

New Jersey Court of Errors and Appeals

NOVEMBER TERM, 1915.

10

STATE OF NEW JERSEY,
Defendant in Error) ON WRIT OF ERROR.
vs.)
MICHAEL RUBERTONE,) INDICTMENT FOR
Plaintiff in Error.) "STATUTORY RAPE."

PRELIMINARY STATEMENT.

20

Michael Rubertone, plaintiff in error, was convicted in the Atlantic Quarter Sessions, October twentieth, 1914, for violation of that portion of the 115th section of the Crimes Act, which reads as follows:

"Any person * * * who, being of the age of sixteen or over, shall unlawfully and carnally abuse a woman over the age of twelve years and under the age of sixteen years with her consent shall be guilty of a high misdemeanor and punished by a fine not exceeding two thousand dollars or imprisonment at hard labor not exceeding fifteen years or both."

30

This offense is sometimes described "Statutory Rape." State v. Huggins, 87 Atl. 630 (E. & A. 1913).

The language of the statute, however, describes carnal abuse, which offense differs radically from rape in that rape requires actual penetration of the

female genital organs by the genital organs of the male, whereas carnal abuse is the mere assault or debauchery of the female sexual organs by the genital organs of the male.

10 The indictment contained five counts charging the defendant with having committed this offense upon one Millie Giette, a woman child of the age of fourteen years, each count alleging five different offenses committed on or about the following dates, June 14th, 1912, June 30th, 1912, September 2nd, 1912, September 6th, 1912, and the last or fifth count containing a general allegation of the common offense on various and divers days from May 1st, 1912, to the date of the taking of the inquisition, the indictment having been found sometime in the early part of April, 1914. The jury returned a general verdict of guilty on all of the counts. The evidence produced by the State showed that the complaining witness, Millie Giette, who was then fourteen years of age, was picking berries for Girard Rubertone on his farm in the town of Hammonton on June 14th, 1912. The defendant, who was the son of Girard Rubertone, it appeared, was the foreman of this farm for his father and had general oversight and supervision over those employees who were engaged in picking berries. On the day in question he picked some berries with Millie Giette, and during the course of the day threw her to the ground and assaulted her, at the same time having sexual intercourse with her. It was also shown that at least on three subsequent occasions, to wit, the specific dates above mentioned, the defendant, with the consent, however, of the Giette woman, had sexual intercourse with her, and the offenses occurring on the farm above mentioned in the berry patch of same during the time the complaining witness was supposed to be picking berries on said farm. The defense consisted of a general denial of the charge of the State and of the evidence produced by the State and of an offer of testimony which apparently tended to show that during the month of September in 1912 the said complaining witness, Millie Giette, had had sexual intercourse with her step father, Giovanino Scazza, at a certain shanty near a cranberry bog near the town of Ham-

20

30

monton. It is the alleged errors in the rejection of the supposed improper relations between the Giette girl and her step father that is the principal controversy in the case at bar.

PITH OF THE CASE.

The principal ground relied upon by the complainant in error for a reversal rests upon the alleged refusal of the learned trial Judge to admit certain testimony offered by complainant in error through one Jesse Rothrock, a witness for the defense at the time of the trial, (State of case, page 67, line 30, continuing to line 10, page 70). This testimony was apparently designed to show that the complaining witness, Millie Giette, sometime during the month of September, 1912, the exact day or dates not being given, had sexual intercourse with her step-father. Upon objection by the Assistant Prosecutor, who tried the case for the State, the learned trial Judge excluded the testimony. At the afternoon session of the trial the defense again apparently offered to prove through Rothrock the same testimony (page 78 to 84, line 11). A careful reading of the re-direct and re-cross testimony of witness Rothrock (pages 78 to 84) will show that the learned trial Judge subsequently permitted the defendant to show in so far as the witness was able to testify to what if any were the improper relations between Millie Giette and her step father at the time and place alleged. The only other point that calls for any comment is the fifth cause for reversal, which alleges that the learned trial Judge misdirected the jury as to the facts.

ARGUMENT.

I.

PLAINTIFF IN ERROR HAVING ELECTED TO SERVE AND FILE ONLY CAUSES FOR REVERSAL UNDER THE AUTHORITY CONFERRED BY THE 136TH SECTION OF THE CRIMINAL PROCEDURE ACT AND HAVING FAILED TO ASSIGN EXCEPTIONS CANNOT REVERSE THE JUDGMENT UNLESS THE ERROR COMPLAIN-

ED OF MAY HAVE PREJUDICED HIM IN MAINTAINING HIS DEFENSE UPON THE MERITS.

This proposition has perhaps never been flatly decided by the Court of Errors. In *State vs. Merkle*, 82 N. J. L. 678, (E. & A. 1912) the question was squarely before this Court upon the proposition as to whether where the plaintiff in error goes up under the 136th section of the Criminal Procedure Act and specifies his causes of reversal as provided for in the 137th section of said act, he is also entitled to the full advantage of a strict bill of exceptions duly signed and sealed where these are duly and separately assigned as causes for reversal as if there was nothing before the Court so far as the 136th section, above cited, is concerned. The prevailing opinion in the *Merkle* case sets this question at rest so that the plaintiff in error now has, where he duly assigns and serves his assignments of error, all the advantages that were formerly open to him on a strict bill of exceptions before the use of the said 136th section. This line of decisions, however, prior to the adjudication of the Court of Errors in the *Merkle* case, supra, tends to show that where plaintiff in error fails to duly prepare and serve his assignments of error and elects to rely solely upon his causes of reversal, as provided for in the 136th and 137th sections of the Criminal Procedure Act, he is limited upon review to such error as manifestly prejudices him in securing a fair trial on the merits. That this must be so is apparent upon consideration. It is now well settled that all of the advantages under each method are open to plaintiff in error in the appellate court. It is also perfectly plain that plaintiff in error may now pursue either method in prosecuting his writ. If he relies solely upon the strict bill of exceptions and duly assigns his error thereon he can claim no advantage under the 136th and 137th sections of the Criminal Procedure Act above referred to. On the other hand, if he elects to rely solely upon these two last named sections of the Procedure Act he certainly shows a clear intention to abandon all the rights which were formerly open to him under a strict bill of exceptions. In *State vs. Brown*, 82 N. J. L. 164, the Supreme Court speaking on page 168, said:

"When a person convicted of crime takes advantage of the liberal review provided by that section (136th section) he relinquishes any advantage which might come to him from mistakes made at the trial unless he can show that he has suffered manifest wrong or injury by such mistakes."

The Court in the Brown case, *supra*, was undoubtedly speaking of a situation similar to the case at bar wherein plaintiff in error had elected to rely solely upon the causes of reversal and bring up the whole record thereon instead of relying upon a strict bill of exceptions. While the opinion in the Brown case does not positively say that no assignments of error were duly returned under the old strict bill of exceptions a careful reading of the decision would lead to a conclusion that causes for reversal alone were relied upon. It would seem that the proposition is clear upon reasoning and authority and that plaintiff in error cannot prevail unless the error complained of shows that he suffered manifest wrong and injury thereby.

10

II.

THERE WILL NEXT BE CONSIDERED THE FIRST AND SECOND CAUSES OF REVERSAL RELIED UPON BY PLAINTIFF IN ERROR. THE FIRST ONE READS THAT, "THE LEARNED TRIAL COURT OVER THE OBJECTION OF DEFENDANT'S COUNSEL ADMITTED ILLEGAL EVIDENCE ON BEHALF OF THE STATE."

20

This assignment of error is not specific enough to entitle plaintiff in error to any benefit thereunder. In *State against Herron*, 77 N. J. L. 523, on page 525 the Court said as follows:

30

"The object of this section (137th section of the Criminal Procedure Act) is plain. It was to apprise the Court and Counsel for the State of cause for reversal with sufficient precision to make the point intelligible. It should, therefore,

where the objection is to the admission or rejection of evidence, point out the precise evidence which was erroneously admitted and the precise offer which was erroneously rejected. If this is not done it becomes incumbent upon the counsel for the State, and the Court to examine the whole of the record, which may be very voluminous, and the object of the act is not achieved. We think the causes as assigned in this case are too general to avail the plaintiff in error."

10 The language just quoted excludes plaintiff in error from any benefit under his first cause for reversal.

The second cause for reversal alleges that, "The learned trial court rejected legal evidence offered by the defendant." For the reason and authority above given and cited under the first cause of reversal, the second must fall with it.

III.

20 WE WILL NEXT CONSIDER THE THIRD AND FOURTH CAUSES OF REVERSAL. AS THEY RELATE TO PRACTICALLY THE SAME POINT THEY WILL BE CONSIDERED TOGETHER. THEY ARE AS FOLLOWS: "3. THE LEARNED TRIAL JUDGE REFUSED TO ALLOW DEFENDANT TO OFFER TESTIMONY SHOWING THE RELATIONS OF THE COMPLAINING WITNESS DURING THE MONTH OF SEPTEMBER, 1913, (EVIDENTLY MEANING 1912) WITH MEN OTHER THAN DEFENDANT. 4. THE LEARNED TRIAL JUDGE ORDERED STRICKEN FROM THE RECORD A NUMBER OF QUESTIONS PRO-
30 POUNDED AND ANSWERED GIVEN BY JESSE ROTHROCK, A WITNESS FOR THE DEFENDANT."

These third and fourth causes for reversal are the principal ground or grounds upon which plaintiff in error relies. As a general proposition, the law re-

lating to the admissibility of evidence concerning the reputation for chastity of the complaining witness on a charge of rape, is that such evidence is admissible where the indictment is for real rape. This reputation for chastity of the prosecutrix, however, is confined to her character before the commission of the alleged offense. It must also be confined to her general reputation in the community in which she resides for chastity.

O'Blenis vs. State, 47 N. J. L., 279.

Where, however, the indictment is for what is sometimes called statutory rape, or really carnal abuse, as in the case at bar, for carnally abusing a woman child under the age of sixteen years and over the age of twelve years, with or without her consent, the question of the reputation of the prosecutrix for chastity is not admissible. There is no specific adjudication upon this point in our state, but it is apparently well settled by the weight of authority. The reasoning is that the offense alleged charges that the act is committed with consent of the prosecutrix. The law therefore denies to her any will or control in the premises. It presumes therefore that the act is committed forcibly and against her will, and presumes an assault. Under these circumstances how can it be said that the previous reputation of the accused for chastity can have any materiality or any bearing upon the issue? The Legislature has said that if the female be under the age of sixteen years and over the age of twelve years, any carnal abuse with her consent is a crime. It would, therefore, seem that even though the defense offered to prove that she were a common prostitute, if it appeared from the previous evidence that the essential ingredients of this statutory offense had been proved, then the offer of such testimony was clearly irrelevant and immaterial. This reasoning is well supported by authority.

10

20

30

In 33 Cyc., page 1481, it is said:

"In cases of carnal knowledge of a female under the age of consent, her want of chastity can-

not be shown to show consent since she is incapable of consenting," and a long line of authorities cited thereunder to support the text.

Then again the learned Mr. Wigmore, in Vol. 1 of his Treatise on Evidence, Section 62, page 132, declares:

"But it (meaning evidence as to the reputation of the prosecutrix for chastity) should not apply in rape where the woman is below the age of consent," and the authorities cited in support of this text.

10 In *People against Abbott*, 97 Michigan, 484, the court speaking on page 485 and page 486 said:

20 "The court admitted this testimony (testimony as to previous acts of intercourse with several other men) on the claim of counsel for respondent that it was competent as bearing upon the girl's credibility. It was not competent * * * even for that purpose. If the girl had been of the age of consent it might be competent to admit evidence of her general reputation for chastity as bearing upon the probability of her story, but specific acts of unchastity could not be inquired into * * * but here the law conclusively presumes that the girl could not give her consent and every act of intercourse with her would be a crime committed against her, and such acts could not, therefore, affect her credibility. Her reputation for truth and veracity could be inquired into the same as of an adult, but she could not be impeached by her acts of intercourse."

30 It is not just clear from the statement of the learned counsel of defendant as to just what his purpose was in offering to prove, through the mouths of witnesses Jesse Rothrock and Frank Southard, the alleged conduct or occurrence between the prosecutrix Millie Giette and her step-father at the cranberry bog. A careful reading, however, of all of this testimony (beginning l. 20 p. 66 state of case, and concluding l. 25 p. 86) would seem to show that the learned counsel was endeavoring to prove cer-

tain and specific acts of sexual intercourse between the prosecutrix and her step-father, sometime during the month of September, 1912.

The last specific act of carnal abuse alleged in the fourth count of the indictment was September sixth, 1912. It is insisted on the part of the state that this evidence was not admissible in the case at bar under any theory of law applicable thereto, for the reasons already given and the authorities cited. Defendant was on trial charged with the carnal abuse of a woman child under the age of sixteen years with her consent. It is true that the first count in this indictment alleged that the offense was committed without her consent, but, even should the court decide that this count is bad under the statute, there are three other distinct offences alleged in the indictment with the consent of the prosecutrix and which the general verdict of guilty will sustain. The evidence amply proved all of the allegations in the indictment. It is well settled that specific acts of sexual intercourse of the prosecutrix with other persons prior to the time of the alleged offence cannot be shown. It is only her general reputation for chastity that is admissible. Such general reputation, however, for chastity of the prosecutrix was not admissible in this case because she was incapable of consent, being under the age of consent.

10

20

Then again, even if such testimony was admissible in the case at bar, defendant cannot complain because the learned trial court, at the afternoon session of the trial, (beginning l. 38 bottom of page 77, and continuing to l. 24 page 86) admitted all of the testimony of this character that defendant had to offer and did so after strenuous objection by counsel for the State as to its relevancy and materiality.

30

IV.

THE NEXT CAUSE FOR REVERSAL WHICH CALLS FOR COMMENT IS: "5. THE LEARNED TRIAL JUDGE MISDIRECTED THE JURY AS TO THE FACTS."

It is true that in the charge of the court (commencing line 15 page 89 and concluding line 20 page 91) the court did comment upon the testimony adduced at the trial, but after so commenting and commencing with line 33, page 90, the court said:

10 "You are as familiar with the testimony as I am, gentlemen, and I will not burden you with any further reference. If my comments have led you to believe that I entertain any opinion as to the guilt or innocence of the accused, you are at liberty to disregard that. It is your duty, gentlemen, to judge the facts. My duty is to tell you the law, which I have endeavored to do. In reaching a verdict you must bear in mind that the burden of proof," etc.

20 It will thus be seen that the learned trial judge clearly left all questions of fact to the jury after he had concluded his comments upon the testimony. The language used by the court in leaving the facts to the jury is clear and unmistakable. There could be no doubt in the minds of the jury that their duty in the premises was to judge the facts. That it is not error for the trial judge to comment upon testimony adduced at the trial is well settled by the authorities in this state. Any misquotation by the court, in its charge, on these facts is harmless error particularly where the court clearly calls the attention of the jury to the determination of the facts being their province.

State vs. Hummer, 73 N. J. L., 714.

State vs. Herron, 77 N. J. L., 524.

V.

30 THE LAST AND SIXTH CAUSE FOR REVERSAL IS: "6. THE VERDICT IS CONTRARY TO THE LAW AND THE EVIDENCE."

A careful reading of the whole record does not disclose any error prejudicial to the defendant whereby he failed to secure a fair trial on the mer-

its. The evidence amply supports the verdict rendered, and the defendant was very properly and justly convicted of the offense charged.

