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WRIT OF ERROR.

(Filed Jan. 7, 1931.)

NEW JERSEY, *ss.*

The State of New Jersey to Honorable Joseph A. Corio, Presiding Judge
(Seal) of the Atlantic County Quarter Sessions Court, holden at Mays Landing, in and for the County of Atlantic, of the October term, in the year of our Lord, one thousand nine hundred and thirty.

Because in the indictment, record, process, proceeding to try the hereinafter named defendant, and also giving of judgment upon two certain indictments against Morris E. Cohen, late of the City of Atlantic City, in the County of Atlantic and State of New Jersey, and on or about 15th day of March, in the year of our Lord, one thousand nine hundred and thirty, at the City of Atlantic City aforesaid, in the county aforesaid, and within the jurisdiction of this Court, did, with force and arms, in and upon one Adele Holland, in the peace of God and of this State then and there being, an assault make, and the said Morris E. Cohen then and there did beat, wound and ill-treat and other wrongs to the said Adele Holland; and did, with malicious intent, in private, commit an act of lewdness and carnal indecency with the said Adele Holland, which was grossly scandalous, and which tended to debauch the morals and the manners of the people, in that he, the said Morris E. Cohen, did at the time

and place aforesaid, expose his private parts to the said Adele Holland; whereof, before you, he has been indicted, and was thereof convicted by a certain jury of the county, taken between the State of New Jersey, and the said Morris E. Cohen; as it is said manifest error hath intervened to the great damage of the said Morris E. Cohen, 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 to him, the said Morris E. Cohen commands you, that if judgment be thereon given, then that you distinctly and openly send, under your seal, the entire record and proceedings aforesaid, with all things touching the same, to our Supreme Court, to be holden at Trenton, on the 30th day of December, next, and the writ, that the record and proceedings aforesaid being inspected, we may further cause to be done thereupon for correcting that error, what of right and according to the laws and customs of New Jersey ought to be done.

Witness, WILLIAM S. GUMMERE, Chief Justice of our Supreme Court, at Trenton aforesaid, the 10th day of December, A. D. 1930.

FRED L. BLOODGOOD,
Clerk.

JOHN C. REED,
Attorney.

A true copy,
FRED L. BLOODGOOD,
Clerk.

RETURN.

The answer of Joseph A. Corio, Presiding Judge of the Court of Quarter Sessions of the County of Atlantic within named, the record and proceedings whereof mention is within made, with all things touching the same, I certify to the Justices of our Supreme Court of the State of New Jersey at the day and year within contained, in a certain schedule to this writ annexed as I am commanded.

JOSEPH A. CORIO,
Judge.

ATLANTIC COUNTY, to wit:

Be it remembered that at a Court of Oyer and Terminer and a Court of Quarter Sessions holden at Mays Landing, in and for the County of Atlantic, on the twenty-sixth day of September, in the year of our Lord one thousand nine hundred and thirty, at which the clerk of said courts by an order in writing then filed according to the statute in such case made and provided was directed to take and receive and thereafter file, such indictments and presentments, as the Grand Jury then sitting in and for the said County of Atlantic, might then offer and deliver, and the said clerk being present in the said courts and the said Grand Jury then being assembled, and being desirous of making presentments of sundry bills of indictment according to the form of the statute in such case made and

provided, and by the oath of Hope Madden, J. Reilly Potter, Anthony Graziana, Julia Miller, Agatha Dornfeldt, Thomas J. Devlin, Alvin H. Morris, George Senn, Samuel T. Zelley, Reuben T. Linn, Allen B. Endicott, Elmira Palmer, Patrick Meliff, John E. Letters, Edmund S. Yard, Thomas J. Christensen, Louis Sanguinetti, Sophia Atkinson, Walter Daminger, Ann A. J. McGee, Ann Keebler, Emil Weiler and William R. Brown, good and lawful men and women of the said County of Atlantic duly summoned and then and there sworn to inquire for the State of New Jersey, in and for the body of the County of Atlantic, now, therefore, then and there to said clerk, it is presented in manner and form following that is to say: State of New Jersey v. Morris E. Cohen, assault & battery & lewdness.

The bills herewith presented are true bills.

HOPE W. MADDEN,
Foreman.

Filed, entered and impounded September 26, 1930, at 3:35 P. M., by Henry McIntyre, Special Deputy Clerk.

WM. A. BLAIR,
Clerk.

