir.

Q. Was it nice weather outside of the storm—I mean the atmosphere was all right?

A. Yes, sir.

Q. And this was through the lighter portion of Edgewater?

A. No, sir, it was dark.

Q. Was there any other car between 10.30 and 12.30 leaving Burlington for Edgewater?

A. Yes, sir, I guess there was, but I did not see them.

Q. Was there any other reason why you got off together at Binney Earl's house that night except Binney's request?

A. That was all.

Q. Did he order you or invite you?

A. He asked me if I would go down home with him, and I said I would.

Q. Did he say he was afraid?

A. No, sir.

Q. Did you tell him you were tired?

A. No, sir.

Q. Then you had a mile and a half walk after leaving Binney at his house?

A. Yes, sir.

Q. Now, when you approached the house, from which side of the house did you approach it?

A. It was to the front of the house that I approached the house.

Q. Did you have to pass Mrs. Earl, Senior's, house before you got to Binney's house?

A. Her house was not there then.

Q. Well, at the point where her house is now?

A. Yes, sir.

Q. Binney's house was there full and complete?

A. Yes, sir.

Q. You saw no light in any part of the house as you approached it?

A. Well, I don't just remember about that.

Q. How far does the house set back from the street?

A. Why, as near as I can get at it, 16 or 18 feet from the curb.

Q. You went up the path?

A. No, sir.

Q. How did you go up?

A. Across the lawn to the side porch, and walked around on the porch to the front.

Q. Did you knock on that door?

A. Mr. Earl knocked.

Q. Did he knock hard?

A. Loud enough for anyone to hear.

Q. Loud enough, so that if people were awake in that house they would hear it?

A. Yes, sir.

Q. Did he knock more than once?

A. Only once.

Q. I suppose there were repeated knocks, one, two, three,—like that?

A. Yes, sir.

Q. Did he call out from the side porch?

A. No, sir.

Q. Did you notice whether the windows were up in the house?

A. I do not recollect.

Q. It was a very hot night that night, wasn't it?

A. It was a kind of foggy, damp night; it had been raining.

Q. Do you mean that a rain had preceded the fog?

A. It was that way, dampness.

Q. Or were you damp that night?

A. I don't know that I was.

Q. How much drink did you have that night?

A. I did not have any.

Q. Now, in going from the side porch door to the front porch door, you remained upon the same platform?

A. Yes, sir.

Q. There is no overhead covering to it—to the porch—except in front of the two doors?

A. There is a covering on the side, but not on the front —only a small peak, like this (indicating), it comes down like that (indicating).

Q. How long do you think you were stopped at the side door, after you knocked?

A. About a minute.

Q. Long enough for someone to come down and let you in?

A. Yes, sir.

Q. Did you make any noise that night with the automobile?

A. We did not have the automobile that night.

Q. And the bell on the side door?

A. No, sir—I don't believe there is any.

Q. No, what was done at the front door—did he give a knock or a rap?

A. I think he rang the bell there.

Q. Well, tell me, how soon after he rang the bell was it that you saw Mark Whitfield coming downstairs?

A. About a minute; it was a short time; I could not just say.

Q. And you did not go in the house that night?

A. Yes, sir, I did.

Q. What part of the stairs was Mark Whitfield on when you first saw him?

A. He was on the top.

Q. Was the door open at that time?

A. Which door was that?

Q. The front door.

A. No, sir.

Q. How far were you and Binney standing apart at the time he rang the bell?

A. When he rang the bell he was up on the first step, and after he rang the bell I stepped up on the step with him; there is a step just before you get into the door—a sill.

Q. You stood right close together then?

A. Yes, sir.

Q. Shoulder to shoulder?
A. We were right close together.
Q. Did you have your heads together?
A. Not very close.
Q. So that you and Binney saw Whitfield coming down at the same time?
A. Yes, sir.
Q. Through a 15-inch opening?
A. I could not say how big it is.
Q. When Whitfield came downstairs, what did Mr. Earl say to him?
A. He did not say anything to him.
Q. What did Mr. Whitfield say to him?
A. Nothing.
Q. Who closed the door?
A. Mark Whitfield.
Q. Where did you go?
A. I went on out in the kitchen.
Q. You went in the dining room?
A. We went to the dining room and then to the kitchen.
Q. Did Mark Whitfield go out with you?
A. I don't know.
Q. You had beer out there that night?
A. No, sir.
Q. What did you go out there for?
A. I don't know; we simply went there.
Q. You had a mile and a half to go to your own home; tell me why you went into the house?
A. Simply because he asked me to go home with him, and I went in the house with him.
Q. Why did you go into the house and through his house and back into the kitchen?
A. Simply because he asked me to do so; he said, "Come on back in the kitchen," and I went there and stood there a little while, and then I went home.
Q. You were standing there doing what?
A. Talking.

Q. Hadn't you talked to Mr. Earl coming down in the train?

A. A little, not much.

Q. Didn't you talk to him coming over to his house?

A. Yes, sir.

Q. Well, what was there to talk about afterwards, at 12.30 or 1 o'clock in the morning?

A. We talked about the car.

Q. You were talking that over with Mr. Earl?

A. No, sir, we were talking that over with Mark Whitfield; Mark was there, I think, at that time.

Q. Who was talking it over with Mark Whitfield?

A. Mr. Earl and I.

Q. What did Mr. Earl have to say to Mark—seeing Mark come downstairs dressed as you say he was dressed, and walking out with him in the kitchen, what had he to say to him?

A. He told him how the car ran and what happened to us.

Q. Did he ask him what he was doing in his wife's bedroom?

A. No, sir.

Q. How long did you stay in the kitchen?

A. About ten or fifteen minutes.

Q. As Mark Whitfield let you in, you and Mr. Earl went direct from the front door back into the kitchen, is that right?

A. As far as I can remember.

Q. You did not pause?

A. I don't know what you mean.

Q. You did not stop on your way from the front door?

A. Not that I remember.

Q. Who led the way?

A. I could not say.

Q. You went from the hall through the dining room into the kitchen?

A. Yes, sir.

Q. Did Mark Whitfield go with you—after closing the door?

A. I cannot just say whether he went or not.

Q. Didn't he follow right out?

A. I cannot say.

Q. He did not go upstairs again, did he?

A. Not that I know of.

Q. Well, when you got out in the kitchen, you saw Mark there, did you?

A. I think he came shortly after that.

Q. When and where was it that you heard Mrs. Earl say to her husband that Mark had been up in her bedroom?

A. Right at the foot of the stairs.

Q. Just as you went in?

A. Yes, sir—the stairs come right down by the front door.

Q. And you stopped there while she said this?

A. Of course, Mr. Earl stayed there too.

Q. I thought you said you did not pause nor stop at any time until you got back to the kitchen?

A. Just for an instant, until she asked who it was.

Q. And was the hall lighted at the time Mrs. Earl made this statement?

A. There was a light burning on the side.

Q. Where was Mrs. Earl?

A. Upstairs.

Q. Did you see her?

A. No, sir.

Q. Did you see her at all that night?

A. No, sir.

Q. Was she upstairs in her room?

A. I could not say.

Q. Did the voice sound as if it came from her room?

A. It sounded from upstairs.

Q. Who replied to her?

A. Binney Earl.

Q. Did Binney say you were there?

A. No, sir.

Q. What did they call you?

A. They called me "Wright."

Q. What was the first sound you heard in that house when you stepped in?

A. I think she said, "Binney, is that you?"

Q. Did she say that in a pleasant tone?

A. She said, "Binney, is that you;" and he said, "Yes, that's me;" and she said, "Where have you been;" and he said, "My car has been broken down;" and she said, "I had to have Mark up here to keep me company, because I was afraid."

Q. And what did he say to that?

A. He did not say anything.

Q. Did Binney put his hat on the hall rack while he was doing this?

A. There is no hall rack there, that I remember.

Q. Where is the hat-rack?

A. I don't remember seeing one.

Q. Now, it took as long for this colloquy between the husband and wife as it took you to tell it here; is that so?

A. I don't know.

Q. And during that time you stood at the front door?

A. I stood back from the front door.

Q. Was the front door still open when these statements were made?

A. No, sir.

Q. Had you moved on towards the dining room?

A. I moved over on the rug.

Q. Why did you stand there?

A. All the rest were standing there, and I stood there too.

Q. Did you hear Mrs. Leigh say anything?

A. No, sir.

Q. Was she in that house?

A. I don't know.

Q. Do you know of any occasion at any time that Binney went out and stayed out, when her mother did not come to stay with Mrs. Earl?

A. I could not say.

Q. You heard no words of protest or remonstrance coming from Binney to Whitfield about his coming downstairs ——

A. I don't understand you.

Q. You said that before Binney—as you and Mark went back in the kitchen, Mrs. Earl had told her husband that Mark had been upstairs with her because she was afraid?

A. Yes, sir.

Q. And Binney still said nothing to him?

A. That is right.

Q. Who let you out that night?

A. Mark Whitfield, I think.

Q. Where was Binney at the time; had he gone to bed?

A. No, sir, I think he was in the kitchen.

RECESS TO 2 O'CLOCK.

AFTER RECESS.

WILLAM H. WRIGHT resumes the witness stand.

Cross-examination (continued).

By Mr. Backes:

Q. About when was it that you saw Mark in his pajamas at seven o'clock in the morning?

A. What time?

Q. What time of the year was it?

A. It was in the summer.

Q. Last summer?

A. Yes, sir.

Q. Mr. Earl was home at the time?

A. I believe he was, yes, sir.

Q. Well, you saw him later on in the day, of that date?

A. Yes, sir.

Q. And this was before getting up time in the morning?

A. Well, it was seven o'clock, yes, sir.

Q. As far as you know, Mr. and Mrs. Earl were upstairs asleep?

A. As far as I know, yes, sir.

Q. It was a female voice that you heard that called "Mark"?

A. I took it to be Mrs. Earl.

Q. You don't know that it was, though?

A. I could not say positive.

Q. Will you say that it was?

A. I don't know.

Q. Of course, you did not speak to Mr. Earl of it later in the day?

A. No, sir.

Q. It was at Mrs. Leigh's house when Mrs. Leigh said that Irma could stand Binney no longer?

A. Yes, sir.

Q. That was after the separation between Mr. and Mrs. Earl?

A. It was before.

Q. It was after the Columbus Inn trip, wasn't it?

A. I could not say.

Q. Was Mrs. Earl at that time living at her mother's when you heard this remark by the mother?

A. I believe she was, yes, sir.

Q. When was it that you saw Mark washing napkins and towels?

A. Why, I could not just say when it was.

Q. Was it before the Columbus Inn trip?
A. Yes, sir.
Q. Long before that?
A. Yes, sir.
Q. Was it before the night that you met Binney at the Odd Fellows' Cemetery?
A. Yes, sir.
Q. At or about that time?
A. It was before that.
Q. Well, Mark did all the household work around the place, as you saw it, didn't he?
A. As far as I know.
Q. He cooked and washed the dishes?
A. Yes, sir.
Q. And did his own washing, the washing of his own laundry?
A. No, sir, I don't think he did all of his own washing.
Q. Well, he did some of it.
A. I could not say that; I don't know.
Q. The towels that he washed, were they the kitchen towels?
A. Yes, sir, I think so.
Q. And the napkins, were they table napkins?
A. Yes, sir.
Q. What color was this suit of underwear?
A. White.
Q. How many pieces?
A. One piece.
Q. Was it muslin or linen, or light material like that?
A. It was knit goods.
Q. A union suit?
A. Yes, sir.
Q. Do you know whether men wear union suits or not?
A. I don't know.
Q. Do you know whether women wear union suits?
A. They are made; that is all I know.
Q. Do you know whether men's union suits are made?

A. No, sir, I do not.

Q. Do you know whether there is any difference between a man's union suit and a woman's union suit?

A. Yes, sir, as much as I have seen.

Q. Did you ever see a man's union suit?

A. No, sir.

Q. And never knew they were made?

A. No, sir.

Q. Don't you know that a man's union suit and a woman's union suit are made alike?

A. No, sir, I do not.

Q. You do not know whether this union suit was Mark's union suit or not?

A. No, sir, I do not.

Q. Do you know whether Mark at any time was affected with nose-bleed; don't you know that he was given to it?

A. No, sir.

Q. You have been out with him when he had nose-bleed on the highway?

A. No, sir.

Q. Now, this water in the basin was colored red?

A. Yes, sir.

Q. Did you examine it closely?

A. No, sir.

Q. At what distance were you from it when you saw it?

A. Well, I judge about four feet.

Q. You don't know whether it was bloody—the water —do you?

A. It looked like it.

Q. You don't know whether the red was caused by blood or by something else?

A. No, sir, I don't know.

Q. After the Columbus Inn trip you went back to the Edgewater house and there found Mrs. Earl packing her goods, didn't you?

A. I came back from Columbus Inn, do you say?

Q. No—after a period after the Columbus Inn trip you, upon one occasion returned to the Earl house and there found Mrs. Earl packing, didn't you?

A. Yes, sir, I believe I did.

Q. You said then to Mrs. Earl—"Mrs. Earl, are you packing up to leave;" and she said, "It certainly looks as though I am packing," or words to that effect?

A. No, sir, Mr. Earl said it to her.

Mr. Backes: I ask that that be stricken out as not responsive.

The Court: Strike it out.

Q. Didn't you then say to Mrs. Earl, "Well, I should think you had every reason in the world to get a divorce, or for leaving," or words to that effect, didn't you?

A. No, sir.

Q. Didn't she say to you, "What do you mean by that;" or words to that effect?

A. No, sir.

Q. Didn't you then say, "Well, I cannot say what I mean; I am employed by Mr. Earl, working for him, and I cannot say anything against him;" did you say that?

A. No, sir.

Q. Didn't she then say to you, "William, I have always been good to you and you ought to tell me;" and didn't you reply, "I cannot do it"?

A. No, sir.

Q. Didn't she then say, "You might be brought up to tell," and didn't you reply, "Well, if I am, I shall have to tell the truth"?

A. No, sir.

Q. Didn't you then say, "Of course, I could not say anything about you," and didn't Mrs. Earl then say, "Of course, William, that goes without saying;" and you replied, "Of course, it does; you have always been nice to me"?