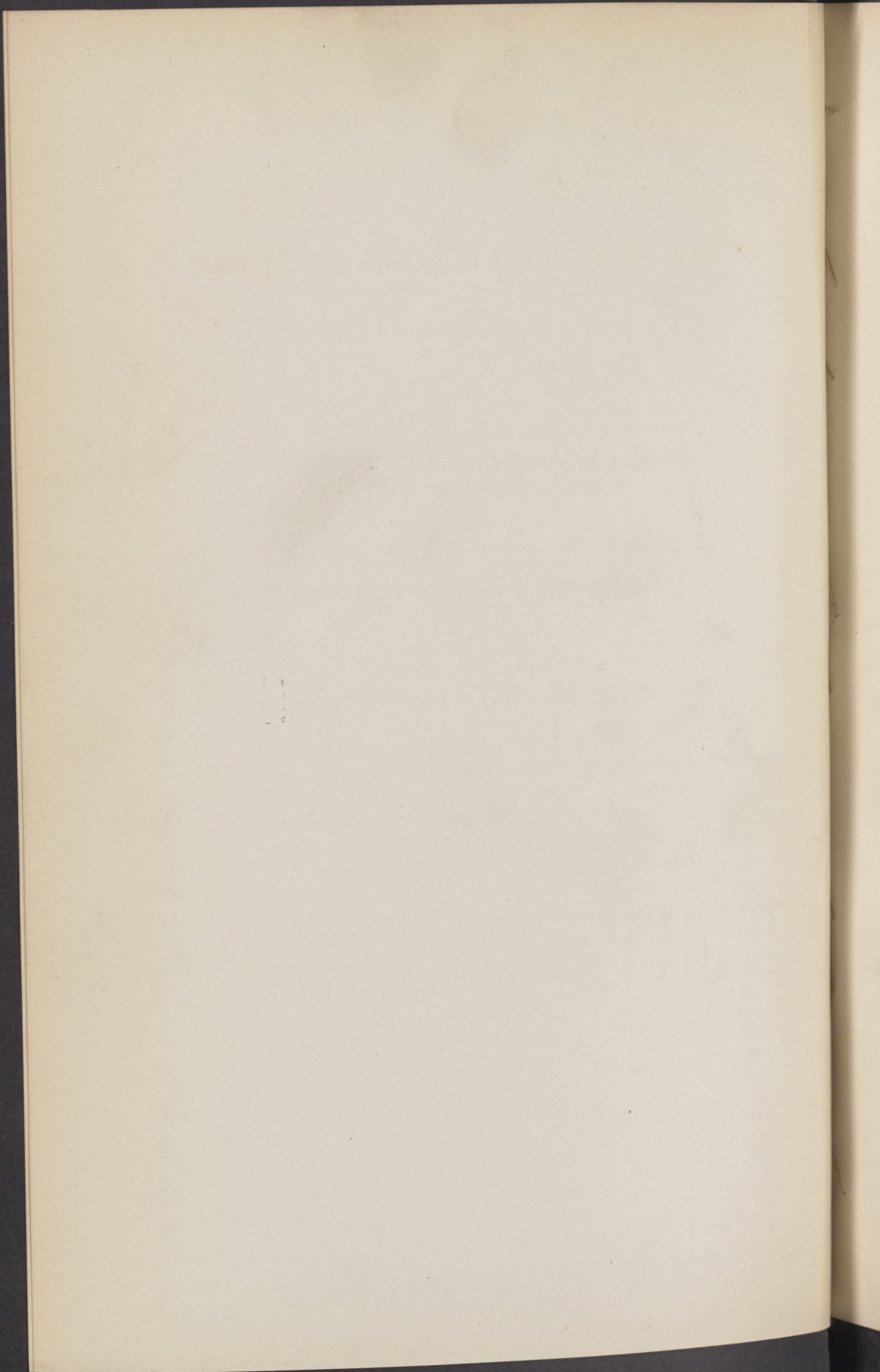
This case was argued in the Supreme Court at the February term last and the judgment of conviction affirmed at the June term last in an opinion handed down at that time. If this opinion is not printed in the State of the Case extra copies will be furnished for the use of the Court.

It is respectfully submitted that on the whole case the judgment should be affirmed and accordingly the writ should be dismissed. 10

CHARLES S. MOORE,
Prosecutor of the Pleas.

20

30



New Jersey Court of Errors and Appeals

<p>The State, <i>Defendant-in-Error,</i></p>	}	<p>On Error to Atlantic County Court of Quarter Sessions.</p>
<p>vs.</p>		
<p>Michael Rubertone, <i>Plaintiff-in-Error.</i></p>		

BRIEF FOR PLAINTIFF-IN-ERROR.

The offense charged in the above case is statutory rape.

While picking berries with the defendant-in-error at Hammonton, New Jersey, in an open field, with no fences or other obstructions, the defendant-in-error, is alleged to have had sexual relations with a child-woman.

The seriousness of the charge impels the belief that defendant-in-error should have had the advantage of every legal right. This, we urge, he did not receive, and especially because not only of the Court's refusal (pages 67, 68, 69 & 70) to allow defendant's counsel to show relation of the complaining witness with other men in the month of September, 1912, but also because of the Court's refusal

to give defendant the benefit of a full charge upon the subject, which objection is fully covered under exception No. 4 of the assignment of errors.

The uncontradicted facts in the case are,

- (1) There was no corroboration of the girl's story.
- (2) The field was in plain sight of the travelling public. (P. 22.)
- (3) The first offences occurred June 14th and 30th, 1912, and a child was born June 11th, 1913. (P. 17.)
- (4) No other offence was committed until September, 1912. At this time the girl was living in a two-room hut with three men.
- (5) No mention was made of the conduct of defendant until December, 1913, when an effort was made to collect money from defendant. This was a clear effort to blackmail. (P. 50.)
- (6) Criminal proceedings were instituted after the effort to compound a felony.

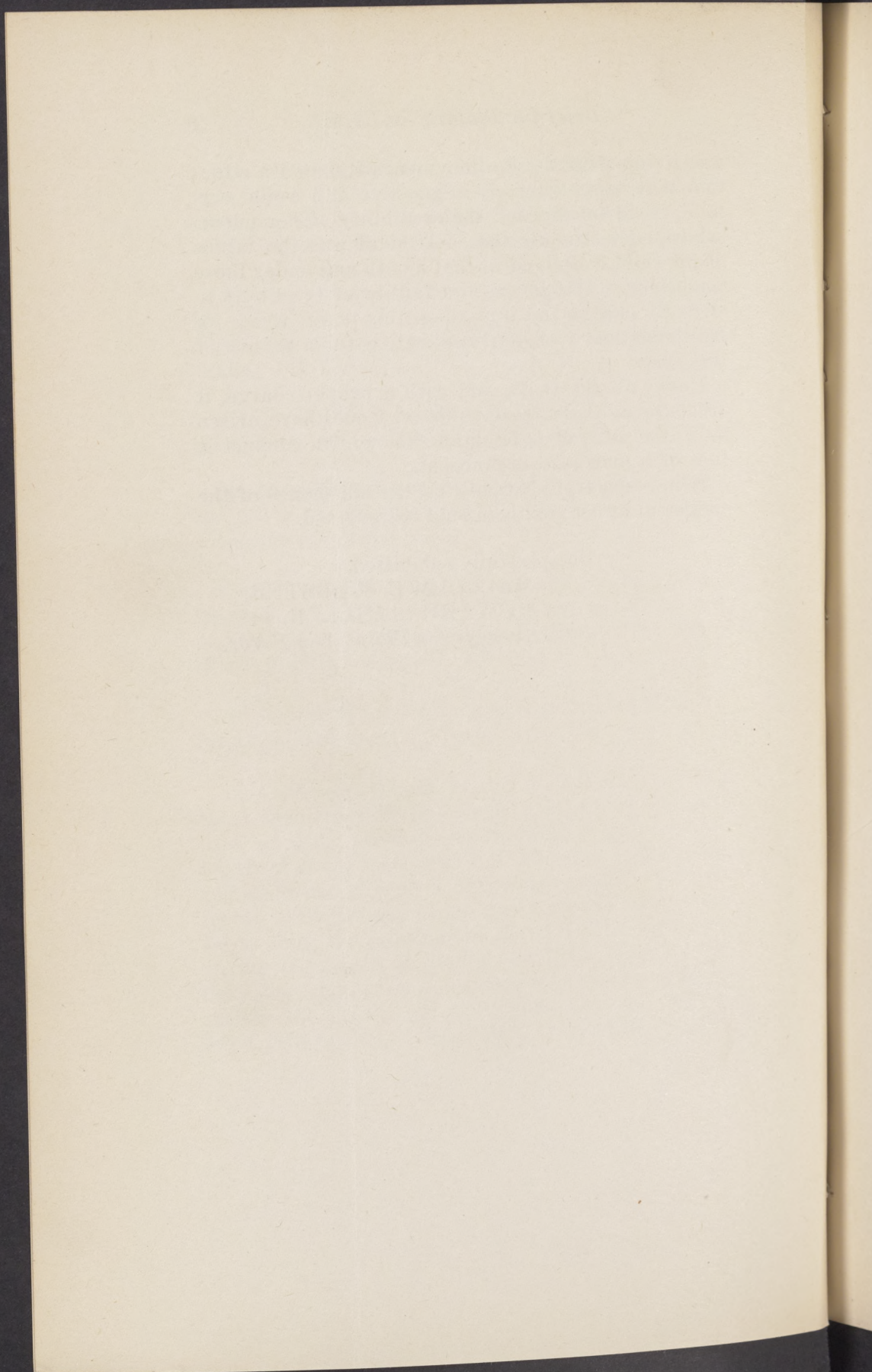
The Supreme Court in its opinion says: "We think the action of the learned trial Court was correct, since the attempt was in effect to prove a fact, which if conceded would not afford a justification for the crime alleged in this indictment." This referred to the refusal of the trial Court to allow counsel to show the relations of the girl with other men during the month of September, 1912. We respectfully urge that while in no sense was this an effort to justify the crime, yet pregnancy having occurred during the month of September, 1912, when the child

was living with these other men, presented a situation that was extremely suggestive and would certainly tend to impeach the credibility of her uncorroborated testimony that defendant was the father of the child conceived in that month and under those conditions. And it was the failure of the Court to strongly charge the jury upon this point, which we feel lends merit on our application for a review of this case.

Under all the facts, and with a proper charge, it seems to us that a serious doubt would have arisen as to the guilt of defendant. His entire conduct is that of a man who is innocent.

It is respectfully urged that the affirmance of the judgment of conviction should be reversed.

Respectfully submitted,
MALCOLM B. WEBSTER,
HOWARD L. MILLER,
Attorneys for Plaintiff-in-Error.



New Jersey Court of Errors and Appeals

<p>The State, <i>Defendant-in-Error,</i></p>	}	<p>On Error to Atlantic County Court of Quarter Sessions.</p>
<p>vs.</p>		
<p>Michael Rubertone, <i>Plaintiff-in-Error.</i></p>		

BRIEF FOR PLAINTIFF-IN-ERROR.

The offense charged in the above case is statutory rape.

While picking berries with the defendant-in-error at Hammonton, New Jersey, in an open field, with no fences or other obstructions, the defendant-in-error, is alleged to have had sexual relations with a child-woman.

The seriousness of the charge impels the belief that defendant-in-error should have had the advantage of every legal right. This, we urge, he did not receive, and especially because not only of the Court's refusal (pages 67, 68, 69 & 70) to allow defendant's counsel to show relation of the complaining witness with other men in the month of September, 1912, but also because of the Court's refusal

to give defendant the benefit of a full charge upon the subject, which objection is fully covered under exception No. 4 of the assignment of errors.

The uncontradicted facts in the case are,

- (1) There was no corroboration of the girl's story.
- (2) The field was in plain sight of the travelling public. (P. 22.)
- (3) The first offences occurred June 14th and 30th, 1912, and a child was born June 11th, 1913. (P. 17.)
- (4) No other offence was committed until September, 1912. At this time the girl was living in a two-room hut with three men.
- (5) No mention was made of the conduct of defendant until December, 1913, when an effort was made to collect money from defendant. This was a clear effort to blackmail. (P. 50.)
- (6) Criminal proceedings were instituted after the effort to compound a felony.

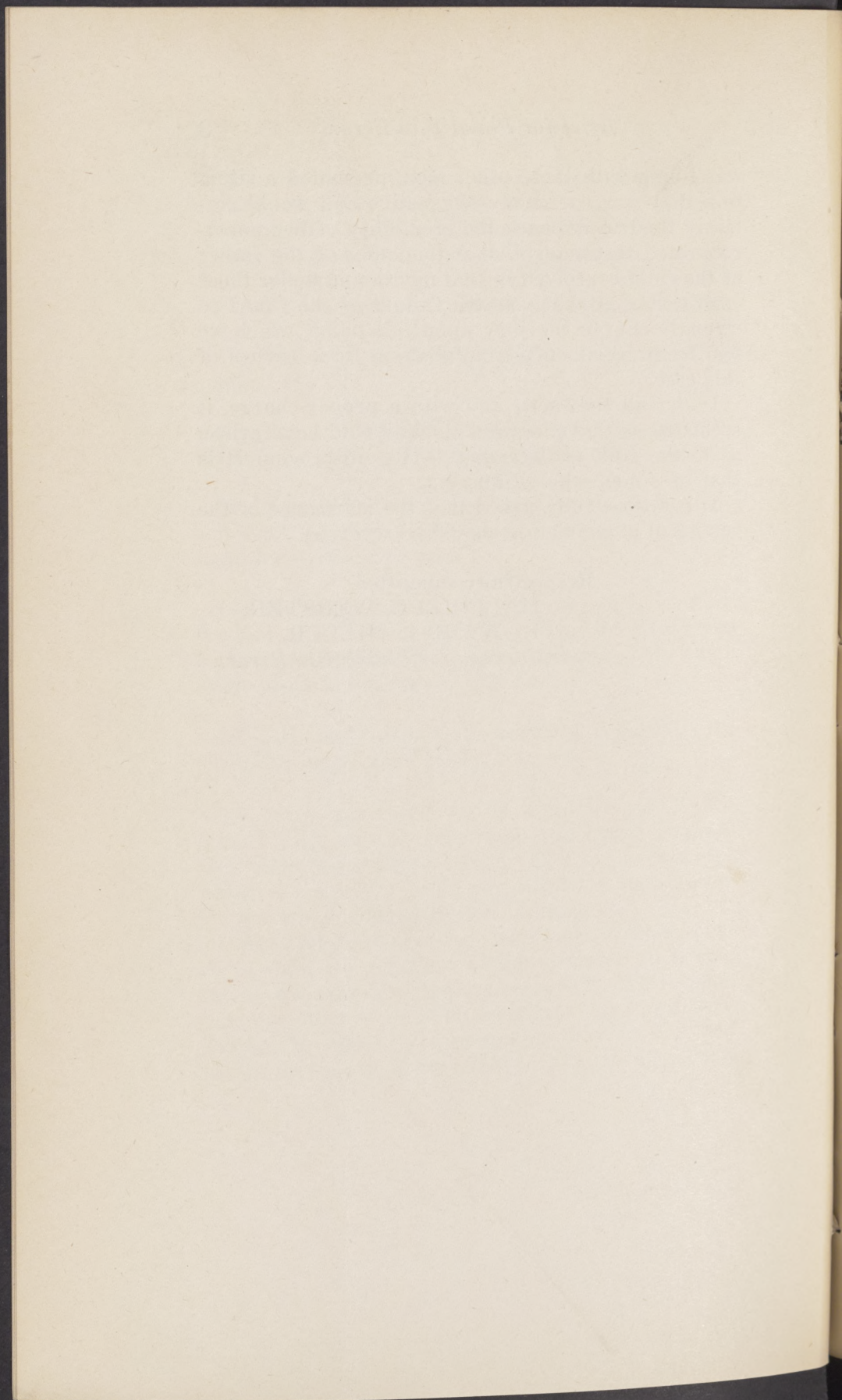
The Supreme Court in its opinion says: "We think the action of the learned trial Court was correct, since the attempt was in effect to prove a fact, which if conceded would not afford a justification for the crime alleged in this indictment." This referred to the refusal of the trial Court to allow counsel to show the relations of the girl with other men during the month of September, 1912. We respectfully urge that while in no sense was this an effort to justify the crime, yet pregnancy having occurred during the month of September, 1912, when the child

was living with these other men, presented a situation that was extremely suggestive and would certainly tend to impeach the credibility of her uncorroborated testimony that defendant was the father of the child conceived in that month and under those conditions. And it was the failure of the Court to strongly charge the jury upon this point, which we feel lends merit on our application for a review of this case.

Under all the facts, and with a proper charge, it seems to us that a serious doubt would have arisen as to the guilt of defendant. His entire conduct is that of a man who is innocent.

It is respectfully urged that the affirmance of the judgment of conviction should be reversed.

Respectfully submitted,
MALCOLM B. WEBSTER,
HOWARD L. MILLER,
Attorneys for Plaintiff-in-Error.



I N D E X

	Page
Writ	1
Return	2
Judgment	3
 Testimony:	
Millie Giette—Direct	13
Cross	19
Re-direct	29
Lucy Mazzo—Direct	30
Cross	32
Frank Mazzo—Direct	34
Cross	35
Mrs. Giovanino Scazzo—Direct	37
Cross	38
Doctor John I. Faunce—Direct	38
Cross	39
 Defendant's Testimony:	
Thomas A. Elvins—Direct	40
William L. Black—Direct	42
Cross	43
Louis O'Donnell—Direct	44
Cross	44
George Strouse—Direct	45
Cross	45
Rocco Rubertone—Direct	46
Cross	47

	Page
James Rubertone—Direct	48
Cross	53
Michael Rubertone—Direct	59
Cross	61
Mrs. Mary Rubertone—Direct	64
Cross	65
Jesse Rothrock—Direct	66
Recalled—Direct	77
Recalled—Cross	82
Frank Southard—Direct	70
Cross	72
Recalled—Direct	84
Girard Rubertone—Direct	72
Caspar Craig—Direct	77
Charles P. Fusco—Direct	87
Cross	88
Court's Charge to Jury	89
Defendant's Exceptions	91
Causes for Reversal	92
Writ of Error	93
Return	95
Opinion	96
Assignments of Error and Specifications of Causes for Reversal	98

WRIT.

NEW JERSEY, ss.

The State of New Jersey to Clifton C. Shinn, Judge of the Court of Common Pleas of the County of Atlantic, constituting the Court of Quarter Sessions in and for the County of Atlantic, October term, 1914. 10

Because in the record and proceedings, and also in giving up judgment in a certain indictment against Michael Rubertone, late of the town of Hammonton, in the County of Atlantic, for that he did make an assault on one Millie Giette and did unlawfully and carnally abuse her without her consent, whereof before you, he hath been indicted, and is thereof by a certain jury of the said county between the State of New Jersey and the said Michael Rubertone, convicted, as is said, manifest error hath intervened to the great damage of the said Michael Rubertone, as from his complaint we have received information, we being willing, in his behalf, to correct the error in due manner, if any there shall be, and that speedy justice be done him, command you that if judgment is therein given then that you distinctly and openly send under your seal, the record and proceedings aforesaid, with all things touching the same, to our Supreme Court of Judicature, to be held at Trenton, on the twenty-ninth day of January instant, and this writ, that the record and proceeding as aforesaid being inspected we may further cause to be done thereupon for correcting that error, what of right, 30

and according to law and custom of New Jersey ought to be done.

Witness, William S. Gummere, Chief Justice, at Trenton, this ninth day of January, 1915.

WM. C. GEBHARDT,
Clerk.

RICHARD W. CRONECKER,
MATTHEW JEFFERSON,
Attorneys.

10

RETURN.

The answer of Clifton C. Shinn, Judge of the Court of Common Pleas of the County of Atlantic, constituting the Court of Quarter Sessions in and for the County of Atlantic, October Term, nineteen hundred and fourteen.

20 The record and proceedings and all things touching and concerning the same whereof mention is within made to the Supreme Court of Judicature, the day and place within named, I certify in a schedule annexed to this writ, as I am within commanded; and I further certify that said schedule contains the entire record of the proceedings had before the Court of Quarter Sessions in and for the County of Atlantic in the trial of said cause.

CLIFTON C. SHINN,
Judge.

30

JUDGMENT RECORD.

ATLANTIC COUNTY, to wit:

BE IT REMEMBERED, that at a Court of Quarter Sessions, holden at Mays Landing, in and for the said County of Atlantic, on the twenty-first day of April, in the year of our Lord one thousand nine hundred and fourteen, before the Honorable Clarence L. Cole, a Judge of the State Court and of the Court of Common Pleas, in and for said county, no Justice of the Supreme Court of the State of New Jersey being present in the Court House and the Grand Jury being desirous of making presentment of sundry bills of indictment according to the form of the statute in such case made and provided, by the solemn affirmation of Henry W. Leeds having first alleged himself to be conscientiously scrupulous of taking an oath, and by the oath of John C. Benson, Walter Nagle, Joseph M. V. Fitzpatrick, Walter W. Clark, E. L. Tomlin, Antonio Siracusa, Brinkle Gummey, P. L. Hawkins, Daniel W. Myers, Joseph Butterhoff, H. L. McIntyre, Henry C. Albert, F. Lester Ewan, Alvin E. Bates, Wm. N. Johnson, William Lewis, Edwin Smith, Edward Schultz, John F. Hill, Daniel Matthews, R. T. Chapman and M. K. Boyer, good and lawful men of the said County of Atlantic, duly summoned and then and there sworn, affirmed and charged to inquire for the State of New Jersey in and for the body of the said County of Atlantic.

IT IS PRESENTED, in manner and form following; that is to say:

State of New Jersey vs. Charles Stewart,
alias F. F. Verline
alias Charles Stuart

- alias Robert A. Smith
 alias Walter Duffy
 alias William Wood
 and J. D. Ireland Conspiracy.
- State of New Jersey vs. Charles Stewart,
 alias F. F. Verline
 alias Charles Stuart
 alias Robert A. Smith
 alias Walter Duffy
 10 alias William Wood False Pretenses.
- State of New Jersey vs. Charles Stewart,
 alias F. F. Verline
 alias Charles Stuart
 alias Robert A. Smith
 alias Walter Duffy
 alias William Wood False Pretenses.
- State of New Jersey vs. Charles Stewart,
 alias F. F. Verline
 20 alias Charles Stuart
 alias Robert A. Smith
 alias Walter Duffy
 alias William Wood False Pretenses.
- State of New Jersey vs. Charles Stewart,
 alias F. F. Verline
 alias Charles Stuart
 alias Robert A. Smith
 alias Walter Duffy
 alias William Wood False Pretenses.
- State of New Jersey vs. Charles Stewart,
 30 alias F. F. Verline
 alias Charles Stuart
 alias Robert A. Smith
 alias Walter Duffy
 alias William Wood False Pretenses.
- State of New Jersey vs. The Atlantic
 Produce Company, Nuisance.

- State of New Jersey vs. Frank H.
MacFarland, et al. Nuisance.
- State of New Jersey vs. Isaac Aaron
False Pretenses.
- State of New Jersey vs Wong Hong Selling Opium.
- State of New Jersey vs. Michael Rubertone Rape.
- State of New Jersey vs. Jennie Cain
Selling liquor unlawfully.
- State of New Jersey vs. A. W. Biddlecomb
Fishing without a license. 10
- State of New Jersey vs. Barney Rossen Perjury.
- State of New Jersey vs. William H.
Hamilton Selling liquor on Sunday.
- State of New Jersey vs. Augustino Pisano
Carrying concealed weapons.
- State of New Jersey vs. Mamie E. Bradley
Disorderly house.
- State of New Jersey vs. Harry Norman Larceny.
- State of New Jersey vs. Abel Spence
Malicious mischief. 20
- State of New Jersey vs. R. Hampe
alias R. A. Holt
alias R. A. Hoch
alias R. C. Hatfield
alias R. C. Held Breaking with intent,
etc.
- State of New Jersey vs. R. Hampe
alias R. A. Holt
alias R. A. Hoch
alias R. C. Hatfield
alias R. C. Held Breaking with intent, 30
etc.
- State of New Jersey vs. Samuel Taylor
Assault and battery.
- The bills returned herewith are true bills.
HENRY W. LEEDS,
Foreman.

[ENDORSED]

County of Atlantic, N. J.

Filed Apr. 21, 1914.

EDWIN A. PARKER, *Clerk.*

10 IN THE COURT OF OYER AND TERMINER OF
ATLANTIC COUNTY, JANUARY TERM, IN
THE YEAR OF OUR LORD ONE THOU-
SAND NINE HUNDRED AND FOURTEEN.

ATLANTIC COUNTY, to wit:

20 The Grand Inquest of the State of New Jersey,
and for the body of the County of Atlantic, upon
their respective oaths and affirmations, those who
affirmed having first alleged themselves consci-
entiously scrupulous of taking an oath,

Present, that Michael Rubertone, late of the
County of Atlantic, aforesaid, on the fourteenth day
of June, Anno *Domni*, one thousand nine hundred
and twelve, at the City of Hammonton, in the county
aforesaid, and within the jurisdiction of this Court,
being then and there over the age of sixteen years,
in and upon one Millie Giette, a woman child of the
age of fourteen years, in the peace of God and this
30 State, then and there being unlawfully did make an
assault and her the said Millie Giette did unlawfully
and carnally abuse without the consent of her the
said Millie Giette, to the evil example of all others
in like case offending, contrary to the statute in such
case made and provided, and against the peace of
this State, the government and dignity of the same.

And the Grand Inquest aforesaid, upon their respective oaths and affirmations, those who affirmed having first alleged themselves conscientiously scrupulous of taking an oath, do further Present, that the said Michael Rubertone on the thirtieth day of June, Anno *Domni*, one thousand nine hundred and twelve, in the City of Hammonton, in the county aforesaid, and within the jurisdiction of this Court, being then and there over the age of sixteen years did unlawfully and carnally abuse one Millie Giette, 10
a woman child of the age of fourteen years with the consent of the said Millie Giette, to the evil example of all others in like case offending, contrary to the statute in such case made and provided, and against the peace of this State, the government and dignity of the same.

And the Grand Inquest aforesaid, upon their respective oaths and affirmations, those who affirmed having first alleged themselves conscientiously scrupulous of taking an oath, do further Present, 20
that the said Michael Rubertone, on the second day of September, Anno *Domni*, one thousand nine hundred and twelve, in the City of Hammonton, in the county aforesaid, and within the jurisdiction of this Court, being then and there over the age of sixteen years did unlawfully and carnally abuse one Millie Giette, a woman child of the age of fourteen years with the consent of the said Millie Giette, to the evil example of all others in like case offending, contrary to the statute in such case made and provided, and 30
against the peace of this State, the government and dignity of the same.

And the Grand Inquest aforesaid, upon their respective oaths and affirmations, those who affirmed having first alleged themselves conscientiously scrupulous of taking an oath, do further Present,

that the said Michael Rubertone, on the sixth day of September Anno *Domni*, one thousand nine hundred and twelve, in the City of Hammonton, in the county aforesaid, and within the jurisdiction of this Court, being then and there over the age of sixteen years did unlawfully and carnally abuse one Millie Giette, a woman child of the age of fourteen years with the consent of the said Millie Giette, to the evil example of all others in like case offending, contrary
 10 to the statute in such case made and provided, and against the peace of this State, the government and dignity of the same.

And the Grand Inquest aforesaid, upon their respective oaths and affirmation, those who affirmed having first alleged themselves conscientiously scrupulous of taking an oath, do further Present, that the said Michael Rubertone, on the first day of May, in the year of our Lord one thousand nine hundred and twelve and on divers other days between
 20 that day and the taking of this inquisition, in the City of Hammonton, in the county aforesaid, and within the jurisdiction of this Court, being then and there over the age of sixteen years, did unlawfully and carnally abuse one Millie Giette, a woman child of the age of fourteen years with the consent of the said Millie Giette, to the evil example of all others in like case offending, contrary to the statute in such case made and provided, and against the peace of this State, the government and dignity of the same.

30

CHARLES S. MOORE,
Prosecutor of the Pleas.

[ENDORSED]

County of Atlantic, N. J.
 Filed Apr. 21, 1914.
 EDWIN A. PARKER, *Clerk.*

ATLANTIC QUARTER SESSIONS.

OCTOBER TERM, 1914.

2402
white

STATE,
vs.
MICHAEL RUBERTONE.

}

Oct. 20th.

10

HON. C. C. SHINN, Presiding.

W. E. BROWN for State.
MATTHEW JEFFERSON for Defdt.

20

Charge: Rape.
Plea: Not Guilty.

The above-named defendant being brought into court charged, pleaded not guilty of the crime as laid to his charge.

30

Whereupon, on motion of W. E. Brown on the part of the State, it was ordered that the Sheriff return a panel of the jury to try the issue joined in the aforesaid plea.

Whereupon the Sheriff returned the following-named persons to serve as jurors, who were sworn as follows, to wit:

1. Israel Crowell
2. Charles A. McKeen
3. Jacob Hager
4. John F. Ryon
5. Edwin Robinson
6. Kirk Hewitt
7. Henry Crawford
8. Harold E. Crane
9. John E. Gerew
10. Harry Newcomb
11. Wm. F. Wahl
12. H. W. Merrill

The following witnesses, Millie Giette, Lucy Mazzo, Frank Mazzo, Giovanni Scazzo, Dr. John I. Faunce and Robert Tusco, having been called for the State, and Thomas Elvins, William Black, Lewis O'Donnell, George Strouse, Rocco Rubertone, James Rubertone, Michael Rubertone, Mary Rubertone, Jesse Rockrock, Frank Souders, Gerard Rubertone and Casper Craig having been called for the defendant and the evidence being closed and the counsel having summed up the case, and the Court having charged the jury, they retired at 2.38 P. M., with Constable John A. Farrar sworn to attend them, and being absent until 2.57 P. M., they return again into court, and being called, all appear, and being asked, say they have agreed upon a verdict and by their foreman further say that they find the defendant, Michael Rubertone, guilty, and so say they all.

Whereupon it is on this 19th day of November, A. D. 1914, ordered that the defendant be placed at the bar and he being accordingly set at the bar the Court

doth order and adjudge that the defendant Michael Rubertone be imprisoned in the State Prison for a period of not less than one year and not more than fifteen years and pay a fine of \$500.

Stand committed until paid.

(Quarter Sessions Judgment Book, No. 7, page 312.)

10

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

I, EDWIN A. PARKER, Clerk of the Court of Common Pleas, in and for the County of Atlantic, the same being a Court of Record, do hereby Certify, that the foregoing is a full, true and correct copy of a certain Caption, Indictment and Judgment in the case of State vs. Michael Rubertone, as the same is of record in my said office.

20

In Witness Whereof, I have hereunto set my hand and affixed the seal of said Court and County at Mays Landing, N. J., this twenty-first day of January, A. D. one thousand nine hundred and fifteen (1915).

[REVENUE STAMP]

EDWIN A. PARKER,
Clerk.
By BURTON A. GASKILL, 20
Deputy-Clerk.

TESTIMONY.

ATLANTIC COUNTY COURT OF QUARTER
SESSIONS.

10

STATE,

vs.

MICHAEL RUBERTONE.

}

INDICTMENT FOR
RAPE.

Mays Landing, N. J., October 20th, 1914.

20

TESTIMONY

Before HON. C. C. SHINN, Judge, and Jury.

30

APPEARANCES:

For the State: W. ELMER BROWN, ESQ., CHARLES P.
FUSCO, ESQ.

For the Defendant: MATTHEW JEFFERSON, ESQ.

MILLIE GIETTE, SWORN.

Direct examination.

By Mr. Brown:

Q. Miss Giette, where do you live?

A. Lake Avenue; I live to Hammonton, Lake Avenue. 10

Q. How long have you lived there?

A. Why, I think it is eight years.

Q. How old are you?

A. Sixteen, going on seventeen.

Q. When were you sixteen?

A. Twentieth of May.

Q. Last?

A. Yes, sir.

Q. Do you know the defendant, Michael Rubertone? Do you know Michael Rubertone? 20

A. Yes, sir.

Q. This man here?

A. Yes, sir.

Q. How long have you known him?

A. Why, it is eight years I have known him well.

Q. Ever since you have been in Hammonton?

A. No; I have been in Hammonton twelve years, but I didn't know him well at first.

Q. In June of 1912 what were you doing?

A. Picking raspberries on his place. 30

Q. Where?

A. Mike Rubertone's place.

Q. Were any others picking berries there at the time?

A. No, sir; it was the first day and they didn't have any more pickers there.

Q. What day was this?

A. Eleventh of June.

Q. Eleventh of June?

A. No, sir; fourteenth of June.

Q. Did you have any conversation with Mike Rubertone that day? Did you have anything to say to him or he say anything to you?