A. No, sir.

Q. Nothing of that kind occurred?

A. I had no conversation whatever with her.

Q. Do you remember a night you took Dr. Leigh from Mrs. Earl's house to the depot?

A. Yes, sir.

Q. Do you remember having a conversation with him on the way?

A. No, sir.

Q. Do you say you did not?

A. No, sir.

Q. Didn't you say that night to Dr. Leigh, "I am sorry that this has happened; there are lots of things I could tell, but it is bread and butter to me;" didn't you say that to Dr. Leigh?

A. No, sir, I did not.

Q. And didn't he then say, "I am sorry you cannot tell me"?

A. No, sir.

Q. Where did you take Mr. Earl at night time other than the places you have told us of?

A. Well, I don't know ——

Q. You took him out frequently at night, alone, didn't you?

A. Not so often.

Q. Well, you did upon some occasions?

A. Yes, sir.

Q. Where did you take him to?

A. I took him over to Lumberton; and I took him to Riverside, and to Bridgeboro.

Q. You have told us of all of these places; where else did you take him to?

A. I don't know where else I have taken him, except to Burlington and places like that; I took him to his mother's, and to places where he would be talking business about lamps.

Q. At all these places he would talk business?

A. No, sir, not all.

Q. What would he talk about when he was talking business?

A. Just about wanting people to take little trips with him and his wife.

Q. Whom did he ever ask to take a trip with him alone?

A. No one, in my presence.

Q. What women have you driven around with Binney in that car?

A. His wife and his mother-in-law and Mrs. Earl, his mother.

Q. Now, those who are not relatives?

A. Miss Keim—that is all I know; that is when he has been in the car.

Q. When you were driving it?

A. Yes, sir.

Re-direct examination.

By Mr. Gaskill:

Q. When was it that your wages were changed from $40.00 to $45.00 a month?

A. I don't know what month that was; when I hired with him he said he would give me ——

Mr. Backes: I object.

Q. Tell me, as near as you can, how long after you had commenced working for him—and remember, you commenced in March, 1911, at $40.00 a month—now, how many months after was it that your wages were changed?

A. As near as I can get at it, four or five months; but that was in the agreement when I hired with him, that he would raise my wages.

Mr. Gaskill: There were two or three questions that I inadvertently omitted.

The Court: All right.

Q. William, did you ever see Mark Whitfield in Irma's bedroom?

Mr. Backes: I wish you would refer to Mrs. Earl as "Mrs. Earl" and not as "Irma;" this man is a servant.

Q. (Question read.) Did you ever see Mark Whitfield in Binney's wife's bedroom, doing any chamber work?

A. No, sir, I cannot say that I did.

Q. Did you ever see him making the beds?

A. No, sir, I never saw him making the beds.

Q. Did you ever see Binney's wife in Mark's bedroom downstairs?

A. Yes, sir.

Q. When was that?

A. Days she would be going out.

Q. I ask you when it was—whether it was spring, summer or fall?

A. It would be in the summer time.

Q. Did you ever hear Binney's wife ask Mark to button her dress?

A. Yes, sir.

Q. On that occasion, or on any of those occasions, from your own observation, what was the condition of her clothing?

A. Why, her undershirt was torn.

Q. And what was the effect of that, what could you see?

A. I could see her bare skin.

Q. Was that the condition when Mark buttoned her dress for her?

A. Yes, sir.

Q. What did you hear said between those two at that time with reference to it; what did Mark say to her, and what did she say to him, in your hearing?

A. Mark said that her shirt was torn, and she told him to pull it over and pin it, and it would be all right.

Re-cross examination.

By Mr. Backes:

Q. Where did you hear Mrs. Earl ask Mark to do that?

A. In the kitchen.

Q. One day that she was going out?

A. Yes, sir.

Q. You were right close by?

A. I was standing in the door.

Q. Right close by?

A. Yes, sir.

Q. She did not ask you to do it?

A. No, sir.

Q. The fastening was done at the back?

A. Yes, sir.

Q. And Mark fastened two or three hooks that could not be reached from the top or the bottom by Mrs. Earl?

A. I don't know whether she could reach them or not.

Q. How many hooks did Mark Whitfield hook—more than one?

A. I don't know.

Q. You do not know whether it was just one hook that was at the back that she could not reach that she asked him to hook, or how many?

A. No, sir.

Q. He was not long about it, was he?

A. No, sir, he was not long.

Mr. Gaskill: Your Honor, I was very much surprised when getting on the train this morning, to have handed

to me at Burlington a message from Dr. Mulford to the effect that Binney Earl was sick with acute intestinal indigestion, and was unable to attend court, and a note from his mother that she was obliged to remain home to look after him. Now, Binney's mother is the only other witness that I have, and with her testimony, I am ready to close my case, and I am compelled, in view of this situation which unexpectedly confronts me, to ask for a continuance at this time.

The Court: I will continue the case upon that application.

Mr. Backes: We don't want a very long continuance; I have this to state to your Honor, that Mrs. Earl, Senior, has stated to a lady in Burlington, and it has come to my notice, that this case will last a year, and that they intend dragging it out.

Mr. Gaskill: If she did say that, she did it without my authority; I will not permit any such thing.

Mr. Backes: I find my notice, especially the notice of the application to file a cross-petition, came from Gaskill and Gaskill, as the solicitors of the defendant.

Mr. Gaskill: That may have been because Mr. Budd was not there to sign it.

The Court: However, that is a matter of minor controversy, anyway.

Mr. Backes: Now, what day can you give us?

The Court: Do you think you can finish in a day?

Mr. Backes: I could finish my side; I don't know how long the cross-examination will take. Can you give us an early day?

The Court: I will adjourn the case to July 5th, 1912, and all the witnesses under subpœna will return on that date.

Transcript of testimony taken in the above-entitled cause on the eleventh day of July, nineteen hundred and twelve, at the State House, Trenton, New Jersey, before Hon. Vivian M. Lewis, Vice-Chancellor.

APPEARANCES:

JOHN H. BACKES, ESQ., for the Petitioner.

HON. JOSEPH H. GASKILL, of the firm of Gaskill & Gaskill, and REGINALD BRANCH, ESQ., for the Defendant.

BINNEY WOODWARD EARL, being recalled in his own behalf, testified as follows:

Direct examination.

By Mr. Gaskill:

Q. You wrote me that your recollection was at fault with reference to one of the nights when you came home; what explanation do you wish to make with reference to that testimony given by you?

A. I stated that I came down the night I saw Whitfield swinging around the corner from my wife's room, that that night I came home in the machine or automobile; that was a mistake; I remembered afterwards,

that that was not the night; it was the night that I was out at Edison's, in the country; and I came in with my car, without a pan—got water in it, and got as far as my mother's house and could not get any further; it would not run; so I left it there and stayed that evening with my mother; and late that evening, I took Wright, my chauffeur, and I went down and took a trolley car down town, and came down on the trolley car.

Q. Now, what was it detained you at Edison's?

A. Just socially.

Q. Was there a thunder storm that day, that you recall?

A. Yes, sir, there was a thunder shower.

Cross-examination.

By Mr. Backes:

Q. When was it you first discovered you had erred in your testimony?

A. Well, one or two days after I had made the statement.

Q. When was it you made the statement?

A. When I was in court the last time, I think, or the second time.

Q. Who informed you that you had blundered?

A. Nobody, at first.

Q. How was it that when you gave your testimony, that you were able to so vividly describe your arrival at your house in your automobile, and you so vividly and refreshingly told us of your stopping on the way, and then proceeding, and as you got to your house you saw a light from a distance, and as you passed into your alley, or avenue leading to your garage, you went directly to your garage, with Wright, your chauffeur —

A. I could remember clearly the facts, but I had the two nights mixed up.

Q. That is the only mixing up that you have done in your testimony?
A. That is all.

MRS. MARIE BINNEY EARL, sworn in behalf of the defendant, testified as follows:

Direct examination.

By Mr. Gaskill:

Q. You are the mother of Binney Earl, the defendant in this case?
A. I am.
Q. Are you a widow?
A. I am.
Q. How long have you been a widow?
A. Nine years.
Q. Who was your husband?
A. F. Woodward Earl.
Q. Where did you live at the time of your husband's death?
A. I lived at my house in Burlington, 222 East Union Street.
Q. Was Binney a member of your household at that time, when your husband died?
A. Oh, yes.
Q. How long did you remain at the Union Street house in Burlington?
A. I lived there until my father died; then I moved to Edgewater Park, about two years after my father died.
Q. You heard of Binney's marriage?
A. Yes, sir.
Q. And up to the time of his marriage, was he a member of your family, living home with you?

A. Yes, sir.

Q. After the marriage, state what you did with reference to providing a separate home for him and his wife.

A. Well, I built them a little house at Edgewater Park; my father was going to build it, but he died; I built it, however.

Q. When was it they moved into that house?

A. In December, 1909.

Q. In December, 1909?

A. I think I am correct in saying that.

Q. After they moved into that home, did you take Binney and his wife on any trips, any winter vacations or excursions?

A. I took them down to Florida, and I took them to Atlantic City once.

Q. When was it you took them to Florida?

A. In January, 1910.

Q. The following January?

A. Yes, sir.

Q. How long were you gone—I mean the three of you?

A. We went in December; no, I made a mistake—we left on the 24th of December; we were gone about three months.

Q. When you returned from Florida, where did these young folks go?

A. My daughter-in-law went to her father's house, because he was very ill and died, and I went down to keep house for my son; I think I was there two or three weeks.

Q. Did you subsequently build a home for yourself at Edgewater Park alongside of the one you had provided for your son and his wife?

A. Yes, sir.

Q. What knowledge had you from Binney's wife as to any sickness or illness of which she complained?

A. Well, she told me about it.

Q. When was it she told you anything about her sickness?

A. She told me on the 10th day of June.

Q. What year?

A. This year.

Q. One year ago, you mean?

A. Yes, sir, 1911.

Q. The 10th of June, 1911?

A. Yes, sir.

Q. How do you fix that date?

A. Because that was a very happy day for me; I was building my house and I made my first payment on it that day.

Q. Where were you when you made that payment?

A. I was at home.

Q. At Burlington?

A. Yes, sir.

Q. And where was it you saw Irma to have any talk with her?

A. At their home at Edgewater Park.

Q. What was it took you to Edgewater Park?

A. I often went down to see them, and I just happened to drive down.

Q. Now, what conversation did you have with Irma on that date about her illness?

A. Well, she had been complaining, she said.

Q. What did she say, as near as you can recall?

A. She said she suffered very much.

Q. How?

A. She said she had pain.

Q. What kind of pain did she say, and what accompanied the pain; I do not want to lead you; now, Mrs. Earl, you will have to tell us this quite frankly and avoid my asking numerous questions so far as the people go; tell us what Irma said on that day.

A. Well, if I must say it, she said that when she went to the toilet room she had a great deal of pain.

Q. In doing what?

A. Urinating.

Q. Prior to that time had Binney, to your knowledge, been sick or complaining?

A. No, sir.

Q. Was he, subsequent to that time?

A. No.

Q. How soon did you learn of any sickness or illness on Binney's part?

A. Well, about the 4th of July.

Q. Now, in the meantime, did you have any other talk with Irma, or Binney's wife, as we will call her?

A. Not until after that date.

Q. After which date?

A. After the 4th of July; I went away on the 8th of July, and I did not come back until about the 28th of July, from Point Pleasant.

Q. When you came back what conversation, if any, did you have with Binney's wife?

Mr. Backes: Where? We have a right to know where and when.

Q. Where was the first conversation that you had with Binney's wife after you returned from Point Pleasant?

A. On the porch, at my son's house.

Q. How soon after your return on the 28th of July?

A. I believe it was on the 29th.

Q. The next day?

A. I believe so.

Q. Now, tell us what it was she said.

A. She told me about Binney being very sick; she told me she had come to the conclusion—I don't remember what she said, but she said that Binney was very sick; but afterwards, I had another conversation with her.

Q. How soon after?

A. About a week after, I think.

Q. Where was the second conversation, after your return?

A. That was in my father's library, at my house in Burlington.

Q. What was it that was said then?

A. She told me she had come to the conclusion that Binney must have got this trouble from her.

Q. Did she describe what the trouble was?

A. She simply said she had that trouble when she went to the toilet room.

Q. Where was your father's house situated with respect to yours, in Burlington?

A. I lived in my father's house after he died.

Q. Then it was in the library of the house that you occupied in Burlington at that time?

A. Yes, sir. I have made a mistake; that conversation did not take place until Binney had been to see Dr. Tracey, and consulted with Dr. Tracey, and Irma had seen a doctor; that was later that she made that remark to me.

Mr. Backes: I move to strike out that part of her answer which is obviously hearsay. I move to strike out that part in which she describes the place of the statement being after a time when Binney had seen Dr. Tracey, and Mrs. Earl had been to see a physician; that evidently, is hearsay.

Mr. Gaskill: I will straighten that out.

Q. Without repeating conversations, except the conversations between you and Binney's wife, which are allowable,—any other conversation is not allowable; now, without repeating the conversation, did you learn as a fact, that Binney's wife had been to see or consult a physician with reference to her trouble; just say "yes" or "no."

A. Yes.

Q. Now, how soon after you learned that fact, did you have any conversation with Irma about the trouble from which she was suffering?

A. Well, now, the dates I cannot remember, but after she had ——

Q. How soon after?

A. Oh, ask me that again, Judge.

Q. How soon after Irma had consulted a physician, as you learned, was it that you had a talk with Irma about the trouble from which she was suffering?

A. Right afterwards.

Q. And where was it you had that talk?

A. I had that talk at her house.

Q. At Edgewood?

A. Yes, sir.

Q. What was that talk?

A. After Binney had been to Dr. Tracey, and Dr. Tracey had treated him, and Dr. Whittaker had given some prescription to Binney for my daughter-in-law, my daughter-in-law told me she had come to the conclusion that she must have given this trouble to my son.

Q. What further was said by either you or Binney's wife at that time?

A. Then I said to my daughter-in-law, "Child, you must have gotten it from the toilet room in Philadelphia."

Q. What did she say to that?

A. I don't remember what she said to me.

Q. Now, when was it that you had the talk that you commenced to tell us about—in your father's library at Burlington?

A. That was after that; she had been prescribed for by Dr. Tracey; that was after Binney had talked to Dr. Tracey and Dr. Whittaker had given some prescription for Irma to Binney.

Q. How soon was it, as near as you can recall, that Binney's wife had been to Philadelphia to consult a specialist, or was it before that?

A. As I remember it, it was before that.

Q. Now, how long before she went to Philadelphia was it you had this talk in the library?

Mr. Backes: I object; counsel is trying to cover up a lapse of the witness.