A. Yes, sir.

Q. What was it?

10 A. Why, while I was picking raspberries and I was turning my back to him picking raspberries, he came in back of me and threw me down and said, "Here, listen; now I am going to do something nice to you; you must not tell nobody what I did to you but stand still; it is going to be something very nice; if you tell your mother or your father or anybody I will kill you, I will show you what I will do to you, I will do something that you don't like, I will kill you," he said, so I didn't tell my mother. I was

20 afraid of my mother and him, too, so I didn't tell.

Q. When he threw you on the ground what happened?

Mr. Jefferson: I object to that as leading. There is no testimony to show she was thrown on the ground.

The Court: Yes, there is.

30 A. He took me and threw me down and laid on me and done what he oughtn't to do.

Q. Did he have intercourse with you? Do you know what I mean by that?

A. No, sir, I don't know what you mean.

Q. What do you mean when you say he did something to you that he ought not to have done?

A. I don't know what you mean.

Q. Just tell us what happened, everything that happened after he threw you on the ground.

A. Why, he took me and threw me on the ground and done that to me.

Q. Did he pull up your clothes?

A. Yes, sir.

Q. Did he take down his trousers?

A. Yes, sir.

Q. Did he expose his person?

10

A. Yes, sir.

Q. Did he get on top of you?

A. Yes, sir.

Mr. Jefferson: That is leading, it seems to me, and I object to it.

The Court: It is somewhat leading, but the witness does not seem to want to tell, and I do not know that I blame her. If the Prosecutor can get the story out of her in as modest a way as possible, I think it is all right. 20

Mr. Jefferson: I withdraw the objection.

Q. After this occurred what did you do?

A. I don't know what you mean.

Q. After you got up what did you do?

A. I sat down and stayed there.

Q. What did he do?

30

A. He started to pick again.

Q. At this time did you make any outcry? Did you holloa?

A. Yes, I hollered for his father. His father was on his way when he caught me and threw me down, and his father made that he was in a hurry to go home, that he didn't hear me.

Q. How far was his father away from you?

A. He was about from here down to that man over there, Umicella.

Q. About from where you are to where that man stood up?

A. Yes, sir.

Q. Did this ever happen after that?

A. Yes, sir.

Q. When?

10 A. Why, it was about the last of June he started to tell me that he would marry me and that he wouldn't do any harm to me, so I done it over again.

Q. Did it ever happen after that?

A. Yes, sir.

Q. When?

A. Why, it was in the month of September after the pickers went away. They didn't have any pickers to pick their berries and they came and called me because they said, "There is a lot of berries and
20 the Philadelphia pickers don't want to pick no more," so they come and called me and other pickers around the neighborhood. When the other pickers around the neighborhood had the time, they would come. When they didn't have time, I would go.

Q. What part of September was this that this occurred?

A. About the beginning part.

Q. Did it ever occur after that?

A. Yes, sir.

30 Q. When?

A. Oh, it was a few days after that.

Q. Where did it occur then?

A. A few days after that.

Q. No; where did it occur?

A. Always in his place, in the field.

Q. What did he say to you at that time?

A. Why, he said, "We want to do what we done last time." He says, "Don't worry yourself; I will marry you all right." He says, "I like you better than any girl around this neighborhood."

Q. Did it ever occur after that?

A. Yes, sir.

Q. Do you recall when?

A. Well, I don't know the date.

Q. Well, was it in September?

A. Yes, sir, just a few days after that.

10

Q. When was the last time that he did that to you, about when?

A. Well, it was about the last—the later part of September, the middle part.

Q. What did he say to you then, do you recall?

A. Sir?

Q. Do you recall what he said to you then?

A. Why, he said the same thing over. He said, "I will marry; don't worry yourself and don't dare to tell your mother," he said, "but if you tell your mother I will show you what I will do to you, I will kill you, I will do something fierce to you," he said.

20

Q. Have you ever done the same thing with any other man?

A. No, sir.

Q. Is that child your child?

A. Yes, sir.

Q. When was that child born?

A. Eleventh of June, 1913.

Q. Where was it born?

A. In the hospital.

Q. Where?

A. Jefferson Maternity Hospital.

Q. Philadelphia?

A. Yes, sir.

30

Q. At any of these times that this occurred was there anybody in the field?

A. No, sir.

Q. Any part of the field?

A. No, sir. Why, there was twenty acres of land in his place and nobody was there but him and me. Sometimes the father came and helped, sometimes he would go home and do the housework.

Q. How early did you go to work in the morning?

A. Five and six o'clock every morning.

10 Q. Did the defendant ever come around after you to go to work?

A. Yes, sir; the father came every morning. Sometimes he come, too.

Q. Did they ever come after you earlier than usual?

A. From five to six o'clock in the morning?

Q. Did they ever come after you earlier than was your time to go to work?

20 A. Yes, sir, they used to come before and call me. When they see more berries, they come after me and when they had no berries I wouldn't go. I wouldn't go over there every day because they didn't have anything to pick every day.

Q. Do you recall how many times in all that the defendant did this to you?

A. Well, I don't know. About six or seven or eight times I suppose.

Q. Did you tell your mother or father about this?

A. No, sir.

Q. How did they find it out?

30 A. Why, at last I told them.

Q. Who did you tell?

A. My mother.

Q. Did you tell your father?

A. No, sir.

Q. Why didn't you tell your father?

A. Why, I was afraid to tell him.

Q. How did you come to go to Philadelphia?

A. Why, I felt sick and my mother took me down there to examine me to see what was the matter with me, so they examined me and told me I was in trouble.

Q. With whom did you stay in Philadelphia?

A. My aunt. I stayed six weeks with my aunt.

Q. How did your father find out about it?

A. Why, then after that we come home and put the baby in a home, and I went home. First I put 10
the baby in a home and then I went home and after Mike's stepmother came and bothered us in the house and his father, saying that we blamed him and why we didn't go down to his house, and this and that, so then I told my stepfather.

Q. Do you know Lucy Mazzo?

A. Yes, sir.

Q. Do you know Frank Mazzo?

A. Yes, sir.

Q. Did they ever pick berries on this farm? 20

A. Yes, sir.

Q. Were they ever around on the days that this occurred?

A. Why, they weren't around when this occurred, but they were around when he used to come after me and pick berries in my row and talk to me all the time and bother me.

Q. They were in the same field, you mean?

A. Yes, sir.

30

Cross-examination.

By Mr. Jefferson:

Q. When were you born, little girl?

A. 1998.

Q. 1898, you mean?

A. Yes.

Q. And where?

A. Italy.

Q. And when did you come to this country?

A. When I was four years old.

Q. And how long have you lived in Hammonton?

A. Twelve years.

Q. When you came to this country did you come
10 directly to Hammonton?

A. Yes, sir.

Q. When you came to Hammonton with whom did
you live?

A. With my father.

Q. With your father?

A. Yes, sir.

Q. Or your stepfather, which?

A. Father. My right father.

Q. Your right father?

20 A. Yes, sir.

Q. How long did you live with your father, your
right father, we will call him?

A. I don't know; four years, I think; I am not
sure.

Q. When did your father die?

Mr. Brown: I object. I do not see that it is ma-
terial or relevant.

30 Mr. Jefferson: I want to show the home life of
this girl.

The Court: What possible bearing could the home
life of the girl have?

(Counsel confer with the Court at side bar.)

(In open court.)

(Question repeated.)

The Court: You may answer.

A. Why, I don't know when he died.

Q. Was he living home when he died?

A. No, he was in the hospital when he died.

Q. How long ago was that, do you remember? 10

A. No; I think it is about four years ago, but I can't say sure.

Q. When did you first meet Michael, the defendant?

A. I don't know what you mean.

Q. When did you first meet Mike here?

A. Meet him?

Q. Meet him. When did you first know him?

A. Why, it is eight years ago.

Q. Eight years ago? 20

A. Yes, sir.

Q. Now, are you sure that it was the fourteenth day of June when —

A. Why, yes, sir, because the day before was an Italian holiday, and his father went to church on the thirteenth, and he came down to my house and said that if I would go and help him to pick the next day.

Q. You are sure it was on the fourteenth of June?

A. Well, I can't say it sure, but I think it is that day. 30

Q. In what part of the field were you working?

A. Why, one end of the field.

Q. Is this a big field?

A. Twenty acres of land.

Q. Twenty acres of land?

A. Yes, sir.

Q. In that twenty acres of land isn't there in the middle of it a berry pickers' house?

A. Why, yes, there is just a shed, but there is nobody in the shed.

Q. No. I just asked you about it.

A. Yes.

Q. Isn't that in the center and then meeting all around that are the different fields, the different raspberry plants and things? No fences there, are there?

10

A. No, sir.

Q. Where you were picking was it right up back of Mr. Rubertone's house or not, that day that you first picked there? Was it right out in back of Rubertone's house?

A. Yes, sir.

Q. You were not picking for Mike? You were picking for Mike's father?

A. Yes, sir.

20 Q. It was on Mike's father's farm that you were working?

A. Yes, sir.

Q. You were picking in the raspberry patch. Was that between the shanty and the house of the Rubertones?

A. No, sir.

Q. Was it the other side of it?

A. It was right in the raspberry field.

Q. Well, where is the raspberry field?

30 A. Way down one corner of his place.

Q. Away down one corner of his place?

A. Yes, sir.

Q. On the day you were working there who were picking?

A. Why, the first day I was picking there was me, him and his father. Then the —

Q. No; I mean the first day. The first day there was Mike here and his father and you?

A. Yes, sir.

Q. Where was his father?

A. Why, right near me. We had a row apiece, one next to each other.

Q. And the father was right around there all the time?

A. No; then he went away.

Q. How far did he go?

10

A. He went down to the house.

Q. Well, how far were you from the house?

A. Well, I don't know how far.

Q. When you say house you mean the shanty?

A. No; house.

Q. His residence?

A. Where he lives.

Q. How far was it?

A. I don't know how far it is. I know it is pretty far.

20

Q. As far as across this room?

A. Oh, further than that.

Q. How much further, little girl?

A. I guess about three times further; further yet.

Q. You say that you holloaed?

A. Yes, sir, and the father heard me, and he made out that he didn't hear me, and walked right ahead.

Q. He was near enough to hear you when you spoke?

A. Yes, sir.

30

Q. Or when you holloaed? This was on the fourteenth day of June. What did Mike say to you first that day?

A. Why, he didn't tell me anything before he threw me down.

Q. Just grabbed hold of you and threw you down?

A. Yes, sir; I was picking and he came in back of me and he just grabbed hold of me and threw me down and said, "Here now, shut up; I am going to do something nice to you; don't say a word."

Q. Did he hurt you?

A. Yes, sir. He said, "This is going to be something very nice, but it isn't anything nice to tell your parents or anybody."

10 Q. Before he threw you down did he tell you not to tell anybody?

A. No, he didn't tell me anything before he threw me down.

Q. Just grabbed you and threw you down?

A. Yes, sir.

Q. With his father right close?

A. Yes, sir, his father was just on his way, starting to go.

Q. When was the next time?

A. The next time was the later part of—the end
20 of June.

Q. Where was this?

A. Why, in his place.

Q. Did all of these take place on his place?

A. Yes, sir.

Q. The first time he bothered you was on the fourteenth of June?

A. Yes, sir.

Q. And the next time was in the latter part of
June?

30 A. Yes, sir.

Q. At the same place?

A. Yes, sir, right in the same place, in the raspberry field.

Q. Did he assault you anywhere else?

A. No, sir.

Q. Didn't meet you out anywhere?

A. No, sir.

Q. Now, from the thirtieth of June until September you didn't have anything —

A. I didn't go over there and pick. He had a lot of pickers from Philadelphia picking then, so I didn't go to pick that year. I just went to help then when they needed help.

Q. You didn't meet Mike out anywheres?

A. I met him lots of times, but he never said a thing to me out on the road.

10

Q. Where were you in the month of September?

A. In his place, picking raspberries.

Q. Every day?

A. No, not every day. Just when they needed help.

Q. Did you work anywhere else at that time?

A. Yes, sir.

Q. Where?

A. I picked cranberries, too.

Q. How about huckleberries?

20

A. No huckleberries in the month of September.

Q. When do you pick huckleberries?

A. In July and August.

Q. Where did you pick cranberries?

A. In September.

Q. Where?

A. For Phil Wescott.

Q. How long did you work up there?

A. Just when they didn't need help.

Q. When Rubertones didn't need help you went up and worked for Mr. Wescott?

30

A. Yes.

Q. Stay up there all night?

A. I stayed there two nights.

Q. Who was up there then?

A. Why, there was my stepfather, my brother,

and a man by the name of Frank Southard and another man by the name of Jesse, I don't know his last name, and another man by the name of Joe, I don't know his last name.

Q. Where did you live there?

(Objected to. Question withdrawn.)

- Q. I direct your attention to the thirtieth of June.
- 10 Who were in the field then?
- A. Nobody.
- Q. Just you and Mike?
- A. Yes, sir.
- Q. Father there?
- A. Yes, sir; then he went to feed the horse at noon time.
- Q. This was at noon time on the thirtieth of June that he did this?
- A. Yes, sir.
- 20 Q. Out in the berry patch?
- A. Yes, sir.
- Q. After the first time, you were with him several other times; he didn't force you any time except the first?
- A. No, sir.
- Q. You were willing to?
- A. Yes, sir.
- Q. And you say all the time between the thirtieth day of June and September, that you did not have
- 30 anything to do with him or he with you?
- A. No, sir.
- Q. He didn't call on you anywhere?
- A. No, sir.
- Q. Well, how is it that you didn't make any complaint about this? This thing happened away along in June.

A. Well, I was afraid to tell my mother.

Q. What?

A. I was afraid to tell my mother.

Q. You were afraid to tell your mother?

A. Yes, sir.

Q. This went from—when did you make a complaint?

A. Well, I made a complaint when I was six months gone.

Q. To whom?

10

A. To my mother.

Q. When did you make a formal complaint, having this boy arrested?

Mr. Brown: That is objected to as irrelevant and immaterial.

The Court: What difference could that make?

Mr. Jefferson: The time elapsing from the hap- 20
pening of this affair was over a year before the
complaint was made.

(Question repeated.)

(Question allowed.)

Mr. Brown: I object to it for another reason, by
reason of the fact that I do not know that there is
anything in evidence to the effect that this girl made 20
a complaint.

The Court: On that ground I will have to over-
rule the question.

Q. Who made the formal complaint in this case?

(Objected to.)

The Court: I think you will have to confine yourself to cross-examination.

Mr. Jefferson: I will withdraw those questions.

Q. How about in the September pick, was there anybody there besides you and Mike?

A. Why, sometimes there were.

Q. Who were there?

10 A. Why, there was Mr. Mazzo's children, and different other families who picked.

Q. And you say that you and he were together with other people around out in the open field?

A. Why, no.

Q. Where were you?

A. Why, when other people weren't there.

Q. You have just said there were several people working there at the time.

A. No, not when that happened.

20 Q. You say it happened on the sixth day of September; where was that?

A. Why, in his place.

Q. What part of his place?

A. In the raspberry field.

Q. Out in the field?

A. Yes, sir.

Q. And there were other pickers there?

A. No, not that day.

Q. Not that hour or time that it happened?

30 A. No, sir.

Q. You didn't meet him anywheres else besides in the berry patch?

A. No, sir.

Q. Did you see him every day along during July and August?

A. Why, sometimes I used to see him when I went out in places.

Q. He didn't meet you anywheres or come to your house?

A. Oh, yes, he used to come down to my house, but not anything like that.

By Mr. Brown:

Q. Millie, at the time that Mike first did this to you, had you yet had your periods?

A. Yes, sir.

10

Q. And when was it that your periods ceased?

A. I don't know what you mean.

Q. When did they stop? I mean by that your monthly discharges?

A. Why, just a few days before he had anything to do with me.

Q. Was the first that you had them, you mean?

A. Yes.

Q. Now, when was it that your monthly period stopped?

20

A. Why, in October. Didn't have any in October.

Q. Do you recall the time in October, whether it was the early or latter part?

A. I didn't have them at all in October.

Q. Do you remember what part of October they were due?

A. Why, I don't know.

Q. When should you have had them? Do you know that?

A. Why, the first part of October some time.

30

LUCY MAZZO, sworn.

Direct examination.

By Mr. Brown:

Q. Lucy, where do you live?

A. I live in Hammonton, on Lake Street.

10 Q. How old are you?

A. I will be fifteen the second of November.

Q. Did you ever work for Michael Rubertone's father?

A. Yes, sir.

Q. On his farm?

A. Yes, sir.

Q. What did you do?

A. Picked raspberries.

20 Q. Were you picking raspberries there in the summer of 1912?

A. Yes, sir.

Q. Was Millie Giette working there, too?

A. Yes, sir.

Q. Did you write this letter?

A. Yes, sir.

Q. Who did you usually pick raspberries with?

A. Picked with the pickers?

Q. Yes, who usually picked raspberries with you?

30 A. My brother. My brother and I picked in the same row all the time.

Q. Did Millie ever ask you to pick raspberries with her?

A. Yes, sir.

Mr. Jefferson: I do not see the pertinency of that.

Mr. Brown: I am leading up to the pertinent part.

Q. Was Michael present at the time she asked you that?

A. Yes, sir.

Q. What did Michael say?

A. Michael said, "Millie is going to pick with me today."

Q. Tell us again what did he say?

A. He says that, "Millie is going to pick with me today."

Q. Who usually picked raspberries with Millie? 10

A. Well, every time I was there they always picked together, Michael and Millie.

Q. Well, when Millie had picked her pail full of berries, what did she do with them?

A. She used to go put it down then.

Q. Where?

A. In the shanty.

Q. In the shed?

A. In the shed, yes, sir.

Q. Did she go there alone? 20

A. Yes, sir.

Q. Or did some one else go with her?

A. No, she used to go alone.

Q. Did Michael ever go with her?

A. I never saw him.

Q. Do you remember saying in this letter that Mike used to go, too?

A. Yes, sir.

Q. Wasn't that right?

A. Yes, that is right. 30

Q. You forgot?

A. Yes, sir.

Q. Has Mr. Rubertone been talking to you about this case?

A. I don't remember.

Q. What?

A. Once he did.

Q. Did he tell you what to say?

A. Yes, sir.

Cross-examination.

By Mr. Jefferson:

Q. What Mr. Rubertone spoke to you?

10 A. Well, he spoke while we were going—if we were coming over here or not.

By the Court:

Q. Which Mr. Rubertone?

A. Michael, of course.

Q. This young man here?

A. That young man there, yes, sir.

20 By Mr. Jefferson:

Q. When was that, Lucy?

A. I can't remember when it was.

Q. One Sunday?

A. No, it wasn't in Sunday.

Q. Where was it?

A. In my house; he came over.

Q. What did he say to you?

30 A. Well, I wasn't home then. I had just come home from somewhere and he was talking to my mother, and then he asked me what I was going to say and I told him just what I was going to say.

Q. What did you tell him?

A. Just what I said just now. I says that, "You always picked there and you two picked together in the same row, and that one morning Millie says to

me, 'Lucy, you pick with me today,' and you said, 'No, Millie is going to pick with me.'"

Q. Was this out in the open field?

A. Yes.

Q. Other pickers around there?

A. Yes, sir.

Q. Along the row?

A. No; in the field.

Q. Along the field?

A. Yes.

10

Q. How far is the shanty from where they were picking?

A. Oh, it was far from the field.

Q. Far?

A. A little far. Not so far, though.

Q. How far?

A. I can't say. I don't know how much far it is.

Q. As far as across this room?

A. No, a little farther than this.

Q. Isn't the raspberry field right close to the shanty, and then going off from it?

A. Yes.

Q. Any woods or anything around there, any woods or trees?

A. No, the woods are further. Well, not trees that grow in the woods, but pear trees and those things.

Q. Just fruit trees?

A. Yes.

Q. Set apart?

A. Yes.

30

Q. None close together?

A. No; not so close together.

Q. Can't you see all over the raspberry field?

A. Sure.

Q. Did Mr. Rubertone tell you anything to say here?

A. No, he didn't tell me.

Q. Did he tell you anything not to say?

A. No, he didn't say nothing I ought to say. Just he said, when he told me that Millie wanted to pick with me, he says he meant that—he said he didn't mean anything different. He says, "You ought not to say that." He says, "That is just because you two girls didn't want to pick together."

10

FRANK MAZZO, SWORN.

Direct examination.

By Mr. Brown:

Q. Frank, how old are you?

A. I will be fourteen the third of December.

20 Q. You live in Hammonton?

A. Yes, sir.

Q. Are you the brother of the little girl that was just on the stand?

A. Yes, sir.

Q. Did you write this piece of paper?

A. Yes, sir.

Q. Did you ever work for Michael Rubertone's father?

A. Yes, sir.

30 Q. What did you do there?

A. Picking raspberries.

Q. Did you pick alone or with someone else?

A. No; we were picking together.

Q. Who?

A. Several people were there.

Q. Who usually picked in your row with you?

A. My sister.

Q. Did Millie Giette work there?

A. Yes, sir.

Q. She picked berries, too?

A. Yes, sir.

Q. Who usually picked berries with her?

A. Michael Rubertone.

Q. Well, did they stay right by you and your sister?

A. No, sir; they used to go a little ways ahead. 10
They were more faster, of course, and they used to go a little ways ahead.

Q. Did you ever say anything to Michael about that? Ever tease him about it?

A. No, sir.

Mr. Jefferson: I object to that as leading.

The Court: I think it is. Ask him what he said, if anything.

20

A. One time we were picking together and I just played, I said, "Is Millie your girl?" And he said, "Yes."

Q. What did Millie do with her berries after she would pick them?

A. Go put them down in the shed.

Q. What did Mike do then?

A. Used to go there and give her the tickets.

Q. At any time that they went to the barn or this shed together, did you follow them?

30

A. No, sir.

Cross-examination.

By Mr. Jefferson:

Q. How old are you now?

- A. I will be fourteen the third of December.
- Q. Third of next December? What year was this you worked in Rubertone's field?
- A. In 1912.
- Q. You were not then twelve years old?
- A. Yes, sir.
- Q. You were eleven years old then?
- A. Yes, sir.
- Q. Who got you to write this letter that the Prose-
- 10 cutor has been reading from?
- A. I wrote it myself.
- Q. Who asked you to write it?
- A. Millie told me to write it.
- Q. Millie told you to write it? Who did she tell you to write it to?
- A. Told me to write it to her witness.
- Q. To the witness? Who was there when you wrote it?
- A. Only me and my sister.
- 20 Q. You and your sister?
- A. My sister wrote hers and then I wrote mine.
- Q. What did you write a letter for?
- A. I don't know.
- Q. Did you talk over what you were going to put in the letter, you and your sister?
- A. No, sir.
- Q. Did Millie?
- A. No, sir.
- Q. Nobody said anything about it?
- 30 A. No, sir.
- Q. You just wrote?
- A. Just wrote what I knew.
- Q. What did you know?
- A. Because we were picking in the patch together and they were picking one row and we picked in another row. They always used to go a little ways ahead.

Q. Did you ever see them alone there together?

A. No, sir.

Q. Did you ever see them in the shanty any length of time?

A. No, sir.

By the Court:

Q. Did you write that memorandum there, or letter, so that you would remember? 10

A. Yes, sir.

MRS. GIOVANINO SCAZZA, SWORN.

The Court: Ask her if she understood when the clerk was talking to her? 20

(Witness sworn through the official interpreter.)

Direct examination.

By Mr. Brown:

Q. Mrs. Scazza, you live in Hammonton?

A. Yes, sir.

Q. Are you the mother of Millie Giette? 30

A. Yes, sir.

Q. How old is Millie?

A. She was sixteen years old on the twenty-second of May.

Q. Of this year?

A. Yes, sir.

Cross-examination.

By Mr. Jefferson:

Q. Did your daughter live with you?

Mr. Brown: That is objected to. It is improper cross-examination. I only put this witness on to
10 prove the age of the girl. That is all he can cross-examine on.

The Court: She testified that she was the mother of Millie.

Mr. Brown: That is true. I have got to show that she is the person who is apt to know. She is the mother of the child and the person who is most apt to know the age of this girl.

20

The Court: I think the question is proper, and will admit it.

A. Yes, sir.

Q. Has she lived with you all her life?

A. All the time, ever since she was born.

30 DOCTOR JOHN I. FAUNCE, SWORN.

Direct examination.

By Mr. Brown:

Q. Doctor, you are a physician?

A. Yes, sir.

Q. In Philadelphia, are you not?

A. Yes, sir.

Q. Did you ever serve a position as resident physician in the Jefferson Maternity Hospital?

A. Yes, sir; the months of June and July of the year 1913 I was resident in the Jefferson Hospital, and my duty during June and July of 1913 was over at the maternity at Seventh and Locust.

Q. Do you know Millie Giette, the young lady who was on the stand? 10

A. I recognized the features of Millie, but she gave her name at the time she was at the Jefferson Maternity as Millie Sarcey, of Hammonton, New Jersey, Lake Avenue.

Q. Was she admitted to the Jefferson Hospital at that time?

A. She was admitted on June eleventh, 1913, to the Jefferson Maternity.

Q. Was a child born to her at that time?

A. A male child, to which she gave the name of Albert, was born on June eleventh, 1913, at two o'clock. Rather, at four fifty-five P. M., the child was born on June eleventh, 1913. 20

Cross-examination.

By Mr. Jefferson:

Q. How long was she in Jefferson Hospital?

A. She entered Jefferson Maternity on June eleventh, 1913, and was discharged with the child on June thirtieth, 1913. 30

Q. Were there other girls there at the same time?

A. You mean other patients?

Q. Yes.

A. Yes.

Q. In the maternity ward?

A. Oh, yes.

Q. Numbers of them?

A. Well, I guess at that time we had about eleven patients or twelve, somewhere around that.

Q. And they were all in the same room, associated together?

A. There were two large rooms in which we had the patients, and about six patients, five to six patients in each room.

Q. Where they could talk to each other?

A. Where they could talk to each other. Their beds were adjacent, but Millie's bed—well, yes, they could talk if they strained their voices in any way.

STATE RESTS.

DEFENDANT'S TESTIMONY.

THOMAS A. ELVINS, SWORN.

Direct examination.

By Mr. Jefferson:

30 Q. Mr. Elvins, where do you live?

A. In Hammonton.

Q. How long have you lived there?

A. About forty-three years.

Q. Do you hold any office there?

A. I am postmaster.

Q. Are you also associated in any business?

A. No. Clerk in a store, my father's store.

Q. Do you know Michael Rubertone?

A. I do.

Q. How long have you known him?

A. For many years. I don't know how long.

Many years.

Q. Do you know others that know him?

A. Oh, yes; many.

Q. Do you know his reputation in the community where he lives for good order and quietness? 10

A. I do.

Mr. Brown: That is hardly the question. It is not good order and quietness.

Q. How long have you known this boy, did you say, and known others that know him?

A. How many years?

Q. Yes.

A. I can't say. I should say for fifteen years, 20 but I am not sure. I couldn't tell you off-hand whether he were born in Hammonton or came as a boy.

Q. You have known him there for a number of years and know others that know him there?

A. Yes.

Q. What is his reputation for truth and honesty there?

A. Good.

30

No cross-examination.

WILLIAM L. BLACK, sworn.

Direct examination.

By Mr. Jefferson:

Q. Mr. Black, where do you reside?

A. Hammonton.

10 Q. What is your business?

A. Storekeeper.

Q. Do you know the Rubertone family?

A. Yes, sir.

Q. Do you know Michael Rubertone, the defendant here?

A. Yes, sir.

Q. How long have you known him?

A. Well, a great many years.

Q. Do you know others that know him?

20 A. Yes, sir.

Q. Do you know what his general reputation in the town of Hammonton is in the community in which he lives for peace and truth, good order and chastity?

A. It has been very good, as far as I know.

Cross-examination.

By Mr. Brown:

30

Q. Mr. Black, this farm where Michael worked was your farm, wasn't it?

A. No.

Q. I have been misinformed. You have testified that Michael's reputation for chastity was good as far as you know. You are acquainted with the charge that is made here?

A. Yes, sir.

Q. If this charge had actually occurred, do you think you would have heard of it? Is it likely that you would have heard of it, the offense?

A. Well, just as soon as there was any talk of this case in Hammonton, I heard of it. Is that what you mean?

Q. Yes.

A. It was noised about.

Q. After he had been arrested?

10

A. Yes, sir; before he was indicted.

Q. After he had been arrested?

A. Yes, sir. That was the first knowledge I had of it.

Q. If it had not been for that you don't think you would have heard of it, do you?

A. No, sir.

By Mr. Jefferson:

20

Q. Are you familiar with this farm, Mr. Rubertone's farm, where they were working?

A. Yes, sir. I pass by there once a week, at least.

Q. Is it a big farm?

A. Why, the young lady testified it was about twenty acres. I should say that was about right. Of course, that is not a large farm.

Q. Have you been out in the field so that you know where the raspberry patch is?

A. No, sir. I just pass along the Pleasant Mills Road. 30

LOUIS O'DONNELL, SWORN.

Direct examination.

By Mr. Fithian:

Q. Where do you live, Mr. O'Donnell?

A. Hammonton, Atlantic County, New Jersey.

10 Q. Do you know anybody up there?

A. Yes.

Q. Do you know Michael Rubertone?

A. Yes, sir.

Q. Do you know others that know him?

A. I do.

Q. How long have you known Mike?

A. Well, a good many years; might be twenty or twenty-five.

Q. Do you know others that know him?

20 A. I do.

Q. Do you know his reputation for peace and good order and chastity in the town of Hammonton?

A. I do.

Q. What is it?

A. Good.

Cross-examination.

By Mr. Brown:

30

Q. You are acquainted with the charge that is made against him here, for which he is being tried?

A. I have heard about it; yes.

Q. When did you first hear about it?

A. Why, when he was arrested.

Q. Do you think that if the offense had actually

occurred that you would have heard of it if he had not been arrested?

A. I do not.

GEORGE STROUSE, SWORN.

Direct examination.

10

By Mr. Jefferson:

Q. Judge, where do you live?

A. Hammonton.

Q. Why do they call you judge?

A. I suppose because I am a Justice of the Peace.

Q. Do you know Michael Rubertone?

A. I do.

Q. Do you know others that know him?

A. Yes, sir.

20

Q. Do you know his reputation for peace, good order, truthfulness, in the community?

A. I do.

Q. What is it?

A. Good.

Cross-examination.

By Mr. Brown:

30

Q. You know of the charge that has been made against the defendant here, for which he is being tried?

A. I heard of it.

Q. When did you first hear of it?

A. About the time he was arrested.

- Q. After he was arrested?
 A. After he was arrested.
 Q. Do you think it likely you would have heard of it before then, if he had not been arrested?
 A. No, I don't think so.
-

ROCCO RUBERTONE, SWORN.

10

Direct examination.

By Mr. Jefferson:

- Q. Mr. Rubertone, where do you live?
 A. Hammonton.
 Q. Do you know Mike Rubertone?
 A. Yes, sir.
 Q. How long have you known him?
 20 A. Why, since he was a boy.
 Q. Do you know others that know him?
 A. Yes, sir; a lot of them.
 Q. Is he any relation to you?
 A. Why, his father is my cousin.
 Q. Well, is he any relation to you any other way beside that?
 A. Yes; my son-in-law.
 Q. When did he marry your daughter?
 A. Why, he married my daughter, it was in March
 30 or April.
 Q. Of this year or last year?
 A. Last year.
 Q. 1913?
 A. 1913.
 Q. Where does he live?
 A. He lives right across from where I live.

Q. Are you familiar with this farm of your cousin, this man's father?

A. Yes; right across the street.

Q. Do you know this young man's reputation for peace and good order and chastity in the town of Hammonton?

A. Yes, sir.

Q. When did you first know of his trouble with this Millie Giette?

A. When I knowed was at the time he was ar- 10
rested.

Q. You didn't know it until he was arrested?

A. When he was arrested.

Q. What is Mike's reputation for peace and good order?

A. Why, it is very good, or else I wouldn't have let him marry my daughter.

Q. You have known him since he was a little boy?

A. I have known him since he was born. He was born in my brother's house. I know him since he 20
was born.

Q. Was that your daughter that was sitting here?

A. That was my daughter.

Q. Mike's wife?

A. Mike's wife.

Cross-examination.