Mr. Gaskill: I withdraw the question.

Q. Now, then, did you ever have any talk with Binney's wife in your father's library at your home in Burlington?

A. Yes, sir.

Q. As near as you can tell us, was that before or after she went to Philadelphia to consult the specialist?

A. It was before, I believe.

Q. And as near as you can tell, how long before that?

A. Well, I cannot remember when she went to the specialist; I think it was in August she went to the specialist.

Q. And what was it that was said by her at that time, in that place?

A. She told me she thought she had given this trouble to Binney.

Q. Who took care of Binney during his illness?

A. His wife.

Q. And who took care of her?

A. Binney.

Q. Were you frequently there at the house?

A. Not when Irma was very sick; I was at Point Pleasant; but I was at the house often in the summer.

Mr. Backes: It does not appear in the case that she ever was very sick; I ask that the answer be stricken out; I move to strike out, "Not when Irma was very sick."

The Court: I will let it stand, subject to your objection.

Q. What I want, Mrs. Earl, is this: after you returned from Point Pleasant, how frequently were you at the house of Binney and his wife?

A. Every day, almost.

Q. What was the condition of either of them during that time?

A. They were both sick.

Q. Were either of them confined to their bed or room?

A. No, oh, no.

Q. Which one, if either, was more helpless than the other?

A. Binney.

The Court: Isn't it possible to get the time fixed in some way?

Mr. Gaskill: It would be after July 28th, when she came back from Point Pleasant.

Q. And during what period did those visits of yours to the house continue after July 28th?

A. They always continued.

Q. Up to what time?

A. Up to September.

Q. Did Binney say anything to you, in the presence of Irma, with reference to the manner in which she had nursed him?

A. Yes.

Q. What did he say?

A. He said that no trained nurse ——

Q. Whereabouts was this said?

A. In Irma's bedroom.

Q. How long after you came back from Point Pleasant?

A. I think it was the next day; I am almost positive; and Binney said that no trained nurse could have taken better care of him than that little girl, and I said that I was delighted, or thanked her, or something like that.

Q. When was it, Mrs. Earl, that you first learned the character of the trouble from which these young people were suffering?

A. After Binney had consulted Dr. Tracey.

Q. Well, before or after you went to Point Pleasant?

A. After, I think.

Q. After you came home?

A. Yes, sir, I think so.

Q. Now, on any of these occasions when Irma made the complaint to you of which you have spoken, did you give her any advice or suggestion with reference to a physician?

A. Yes, sir; I urged her to have a physician; I urged her to go to a specialist.

Q. And what reply did she make?

A. She did not like to go to a physician.

Q. And to your knowledge, up to the time she went to Philadelphia, did she go to a physician?

A. Dr. Whittaker prescribed for her, I believe, through my son; I think Binney told Dr. Whittaker —

Q. Never mind about that.

A. Or Dr. Tracey, I don't remember which.

Q. Mrs. Earl, when you visited the house where your son and his wife were living, what servants, if any, did you see there?

A. One—Mark Whitfield.

Q. On any occasion did you hear any conversation concerning dress, between Binney's wife and Mark Whitfield?

A. Once.

Q. When was that?

A. The date I cannot remember, but it was in the summer, and they had dinner on the porch.

Q. Was it before or after you had been to Point Pleasant?

A. Before, I think.

Q. What was it that you heard?

A. I heard her say to Mark that her dress was too low.

Q. Did you notice the dress she had on?

A. Yes, sir, it was a little pink dress, and it was a square low-necked dress.

Q. Where was she when she made that remark?

A. In the dining room.

Q. Did you see who was in the dining room with her?

A. Yes, sir.

Q. And who was?

A. Mark Whitfield.

Q. Did you hear any reply that he made?

A. No, sir.

Q. Did you ever have any talk with Irma with reference to their being sick at home?

A. Yes.

Q. When was that?

Mr. Backes: Who?

Mr. Gaskill: These two.

Q. When was that?

A. I believe it was after I came back from Point Pleasant, and Irma said she was very glad that they were at home having this trouble, because people would know that they were all right.

Q. Did she, on that occasion, say to you that she was glad that both of them had this sickness while they were at home where the doctor knew them and knew that they were both respectable?

A. Yes, sir.

Q. Mrs. Earl, you said on one occasion you took Binney and Irma to Atlantic City; when was that?

A. That was in February, I believe, or March of 1910.

Q. Right after your return from Florida?

A. No; long before; we did not stay at the same hotel; I gave Binney the money and they went to another hotel; they went to the Wiltshire and I went to the Dennis, where I have always gone.

Q. Prior to that time, had you ever met Alexander Goulard?

A. Yes, sir.

Q. You had a conversation with him, or heard him talk?

A. Yes, sir.

Q. While you were at Atlantic City, did he call you up?

A. Yes, sir, he wanted to see me.

Q. What did he say?

Mr. Backes: Now, Judge, you know it is not competent.

Judge Gaskill: I thought if you did not object, we would have it.

Mr. Backes: You thought I did not know enough to object.

Mr. Gaskill: Oh, no, I did not. You may cross-examine.

Cross-examination.

By Mr. Backes:

Q. When was Binney married, Mrs. Earl?

A. March 29th, March 28th or 29th, 1909.

Q. When were you first informed of his marriage?

A. He wrote to me.

Q. From where?

A. From Moorestown, I believe.

Q. You knew he was to be married?

A. Yes, sir.

Q. You knew he was to be married to his present wife?

A. Yes, sir.

Q. How long before his marriage did you know that?

A. Since he was a little boy he always said he was going to marry her—when he was 16 years old.

Q. And he was 21 when he got married?

A. I believe so.

Q. Of course, you were gratified?

A. Yes.

Q. And you so expressed yourself to Mr. Leigh?

A. No, sir, I never spoke to Mr. Leigh about it, I think.

Q. Didn't you, in your house, after the marriage, say to Mr. Leigh, prancing and dancing in front of him, that you had been endeavoring to accomplish this match for a period of five years, or words to that effect?

A. No, sir, I did not.

Q. You had spoken to Irma about the approaching marriage, hadn't you?

A. No, sir.

Q. You had told Irma about the Cook woman, before the marriage, hadn't you?

A. No, sir.

Q. Did you say to Irma, that the story connecting Binney's name with the Cook woman was not true and was greatly exaggerated?

A. No, sir, I said it was true.

Q. You knew it, then, to be true?

A. Yes.

Q. And you told Irma that it was true?

A. Yes.

Q. And you were proud of it, were you?
A. No.
Q. How many times did you urge Irma to see a physician?
A. Two or three times.
Q. Over what period of time?
A. A month, I think, to be accurate.
Q. Are you quite sure of that?
A. I think so.
Q. Are you quite sure of it?
A. I think so.
Q. That is your best recollection?
A. Yes.
Q. It is your honest recollection?
A. Yes.
Q. And your conscientious statement of the truth?
A. Yes, and I believe I am correct.
Q. Now, you were somewhat confused in statements made to you by Irma; where was it Irma said to you that she had come to the conclusion that Binney had gotten the trouble from her?
A. At her house.
Q. You are quite sure of that, are you?
A. Yes, sir.
Q. After your return from Point Pleasant?
A. She said it twice to me; once at her house, on her porch, and once in my father's study; and also once in the automobile out in the front of the house.
Q. In front of which house?
A. My house in Burlington, and my son was in the automobile.
Q. Now, which one of these occurrences was it that she made you the first statement—that she first made the statement?
A. She made the statement twice.
Q. I thought you said three times?
A. Yes, three times.
Q. Where was she when she first made it?

A. On the porch of her own house.

Q. That was in the month of August or September?

A. It was in the latter part of July or the first part of August.

Q. You had spoken to her prior to the time of and concerning the disorder with which she was suffering, hadn't you?

A. Yes, sir.

Q. You had persuaded her that she had contracted it somewhere at a toilet?

A. After that—yes.

Q. Before that?

A. No, sir, not before that.

Q. Didn't you suggest to her that she might have gotten it from a toilet?

A. Yes, I did; that was in July, the latter part of July or the first of August.

Q. And you repeated that to her, didn't you?

A. Yes, sir.

Q. Many times?

A. I don't know.

Q. And it was after frequent repetition by you of this statement to her that she said that she had come to the conclusion that Binney had gotten it from her?

A. No, sir.

Q. Where was it that you said to her, "Well, child, you must have gotten it from a toilet"?

A. On her porch.

Q. You said that to her, then, the first time that she remarked to you that Binney must have gotten it from her—is that right?

A. Yes, I believe that is correct.

Q. Now, how many times before she made this statement to you on the porch was it that you spoke to her of the probability of her having received this from a toilet?

A. Not before.

Q. At no time?

A. No, sir.

Q. Did you suggest that Binney might have gotten it from a toilet prior to that time?

A. No, sir.

Q. Did you suggest, prior to that time, that Binney might have gotten it from Irma?

A. No, sir.

Q. You made no suggestion to either of these parties, while together, that one might have contracted it from the other?

A. Not previous to that date.

Q. You had no conversation with either of them, both being together, as to the source of contracting the disorder?

A. No, sir.

Q. You think that conversation on her porch was on the 29th of July—the day after you returned from Point Pleasant?

A. I believe it was.

Q. And you had talked many times to both of them together, and to the two of them separately, of the nature of this disorder?

A. No.

Q. Now, how long after the conversation on the porch was it, that Irma repeated the identical statement to you in your father's library?

A. I cannot exactly remember.

Q. A day or so afterwards?

A. No, sir, longer than that.

Q. Did you provoke it?

A. No, sir.

Q. She just volunteered it?

A. Yes, sir.

Q. Did she say anything else?

A. I don't remember.

Q. All that you do remember of what she said to you in the library, is what?

A. That she had come to the conclusion that she had given Binney this trouble.

Q. The words that you have now repeated are all that you remember of the conversation that you had in the library?

A. Yes, sir.

Q. And the statement that you now repeated is all of the conversation that you recall that occurred at Irma's house—prior to the time that she made this statement to you in your father's library—is that right?

A. I don't understand the question.

Q. What do you recall of the conversation between the two of you at Irma's house at the time that she said that she had come to the conclusion that she had given Binney this trouble?

A. I told her she had got it at a toilet.

Q. Now, what did she say to that?

A. She said she had come to the conclusion that she had given it to Binney.

Q. And she used the exact language the second time in your library?

A. Yes, sir, as near as I can remember.

Q. And again she used the exact language in the automobile?

A. As near as I can remember.

Q. Who provoked the second repetition or the third statement?

A. I don't remember.

Q. Did you?

A. I don't remember.

Q. Where were you when you urged Mrs. Earl, Irma, to consult a specialist, or to consult a physician?

A. At her house, I believe.

Q. And the three or four times that you urged her to consult a physician, they were all occurrences at her house?

A. I believe so.

Q. Won't you please describe the pink dress concerning which Mrs. Earl made a remark to Mark Whitfield that the dress was too low?

A. It was a little soft, pink satin, I believe; it was not really satin; square, low neck, with trimmings on the sleeves and the neck; I cannot remember it exactly.

Q. This statement was made last summer?

A. Yes, sir.

Q. After the 4th of July, would you say?

A. No, sir.

Q. In the month of June, would you say?

A. I think so.

Q. What time of day was it?

A. It was in the evening; I suppose it was about six o'clock to half-past six.

Q. Before dinner?

A. They were having dinner on the porch.

Q. This was an evening dress?

A. Yes, sir.

Q. It was a dress that Mrs. Earl had made before she was married; is not that so; is that the one you mean?

A. I believe it was; I am not sure.

Q. Don't you know as a fact, that that dress had not been worn for a year?

A. I don't know.

Q. Don't you know that prior to June of 1911, and for the year prior to that time, Mrs. Earl had not worn this dress?

A. I don't know.

Q. She did not have the dress on when she made this remark to Mark Whitfield?

A. Yes, sir, she had.

Q. What was Mark doing in the dining room at the time?

A. Getting the things ready for dinner, I presume.

Q. Do you know?

A. No, sir.

Q. Where were you?

A. On the porch.

Q. How far away were you from Mrs. Earl?

A. The porch door is very near to the entrance of the dining room, near enough to hear conversation.

Q. And all you heard was, she made the passing remark, that this dress was too low?

A. Yes, sir.

Q. Of course, that remark escaped your attention, it passed away from you at the time, didn't it?

A. No, sir.

Q. Did she make any observation about her shoes; that her shoes were too tight?

A. No, sir, not that I know of.

Q. Where was Binney at the time?

A. I don't remember.

Q. Was he in the dining room?

A. No, sir.

Q. When was it that Mr. Goulard called you up in Atlantic City?

A. In February or March, 1910, I believe.

DEFENDANT RESTS.

REBUTTAL.

MARK WHITFIELD, sworn in rebuttal, testified as follows:

Direct examination.

By Mr. Backes:

Q. Where do you now live?
A. Burlington, New Jersey.
Q. How old are you?
A. Twenty-four.
Q. You lived with Mr. and Mrs. Earl?
A. Yes, sir.
Q. When did you go to live with them?
A. About 1909, I think.
Q. Shortly after they were married?
A. Yes, sir, I was working for Mr. Earl before he was married.
Q. Where?
A. At his home, in Edgewater, and at his home in Burlington too.
Q. Did he live in Edgewater before he was married?
A. No, sir, he was starting a home there in Edgewater.
Q. That was after he was married?
A. Yes, sir, after he was married.
Q. How long did you work for Mr. Earl before he was married?
A. I did not work for him before he was married, I don't think.
Q. He was married in March, 1909; now, was it in 1909 that you went to work for him?
A. In the fall, about October, I think.
Q. He was then living in Burlington with his wife at his mother's house?