By Mr. Brown:

30

Q. You say that the defendant's reputation for peace and honesty and order and chastity is good as far as you know?

A. I didn't say as far as I know.

Q. Isn't that the truth, as far as you know? As far as you know it is good?

A. It is very good.

Q. As far as you know?

A. Well, I don't know anything wrong about him.

Q. Well, then, it is as far as you know. All right.
That is all.

JAMES RUBERTONE, SWORN.

10

Direct examination.

By Mr. Jefferson:

Q. James, where do you live?

A. In Hammonton.

Q. Are you any relation to Mike?

A. Yes, sir; I am his brother.

Q. Do you know this gentleman sitting in front of
20 me?

A. Yes, sir; I do. I met him once.

Q. When?

A. I think it was about the seventeenth or eighteenth day of December.

Q. Where did you meet him?

A. Stephen Girard Building, Twelfth and Chestnut, in his office.

Q. How did you come to meet him there?

A. We received a letter from him on the fifth day
30 of December stating for my brother to be up there on Tuesday, I think it was, so while on my way up I stopped in to see what he wanted. He didn't state in his letter what he wanted him there for, so I stopped in to see.

Q. What did he want when you got there?

A. When I got there —

(Objected to.)

The Court: What is the purpose?

Mr. Brown: If the purpose is to be stated, I wish it stated at side bar.

(Counsel confer with Court at side bar.)

(In open Court.)

10

Q. James, for whom did you go to see Mr. Fusco?

A. Well, I stopped in there while I was going up to the city, to go and see what he wanted of Michael Rubertone.

Q. Did Mike ask you to go?

A. Why, no, Mike didn't ask me to go, but I stopped in —

Mr. Brown: I object.

20

Q. Who did ask you to go?

Mr. Brown: I object.

The Court: Your question is not proper. If the brother did not ask him to go, no one else had any authority, I assume, to constitute him an agent. I think you will have to show that he was an agent of the defendant. In other words, I do not think you will be permitted to show that he went to see this gentleman out of mere idle curiosity.

30

Mr. Jefferson: Oh, no; I do not want to do that.

The Court: That seems to be what happened up to date.

Q. Who received the letter from Mr. Fusco?

A. Why, Michael received the letter.

Q. How did you get it?

A. Well, Michael came up there in the morning and told me about it and I said, "Well, I am going up; if you want me to stop in, I will stop in and see." He says, "Well, it will save me the trip, we are busy," so I went up to the city and went to the Stephen Girard Building the first thing and inquired
10 for Mr. Fusco's office. They took me up there.

Mr. Brown: You have answered the question.

The Court: I think that establishes an agency.

Mr. Brown: That establishes it so far.

Q. Now, Mr. Rubertone, just answer my questions and do not give us a lecture.

20 A. All right.

Q. Then you went to the Stephen Girard Building and saw this gentleman?

A. Yes, sir.

Q. Who were there?

A. Why, his bookkeeper was there.

Q. Was there anybody else there?

A. No, there was nobody else.

Q. No other of the defendants here?

A. No.

30 Q. This girl was not there?

A. No. They had been there, but they wasn't there then.

Q. How do you know they had been there?

A. Because he told me.

Q. What did he tell you he wanted of you?

Mr. Brown: I object, because, although he has

established one agency, he has to establish two. He has got to show that this man was acting under an authority before any transaction between this witness and this attorney can be binding in this case at all. I object to that evidence unless he can show that relationship between the complaining witness and this attorney. Even though he wrote the letter, that does not show agency. You have to show that he wrote that letter under authority.

The Court: Do you mean to say, Mr. Brown, that the defendant could not constitute his brother an agent to go and ascertain —

10

Mr. Brown: No, sir; that agency is established.

The Court: Now they are trying to find out why this attorney wrote to the defendant.

Mr. Brown: But, if your Honor please, if it was in connection with this case, the State cannot be bound by anything that this attorney might have said, unless the defense can show that he was authorized by the complaining witness to make those statements. You have got to establish two agencies here.

The Court: I understand that, but suppose Mr. Fusco stated to this witness that he did represent the complaining witness?

20

Mr. Brown: That does not even bind the complaining witness. You have got to show that whatever statements the attorney made, the complaining witness authorized him to make, the same as you have to show that whatever statement this witness

made the defendant authorized him to make. There is the same relationship that has got to exist.

The Court: I think the examination is proper, Mr. Brown. I will admit the question.

Q. What did Mr. Fusco say to you, if anything?

A. Why, he says to me, he says that my brother—
10 going to be a charge brought before him if he didn't go there that week, make an appointment with him, and Mr. Testa and the girl would be there, and probably they could make a settlement right there.

Q. And there would not be any criminal charge?

A. No; and there was no charge, he said, there was no other way of my brother getting out of that, because it means from twenty-five to thirty years States Prison.

Q. This gentleman here told you that?

20 A. Yes, he told me that; and he says, "It doesn't make no bit of difference what anybody says; what the girl says goes, and nobody else can stop that, and whether he is guilty or not guilty, the best thing you can do is settle it."

Q. Did you settle?

A. I told him to write that down on the typewriter and I would take it over to my brother to see if there was any truth in it or not, and he says he wouldn't do anything like that.

30 Q. Are you familiar with your brother's place?

A. Yes, sir; I am.

Q. Do you work there?

A. I used to work there; yes.

Q. You don't live there now?

A. No, I don't live there now.

Q. Where is the raspberry patch in the field?

A. Raspberry patch, one is—well, it is about from here to the street out away from the house.

Q. Where is the shanty?

A. Right straight to it. It has got an open door, right facing to it.

Q. With respect to the shanty where is the raspberry patch that they were picking in in 1912?

A. Why, that was ——

Q. Between the house ——

A. Between the house and the shanty. 10

Q. If anyone is in the shanty, can they see all over the raspberry patch?

A. Yes, sir; they can see all over.

Q. Is the shanty on an elevation there or not?

Mr. Brown: Mr. Jefferson objected several times that I was leading the witness.

The Court: I think the questions are very leading. 20

Mr. Jefferson: I admit it, and apologize to the Court.

Q. You were not there during any of the season of 1912 while they were picking?

A. No; I was not.

Cross-examination.

By Mr. Brown: 30

Q. When did you go to see Mr. Fusco?

A. Why, I don't remember the exact date, but I think it was on the fifteenth we got the letter and it was either the seventeenth or eighteenth I went up. I couldn't say positively.

Q. Have you got the letter?

A. No; I had the letter and I take it up to Mr. Jefferson and then I get it again, and I never found a trace of it.

Q. You lost the letter?

A. Yes, sir.

Q. Tell me again what Mr. Fusco said.

A. Well, just as I said, I went into his office and I found the young lady there and she showed me
10 where he was at, and another young lady was in there, too, and he asked the young lady out of the office. She went out and he got me in there and closed the door and I asked him what he meant by—my brother wanted to know what he meant by sending him this letter and he says he represented Testa for a charge against my brother, but he said the charge wasn't brought as yet. He says, "It is this way: if your brother will make an appointment with me, to meet me here a certain date, I will have the
20 girl here and Mr. Testa and we will try to settle this case before there is any charge brought against him, because if there is any charge brought against him, he gets from fifteen to thirty years." I says, "Suppose he is not guilty?" He says, "It don't make a bit of difference, when a girl charges you with a rape that way, whatever she says goes." He says, "Your word don't amount to anything." He says, "The best thing to do in a case like that is settle it, and I advise you to tell your brother to make an
30 appointment with me and I will ask Mr. Testa and his daughter, as they say they have an appointment with me any time your brother is ready, and we will try to see if we can't straighten out the case."

Q. As a result of that you went to see your brother to find out the truth of what he said?

A. I asked him to write it down and I would give

it to my brother. He says, no, he wouldn't dare to do that, so I went back home and told my brother just what he says, and my brother says, "When I am not guilty I won't pay a cent for nobody, or settle it."

Q. Didn't he tell you at the time that someone had been to the Rubertone's offering to settle for two hundred dollars and he wanted to know whether or not it was a fact?

A. No, sir; I don't remember it.

10

Q. Isn't that the truth?

A. No, sir.

Q. I mean to Testa?

A. No, sir.

Q. Some of the Rubertones had been to Testa?

A. No, sir.

Q. Never said that?

A. Never said that.

Q. Did you make a note of this conversation at the time?

20

A. Well, I made a note of some of it.

Q. Where are your notes?

A. No note of it. I mean just remembering it.

Q. You remembered all that, did you?

A. Yes; what I heard, yes.

Q. When did you first tell Mr. Jefferson about it?

A. Well, when there was the arrest. Right after the arrest I thought I would tell Mr. Jefferson.

Q. How long after that?

A. It was on the following Friday.

30

Q. You never came in our office about this matter, did you, the Prosecutor's office in Atlantic City?

A. It wasn't the following Friday.

Q. Answer my question. You never went to the Prosecutor's office about this matter, did you?

The Court: He may correct his testimony.

A. We went there New Year's Day. That is when we went over to see Mr. Jefferson, New Year's Day, if I am not mistaken.

Q. You never were in the Prosecutor's office about this matter?

A. We were.

Q. What were you there for?

A. Why, they re-arrested him again, and when they re-arrested him again, then we came down.

10 Q. Do you know why they re-arrested him again?

A. Not sufficient bail or something like that.

Q. Nothing was said as to the facts of this case, was there? Did you see me there at the time?

A. Well, now, I couldn't remember whether I seen you there. If I see a man once, I don't —

Q. We never sent for you, did we?

A. No, I don't think so.

Q. We never sent for Michael, did we, only to have his bail renewed?

20

Mr. Jefferson: What is the purpose?

A. You re-arrested Mike, so they took him there.

Mr. Brown: They are trying to bind the State. I represent the State. I do not represent Millie Giette.

30 The Court: They have not undertaken to show that the State was a party to that.

Mr. Jefferson: The State does not seem to know the purpose of the testimony. We do not ask to bind the State to anything.

Mr. Brown: I see the purpose of it. I fail to see the effect of it.

Q. Was this stenographer of Mr. Fusco's present during this conversation?

A. No, sir.

Q. This was in Mr. Fusco's own private office?

A. Yes, sir.

Q. No one else present?

A. He had two rooms, one about there and one here, and this was the smallest one, and he made the young ladies go in the other room.

Q. When you came in the office, where was the 10 stenographer?

A. Well, now, there was one young lady I met there, and I asked if that was Mr. Fusco's office and she says yes. I asked if I could see Mr. Fusco and she says, "You can," so she went and opened the other room and knocked at the door and Mr. Fusco and the other young lady was in there.

Q. That is not quite responsive to my question: Where was she as respects Mr. Fusco's private office? Was she in Mr. Fusco's private office? 20

A. One was there and one was in the other room. There was two young ladies.

Q. There are two now?

A. There was two, one in one room and one in the other.

Q. Was the one in Mr. Fusco's room sitting at a desk?

A. I don't know whether she was sitting, because just as I went in she stood right up and he asked her if she would kindly leave the room for a few 30 minutes.

By Mr. Jefferson:

Q. When did you next see me after you had seen Mr. Fusco?

A. After I seen Mr. Fusco? I didn't see you until after the arrest.

Q. The next time I came to Hammonton?

A. Yes.

By Mr. Brown:

Q. Was it before or after the defendant was arrested that you saw Mr. Jefferson?

10 A. Before.

Q. Why did you see him?

A. No. Mr. Fusco. Jefferson was after. That was New Year's Day, after they arrested him

By Mr. Jefferson:

Q. Are you sure you didn't see me about this matter before the arrest?

20 A. Well, probably there was—yes, there was about a week before that we heard talk about it, that I think I stopped in to see you.

Q. When you received that letter?

A. Yes. I had the letter at your office. I had the letter in my hand and I came up to your office to see.

Q. After you received the letter what was the first thing you did?

A. First thing I did, I come over to your office.

30 By Mr. Brown:

Q. You don't seem to remember very distinctly being at Mr. Jefferson's office prior to that proposed arrest. How is that?

A. I don't seem to remember when he was arrested?

Q. No, you don't seem to remember very distinctly your being at Mr. Jefferson's office before your brother was arrested?

A. I was there once when we got that letter before he was arrested.

Q. You are sure of that?

A. Yes, sir.

Q. Who went with you?

A. I think—I forget whether my brother went with me or not. I think I went with my brother. 10

Q. You think you did? You don't know?

A. Don't remember exactly.

Q. The only thing that happened around this time that is vivid in your mind is this conversation you had with Mr. Fusco? That is plain? You remember that very vividly?

A. I remember that.

20

MICHAEL RUBERTONE, SWORN.

Direct examination.

By Mr. Jefferson:

Q. Where do you live, Michael?

A. In Hammonton.

Q. Where did you meet Millie, the girl who made this charge against you? 20

A. I have forgotten where I met her, but I met her when she was over to my house. That is about all I can remember.

Q. You have known her very long? That is, you know her when you see her?

A. I know her when I see her; yes.

- Q. Did you ever call at her house?
 A. Call at her house?
 Q. Yes.
 A. No; I never called at her house.
 Q. I direct your attention to the month of June, 1912, and ask you if this girl worked for your father?
 A. In the month of June?
 Q. Yes, 1912. Did she pick berries there?
 A. What date?
 10 Q. Any time in the month.
 A. Yes, she was there.
 Q. Was she picking there same as others?
 A. Same as others.
 Q. She charges that on the fourteenth day of June of that year you threw her down and committed an assault on her. Do you know anything about that?
 A. Well, we didn't pick on the fourteenth of June as far as I can remember.
 Q. Well, did you take hold of her and put her on
 20 the ground?
 A. She wasn't there.
 Q. Did you that or any other time?
 A. No; no, sir.
 Q. Did you ever have improper relations with her?
 A. What do you mean?
 Q. Ever have sexual relations with this little girl?
 A. Oh, no, sir; never did.
 Q. At any time?
 30 A. No, sir; at any time.
 Q. When were you married, Mike?

Mr. Brown: I object to that as irrelevant and immaterial.

The Court: I do not think that is any part of the case.

(Counsel confer with Court at side bar.)

(Open Court.)

(Question overruled.)

Q. Were you ever at any time alone with this girl?

A. No, sir.

Q. Outside of your father's place?

A. No, sir.

10

Q. Were you ever alone with her in the raspberry field?

A. No, sir; never was alone in the raspberry field.

Q. At any time she was working there, there were other people working?

A. Yes, sir; there was.

Q. Why do you say you were not there on the fourteenth of June, 1912?

A. Well, I was on the place, but we wasn't picking raspberries.

20

Q. Why? Why do you say that? How do you know is what I want to know?

A. I think we started to pick on the fifteenth of June, or eighteenth.

Cross-examination.

By Mr. Brown:

Q. I want to know how you are so sure that you 30 did not pick raspberries on the fourteenth, but that you did pick them on the fifteenth?

A. Well, they wasn't ripe yet.

Q. Did they ripen up over night?

A. Sure, they would ripen up over night.

Q. Ripen up over night?

A. Supposed to.

Q. Well, don't you know?

A. Well, I suppose berries ripen over night, don't they?

Q. I don't know. I am asking you.

A. Well, I don't know. I suppose so.

Q. How long have you been picking raspberries up there on that farm?

A. Oh, I don't know exactly how long. Quite a
10 while now.

Q. A number of years?

A. Seven or eight years.

Q. And you can't tell me whether or not those raspberries ripen over night?

A. Why, I should think they would ripen over night, sure.

Mr. Jefferson: It seems to me that is rather an indefinite question. What does ripen mean?

20

Q. How do you know, as a matter of fact, that the raspberries were not ripe on the fourteenth, but that they were ripe on the fifteenth? How do you fasten the dates?

A. Well, we couldn't make a crate, you know, and we picked on the next day.

Q. Do you remember that you did not pick a crate on the fourteenth?

A. No, I don't remember. We didn't pick on the
30 fourteenth.

Q. Didn't pick a raspberry, not a berry?

A. No, sir.

Q. How many crates of raspberries did you pick on the fifteenth?

A. Oh, I don't remember now. I don't think we picked —

Q. Who all was picking there that day?

A. Well, there was my father and my stepmother and that Millie Giette.

Q. Anybody else?

A. I think there was Frank Mazzo and Lucy Mazzo there.

Q. How about the thirtieth of June? Did you pick raspberries on the thirtieth?

A. Surely did. Heavy picking on the thirtieth of June.

10

Q. Who picked raspberries on the thirtieth?

A. Well, there was Philadelphia pickers there.

Q. Did Millie Giette pick raspberries there on the thirtieth?

A. I think she was there; yes.

Q. How about the first part of September? Did you pick raspberries every day?

A. No; not every day.

Q. There wasn't such good picking then?

A. Well, that was the second crop.

20

Q. When does the second crop start?

A. In September. August or September.

Q. Your first crop started on the fifteenth of June?

A. To pick, you mean?

Q. Yes.

A. Well, that was the first crop; yes.

Q. How long did you say you had known Millie?

A. Oh, I have known her for quite a while, but not very well acquainted with her —

Q. About how long?

30

A. About six or seven years, something like that.

Q. She has picked berries for several years on your farm, hasn't she?

A. Not several years.

Q. Was this her first summer picking berries?

A. Well, yes; I think that was about the first summer.

Q. The first day of the season when you were picking berries, Millie was the only person you had hired for the purpose on that day, wasn't she?

A. Well, Frank Mazzo and Lucy Mazzo.

Q. On the first day of the season?

A. Yes; first of the season.

10 MRS. MARY RUBERTONE, sworn through the interpreter.

Direct examination.

By Mr. Jefferson:

Q. Are you any relation to Mike here?

A. No relation.

Q. What is your name?

20 A. Mary Azzatto.

Q. Are you the stepmother of Mike?

A. Yes, sir.

Q. You are the wife of Mike's father?

A. Yes, sir.

Q. Does Mike live with you?

A. Yes.

Q. Were you living there with Mike and his father in June, 1912?

A. Yes, sir.

30 Q. Were you out in the raspberry patch when they were picking during the month of June?

A. Yes, sir. All united together.

Q. How much of the time were you out there when they were picking, how many of the days?

A. We stayed there until we finished picking and then we would go home.

Q. Were there any days of that month that they were picking that you were not out there working yourself?

A. I was there all the time.

Q. You were out there all the time that your husband and Mike were out?

A. Yes, sir.

Q. Do you know Millie, the little girl who has made the complaint?

A. Yes.

10

Q. Do you know of her working there?

A. Yes, sir; she was there.

Q. Did you any of those days during the month of June see Mike and Millie together anywhere?

A. Never.

Q. Were you out there during the month of September when they were picking?

The Interpreter: She explains that Millie was not there in the month of September.

20

Q. She was not there at all in the month of September?

A. Never.

Q. At no time?

A. Not in September.

Cross-examination.

By Mr. Brown:

30

Q. Did you pick berries on the fourteenth of June?

A. Yes.

Q. When did you start to pick berries in the month of June?

A. I can't remember.

Q. Was it the early part of June?

A. Yes, sir.

Q. The berries were ripe at the middle of June, were they?

A. They were ripe.

Q. Did Millie work there every day in June?

A. She left us and she went to pick huckleberries in the bush.

10 Q. What time did you usually start to pick berries in the morning?

A. Sometimes seven o'clock, sometimes before seven and sometimes be later.

Q. You had your house work to do, didn't you?

A. No; we were out there picking.

Q. Who did your house work for you?

A. We closed the house.

20 JESSE ROTHROCK, SWORN.

Direct examination.

By Mr. Jefferson:

Q. Jesse, where do you live?

A. I live at Nesco, New Jersey.

Q. Where were you in September, 1912?

30 A. I was on Philip Wescott's cranberry meadow on Sleepy Creek.

Q. What part of September were you there?

A. From the third day of September until the first day of December, somewhere along there.

Q. For whom were you working?

A. I was working for Phil Wescott.

Q. Was there anybody else there working?

A. Cranberry pickers.

Q. Was this little girl, Millie, was she there any time?

A. She came there on the third day of September.

Q. How long did she stay?

A. She stayed until the last part of September.

Q. Sure about that?

A. Yes, sir. Except one or two days through the week they would go home and get provisions, her and her, I presume it was her stepfather.

10

Mr. Brown: Do you know of your own knowledge where they went those days they were not on the cranberry bog?

A. They went away from there. I couldn't tell you where they went.

Mr. Jefferson: It is very unfair for the State to interfere with my examination.

20

Mr. Brown: I beg your pardon. I did not mean to be unfair.

Q. Who were there?

A. At the time that I was picking the cranberries, you mean?

Q. Yes; who were there with this girl?

A. Why, I supposed it was her stepfather at the time. Frank Southard, and fellow by the name of Joe Davis.

20

Q. Where did this girl sleep?

A. She slept in the next room —

Mr. Brown: I object.

(Counsel confer with Court at side bar.)

(Open Court.)

(Question repeated.)

Mr. Brown: That is objected to.

The Court: I rule that the objection shall be sustained. You are not to answer that question.

10 (Counsel confer with Court at side bar as follows:

Mr. Jefferson: The defense offers testimony —

Mr. Brown: I object to the offer of this on the record. I do not think it is admissible to state that as a matter of record. The question was asked, objected to, and the ruling was made by the Court. If he wants to state his reason, I suppose he can have that argument on an appeal, if he wants to take an
20 appeal, but I do not see that —

Mr. Jefferson: I want to make the offer and get the ruling on it.

The Court: You have made the offer and I have made the ruling, and I do not think it is a proper part of the record.

Whereupon the defendant, by his counsel, prays
30 a bill of exceptions, which is hereby allowed and sealed accordingly.)

(Open Court.)

Mr. Jefferson: That leaves us with nothing at all. I will offer a new question now. You objected

to a question that I asked as to with whom she slept there. You overruled it and now I want to offer some other testimony which I told your Honor, so that the jury would not hear what it was, and now I simply want on the record that which I propose to offer.

The Court: You cannot offer testimony at side bar and get a ruling as to its admissibility before you propound the question to the witness. 10

Mr. Jefferson: My only reason for doing it that way is that I did not want it to go to the jury. I did not want to be unfair to Mr. Brown.

The Court: I do not want to be unfair to the defendant. He is entitled to the fairest kind of a trial. You may ask the witness such questions as you see fit, and if Mr. Brown objects, we will see whether or not the objection shall be sustained. 20

Mr. Brown: Before the questions are asked, I move that all that part of the record which follows the last question, the objection and the ruling of the Court, be stricken out.

The Court: I think it is proper that that be stricken out.

Mr. Jefferson: I will join in that, that it be 30 stricken out, with regard to the method of the girl living at this place.

Q. Did this girl stay up there nights during the month of September?

(Question objected to. Objection sustained.)

(Question repeated.)

Mr. Jefferson: The purpose of that question is to show that this girl stayed up there all the time, with the exception of certain nights she came home, and I am going to follow that up by asking what nights she stayed there.

The Court: I do not think that is material at all,
10 and I will sustain the objection.

No cross-examination.

FRANK SOUTHARD, SWORN.

Direct examination.

20 By Mr. Jefferson:

Q. Where do you live, Mr. Southard?

A. Nesco, New Jersey.

Q. Do you know Mike Rubertone?

A. Yes, sir.

Q. Do you know Millie?

A. Yes, sir.

Q. Where were you working during the month of
September, 1912?

30 A. Philip Wescott's.

Q. Where?

A. It is about seven miles from Pleasant Mills, at
the cranberry meadow, what we call Sleepy Creek.

Q. How far from Hammonton?

A. I should say it is about twelve or thirteen
miles, something like that.

Q. Did you have any position there with Mr. Westcott at the time?

A. Yes, sir.

Q. What was your position?

A. I take care of his meadows there every fall.

Q. Are you the foreman there?

A. Yes, sir.

Q. What times was Millie Giette, whatever you call it, there, the young girl?

A. They came to work on the third of September. 10

Q. How long did they stay?

A. We finished up, I think it was on the twenty-fifth or twenty-sixth, up at the Sleepy Creek meadows, and then we came down to the meadows we have home, and it was on either the third or fourth of October when we got all through and paid off.

Q. Do you know whether she was there on the thirtieth day of September or not?

A. Thirtieth day of September? Where, at Sleepy Creek? 20

Q. Yes.

A. Why, she worked by the peck —

Mr. Brown: Answer yes or no.

A. She was not working by the day.

Q. Was she there all the time?

A. She picked there every day that the weather—

Mr. Brown: That is not responsive. 30

Q. How many days did she work?

A. Well, I couldn't tell you exactly the number of days, because they worked by the bushel. They don't work by the day.

Q. You were there yourself all the time?

A. I was there. I left there on Saturday.

Mr. Brown: I object to the leading manner in which the questions are put.

A. And I was home over Sunday, but I was there Monday morning on the job.

10 Cross-examination.

By Mr. Brown:

Q. Did you keep books in this place?

A. Didn't then. We do now.

Q. Did not then?

A. We do now.

20

GIRARD RUBERTONE, sworn through interpreter.

Direct examination.

By Mr. Jefferson:

Q. Do you know this young man?

A. He is my son. I know him.

Q. Did your son live with you in the month of
30 June, 1912?

A. Yes, sir.

Q. Did he work with you on the farm, in the running of the farm?

A. Yes, sir.

Q. What time in the month of June did you start to pick raspberries?

A. About the seventh day of June.

Q. Have you any memorandums to show when you commenced to work?

A. I remember by memory.

Q. Do you have any writing to show it, the question is?

A. I have in writing.

Q. Where is it?

A. There is a book there.

10

Mr. Brown: Permit me to cross-examine.

By Mr. Brown:

Q. Who makes the entries in this book?

A. I do.

Q. When do you make the entries, when the day's work is done?

A. In the night.

Q. Can you write?

20

A. Yes, sir. Italian, I can.

Q. Let me see you write, "ten cases of strawberries."

The Interpreter: He wants to write in Italian strawberries, the significance of strawberries.

Q. "Ten cases of strawberries," in Italian. That is all. I can't read it.

30

(Witness writes on paper.)

Q. You are all right.

Mr. Brown: I have no objection to your using the book, Mr. Jefferson.

By Mr. Jefferson:

Q. Did you make those entries at the time?

A. At that time I did.

Q. That is, the dates that are mentioned there, each day?

A. I can't remember to memory, but this is the one I have.

10 Mr. Jefferson: I offer that book.

Mr. Brown: I have no objection.

(Book marked Exhibit D1.)

Mr. Jefferson: With your permission, I will ask the interpreter to read the first two or three on there.

20 Mr. Brown: I think we ought to bind ourselves to certain days. I do not think we ought to go into a year in this thing. I do not see the purpose. I have no objection to the book going in, but I want you to be a little more specific. May I ask your purpose in introducing the book?

Q. Mr. Rubertone, during the months of June, 1912, were you in the raspberry patch there with your son Mike each day that he was there?

30 Mr. Brown: I object, unless he refers to the book. The book is in evidence and the book is the best evidence, I suppose.

Mr. Jefferson: Of what?

Mr. Brown: Of whether they were picking in the raspberry patch on certain days.

The Court: I understood the purpose of this book was to fix the first day on which raspberries were picked.

Mr. Brown: If he is going to confine himself to that, I have no objection to it.

Q. Were you and your son Mike and Millie in the patch on the fourteenth day of June?

A. No, sir.

10

Q. Were you there on the thirtieth day of June?

A. Yes, sir.

Q. Was this girl Millie picking in the patch?

A. What date do you mean?

Q. On the thirtieth day of June?

A. I don't remember the thirtieth of June.

Q. Was his son, Mike, ever picking in the patch during the month of June, 1912, when Millie was there and the witness was not?

20

The Court: When he was not present? How can he answer that question?

(Question withdrawn.)

Q. Were you in the patch all the time that berries were being picked in June?

A. Every day.

Q. Or part of each day they were picking?

A. I was there continuously.

20

Q. If anything happened between his son and this girl, could he have seen it?

Mr. Brown: I object on the ground that he has got to place the defendant and the girl at some particular point and then ask this witness from where

he was standing if he could see them and what they were doing. It seems to me that is the proper thing to do, and not ask him if there was any place in the universe, and he could have seen them wherever they were.

The Court: He has fixed them in the field. Now, he asks whether if the defendant was doing anything to Millie, he could have seen it. I think the question
10 is proper.

A. Sure. I was right there.

Q. Did you hear Millie cry at any time, call you during the month of June?

A. I couldn't hear no cry. We always been near together at times.

Q. During the month of June did they have any other crop they were gathering besides raspberries?

A. No.

20 Q. I direct your attention to the month of September. Were you there then?

A. I was there on the farm all the time.

Q. Were you directing the picking then?

A. Yes, sir.

Q. Did you have other berry pickers there?

A. Yes, sir.

Q. And was there any time that this Millie girl picked there alone during the month of September?

30 A. In the month of September she has not come there at all.

Q. She didn't pick for him at all in the month of September?

A. No.

Q. When did she stop picking?

A. About the latter part of July.

Q. Was she picking there during the month of July or not?

A. No, only about four or five days after the pickers had been there, she went away.

No cross-examination.

Recess taken until 1.30 P. M.

Afternoon Session, 1.30 P. M.

10

CASPAR CRAIG, SWORN.

Direct examination.

By Mr. Jefferson:

Q. Where do you live, Mr. Craig?

A. Nesco, Mullica Township.

Q. Do you know Michael Rubertone?

20

A. Yes, sir.

Q. How long have you known him?

A. Oh, I guess ten or twelve years.

Q. Do you know others who know him?

A. Yes, sir.

Q. Do you know what his reputation is for truth and peace and good order in the community where he lives?

A. Good.

30

No cross-examination.

JESSE ROTHROCK, recalled.

Mr. Jefferson: I want to now renew my offer that I made this morning and the Court overruled.

Mr. Brown: This should be at side bar.

(Counsel and Court confer at side bar.)

(Open court):

Direct examination.

By Mr. Jefferson:

10

Q. Did this girl Millie stay up to the cranberry bog at night?

Mr. Brown: I object.

The Court: Ask where she stayed at night.

Mr. Jefferson: On the ground that it is leading?

20

Mr. Brown: I object to the question put either way. The purpose of putting this witness on the stand is to attack the credibility of one Millie Giette, who was a witness for the State. If your Honor please, it has got to be attacked, and not strengthened. I do not care about his strengthening my case. I have got a case, all I want. If he is going to attack it, let him attack it, but I do object to any other testimony going in.

30

The Court: It seems to me he will necessarily have to ask such a question.

Mr. Jefferson: I want to simply repeat my question that your Honor overruled this morning.

The Court: I will admit the question. He may answer it.

(Question repeated.)

A. Yes, sir.

Q. During the month of September?

A. Yes, sir.

Q. More than one?

A. From until about the third until the very last day of September.

Q. Do you know where she slept?

A. Yes.

10

Q. Tell the jury where she slept.

A. Well, there were four berths —

Mr. Brown: I object to that. That is not the test. We are getting in a lot of stuff that is not affecting the credibility.

Mr. Jefferson: I have to lay the foundation.

The Court: Go ahead.

20

A. Shall I explain all of this?

Q. No, just answer my questions, Mr. Rothrock. Where did this girl sleep, in what kind of a room?

A. She slept in the next room to me, or what you might call a room. There was a partition between her and I, what they call a partition. There is boards nailed up, which I put over paper.

Q. Were you ever in her room where she stayed?

A. Yes, I was in her room where she stayed.

30

Q. Well, tell the jury what kind of a room it was.

A. It was a room six by twelve or eight by twelve, something like that.

Q. Beds in there?

A. There was one berth in there, where her and her stepfather, I presume, occupied.

Mr. Brown: I object to that and move it be stricken out as a presumption.

The Court: Strike that answer out.

Q. Was it that gentleman there with his hand —

Mr. Brown: I object to that because it has not been shown that any gentleman slept with her. It is
10 only presumption.

Q. Did anybody sleep with her?

A. Did anybody?

Q. Yes.

A. There was only two in the room and only one mattress and only one berth for them to sleep on.

Mr. Brown: I object to that.

20 The Court: Just answer in as few words as you can, giving the desired information. Do not make a speech.

Mr. Brown: I move that answer be stricken out.

Mr. Jefferson: I object.

The Court: Yes, strike it out. Be more responsive and do not volunteer anything.

30

Q. Were you there at night when she was in the room adjoining you?

A. Yes, sir.

Q. What did you hear there?

Mr. Brown: I object.