A. Yes, sir.

Q. What did you do for him there?

A. Grading lawns and things like that; doing outside work.

Q. Chores about the house; did you work for Mr. Earl at his mother's house in Burlington?

A. I was working for him while he was at his mother's house, but I was not doing any work at his mother's house.

Q. Were you doing work for him at his Edgewater house?

A. Yes, sir.

Q. Where did you work prior to that time?

A. At Mrs. Bowman's.

Q. How long did you work for her?

A. Two years.

Q. Where did Mrs. Bowman live?

A. About three miles outside of Burlington.

Q. And where did you work before that?

A. At the Masonic Home.

Q. For how long?

A. A year.

Q. What did you do at these places?

A. At the Masonic Home I drove the wagon for them, and at Mrs. Bowman's I was second man there.

Q. What do you mean by "second man"?

A. Worked in the stable.

Q. Were you a cook at any time prior to going to Mrs. Earl's?

A. Yes, sir.

Q. Where did you learn cooking and housework?

A. At a family's in New Egypt, by the name of Woodward.

Q. How long had you been with them?

A. Three years.

Q. There is where you learned both housekeeping and cooking?

A. Yes, sir.

Q. You changed your occupation while at the Earl's, from an outside man to an inside man?

A. Yes, sir.

Q. When did that occur?

A. In January, the following year, 1910.

Q. Who hired you to do the inside work?

A. Mr. Earl.

Q. Where did that occur—what did he say to you?

A. Why, the other servant left, and he wanted to know if I would not take her place in the house, and I told him "yes."

Q. And then did you?

A. Yes, sir.

Q. What were your duties about the house?

A. Cooking and general housework.

Q. Did you do it all?

A. Yes, sir.

Q. Did you ever have any help?

A. No, sir.

Q. Did Mr. Earl or Mrs. Earl ever help?

A. They helped once in awhile.

Q. Doing what?

A. Different things around the house.

Q. Such as what?

A. Dusting and moving furniture, and things like that.

Q. Who did the dish washing in the house?

A. I did.

Q. Who did the laundry work?

A. I don't know.

Q. Did you?

A. No, sir.

Q. I am now speaking of all of the time that you were at the place?

A. I never did any of the laundry work at all.

Q. Who did the upstairs chamber work?

A. I did.

Q. With anybody's help?

A. Mrs. Earl's.

Q. Did Mrs. Earl ever help?

A. Sometimes.

Q. How long did you continue to work for the two?

A. Well, I worked about two years there all together.

Q. Up until what time?

A. Up until October of 1911.

Q. What time in October of 1911?

A. The first of October.

Q. Working in your capacity as cook and chambermaid and all around maid at the house, up until that time?

A. Yes, sir.

Q. Was Mr. Earl or Mrs. Earl, or either of them, living at the house at the time you left?

A. No, sir, not just at the time I left, no—by myself.

Q. When had they, or either of them, departed?

A. About two weeks before that.

Q. Did you drive Mrs. Earl and Miss Keim to the Columbus Inn in the month of September?

A. No, sir; I did not.

Q. And then drive Mrs. Earl back to her mother's house—Mrs. Leigh's?

A. No, sir.

Q. And, on your way to the Columbus Inn, did you drop Mr. Earl at his mother's house?

A. No, sir.

Q. During the two weeks that you remained after Mr. and Mrs. Earl left, did either of the parties return to the house?

A. Both of them, yes, sir.

Q. At the same time, or at different times?

A. Once they were there together, and at other times they came separately.

Q. Do you recall what occurred when they were there together,—what was said between them, if anything?

A. I don't remember any of the conversation at all.

Q. Did you have a conversation with Mr. Earl when he came?

A. No, sir, only he told me he would not be home at dinner or lunch, or whatever it happened to be, and I would tell him "All right," and that was all the conversation there was.

Q. Under what circumstances did you leave on the first of October?

A. I left of my own accord.

Q. And had you given notice?

A. Yes, sir.

Q. To whom?

A. To Mrs. Earl—two weeks' notice.

Q. Did you notify Mr. Earl?

A. No, sir.

Q. Did you ever run the automobile for Mr. Earl?

A. Yes, sir.

Q. When—in the daytime or what, and under what circumstances?

A. Sometimes in the morning and afternoon, and then again at night.

Q. Was that part of your labor?

A. No, sir.

Q. What were your hours of work?

A. Housework, most any hours; it all depended on when I got through.

Q. Did you take him out at night?

A. The family, do you mean?

Q. Did you take him out alone?

A. Sometimes.

Q. Did occasions ever arise when you rebelled against going, and he offered you money inducements?

A. I to'd him I had a date up town, and he told me he would pay me if I would go with him.

Q. What were your relations with Mr. Earl during all the time you were with him?

A. He treated me fine.

Q. All during the time that you worked there?

A. Yes, sir.

Q. Your relations were pleasant?

A. Yes, sir.

Q. Did this ever occur—in the month of June or thereabouts of last year, you came out on the porch where Mrs. Earl was sitting on her husband's knee, not fully dressed, or scantily dressed?

A. No, sir.

Q. Wait—and Binney, Mr. Earl, told you not to come out; and Mrs. Leigh then said to you, "Come on, Marky, dear, you are one of the family"; did that ever occur?

A. No, sir.

Q. And then you came out and sat with them after Mr. Earl protested; did anything of that kind ever occur?

A. No, sir.

Q. Did you ever hear Mrs. Earl say to her husband, "If you discharge him (meaning you) I will get a divorce"?

A. No, sir, I did not.

Q. Did you ever button up Mrs. Earl's dress in the back?

A. No, sir.

Q. Did you ever have occasion to do that?

A. No, sir.

Q. If she had ever asked you to do it, would you have done it?

A. Yes, sir.

Q. Did she, in the presence of Wright, one afternoon when she was about stepping in the automobile, ask you to fasten up the back of her dress, and did you say to her that the shirt was torn, and did she tell you to pull it over and pin it?

A. No, sir.

Q. What hours was Mr. Earl in the habit of coming in when he went out alone?

A. From 11.30 to 12.30,—sometimes later.

Q. And would he be out walking or out with the machine?

A. With the machine.

Q. When he went out and stayed out, or whenever he went out of an evening alone, leaving Mrs. Earl in the house, would anybody else be in the house except you and Mrs. Earl?

A. Yes, sir.

Q. Who?

A. Someone of the family, or some friend of hers.

Q. Were you ever in the house alone with Mrs. Earl at night?

A. No, sir.

Q. Do you remember the night that the machine of Mr. Earl broke down near Odd Fellows' Cemetery?

A. Yes, sir.

Q. Where had you been that night?

A. Burlington.

Q. How do you know the machine had broken down?

A. I saw it.

Q. Where were you when you saw it?

A. On the trolley car.

Q. Proceed.

A. I was coming from Burlington on the car, and saw the machine stop opposite the Odd Fellows' Cemetery; and after they came home, I learned all about what was the matter with it.

Q. After who came home?

A. Mr. Earl and Wright.

Q. Where did you see them?

A. In the house at Edgewater.

Q. Now, why didn't you get off the car where the machine was?

A. It was late, and there seemed to be enough to attend to the car, and I went on home.

Q. On what trolley did you go home?

A. The 11.30 from Burlington.

Q. How long were you home before Mr. Earl and Wright came home?

A. I don't know just how long.

Q. Where were you when they came?

A. In bed.

Q. Who let them in?

A. They let themselves in.

Q. Do you know in what door they came in?

A. I did not see them come in the door, but I imagine it was the side door, because that was not locked.

Q. And why was that?

A. Because it could not be locked.

Q. Why not?

A. On account that it was swollen a great deal on account of the weather; it was not locked for a good while.

Q. How long had it been in that condition before this night that the machine broke down?

A. A month or so.

Q. And how long did it continue that way after that?

A. It continued about the same length of time afterwards.

Q. So that the door was never locked?

A. No, sir.

Q. Did they get you out of bed?

A. I got out, yes, sir.

Q. Where did you see them?

A. In the dining room.

Q. What occurred in the dining room?

A. They came on out in the kitchen then and were talking, and telling me about the machine—how it broke down, and what a time they had.

Q. What else were you doing? Were you having refreshments?

A. Yes, sir.
Q. What?
A. A bottle of beer.
Q. Who had the bottle of beer?
A. All three of us.
Q. Were you in the habit of drinking beer with Binney?
A. Yes, sir.
Q. Under what circumstances—when would you be drinking with Binney?
A. Whenever he would ask me.
Q. And how often would he ask you?
A. Well, two or three times a day, sometimes, more or less.
Q. Were you and Binney chummy?
A. Yes, sir.
Q. All during the time that you lived there?
A. Yes, sir.
Q. And where would you and he do the drinking?
A. Out in the kitchen.
Q. Is that where the beer was kept?
A. No, sir.
Q. Where was it kept?
A. In the cellar.
Q. Did you, upon any other occasion, either shortly before or shortly after, we will say within a month before or a month after, or thereabouts, of the night of the automobile breakdown, come downstairs from the second to the first floor and open the door and let Mr. Earl and Wright in the house?
A. No, sir, I did not.
Q. Were you ever upstairs at night during Mr. Earl's absence?
A. No, sir.
Q. When Mrs. Earl was in the house?
A. No, sir.
Q. Mr. Earl says that he came home at night, a year ago last June or July, somewhere along there, rang the

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doorbell, that you came downstairs, not fully dressed, opened the door and let them in, and that you, as you left the second floor, swung around from his wife's bedroom to take the steps downstairs; did that occur?

A. No, sir.

Q. Did you ever disarrange the automobile?

A. No, sir, I did not.

Q. Did you know William McCrea?

A. Yes, sir.

Q. Did you ever ask him where you could get medicine for the gonorrhoea?

A. No, sir, I did not.

Q. And he told you you could get it at a place in Philadelphia?

A. No, sir.

Q. Did anything of that kind ever occur between you and this colored man?

A. No, sir.

Q. Did he see you in the house with a woman?

A. Yes, sir.

Q. The morning of a day that he came there?

A. Yes, sir.

Q. Mr. Wright has testified, that one morning, about seven o'clock, while he was in the house, somebody called "Mark"—a female voice—and that you, in response, left him, going through the dining room with your person exposed, saying, "Well, here is where I have to get this off," or words to that effect; did anything of that kind occur?

A. No, sir.

Cross-examination.

By Mr. Gaskill:

Q. Mark, how came you to leave the Earls?

A. Mr. Earl accused me of monkeying with the machine.

Q. Did he discharge you?
A. No, sir, he did not.
Q. You discharged yourself?
A. Yes, sir.
Q. Who was at the house at the time?
A. At the time when—what time?
Q. When this discharge took place that you speak of?
A. Both of them were there.
Q. Who else was there?
A. Nobody else.
Q. No one else?
A. No, sir.
Q. How long had it been that you had been living there alone?
A. A couple of weeks, I guess.
Q. Two weeks?
A. Yes, sir.
Q. Where was Binney at that time, so far as you know?
A. At his mother's.
Q. In Burlington?
A. Yes, sir.
Q. Did you go up here at all during the two weeks?
A. No, sir.
Q. Where was Irma?
A. At her home.
Q. Did you go over there at all during the two weeks?
A. Yes, sir.
Q. How frequently?
A. Maybe once or twice during the two weeks.
Q. Which was it, once or twice?
A. I don't remember.
Q. Well, it was more than two times?
A. No, sir.
Q. You are sure it was two times?
A. Yes, sir.

Q. How soon was the first time after Mrs. Earl, Binney's wife, had gone over to the mother's; how soon was it after she had gone over there the first time that you went over there?

A. I don't know.

Q. What did you go over for?

A. On an errand.

Q. What kind of errand?

A. To take something that Mrs. Earl had told me to.

Q. When did she tell you to bring it?

A. Before she left there.

Q. When was it she left?

A. The latter part of September.

Q. What day in September?

A. I don't know.

Q. What day in the week?

A. I don't know.

Q. How soon after she left was it that you went there on this errand to take what she had told you to take?

A. I don't remember.

Q. What was it that you took?

A. A package she had ready for me; I don't know what was in it.

Q. Where was the package?

A. Downstairs.

Q. Why didn't you take it the day she left?

A. She did not ask me to do so; I took it when I was asked.

Q. Who was with her the day that she was there last?

A. Her mother.

Q. How did they come?

A. I don't know.

Q. On foot or how?

A. I don't know.

Q. Did you see them at the house?

A. Yes, sir.

Q. Did you see them go?
A. Yes, sir.
Q. Did they have anything with them when they left?
A. I don't know whether they had or not.
Q. How large was this package?
A. A small package.
Q. Easily carried?
A. Yes, sir.
Q. Light weight?
A. Yes, sir.
Q. What day was it that you left?
A. The first of October.
Q. On the first day of October?
A. Yes, sir.
Q. Clinton told you to leave, didn't he?
A. No, sir.
Q. Did you have any talk with Clinton about leaving?
A. I did not.
Q. You know Clinton?
A. Yes, sir.
Q. Did not Clinton tell you that his sister wanted you to leave?
A. No, sir.
Q. Where did you go when you left the Earl house?
A. I went to Burlington.
Q. Didn't you go over to Leigh's?
A. No, sir.
Q. Didn't you go over and stay there some time?
A. No, sir.
Q. Didn't you take any meals there, after?
A. No, sir.
Q. Never took any?
A. I did not.
Q. How many times did you ever sit out on the porch with the family in the summer?
A. Where?

Q. At Edgewater?
A. Several times.
Q. In the evening?
A. Yes, sir.
Q. Warm weather?
A. Yes, sir.
Q. Who invited you out?
A. Mr. Earl.
Q. Binney asked you to come out, did he?
A. Yes, sir.
Q. Who was there on the first occasion when you went out at Binney's request?
A. Himself and his wife.
Q. Anyone else?
A. No, sir.
Q. How many times did you go out and sit with them all together that summer?
A. I don't know.
Q. Was anyone else there on any occasion but Binney and his wife?
A. No, sir.
Q. Was Binney's wife's mother ever there?
A. No, sir.
Q. You never sat out when she was there?
A. No, sir.
Q. Are you quite sure of that?
A. Yes, sir.
Q. You say that Binney offered you money on one occasion to go out with him at night; is that right?
A. Yes, sir.
Q. You spoke of one occasion when you had a date —what did you mean by that?
A. I meant I had a previous engagement, I had a private engagement.
Q. Did you visit some girl that night?
A. I don't remember that.
Q. Well, that is what you meant?
A. Yes, sir.