The Court: That is a very general question, Mr. Jefferson, and I think you ought to be a little more specific.

Mr. Jefferson: I do not want to lead the witness.

The Court: Suppose we start all over again and we start in a proper way this time.

Q. Mr. Rothrock, were you rooming in a shanty 10
at Wescott's cranberry bog in the month of Sep-
tember?

A. Yes, sir.

Q. What kind of a shanty was it?

A. It was twelve by sixteen with a partition, what they call a partition, run through the building with cracks about an inch or inch and a half apart, and I put paper over it —

Mr. Brown: Never mind what you put there. 20

Q. Who occupied the other part of the room of
this shanty?

A. Why, that little bit of a girl over there and her
stepfather. I presume it was her stepfather.

Mr. Brown: I object to that and ask that it be
stricken out.

The Court: That is exactly the same response he 30
made to a similar question. Do not presume. Be
positive, Mr. Rothrock.

A. Well, your Honor, I couldn't tell. I didn't
know at the time.

Q. If you see the man here, point him out.

Mr. Brown: I object. He cannot tell. He didn't see him at the time.

The Court: He said he did not know him at the time.

Q. I ask you if you can see the man here.

A. Oh, the man undoubtedly is in this court room.

Q. Can you point him out?

10

A. Yes, sure. He is right down there.

Q. Walk over and point him out so as to be specific.

A. Here is the man and there is the girl.

Q. They occupied this room at night?

A. Yes, sir.

Q. Tell the jury what you heard.

Mr. Brown: I object.

20

The Court: Ask him what took place.

Q. What took place in that room there?

A. Bounding and rebounding noise.

Q. Indicating ——

(Objected to.)

Q. What do you mean by a bounding and rebounding noise?

30

A. Jumping up and down.

Cross-examination.

By Mr. Brown:

Q. Something like a pillow fight?

A. Well, it might be a pillow fight, yes.

- Q. As far as you know?
A. I couldn't say anything else.
Q. You don't know what caused that bounding and rebounding noise, do you?
A. Except by the sense of hearing.
Q. You can't say actually what did it? All you heard was a noise?
A. Yes.
Q. Like a bouncing noise?
A. Yes. 10
Q. That is all you heard?
A. That is all I heard.

By Mr. Jefferson:

- Q. Was it more than one night you heard this?
A. Heard it from the third of September to the very last —

Mr. Brown: I object to that and move that the 20 answer be stricken out.

Mr. Jefferson: I join in the motion.

The Court: It will be stricken out.

By the Court:

- Q. Isn't it customary that these cranberry shanties or where they are picking strawberries or rasp- 20 berries or what not, where they employ labor from a distance, for all of them to sleep in one room?
A. Yes.
Q. Male and female?
A. Yes.
Q. Irrespective of sex?

A. Yes, they are packed in the same as a lot of sardines, and the only screen they have —

Q. Now, listen. I have not asked you a single thing.

By Mr. Jefferson:

Q. There were not enough to make them pack like sardines in this room?

10 A. No, but they would pack them, if they got the oil.

FRANK SOUTHARD, recalled.

Direct examination.

By Mr. Jefferson:

20

Q. Will you describe to the jury the kind of a room at the Wescott cranberry bog that Millie and another person occupied there?

A. Why, it was a room about twelve by sixteen, I suppose, not just giving the exact dimensions, and we was just a little bit cramped at that time —

Mr. Brown: Never mind that. We just want the description.

30

A. Well, it was just merely a shanty built out of barn boards and dividing the part between Mr. Rothrock and Mr. Davis and Mr. Testa and his daughter, we just put up boards between the two.

Q. Was there more than one bunk in there?

A. There was, but there was only one bunk in use at that time.

Q. Did you see them in there together at that time?

A. I never seen them sleeping there at the time, no. I saw them in there cooking.

By the Court:

Q. Was there more than one bunk prepared for their use?

A. No, sir.

10

By Mr. Jefferson:

Q. Did they stay there more than one night?

A. Yes, sir, they did.

Q. Who do you mean by they?

A. Well, I will tell you. Mr. Testa was supposed to —

Mr. Brown: Never mind.

20

Q. Don't say what you suppose or infer or presume. Just tell what you know.

A. Well, I went up there on Monday, on Labor Day in 1912, and we was supposed to have pickers up there, but they wasn't there, and on Tuesday they came, and the pickers that should have come went down to Mr. Ballard's.

Mr. Brown: That is objected to. It is not responsive.

30

A. He is asking me and I will tell you if you want to know, where they put up.

Q. Well, tell us. Don't tell us about the cranberries.

A. There was a shanty on one side of the creek and

I occupied that by myself, and there was a shanty on the other side, I suppose about a hundred feet —

Q. Don't say "suppose." Tell what it is. That disentitles what you say.

A. These four people occupied that shanty.

Q. What four people?

A. Mr. Testa and Millie and Mr. Rothrock and Davis.

Q. Who roomed together, if any of them?

10 A. Mr. Rothrock and Davis roomed in one end of it and Testa and Millie in the other end.

Mr. Brown: I move that that evidence of this witness be stricken out as not fulfilling the purpose for which it was admitted, that is, combating the testimony of the State's witness, Millie Giette.

The Court: I think that Mr. Jefferson may show that Millie and her stepfather occupied the same
20 room, for whatever it is worth.

Mr. Jefferson: That is all I have shown.

No cross-examination.

DEFENDANT RESTS.

30

STATE'S TESTIMONY IN REBUTTAL.

MILLIE GIETTE, recalled.

Mr. Brown: I wish at this time to offer the child of Millie Giette in evidence. I do not suppose Mr. Jefferson has any objections to that.

Mr. Jefferson: If you will admit the sister of the complainant has another little baby.

Mr. Brown: This is the only child in issue. It is testified that this woman had this child at the Jefferson Maternity Hospital on the eleventh of June, 1913.

Mr. Jefferson: This is an action for statutory rape. The question of whether it is a child or not has no bearing on it whatever. I object. 10

(Counsel confer with Court at side bar.)

(Objection sustained.)

CHARLES P. FUSCO, sworn.

20

Direct examination.

By Mr. Brown:

Q. Mr. Fusco, you are an attorney of Pennsylvania?

A. Yes, sir.

Q. Have offices in the Stephen Girard Building in Philadelphia?

A. Yes, sir.

Q. Do you know Michael Rubertone's brother, the gentleman who was on the stand this morning?

A. I don't know him, no, sir.

Q. Have you had any conversation with him at your office in Philadelphia?

A. The gentleman that was here this morning

30

came to my office and said he came in response to a letter that I addressed to Michael Rubertone.

Q. Give me that conversation which you had with him at that time.

A. He came in and asked me what I wanted with Michael Rubertone. I presented the situation to him as Mr. Testa, who had retained me to represent them as private prosecution, and then I asked Mr. Rubertone—he said he was Mr. Rubertone—if there had
10 been an offer to settle, which he denied. I tried to get some particulars from him. I was after evidence, if I could get any from him, and his whole conversation pointed to prove that his brother, as far as he knew, had had no connection—had had nothing to do with this girl. We then went back to the question of settlement by bringing up this question. He says, “We have not made an offer to settle, but if you will give me a paper whereon you state your terms, I shall take it to my lawyer and see what
20 he has got to say about it, and then maybe we can do something.” I said, “No, I couldn’t give you a paper. Did you offer to settle? That is what I want to know.” He said, “No,” didn’t know that his brother had offered to settle or that his family had offered.

Cross-examination.

By Mr. Jefferson:

30

Q. The purpose of your letter of December sixteenth was to find whether they had made any offer for settlement?

A. That may have been one of the reasons. As an attorney I wrote to find out all I could. I was representing the private prosecution.

Q. The private prosecution?

A. Private prosecution, exactly.

Q. You were not representing the private, civil part of it?

A. No, there was never any civil action taken. They never took any action even to recover maintenance for the child, although I suggested that.

BOTH SIDES REST.

10

COURT'S CHARGE TO JURY.

SHINN, J.

Gentlemen, the defendant is charged with what is known as statutory rape, which the law of New Jersey defines as "unlawful and carnal abuse of a woman-child over the age of twelve years and under the age of sixteen, with or without her consent, shall be guilty of a high misdemeanor," which, as I said, we call statutory rape. You will observe that it does not require her consent. There is no doubt that Millie, the complaining witness, was employed at this raspberry farm in June of 1912. She fixes the first date as on the fourteenth, by reason of some Italian holiday having fallen on the thirteenth. The defendant says it was not the fourteenth, it was the fifteenth, and the defendant's father says that it was the seventeenth, and brings a book to substantiate his statement. The mother of the defendant says that they began picking berries in the early part of June.

20

30

So that, whether it was the fourteenth, fifteenth or seventeenth seems to me matters not, if you find that the offense was committed by the defendant as he is charged.

On the question of whether or not Millie was employed at the Rubertone farm in the month of September there seems to be some doubt. At least, Millie says she was employed there, and the defendant, as I recall, did not deny it; the father did deny it. 10 The witnesses from the cranberry bog say that she was employed there from about the third of September to the latter part of September; one of them saying that she would leave every week for two or three days for the purpose of coming down and getting supplies.

After all, gentlemen, it is simply a question of whom you believe, whether you think that Millie is telling the truth when she says that during the months of July and September the defendant had 20 sexual intercourse with her to the extent of some six or eight times, as I recall; or whether you believe the defendant in his statement that no such thing took place. The testimony of the two men from the cranberry bog as to her stepfather and herself occupying this room together, it seems to me should not make a strong impression upon your minds, because they did not provide any other place for them to sleep. In response to a question from me, one of them said, Mr. Rothrock, I think, that it was 30 customary for the male and female berry pickers to occupy the same room, saying that they were packed in like sardines.

You are as familiar with the testimony as I am, gentlemen, and I will not burden you with any further reference. If my comments have led you to believe that I entertain any opinion as to the guilt or

innocence of the accused, you are at liberty to disregard that. It is your duty, gentlemen, to judge the facts. My duty is to tell you the law, which I have endeavored to do. In reaching a verdict you must bear in mind that the burden of proof is upon the State, the proof being of such quality and character as will warrant you in finding a conviction. If there should exist in your minds a reasonable doubt, the defendant is entitled to the benefit of that doubt, and it is your duty to give it to him. 10.

The Prosecutor has asked me to state to you that my reference to the testimony of the men from the cranberry bog as to their occupying the same room should not bother you at all. I wish to qualify that by saying as to her credibility, as to the credibility of Millie it should be considered, only. It matters not whether she actually did have sexual intercourse with her stepfather, the defendant, if you believe he committed the act, would be just as guilty as though no such intercourse had taken place. 20.

DEFENDANT'S EXCEPTIONS.

Mr. Jefferson: I except to that part of the Court's charge which touched on the evidence of the men from the cranberry bog.

(Which exception is hereby noted.) 30

Mr. Jefferson: I except to that part of the Court's charge which touched on the evidence of the men from the cranberry bog, made at the end of the charge at the request of the Prosecutor.

(Which exception is hereby noted.)

CAUSES FOR REVERSAL.

NEW JERSEY SUPREME COURT.
ATLANTIC COUNTY.

10	THE STATE OF NEW JERSEY, <i>Defendant-in-Error,</i> vs. MICHAEL RUBERTONE, <i>Plaintiff-in-Error.</i>	ON INDICTMENT. RAPE.
----	---	-------------------------

20

And the plaintiff-in-error, by Richard W. Cron-ecker and Matthew Jefferson, complains and charges that in the trial of said cause below manifest error intervened to his great prejudice in this:

1. The learned trial Court over the objection of defendant's counsel admitted illegal evidence on behalf of the State.
- 30 2. The learned trial Court rejected legal evidence offered by the defendant.
3. The learned trial Judge refused to allow defendant to offer testimony showing the relations of the complaining witness during the month of September, 1913, with men other than defendant.

of Quarter Sessions in and for the County of Atlantic, October Term, 1914, wherein said Michael Rubertone was convicted of statutory rape with one Millie Giette, manifest error hath intervened to the great damage of the said Michael Rubertone, the plaintiff-in-error, as aforesaid, as is said: we being willing that the error, if any there be, should, in due manner be corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, that if judgment be thereupon given and affirmed, 10 then you distinctly and openly, under our seal, the record and proceedings and plaint aforesaid, with all things touching and concerning the same, to our Court of Errors and Appeals in the last resort in all causes, before the Judges thereof, at Trenton, on the 16th day of November, next, together with this writ, and that the record and proceedings aforesaid being inspected we may cause to be further done thereupon, for correcting that error what of right and according to the law and custom of the State 20 of New Jersey, ought to be done.

Witness, Edwin Robert Walker, our Chancellor and President Judge of our said Court of Errors and Appeals, at Trenton, aforesaid, this second day of November, one thousand nine hundred and fifteen.

THOMAS F. MARTIN,
Clerk.

HOWARD L. MILLER,
Attorney.

RETURN.

The answer of William S. Gummere, Chief Justice, within named.

The record and proceedings of the plea whereof mention is within named, with all things concerning the same, to the Court of Errors and Appeals in the last resort in all causes, within specified, at the day and place within contained, I certify in a certain schedule to this writ annexed, as I am within commanded. 10

WILLIAM S. GUMMERE,
Chief Justice.

20

30

OPINION.

NEW JERSEY SUPREME COURT.
FEBRUARY TERM, 1915.

10 THE STATE,
VS.
MICHAEL RUBERTONE. }

Error to Atlantic Sessions.

Argued February Term, 1915. Decided June Term, 1915.

20

Matthew Jefferson, for Plaintiff-in-Error.
W. Elmer Brown and Charles P. Fusco, for Defendant-in-Error.

30 Argued before the Chief Justice and Justices Garrison and Minturn.

Per Curiam:

The indictment was for the statutory crime of rape, upon a girl fourteen years of age, and the de-

fendant was convicted. It is urged that the conviction was illegal upon certain grounds of procedure, among them that the trial Court overruled the effort of the defendant to show that the complaining witness made no complaint after the alleged commission of the rape. If this be material the defendant's attorney shortly after putting the question withdrew it, so that its materiality is not before us.

The next and final objection urged is the refusal of the trial Court to allow counsel to show the girl's relation with other men during the month of September, 1912, being the month when the alleged crime was committed by the defendant. 10

We think the action of the learned trial Court was correct, since the attempt was in effect to prove a fact, which, if conceded, would not afford a justification for the crime alleged in this indictment.

The judgment of conviction will be affirmed.

20

30

**ASSIGNMENTS OF ERROR AND SPECIFICA-
TIONS OF CAUSES FOR REVERSAL.**

NEW JERSEY
COURT OF ERRORS AND APPEALS.

10

THE STATE OF NEW JERSEY,
Defendant-in-Error,)

VS.

MICHAEL RUBERTONE,
Plaintiff-in-Error.)

IN ERROR.

NEW JERSEY, ss.

20

Afterwards, to wit, on the return of the said writ before the Court of Errors and Appeals, at Trenton, comes the said Michael Rubertone, by Lawrence B. Reader and Howard L. Miller, his attorneys, and says, that in the record and proceedings aforesaid, and also in the giving of judgment aforesaid, there is manifest error, in this, to wit:

30 1. Because the said Supreme Court affirmed the proceedings and judgment of the said Court of Quarter Sessions, whereas, by the laws and customs of the State of New Jersey, the said proceedings and judgment should have been reversed and judgment rendered in favor of the plaintiff-in-error.

2. Because the said Supreme Court sustained the

trial Court in admitting illegal evidence on behalf of the State over the objection of the defendant's counsel.

3. Because the said Supreme Court sustained the trial Court in rejecting legal evidence offered by the defendant.

4. Because the said Supreme Court sustained the trial Court's refusal to allow defendant to offer testimony showing the relations of the complaining witness during the month of September, 1913, with men other than defendant. 10

5. Because the said Supreme Court sustained the trial Court who ordered stricken from the record a number of questions propounded and answers given by Jesse Rothrock, a witness for the defendant.

6. Because the trial Judge misdirected the jury as to the facts. 20

7. Because the verdict of "Guilty" is not sustained by the evidence.

LAWRENCE B. READER,
HOWARD L. MILLER,
Attorneys for and of Counsel with Plaintiff-in-Error.