Q. And money was no inducement that night to get you to break that engagement?

A. Sometimes it was, and sometimes it was not.

Q. The night when you said you had to go, was it any inducement that night?

A. Yes, sir, I broke the date and went with Binney.

Q. Did you get the money?

A. Yes, sir.

Q. How much did he give you?

A. Two dollars and fifty cents.

Q. Where did you go that evening?

A. I don't just remember where we went—up around the country.

Q. Did you have the lamps that Binney was demonstrating?

A. No, sir.

Q. You did not go anywhere to demonstrate any lamps?

A. No, sir.

Q. You and Binney run around the country together in the machine?

A. The family was along.

Q. And that is what you got the $2.50 for?

A. Yes, sir, for driving around, yes, sir.

Q. You used to drive the automobile from time to time?

A. Yes, sir.

Q. Now, on this occasion when Binney and Wright came home and you were in bed, why was it you got up out of bed?

A. I naturally would get up when I heard them come in and heard them talking.

Q. They did not come into your bedroom?

A. No, sir.

Q. They did not call you, did they?

A. Yes, sir.

Q. Did they call you?

A. Yes, sir.

Q. Who called you?

A. Mr. Earl.

Q. What did he say?

A. He said, "Are you awake?" and I said that I was.

Q. Now, on no occasion were you ever there keeping Mrs. Earl company, alone, you say?

A. I was not.

Q. Never?

A. No.

Q. And never on any occasion did you come downstairs to open the door for Binney and Wright, or either of them?

A. No, sir.

Q. You are sure of that?

A. I am.

Q. How often was Binney out in the automobile running at night?

A. I don't know just how often he was.

Q. Well, you said that he was out sometimes until 11.30; about when was he ever out until 11.30?

A. I could not state any time, but I know he has been out.

Q. Was he out more than once?

A. Yes, sir.

Q. Until 11.30?

A. Yes, sir.

Q. And how many more times than that?

A. I don't know.

Q. Who was with him?

A. That I don't know always, sometimes he went all by himself; sometimes I was with him, and sometimes Wright was with him.

Q. Now, when he was alone, did he ever stay out that late, when he was alone; wasn't it always when either you or Wright were with him that he was out late?

A. No, sir.

Q. When did he ever come home alone late?

A. Very seldom.

Q. And you do not remember and cannot fix any time?

A. I have nothing to fix the time by—no.

Q. Now, you know this man McCrea right well?

A. Yes, sir.

Q. He lived on the adjoining place?

A. Yes, sir.

Q. You frequently had talks with him?

A. Yes, sir.

Q. Sometimes you got talking together about the girls, didn't you?

A. I suppose we did.

Q. Now, don't you remember, Mark, that on one occasion at least, you were ironing Mrs. Binney Earl's shirtwaist when mother Earl came to the house?

A. What do you say?

Q. Don't you remember one occasion when you were ironing a shirtwaist for her?

A. No, sir; that is something I don't do for anyone.

Q. Well, now, did McCrea tell you that he knew where a good place was to get medicine for this disease that was spoken of?

A. I did not ask him, no.

Q. I did not ask you that—(question read).

A. No, sir.

Q. He never told you that he knew the ropes?

A. No, sir.

Q. You did not find out from him that he knew the ropes, where to go?

A. No, sir.

Q. Don't you remember being there in front of the postoffice at Edgewater and telling him that you had that trouble, and that you wanted to know where you could go to get some medicine?

A. No, sir.

Q. Didn't he tell you of this place in Philadelphia?

A. No, sir, he did not.

Q. And wasn't that in the early summer or late spring of 1911?

A. No, sir.

Q. Well, you had met him over there at the post-office?

A. Several times, yes, sir.

Q. Now, don't you remember one occasion when Binney came home and tried the back door and it was locked, and then tried the side door, and you came and let him in?

A. No, sir, I do not.

Q. Didn't you ever let Binney in the house at night?

A. I have done, yes, sir.

Q. When he has come to the side door?

A. No, sir, I generally let him in the front door.

Q. Did he bang on the door?

A. He rang the bell.

Q. And you went there and let him in the front door?

A. Yes, sir.

Q. And all that time you say the side door was not locked?

A. I have not said when that time was that I let him in.

Q. When was the time that you let him in?

A. That was before the side door got that way.

Q. After the side door got that way, you never let him in?

A. He let himself in.

Q. Always?

A. Yes, sir.

Q. You never went to let him or Wright in the house?

A. No, sir.

Q. Don't you remember one occasion when you let him in the house and you had nothing on but a shirt, trousers and a light pair of light-soled shoes?

A. No, sir, I do not.

Q. When was it that you commenced occupying the bedroom next to the kitchen?

A. When I first went there.

Q. When you were working out of doors?

A. Yes, sir.

Q. Even before you were changed to inside work?

A. Yes, sir.

Q. Now, Wright worked there after you became the indoor man, didn't he?

A. Yes, sir.

Q. He took your place doing the outdoor work?

A. No, sir.

Q. Did he do outdoor work the same time that you did?

A. No, sir.

Q. After you concluded doing the outdoor work, then he commenced doing the outdoor work?

A. No, sir.

Q. How long was it after that?

A. A year or so after that.

Q. But during the year 1911, he was doing outdoor work there?

A. Yes, sir.

Q. Don't you remember, during that year, his coming to the door one morning with the mail, and that the screen door was hooked, and when he tried to get in, you jumped back and went to your room?

A. The screen door was always hooked; I do not remember anything of the kind; I know it never happened.

Q. Now, just after you jumped back from the screen door and went to your room, didn't he come around to the window and knock at the window?

A. He knocked at the window several times.

Q. Well, didn't he, on that occasion, knock at the window twice?

A. No, sir.

Q. Didn't he say to you, "Oh, come on, get up; you can't fool me"?

A. He often said that to me.

Q. Do you remember his saying it to you in the morning about seven o'clock?

A. That is the only time he did say it to me.

Q. When he came there on that occasion with this mail; now, do you remember Wright coming there to the house after, during the time that Binney was up to his mother's the two weeks preceding the time you left in 1910—do you remember Wright coming there one day when you and Irma were there, Binney's wife?

A. I don't remember any special time; he was always there.

Q. Don't you remember his coming there on one occasion while Binney was away and you saying to Wright, "How is the boss?" in the presence of Irma —

Mr. Backes: Please refer to Mrs. Earl as "Mrs. Earl" when you are talking to this witness.

Q. —— and he said to you "He is sick"?

A. No, sir.

Q. And were not you standing there with Binney's wife, and didn't you reply, in the presence of Binney's wife, to Wright, "What he needs is a good drawing out"?

A. That is something I never said in my life to anyone.

Q. And Mrs. Earl laughed?

A. No, sir.

Q. And did not Wright then say to you, "Look out," and you looked around and laughed; did not that occur during that time?

A. No, sir, it did not occur at any time.

Q. Do you remember the time when he came to the kitchen early in the morning, and you were there with your pajamas on and the bell rang, and someone called, "Mark"?

A. No, sir, I do not.

Q. And while you were there in your pajamas, is it a fact that your private part was erected?

A. No, sir, it was not.

Q. And when the bell rang and the call came "Mark," didn't you say to Wright, "Here is where I get it off"?

A. No, sir, I did not.

Q. Weren't you gone some 15 or 20 minutes before you came back?

A. No, sir.

Q. And when you came back, did not Wright say to you, "Well, is it gone?" and you said, "Yes, it is gone"?

A. No, sir.

Q. Didn't you say to Wright on one of those occasions, that you had heard of women like Binney's wife, but had never had the luck to run up against one before?

A. No, sir, I did not.

Q. Do you remember during that summer asking Wright, as he was going home to Beverly, to get you some medicine, some Hood's Sarsaparilla?

A. Yes, sir, I do.

Q. And he asked you what it was for, didn't he?

A. I don't know whether he did or not.

Q. And you said your blood was out of order, do you remember that?

A. I don't remember just what I did say to him.

Q. And didn't he ask you where you got the money, and you replied, "Oh, I will get it;" didn't you say that?

A. No, sir, I did not.

Q. Didn't you tell him to get a cigar out of the change?

A. Yes, sir, I did.

Q. And when he came back you gave him a quarter too, didn't you?

A. No, sir.

Q. And soon after that, didn't you ask him to go and get some more for you—some more medicine?

A. No, sir.

Q. And he asked you, "Where is the money?"

A. No, sir.

Q. And he said he guessed he had better not go until he had seen the boss?

A. No, sir.

Q. And didn't you, at this time, hand him a $5.00 bill?

A. No, sir.

Q. He did get medicine for you twice, didn't he?

A. He got it once.

Q. Didn't he get it for you twice?

A. No, sir.

Q. And at this second time, didn't Wright say to you, "Where are you getting all this money;" and you said, "I have got a friend"?

A. No, sir.

Q. Nothing like that ever took place?

A. No, sir.

Q. Do you remember the time that Wright came up to the house when you were spreading some clothes out on the grass to dry?

A. Yes, sir, I do.

Q. You were spreading out a suit of knit underwear, were you not?

A. No, sir, I was not.

Q. Women's underwear?

A. No, sir.

Q. And he came in the house and called your attention to a basin of bloody water under the sink; don't you remember that?

A. It never happened.

Q. And didn't he say to you, "What in the devil is that in there," and you said, "It is nothing," and you threw it in the sink?

A. No, sir.

Q. Didn't he say to you, "Who put it there?" and you said that you did?

A. No, sir.

Q. And didn't he say, "What is this?" and you said, "Never mind"?

A. No, sir.

Q. Do you remember one occasion when you had Mrs. Earl out in the automobile, teaching her to run it, one afternoon, when you went down to Riverton and Riverside?

A. Yes, sir.

Q. And Wright was there at the house when you came back?

A. Yes, sir, I suppose he was, I don't know.

Q. And do you remember Mrs. Earl saying to Wright, "William, I drove all the way down to Riverton, all through Riverside and Beverly and on up here"?

A. I don't remember it.

Q. Do you remember her saying it?

A. No, sir.

Q. And Wright said, "That is good, Mrs. Earl," and she said, "I did it all by myself"?

A. I don't remember that.

Q. But, when you came back and went to turn in the yard, you took the wheel, didn't you?

A. Mrs. Earl drove the car home.

Q. You took the wheel when you came in the yard?

A. No, sir.

Q. You and Mrs. Earl were the only ones in the car that afternoon?

A. Yes, sir.

Q. Didn't you say to Wright on one of these occasions, that you had often read of such women, but you had never bumped into one until you met this one?

A. No, sir, I made no such remark at all.

Q. And didn't Wright say to you, "Bill, you have got a cinch," and didn't you reply, "Oh, Bill, I have

read of such women, but I never met one until I met this one"?

A. No, sir.

Q. Has Mrs. Binney Earl ever been in your bedroom?

A. Yes, sir, she has.

Q. Have you ever been in her bedroom, making the bed, when Binney Earl has been away?

A I have, yes, sir.

Q. On the occasion when the dress episode was spoken of, didn't Irma come up to you and say to you, "Mark, button my back up"?

A. No, sir, she did not.

Q. And didn't you say, "Mrs. Earl, your underwaist is unbuttoned, and your shirt is torn"?

A. No, sir.

Q. And didn't she reply, "Well, just pull my undershirt around so it won't show, and just button up the waist and dress"?

A. No, sir.

Re-direct examination.

By Mr. Backes:

Q. Was it an unusual occurrence for you to go into Mrs. Earl's room to do the chamber work?

A. It was my work.

Q. Whether Mr. Earl was home or not?

A. Yes, sir.

Q. Were you frequently in her room with her doing the work in the room when he was home?

A. Yes, sir.

Q. Did you do the work around the bathroom too?

A. Yes, sir.

Q. What was Mrs. Earl doing in your bedroom?

A. There was a looking glass in there, and sometimes when she was going out in the automobile, she would come in there to fix her hat.

Q. Your bedroom is right off the kitchen?
A. Yes, sir.
Q. When was it you got Wright to get you Hood's Sarsaparilla?
A. I don't remember.
Q. What is it used for?
A. For the blood.
Q. Now, when was it he got that for you?
A. I have no way to fix the time; I don't know when it was; it was in 1911 sometime.
Q. Where was it he got it for you?
A. I don't know.
Q. Where was he going to get it for you?
A. To Beverly.
Q. And you asked him to do this errand for you?
A. Yes, sir.
Q. Did you teach Mrs. Earl to run the automobile, or did somebody else?
A. Oh, Mr. Earl, too.
Q. How many times did you have her out, teaching her?
A. I don't remember how many times—several times.
Q. Who asked you to take her out?
A. Sometimes Mrs. Earl would, and sometimes Mr. Earl would.
Q. To teach her how to run the machine?
A. Yes, sir.
Q. How many times did Mr. Earl ask you to take her out in the machine?
A. Several times; I don't know how many times.

CLINTON LEIGH, recalled in rebuttal, testified as follows:

Direct examination.

By Mr. Backes:

Q. Do you know Alexander Goulard?

A. Yes, sir.

Q. Where did you meet him?

A. I went to the Burlington Academy at the same time that he did.

Q. Did you meet him again shortly after your sister was married?

A. Yes, sir.

Q. In the winter of 1909-1910?

A. I don't remember the year, but when we were at the Metropolitan Inn, I met him there.

Q. How long had it been before that time that you had seen Goulard?

A. Not since we had gone to school together.

Q. How long, about?

A. Ten years, maybe; I was quite a small kid when I went there to school.

Q. Did he meet your sister upon this occasion there, when he was at the hotel?

A. Yes; I was going down through the office and somebody spoke to me and asked me if I was not Clinton Leigh, and I said "Yes," and he said, "You don't remember me?"

Mr. Gaskill: I object to the conversation between him and Mr. Goulard.

Mr. Backes: Proceed.

Mr. Gaskill: I object to the conversation between this witness and Mr. Goulard as immaterial and irrelevant.

The Court: The objection is overruled.

A. After I looked at him, I did recognize him, and I said so, and I said, "Do you remember Irma," and he said, "Yes."

Q. Now, you had a talk about your sister; I don't care for that. Did he meet your sister then?

A. I took him up to my mother's room, and introduced him to Irma and the rest of them.

Q. At the Burlington Inn?

A. No, sir, at the Metropolitan Inn.

Q. Well, what happened after that?

A. I did not see very much of him the next day, because he seemed busy, and I had work to attend to, but on the following Sunday I went down in the morning and rode down on a pony to Edgewater, and Mr. Goulard was there, and I saw Binney and Mr. Goulard and my sister, and I stayed awhile, and I was to go back in the afternoon; I don't know whether they asked me to dinner or not, but I rode on back home.

Q. What did you see as between Goulard and Binney that Sunday morning when you were there?

A. They were all there in the living room, just having a sociable time.

Q. How was Binney treating Goulard?

A. They were friendly; I stayed about an hour or so.

Q. What next did you hear about Goulard?

A. Well, the next I saw of Goulard—Goulard went down on a Saturday afternoon ——

Mr. Gaskill: I want the time fixed.

A. It was the only day that he spent there; he went down on Saturday afternoon; he met my sister on the train; he stayed there over night, and he came home Sunday afternoon, and I saw him at the hotel in the afternoon that he came from there—towards the evening.

Q. What do you say about the train?

A. He told me on Sunday ——

Q. Never mind that; you spoke about a train?

A. That is how he came to stay to my sister's over night.

Q. Are you telling us what he told you?

A. Yes, sir.

Q. When you say this is what he told you, what do you mean?

A. About the train.

Q. Did you see Binney that night or the next day?

A. I did not see him that night, and I think they were up at the hotel the next day; Irma and Binney, on a Monday; I think you can find by the register ——

Q. Never mind that. Did you see them there on Monday?

A. Yes, sir, I saw them there on Monday; they were there several days with us.

Q. Did you have any conversation with Mr. Earl about some trouble that he had with Goulard?

A. Yes, sir.

Q. When?

A. On that Monday.

Q. What did he say to you?

A. Well, he said—of course, we had a conversation, and Binney said it was just a fit of jealousy, that there was not any cause for ill-feeling; of course, this fellow being a friend of mine, I naturally felt bad about it.

Q. You mean Mr. Goulard being a friend of yours?

A. Yes, sir.

Q. And what did Binney say?

A. He said it was just a fit of jealousy, and he was very sorry it happened.

No cross-examination.

DR. CHESTER A. LEIGH, recalled in rebuttal, testified as follows:

Direct examination.

By Mr. Backes:

Q. When did you see Binney Earl next after you heard of his marriage to your sister?

A. I should say somewhere in July or August, possibly.

Q. Did you see him in the month of March?

A. No, sir.

Q. Or within four or five or six days after his marriage, at your mother's house?

A. No, sir.

Q. Or anywhere else?

A. No, sir.

Q. Did you, at your mother's house, say to him, that you wanted to know from him how much he would give for the two of them to live apart, he and his wife, to live apart?

A. I never had any conversation with him about money at all; I was very much dissatisfied with the marriage, and I did not want him to marry her; I knew exactly what he was, and I guess everybody else did.

Mr. Gaskill: I ask to have that struck out.

The Court: I shall allow it to stand. The objection is overruled.

Q. Do you recall a night, after you had learned of the disorder with which Binney and your sister were suffering, and you had had a talk with Binney concerning it at Binney's house, do you recall you leaving and going to the train?

A. Yes, sir.

Q. Who took you to the train?

A. William Wright.

Q. Did he say to you on your way to the train, while you were in the automobile, "I am very sorry that this has happened; there are lots of things that I could tell, but it is bread and butter to me"?

A. He did.

Q. Did you say to him, "I am sorry you cannot tell me," and did he say he would like to tell you but it was bread and butter to him?

A. Yes, sir, he did.

No cross-examination.

MRS. MARY M. LEIGH, called in rebuttal, testified as follows:

Direct examination.

By Mr. Backes:

Q. On March 31 of 1909, or thereabouts, when Binney Earl and your daughter for the first time after their marriage returned to your house, did you ask or demand of Binney a money consideration for your daughter, and that they should live apart, or words to that effect, or was there anything like that, or any sentiment of that kind uttered by you?

A. Nothing of the kind.

Q. Did you meet Mr. Goulard?

A. Yes, sir.

Q. Where?

A. At the inn where we were boarding.

Q. Did your daughter meet him there also?

A. Yes, sir.

Q. Do you know whether he was entertained at your daughter's house?

A. I know he was there Saturday night and Sunday.

Q. Did you see him there?

A. No, sir, but Mr. Leigh was down there and saw him and came up with him; that is the only time he was ever there.

Q. Did you speak to Binney of and concerning his conduct towards Mr. Goulard, or he to you?

A. Yes, sir, several times.

Q. Well, the first time, what did you say to him?

A. I went down there on Monday, and Binney seemed to feel so sorry that he had acted so silly about this affair; he said it was simply a fit of jealousy, and my husband told me to bring Irma up home with me, and Binney came also, and they stayed several days up at the hotel, and he told me then, in the presence of my husband, that he would swear before any lawyer, that it was only a fit of jealousy, and Mr. Leigh thought he was sincere about it, and he did not pay any further attention to it, and Binney was always saying, "Don't mention it; I am so sorry I made such a fool of myself."

Q. Did you say to Binney that you wanted Binney to forgive Irma for her relations with Goulard, and you wanted Irma to forget?

A. No, sir; there was nothing to forget or forgive; he was the one in fault.

Q. When did your son Chester first see Binney Earl after Binney's marriage to your daughter?

A. Oh, several months, because he was so thoroughly disgusted.

Mr. Gaskill: Objected to.

Q. After this Goulard eruption, did you see Mrs. Earl, Senior?

A. Yes, sir; she came to the hotel one Sunday and stayed there for dinner with me.

Q. Did she bring anything?

A. No, sir, but she brought two rugs that day, as a sort of a peace offering; there was a Russian Jew selling rugs ——

Q. Had she heard of this Goulard matter?

A. Yes, sir, she talked it over with me, and said that she was sorry the way Binney had acted; that she thought Goulard was a perfect gentleman; that she had met Goulard on the train.

Q. Were you ever on Binney Earl's porch when Binney was there,—his wife sitting upon his knee, not wholly dressed, and Mark Whitfield came to the door, or near your presence, and Binney told him not to come out, and you made the remark, "Come out, Marky, dear, you are one of the family"; or words to that effect?

A. Nothing of the kind ever occurred.

Q. Did you have occasion to go out to Mrs. Earl's house at night time?

A. I have been there several times at night.

Q. Well, when Mr. Earl was away at night time?

A. Do you mean down to my daughter's house?

Q. Yes.

A. Oh, I always stayed there at my daughter's house when Binney was away—always.

Q. Was he ever away at night time that you were not at your daughter's house?

A. No, sir, I always stayed with her.

Q. Do you remember the night that the automobile broke down?

A. Yes, sir.

Q. Where were you then?

A. I was there for dinner, Clinton and myself.

Q. How about at night?

A. I stayed all night that night; Clinton 'phoned that they were broke down, and I had better stay with my

daughter, and he stopped off at the bungalow, at our home.

Q. Where did you sleep upon the nights that you were at the house when Binney was away—when you were down there with your daughter?

A. I slept in Irma's room.

Q. With whom?

A. With Irma.

Q. With Irma?

A. She and I always slept together when I went there, and he was out.

Q. Do you recall Binney coming to the house, his own house, during July or August of last year, after he had said to you that he had been to a Dr. Steele in Philadelphia?

A. Yes, sir, I was there when he came home.

Q. What happened when he came home?

A. Well, he spoke about being so late getting home, and he said he had been up to see his mother, and he said he had had a quarrel with his mother, that she was coaxing him to say that Irma had given him this trouble, and he said he could not say it, because he knew she had not; he knew he had given it to her, and that he and his mother had been scrapping about it; and I told him at the time I would go up and see his mother, and he said, "No," he did not want me to have any talk with her about it; and he said she was not in good humor, and he would rather I would not go up. He came in and threw himself on the bed, and cried and acted awfully silly about it; he cried and wanted me to be pleasant to him, and, of course, I was not, and he said, "Mother, won't you come over and hold my hand and treat me like you should, as a son?" and I said, "I will not ever treat you like a son, the way you have treated my daughter." That is the day he came from this doctor.

Q. Before his marriage to your daughter, did you forbid him to come to your house?

A. Yes, sir, and he did not come for some time, and one day Mrs. Earl came there and asked me to let him come back; this was after the Cook episode, and she said there was a whole lot of it was not so, and she denied it, and sort of worked on my feelings, and I simply let him come back, with no other intention ——

Q. Do you know Ella Burns?

A. I just simply knew her.

Q. Did you say to her that Mark Whitfield could have a home with you as long as he lived?

A. No, sir.

Q. Did you say to Wright, to William Wright, "Irma cannot stand Binney any longer," and "why don't you get another job?"

A. No, sir, I never talked with servants about such matters.

Q. Did your daughter Irma say to Mrs. Earl, in your presence, that she loved that man, referring to Goulard, and that she would "rather live in one room with him and be happy," or words to that effect, "than to live with Binney"?

A. No, never.

Q. And did she then say to you, "Take your daughter home"?

A. No, sir.

Q. "And in two years Binney can get a divorce"?

A. No, sir, she never made any such expression as that to me.

No cross-examination.

RECESS TO 2 P. M.

AFTER RECESS.

MRS. MARIE BINNEY EARL, recalled for further cross-examination.

Cross-examination.

By Mr. Backes:

Q. You referred this morning to an occurrence of June 10th, on which day you said that Mrs. Binney Earl said to you that she had trouble in urinating; you are quite positive of that date—are you still positive of that being the 10th of June?

A. Yes, sir.

Q. What time of day was it?

A. In the evening.

Q. What time in the evening?

A. I cannot tell you exactly what time in the evening.

Q. Well, after dinner or before dinner?

A. After dinner, I think, as well as I can remember.

Q. Who was present at the time?

A. My son.

Q. Who else?

A. My daughter-in-law, and my son and myself.

Q. At Binney's house?

A. Yes, sir.

Q. Anyone else in the house?

A. I don't know.

Q. What enabled you to fix the 10th of June, aside from the fact that on that day you were gratified because you had made your first payment on your house?

A. Because I was so happy that day that I could hardly contain myself, and I went down to my son to tell him about it.

Q. What enabled you to fix it as June 10th?
A. Because I always remembered it.
Q. Having made your first payment?
A. Yes, sir.
Q. When did you make your second payment?
A. I don't know.
Q. When did you make your third payment?
A. I don't know.
Q. Did neither one of the other payments make you happy?
A. Not so happy.
Q. What was the first payment?
A. Two hundred and fifty dollars.
Q. What was the next one?
A. I don't remember.
Q. Much larger?
A. Yes, sir.

Re-direct examination.

By Mr. Gaskill:

Q. Mrs. Earl, do you recall a conversation with your daughter-in-law and her mother with reference to Goulard, in February of the year 1910?
A. Yes, sir.
Q. Or 1911, which was it?
A. Nineteen hundred and ten.
Q. At that time you remember your daughter-in-law saying to you, in the presence of her mother, that she loved Goulard and would rather live with him in one room than with Binney in a whole house, or words to that effect?
A. She said she would rather live with a man that she loved in one room than with my son in that house.
Q. What remark, if any, did you make to Mrs. Leigh, Irma's mother?

A. I told Mrs. Leigh to take her daughter home, and that in two years my son would get a divorce from her.

MRS. IRMA LEIGH EARL, recalled in rebuttal, testified as follows:

Direct examination.

By Mr. Backes:

Q. Where was it that you met Mr. Goulard in 1909 and 1910?

A. The first time I saw him was at the Metropolitan Inn in Burlington.

Q. What occurred there?

A. I just met him, and my mother was there, and we talked about going to school together, and then the next day, I met him on the train going to Philadelphia; I met my mother-in-law at Edgewater Park, and I was to meet her to go to the opera with her, and he was on the same train, and we all went down together.

Q. And that was on what day of the week?

A. That was on Saturday.

Q. Did you come back together?

A. Yes, sir.

Q. With your mother-in-law?

A. Yes, sir, we came back in the afternoon—before dinner.

Q. And you invited him to go to the house, did you?

A. Yes, sir.

Q. Was your husband home when you got there?

A. Yes, sir.

Q. How did your husband conduct himself towards Mr. Goulard on that Saturday?

A. Very nicely, as he would to any guest coming in the house; he was polite and nice to him; he invited

him to stay to dinner, and afterwards invited him to spend the night.

Mr. Gaskill: Objected to; that has all been gone into.

The Court: The objection is overruled; I will allow it to be repeated here.

Q. He stayed at your house, did he?

A. He stayed there for supper and over night.

Q. Did he stay for breakfast in the morning?

A. Yes, sir.

Q. Did he leave before luncheon?

A. Yes, sir, but he was invited back for dinner by Mr. Earl that afternoon, and he came back, but we did not have any dinner, and he left before dinner with my father; we did not have dinner because the cook was so intoxicated that she could not cook it, and she went up in her room, and we did not have any dinner; and Mr. Earl was out, and I did not find him, and he did not come back until almost morning.

Q. Did Mr. Goulard return to your house after that?

A. No, sir, never.

Q. He was only there from Saturday afternoon until Sunday afternoon?

A. That is correct, absolutely.

Q. The Saturday night that Mr. Goulard was at your house, what did he do at your house?

A. He was just sitting there talking.

Q. Was he working at his bills and preparing his accounts?

A. No, sir, I did not see any at all; he and Mr. Earl were talkng over the business that he was in.

Q. Your husband said he was there, writing.

A. I do not remember his writing ——

Q. That Goulard was fixing up his accounts?

A. No, sir.

Q. Did you say to your husband, that you would like to kiss Mr. Goulard?

A. Certainly not.

Q. Did you say to your husband that you loved Mr. Goulard?

A. No, sir, I did not love him; how could you love a man that you only met that afternoon?

Q. Did you say to your husband on the quiet, that you felt like kissing Mr. Goulard?

A. No, sir, and I did not feel like kissing him, and if I had felt like it, I would not have asked him.

Q. Did you, that night, massage Mr. Goulard's neck?

A. No, sir; Mr. Goulard had a sore neck, but I did not massage it, and he had been having treatments for it up at the hotel, and he said that mother had put antiphlogistin on it the night before, and it was awfully stiff, and I said, "We have antiphlogistin," and I said "shall I fix it?" and he said "No," he said not to bother, and Mr. Earl said, "Why not fix it?" and we all went up, and I put antiphlogistin on his neck, and we all came down together; that was up in the bathroom; Mr. Earl heated the antiphlogistin for me.

Q. Did Mr. Earl at that time show any animosity towards Mr. Goulard for your doing that?

A. No, sir, he suggested that; he wanted me to do it.

Q. Did you complain of having a headache and desiring to retire that night, at the time he spoke of having a sore neck?

A. No, sir.

Q. You all started upstairs together?

A. Yes, sir, at Mr. Earl's suggestion.

Q. When you all came downstairs again, what happened?

A. We just sat in the library and talked until it was time to go to bed, and then I went ahead to light up, and after I got upstairs and lighted the light, Binney had not yet come up, and Mr. Goulard sat down in the room, and we sat down and looked over some photo-

graphs, and I kept calling to Binney to come up, and then I went in my room and went to bed.

Mr. Gaskill: I object to this as mere repetition; it has been covered by the cross-examination and the redirect examination, and if taken, it must be under my objection.

The Court: I will allow it to stand.

Q. Now, you took Mr. Goulard into the guest room?

A. It was in the big room that we called my room, but I gave him that room that night to sleep in, because Binney and I were sleeping in Binney's room.

Q. Did Binney come up while you were still in the room?

A. No, sir, he came up after I had gone through and closed the door and was in my own bed; and Binney came up and went to bed with me, in the same bed.

Q. Were you downstairs with Mr. Goulard at any time that night sitting on the floor, Mr. Goulard in a chair, and you sitting on the floor alongside of him, and he there reading or writing, or doing something, and you on the floor with your dress up and your leg showing, and partly undressed, when Binney came downstairs?

A. After we went up and went to bed, no one came down after that.

Q. And Binney says he sat there for fifteen minutes in utter amazement?

A. He did not.

Q. You were not downstairs at all?

A. We were not downstairs after we once went up to go to bed. In the evening, before we went to bed, Mr. Goulard was looking at some photographs on the table, and we were all kneeling around the table looking at the photographs; perhaps that is what Binney has got mixed up on.

Q. Did Mr. Goulard, during that visit at your house, or at any other time while at your house, ask you to elope with him and leave Binney, and did you say that you did not care for Binney, and you knew that you could get along together?

A. No, sir, he never said anything of the kind.

Q. Did Mr. Goulard ever make any advances of that kind?

A. No, sir, he never said anything of the kind.

Q. And did your husband reprimand you for it?

A. No, sir.

Q. And did you promise to be good thereafter, after he reprimanded you?

A. No, sir; he did not reprimand me.

Q. Did Binney forgive you for your conduct towards Goulard at any time?

A. I had not done anything to be forgiven; he cried, that is the way he acted.

Q. Give us, in greater detail, what happened in the afternoon of Sunday, between Binney and Goulard, if anything.

A. Nothing at all; they were just as nice as could be, only Binney disappeared and did not come back, and then papa called up on the 'phone and said Binney had been up there and told him some awful story, and I told him to come down right away, and I would explain it to him ——

Q. Did Binney ever order Mr. Goulard out of the house?

A. No, sir; he was nice to him up to the time Goulard left.

Q. Have you seen Mr. Goulard since?

A. No, sir.

Q. Did you see him in Atlantic City?

A. No, sir; Binney came home and said he saw him in Atlantic City; and I said that I did not see him, and I did not.

Q. Did you see Mr. Goulard in Philadelphia after that and took luncheon with him?

A. No, sir.

Q. Did you go to lunch with him in Philadelphia?

A. No, sir.

Q. And did you go home and tell your husband that you had been to luncheon with Goulard?

A. No, sir.

Q. Did you ever get any letters from Mr. Goulard?

A. He wrote, after he had been there, thanking Binney and me for the nice time he had had, and that is all.

Q. Did you ever get any other letters from him?

A. No, sir.

Mr. Backes: Will you please let me have the Goulard letter that you offered in evidence?

Mr. Gaskill: You can have it just as soon as I can go to the office and get it.

Q. Did you see the Goulard letter that Judge Gaskill offered in evidence?

A. Yes, sir.

Q. You saw it here at the trial?

A. Yes, sir.

Q. Do you know Mr. Goulard's handwriting?

A. I had that one letter from him.

Q. But the letter that Judge Gaskill offered in evidence, did you ever see that before?

A. Never.

Q. Did you have a bundle of some fifteen, ten or fifteen letters from Mr. Goulard?

A. I had one letter.

Q. And did you have a letter from Mr. Goulard in which he said that it was hard to write to a married peach, or words to that effect?

A. No, sir, not that I ever saw at all.

Q. Did you leave—after you separated from your husband—a bundle of ten or fifteen letters in your writing desk, or wherever it may have been at your house; that were received by you from Mr. Goulard?

A. No, sir.

Q. Did you have a conversation with Mrs. Earl, your mother-in-law, after this happening?

A. After the Goulard affair?

Q. Yes.

A. She said she was sorry that Binney had acted so mean about it.

Q. When Binney came back the next morning, what did he say?

A. He cried, and begged me to forgive him, and he was afraid that I would leave him, because papa was so mad that he thought he would take me home, and Mrs. Earl brought me two rugs.

Q. What do you know about a trip to Nyack?

A. I was invited to Nyack to visit a girl friend that I met in Florida, and she asked me all summer to come, and I wrote and told her I could not go on account of Binney's condition.

Q. I am showing you a letter marked "Nyack-on-Bun," and the envelope.

A. I don't know what it is meant for.

Q. Did you receive this letter in August of 1911?

Mr. Gaskill: Objected to as incompetent, immaterial and irrelevant.

The Court: Why?

Mr. Gaskill: This is a letter from a third party, a pure matter of hearsay, or the manufacturing of testimony for her own benefit; in no way can it be connected with this defendant.

The Court: I will allow it, subject to your objection.

Mr. Backes: Binney testified that his wife was going to Nyack to meet Goulard, and then when Binney wanted to go, she cancelled the engagement.

The Court: Tentatively, I will accept it now.

Q. Did you show it to Binney?

A. I am sure he saw the letter; I showed him most of the letters I received.

Q. This letter came in this envelope that I am showing you?

A. Yes, sir.

Q. And that is post-marked "August 28, 1911, 2 P. M." The letter is from whom?

A. From May Belle Stilson,—a girl I met in Florida.

Q. The letter contains an invitation for you to come, does it: "Was sorry you couldn't come. It is too bad about Binney. Yes, you were a trifle late in sending sympathy. No, Tom and I didn't scrap, it was his mother."

The Court: What is the date of that letter?

Mr. Backes: It is post-marked "August 28, 1911."

Q. Before this letter was received by you, had you arranged to go to Nyack?

A. Yes, sir; from the time we met May Belle in Florida, we were to go and visit her.

Q. Did you write her you could not go?

A. Yes, sir, she wrote several times and wanted us to come, and I wrote and told her Binney was under the doctor's care and could not leave.

Q. Binney implied that you desired to go to Nyack to see Mr. Goulard; is that so?

A. No, sir; I did not want to see Mr. Goulard.

Q. Did Mr. Goulard know May Belle?

A. No, sir.

Q. And whatever there was about the Nyack matter referred to May Belle Stilson?

A. Yes, sir; I could have gone myself, but I did not go without Binney.

Q. Did this ever occur: in the spring or early summer of 1911, you were out on the porch sitting on your husband's knee, you partly dressed, your mother present; Mark Whitfield came to the door, and your husband remonstrated against his coming out, and your mother said, "Come on out, Marky, dear, you are one of the family," or words to that effect?

A. No, sir.

Q. That never occurred?

A. No, sir.

Mr. Backes: I offer this letter and envelope in evidence.

Mr. Gaskill: I object.

The Court: It will be taken, subject to objection.

(Marked "Exhibit PAX1.")

Q. Who hired Mark?

A. Mr. Earl.

Q. Who hired him to do the inside work?

A. He did.

Q. Who, in fact, did the inside work?

A. Mark.

Q. All of it?

A. Yes, sir.

Q. Did you aid?

A. Yes, sir.

Q. Did Binney ever aid?

A. Sometimes, not very much.

Q. What was Binney's conduct towards Mark, while he was a servant in the house?

A. He would sit in the kitchen and talk with him and have beer with him, and was very familiar with him throughout the time he was there.

Q. And what was your conduct towards Mark as a servant in the house?

A. Just as you would treat any servant; always nice to him, and he did his work properly, and we never had any fights or anything.

Q. Did you ever treat him as anything but a servant in the house?

A. No, sir.

Q. Did you ever make familiar with him?

A. No, sir.

Q. Or he with you?

A. No, sir.

Q. Did Mark ever sit on the porch with you and Binney and your mother?

A. Sometimes, if Binney would be there alone, and we hadn't any company, Mark would come there and get cool; Binney would ask him to come, but never if we had anyone around.

Q. Was Mark ever in your bedroom at night time?

A. Never.

Q. When Binney left his home at any time at night after dinner, and remained away late, were you ever in the house alone with Mark?

A. Never.

Q. Who was there?

A. Always my mother or my brother, and if Binney was going out, mostly he would take me and leave me at the bungalow.

Q. Who would arrange for somebody to be with you?

A. Binney would arrange it; we both would arrange it; sometimes I would suggest mamma, and sometimes Binney would; I was never there alone.

Q. How would it be arranged?

A. Sometimes Binney would go up in the car and bring mamma down, and he would leave me there sometimes, or he would call her up.

Q. Do you remember a time when Binney's car was said to have been stalled near Burlington City after he and Wright had been to Edison's?

A. I don't remember that time.

Q. I mean the Odd Fellows' Cemetery?

A. No, sir, I don't remember it.

Q. Did you ever hear of it being stalled?

A. He often used to break down and would not be home until late at night, and they often used to go to Edison's.

Q. Did Binney come home late at night, either in the late spring or early summer of last year, accompanied by Wright, and knock at the door or ring the bell, and then Mark Whitfield swung around the door of your room, down the steps, and let him in?

A. No, sir, never.

Q. And then did you say to Binney, Wright being present: "Don't be angry; I was afraid, and I had Mark upstairs with me to keep me company," or "up here reading for me"?

A. I never was alone with Mark at night.

Q. Or words to that effect?

A. No, sir.

Q. Or anything at all?

A. No, sir.

Q. You say that occurrence did not happen?

A. It did not.

Q. This is the language that you are said to have used: "I had him up here because I was afraid;" and another witness said that you said, "I had him up here reading to me; I was afraid;" did anything of that kind happen?

A. No, sir, never.

Q. Did Binney ever have any trouble with his automobile?

A. Yes, sir.

Q. What kind?

A. It used often to break down and would not run; I don't know what the trouble was exactly.

Q. Did Binney ever take it apart?

A. Yes, sir, it was most always apart.

Q. Taken apart by whom?

A. By Binney, and Wright used to help him.

Q. Did he ever charge Mark Whitfield with interfering with his machine, to you?

A. Never to me.

Q. Never in your presence?

A. No, sir.

Mr. Gaskill: All of this is mere matter of repetition.

Mr. Backes: This particular matter was brought out partially by cross-examination of Mrs. Earl when she was on the witness stand, and I am simply covering the entire situation as afterwards testified to by Binney.

Q. Did Binney threaten to discharge Mark because he regarded him as having interfered with the automobile, and did you say, "If you discharge Mark, I will get a divorce"?

A. No, sir.

Q. Did you ever say that to him?

A. No, sir.

Q. Under any circumstances?

A. No, sir.

Q. Did you ask Mark to button your dress upon a day that you were about to get into the automobile—to button up the back of your dress?

A. No, sir.

Q. Did you say to him at the time—did he say to you at the time, that your shirt was torn, and you said to him, "Pull it over and pin it"?

A. No, sir.

Q. Was there anything of that kind happened?

A. No, sir.

Q. Did Mark Whitfield teach you to run the automobile?

A. Yes, he helped.

Q. By whose direction?

A. Mr. Earl's.

Q. You were suffering from hemorrhoids in June and were treated by Dr. Mulford?

A. Yes, sir.

Q. Did you say to Mrs. Earl, your mother-in-law, at your house,—at her father's library in Burlington, and in the automobile, standing in front of the house, that you had come to the conclusion that the disease with which Binney was suffering he had gotten from you, or that you gave it to him?

A. Mrs. Earl told me that every woman gave it to her husband, and they all got it from a toilet, and she told me that so much that I did not know whether I had done so or not.

Q. Did you ever say to Binney that you had given it to him?

A. No, sir.

Q. Do you remember Binney coming to the house—your home—in August of last year, when he said that he had been to Dr. Steele?

A. Yes, sir.

Q. What took place then?

A. He came home; he had been out all night, and he came home in the morning, and he was lying on the bed and mother and I were in the room, and he said he had just had a fight with his mother, because she wanted him to say that he had gotten it from me, and he could not say it, and he wanted mamma to come and hold his hand and be nice to him, and my mother said "No" she would not do it; she was disgusted with him.

Q. Do you remember where you were on the 10th of June, 1911?

A. I came up to Trenton to get my sister in the car.

Q. How do you fix that day?

A. Because the next day was children's day, and I was bringing her home the next day.

Q. What do you mean?

A. At the churches they have children's day the second Sunday in June, and I remember she was all dusty, and she said she hated to walk through the streets; we did not take her all the way to the house, and she said she hated to go through, looking so dirty, with the children all looking so clean; I went up for her on Saturday and brought her down.

Q. Whom did you bring down?

A. My sister-in-law, and her little boy, and I had taken my mother up with me, and Wright drove the car.

Q. What is the name of your sister-in-law?

A. Mrs. Chester Leigh.

Q. You took them back Sunday?

A. Yes, sir.

Q. Did you see your mother-in-law that night?

A. No, sir, she never came to the house at night; I don't think she was ever at our house after dinner unless she had come to stay over night; she never came down in the evening.

Q. Did you tell her that night that you had a burning sensation when nature made demand upon you?

A. No, sir; I was complaining then of hemorrhoids.

Q. Did you say to her then that you had a burning sensation when nature made the other demand upon you?

A. No, sir, I did not see her that night; she was not there.

The Court: Referring now to the date of June 10th?

Mr. Backes: Yes.

The Court: Testified to by the mother of Binney Earl?

Mr. Backes: Yes.

Q. Did you say to Mrs. Earl, in the presence of your mother, or in her absence, that you loved Goulard and you would rather live in a single room with him than with Binney?

A. No, sir.

Q. Did you say to her that you loved Goulard—did you say to her in the presence of your mother, at your house, that you would rather live with a man that you loved in a single room than to live with Binney?

A. No, sir; I said I would rather live with a man I loved in a single room than live with a man I did not love; and I was mad with Binney then because he had made a fuss with Mr. Goulard.

Q. Did you express any love or affection for Mr Goulard to your mother-in-law?

A. No, sir, I hadn't any.

Q. On this Sunday that Goulard was there, did you leave the house with Goulard?

A. No, sir.

Q. Who drove the car to Columbus Inn?

A. Wright.

Q. And not Mark?

A. No, sir, not Mark.

Q. You left your husband where?

A. At his mother's in Burlington.

Q. When you started from home, were you destined then to go to Columbus Inn?

A. Yes, sir.

Q. Who was to go?

A. Just Miss Keim and myself, and I don't know whether Binney was going or not, but by the time he got to his mother's, he said he did not feel well and wanted to get out.

Q. Then, from there you went where?

A. We went to Columbus Inn.

Q. And from there you went where?

A. To Edgewater Park, home.

Q. When you got home, whom did you find there?

A. There was not anyone there—Binney was still at his mother's.

Q. Did Binney ever return to your Edgewater home while you were there?

A. No, sir.

Q. How long did he stay?

A. I stayed there over night, and I went away the next morning.

Q. Did you return to your house from your mother's after that?

A. I went down to pack up my things, but never to live—not even for a meal.

Q. And when you returned there, did you see William Wright?

A. Yes, sir, I saw him one day when I was down there packing.

Q. While you were packing?

A. Yes, sir.

Q. What was said?

A. William was down in the cellar making a fire in the heater, and he came up, and there was not anyone else in the house; and he asked me if I was packing, and I said "Yes," and he said he was sorry there was trouble, and he said we had always gotten along nicely together, and he said he knew something that he could tell about Mr. Earl, and I said "Tell me," and he said, "You know my bread and butter depends on it;" and I said, "You may be brought up to tell it;" and he said, "Then I shall have to tell it;" and he said he was work-

ing for Mr. Earl and he could not get another position.

Q. After the trip to Columbus Inn and your return to the house that night and staying there over night, did you again see your husband at the house?

A. Yes, sir, the day I was down there packing, he came in just for a minute.

Q. Did he say anything to you?

A. He asked what I was doing, and I said I was packing.

Q. Mrs. Earl, did you ever have any company at your house after the Goulard incident?

A. No, sir, no men, sometimes a girl.

Q. Did you ever tell your husband why?

A. Yes, sir.

Q. What did you tell him?

A. Because he had made such a disturbance, and had acted so rude to the man, that I would not have any young people come to the house after that.

Q. And because of that, you had no more young people?

A. That is it.

Q. After the Goulard incident, did your mother say to you and to Binney that she wanted Binney to forgive, and wanted you to forget the matter?

A. No, sir.

Q. Did this man Whitfield ever wash any clothing for you?

A. We always had a laundress.

Mr. Gaskill: That has all been gone into.

The Court: The objection is overruled; I will allow it.

Q. Did you ever call Mark Whitfield at seven o'clock in the morning?

A. Sometimes I would ring the bell and call Mark downstairs, and then I would call from my room and

give him orders, or Mr. Earl would call to him and tell him what to tell Wright; but I never saw him in the morning.

Q. Binney has spoken about a sunken garden that you had, where there was a conversation between your brother and himself; what is the nature of that sunken garden?

A. It is just a place where there are a few trees and some grass.

Q. How far is that from the house?

A. Not very far.

Q. Is it between the house and the garage?

A. Yes, sir.

Q. This man McCrea worked for you, did he?

A. He worked for us at one time.

Q. And he was discharged by a telegram from your husband?

A. Yes, sir.

Q. Sent to Mark Whitfield, or Mark Whitfield got it, during the time you were still in Florida?

A. Yes, sir.

Q. Do you know why your husband discharged him?

A. Because he had stolen some money from me.

Q. Is that the reason he was discharged?

A. Yes, sir.

Q. Was that made known to McCrea?

A. I think so; I am sure it was; he knew that he had done it, because I think Mr. Earl told him of it after he came home.

Q. Do you wear union suits?

A. Yes, sir.

Q. Did Mark ever wash a union suit of yours?

A. Never.

Q. Do you remember the barber coming to shave your husband on the 24th of December, at the time you started for the South?

A. Yes, sir.

Mr. Gaskill: I make the same objection.

The Court: The same ruling.

Q. How long had you been upstairs that morning?

A. Mark was cleaning the bathroom, and I was up there helping him, and I was packing some toilet articles that I wanted to take.

Q. How far was your husband from you?

A. He was right at the foot of the stairs.

Q. That was not an unusual thing for Mark to clean the bathroom?

A. No, sir, he always cleaned it every week.

Q. Did you help?

A. Yes, sir.

Q. Did your mother-in-law repeatedly urge you to consult a physician after you became ill?

A. She asked me once or twice, but that was while Dr. Tracey was away, and I was waiting for him to come back.

Q. Did you, during last summer, have a pink evening dress?

A. No, sir.

Q. Did you ever have one?

A. Before I was married I had a pink messaline dress, but I did not wear it last summer at all; it was worn out long before that.

Q. Your mother-in-law described a pink dress; does that correspond with the one you are now speaking of as a messaline dress?

A. Yes, sir, it is the only thin dress I ever had; I did not have that when I went to Florida, and that was the winter before that; it had been destroyed before I went to Florida, it had been destroyed.

Q. Did you say to Mark on one occasion, "The dress is too low"?

A. No, sir.

Cross-examination.

By Mr. Gaskill:

Q. Mrs. Earl, there is not any telephone in your mother's home at the bungalow, is there?

A. No, sir.

Q. Now, what day did you say you came to Trenton with your sister?

A. The day before Children's Day.

Q. The day before Children's Day?

A. Yes, sir, the 10th of June.

Q. On Saturday, the 10th of June?

A. Yes, sir.

Q. One year ago?

A. Yes, sir.

Q. Now, you came up in the automobile?

A. Yes, sir.

Q. Who drove the automobile?

A. William Wright; we did not come all the way in Trenton; we stayed out on Hamilton Avenue.

Q. Now, about this stolen money; McCrea claimed there was wages coming to him?

A. Yes, sir.

Q. And he kept some of the money that was in his hand as change to pay it?

A. He took money that did not belong to him.

Q. And you and your husband discharged him?

A. Yes, sir.

Re-direct examination.

By Mr. Backes:

Q. When you telephoned from your house at Edgewater to your mother, what did you do?

A. We 'phoned across the street to a person named Scott and Martin.

Q. That is the way you communicated with your mother when you wanted her to come to your house?
A. Yes, sir.

Mr. Backes: I have been trying to get Mr. Goulard.

The Court: Where does he live?

Mr. Backes: That I don't know, but I am in communication with his counsel, Mr. Alexander Riorke, of No. 2 Rector Street, New York City. The only way I can get Mr. Goulard's testimony, and I think I can get it, is by deposition, and I intend getting it. That need not interfere with fixing a day for the argument of this case, because I will get the testimony before, or will have to go without it.

The Court: Does counsel desire to sum this case up?

Mr. Gaskill: Yes, I think we ought to be heard; it is a question of fact.

The Court: Do you desire to be heard, Mr. Backes?

Mr. Backes: Indeed, I do. Now, reserving my right to produce the deposition of Mr. Goulard, we rest.

PETITIONER RESTS.

SUR-REBUTTAL.

WILLIAM H. WRIGHT, recalled in sur-rebuttal, testified as follows:

Direct examination.

By Mr. Gaskill:

Q. On the night that the automobile broke down at the Odd Fellows' Cemetery, and you were 'phoned for at your house and you went up there; when you came home to the Binney Earl house, was the door locked?

A. Why, I don't remember whether it was locked or not at that time.

Q. Do you remember banging upon the front door and Mark coming down and letting you in?

A. No, sir.

Q. You don't remember that?

A. No, sir, not that night.

Q. Did he do that on the night that you came from Edison's?

A. Yes, sir.

Mr. Backes: Objected to; this is not sur-rebuttal; this witness has made his affirmative statement of what occurred.

The Court: The question will be allowed, subject to the objection.

Q. On that night when he let you in, had he on anything but a shirt, trousers and a light pair of light-soled shoes?

Mr. Backes: Objected to.

A. He had light shoes, I know, and a shirt and trousers.

Q. On the morning you went to the screen door of the kitchen and found it fastened and saw something white inside, I forget just what your language was in that respect, did you go around to the window of Mark's bedroom and call to him a couple of times?

A. Yes, sir.

Mr. Backes: Objected to as not sur-rebuttal; he is simply going in a circle again.

Mr. Gaskill: I am now contradicting Mark Whitfield for the purpose of breaking down his testimony.

Mr. Backes: Counsel cannot do that, and no one knows it better than counsel. We asked Mark Whitfield questions that were collateral to the issue; Mark Whitfield denied, and having made denial the other side is bound by it, and what he denied, it being collateral, it cannot be contradicted even for the purpose of discrediting ——

The Court: Well, I will allow it, subject to the objection.

Q. When you went to the window, did you say to him, "Oh, come on and get up; you can't fool me"?

Mr. Backes: Objected to.

The Court: Objection overruled.

A. Yes, sir.

Q. Do you recall on one occasion, while Binney was sick at his mother's, you going to the house and seeing Mark Whitfield and Binney's wife there, and Mark saying to you, "How is the boss;" and your saying, "He

is sick;" and Mark's replying, "He needs a good drawing off"?

Mr. Backes: Objected to; where was this at?

Mr. Gaskill: At Binney Earl's house.

A. Yes, sir.
Q. Was Binney's wife there?
A. She was at a distance away from Mark.
Q. Did you say to Mark this, "Look out there"?
A. Yes, sir.
Q. And he looked around and laughed?
A. Yes, sir.
Q. On the morning that you have spoken of in the other testimony about seeing Mark Whitfield in the kitchen with his pajamas on and having an erection, at the time he heard the bell and the call, did he say to you as he started, "Here is where I get it off"?

Mr. Backes: Objected to as not rebuttal.

The Court: Of course, that has all been answered; that is in your testimony before.

Mr. Gaskill: Now, I am proving the conversation that took place at the time the witness has already spoken of in his testimony with reference to certain facts.

The Court: Well, I will take it, subject to the objection of counsel.

Q. When he came back in the kitchen where you remained, did you say to him, "Mark, well, is it gone?" and did he say, "Yes, it is gone"?
A. Yes, sir.

Mr. Backes: Objected to; the Court above sometimes says, that unless we here state our reasons, that they will not entertain them. I object to this because it is not a sur-rebuttal; because it cannot be shown by way of discrediting Mark Whitfield; that whatever may have been requested of Mark Whitfield in the interrogatory put to him upon cross-examination upon this particular subject, the answer thereto by Mark Whitfield is binding on the other side, and they cannot contradict it; and furthermore, the question which is now propounded to the witness has no foundation in fact by anything put to Mark Whitfield; no such question was put to Mark Whitfield to which he gave a negative answer.

Mr. Gaskill: I contradict the gentleman; I have in my hand the very paper from which I read these questions to Mark Whitfield this morning, and I am using the exact language now that I used to Mark Whitfield.

The Court: I will let the objection be noted, and I will take the testimony.

Q. On the occasion when he says he sent you after some Hood's Sarsaparilla, did you ask him where he got that money from, and he said, "Oh, I will get it"?

A. Yes, sir.

Q. And did he give you a quarter in addition to a cigar for that errand?

A. A quarter and a cigar, yes, sir.

Q. Now, did he send you after Hood's Sarsaparilla the second time?

A. Yes, sir.

Q. And did you say to him, "Where is your money," and then say, "I guess I had better not go until I see the boss"?

A. Yes, sir.

Q. Did he hand you a five dollar bill, and did you then say, "Where are you getting all this money from?" and he said, "I have got a friend"?

A. Yes, sir.

Mr. Backes: This is all taken subject to my objection?

The Court: Yes.

Q. On the occasion that you saw the basin of water that you have spoken of in your other testimony, did you say to him, "What in the devil is that in there;" and he said, "It is nothing," and then picked it up and threw it in the sink, and you said to him, "Who put it there;" and did he say, "I did;" and you said, "What is it;" and he said "Never mind"?

A. Yes, sir.

Mr. Backes: This is all objected to for the same reason.

By Mr. Backes:

Q. Why are you smiling?

A. I could not help but laugh.

The Court: This is no laughing matter; it is a matter of great seriousness.

Further direct.

Q. On one of these occasions, William, when you were talking with Mark, did he say to you, that he had often read of such women, but had never bumped into one until he met this one?

A. He did.

Q. And did you then say, in that same conversation, did you say to him, "Bill, you have got a cinch," and he said, "Oh, Bill, I have read of such women, but I never met one until I met this one"?

A. Yes, sir.

Q. Did you take Irma ——

Mr. Backes: Will you please refer to Mrs. Earl when you are talking to this witness, as "Mrs. Earl" and not "Irma;" I object to it.

Q. Did you take Mrs. Binney Earl and Dr. Leigh's wife in the automobile on the 10th of June, up to Trenton?

A. I could not say; I took them to Trenton, but I don't know what time; I took them from his house.

Q. Did you ever bring them here on a Sunday?

A. No, sir, not on Sunday, no, sir.

Cross-examination.

By Mr. Backes:

Q. You are still working for Binney Earl?

A. Yes, sir.

Q. You like your job pretty well, do you?

A. To a certain extent, yes, sir.

Q. Have you had a raise in your wages since this trial has been going on?

A. I don't know that I have, no more than what was agreed to.

Q. How far away was Mrs. Earl when, as you say, Whitfield said, concerning Mr. Earl, that "He needs a good drawing off"?

A. I could not say; I did not measure the distance.

Q. What?

A. I could not measure the distance.

Q. Was she within hearing distance?

A. Certainly.
Q. About how far?
A. I could not say.
Q. Was she as far away as you are from me?
A. No, sir, not that far.
Q. Was Mark's back turned to her?
A. Yes, sir.
Q. You facing her?
A. No, sir, I was not facing her.
Q. You saw her at the time?
A. Yes, sir.
Q. At the time that he made this remark that you say he made, tell me how far in the yard, if you can, Mrs. Earl was away.
A. As near as I can guess at it, about three yards.
Q. About nine feet?
A. About three yards.
Q. How many feet are there in a yard?
A. Three feet.
Q. Mrs. Earl in no way participated in this conversation that you and Whitfield were indulging in?
A. I don't understand you; I don't understand that.
Q. Are you a man of no schooling?
A. A little, but not much.
Q. Mrs. Earl took no part in this nasty conversation between you and Wright?
A. Not that I remember.
Q. Well, you would remember, wouldn't you?
A. I don't know.
Q. Do you mean to say you would not remember if Mrs. Earl had engaged in a dirty conversation that you say you had with Whitfield?
A. I don't know what they did after I left.
Q. No, but while you were there?
A. Oh, no, sir.

Both sides rest,—with the reservation to Mr. Backes to take Mr. Goulard's testimony.

The Court: I will fix a day as soon as I can.

The Court afterwards fixed September 6, 1912, for the argument.