To William A. Blair, Clerk of the Court of Oyer and Terminer and Quarter Sessions, in and for the County of Atlantic, and to any duly authorized Deputy Clerk of said Courts:

You are hereby notified, ordered and directed to take and receive any and all indictments, present-

ments and documents, by whatsoever name they may be known, that may be returned and presented to you by the Grand Jury in and for the County of Atlantic at the conclusion of its deliberation during the present term of 1930 and to impound same until released by order of the Court.

WM. H. SMATHERS,
Judge.

Dated September 26, 1930.
Filed September 26, 1930.

WILLIAM A. BLAIR,
Clerk.

IN THE
COURT OF OYER AND TERMINER.

OF ATLANTIC COUNTY.

May Term, A. D. 1930.

ATLANTIC COUNTY, to wit:

The Grand Inquest of the State of New Jersey in and for the body of the County of Atlantic upon their respective oath and affirmation, those who affirmed having first alleged themselves to be conscientiously scrupulous against taking an oath, present that Morris E. Cohen, late of the City of Atlantic City, in the said County of Atlantic, on and about the fifteenth day of March in the year of our Lord one thousand nine hundred and thirty, at the City of Atlantic City aforesaid, in the county aforesaid

and within the jurisdiction of this court, with force and arms, in and upon one Adele Holland, in the peace of God and of this State then and there being, an assault did make, and he, the said Morris E. Cohen, then and there did beat, wound and ill-treat and other wrongs to the said Adele Holland, then and there did, to the great damage of the said Adele Holland, to the evil example of all others in like case offending, contrary to the form of 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 oath and affirmation aforesaid, do further present that the said Morris E. Cohen on and about the fifteenth day of March, in the year of our Lord one thousand nine hundred and thirty, at the City of Atlantic City, in the county aforesaid, and within the jurisdiction of this Court, did with malicious intent commit an act of open lewdness, and notorious act of public indecency, grossly scandalous, wherein and whereby he did show and expose his private parts to one Adele Holland, and which act tended to debauch the morals and the manners of the people, to the evil example of all others in like case offending, contrary to the form of 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 oath and affirmation aforesaid, do further present that the said Morris E. Cohen, on and about the fifteenth day of March, in the year of our Lord one thousand nine hundred and thirty, at the City of Atlantic City, in the county aforesaid, and within the juris-

diction of this Court, did with malicious intent, in private, commit an act of lewdness and carnal indecency with one Adele Holland, which was grossly scandalous, and which tended to debauch the morals and the manners of the people, in that he, the said Morris E. Cohen, did at the time and place aforesaid, expose his private parts to the said Adele Holland, to the evil example of all others in like case offending, contrary to the form of the statute in such case made and provided and against the peace of this State, the government and dignity of the same.

LOUIS A. REPETTO,
Prosecutor of the Pleas.

[ENDORSED]

12800 Atlantic Court of Oyer and Terminer, May Term, 1930.
Indictment for Assault and Battery and Lewdness.
The State vs. Morris E. Cohen,
Louis A. Repetto, Prosecutor of the Pleas.
A true bill, Hope W. Madden, Foreman.
Plea 9/30/30 Not Guilty.
Trial 12/5/30 Guilty on 1st & 3rd counts.
Filed, entered and impounded 9/26, 1930.
William A. Blair,
Clerk.

ATLANTIC QUARTER SESSIONS COURT.

October Term, 1930.

12800
STATE,
v.
MORRIS E. COHEN.

December 5th, 1930.
Hon. Joseph A. Corio, Presiding.
Robert McAllister, for State.
John C. Reed and William Stringer, for defendant.
Charge Assault & Battery & Lewdness.
Plea: Not Guilty.

The above named defendant, Morris E. Cohen, being brought into court charged, pleaded not guilty to the crime as laid to his charge. Whereupon, on motion of Robert McAllister, Esq., Asst. Prosecutor 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. George Wagner sworn
2. Harward Myers "

3. Frank Austin "
4. Anna Silverman "
5. David R. Clower "
6. H. H. Gallagher "
7. Harry McCaine "
8. Margaret Walsh "
9. J. S. Hunt "
10. George Glenn "
11. Samuel Baylinson "
12. Louis Schaefer "

The following named witnesses who were called, Mrs. A. V. Holland, Frances Jackson, Dorothy Christensen, Mary Delgreeff and Mrs. A. V. Holland (recalled), having been sworn for the State and Mary Murrow, Julin Hutchinson and Morris E. Cohen, having been called for the defendant and the evidence being closed and the counsel having summed up the case a motion was made by Mr. Reed to strike out third count of indictment. Motion denied. Second count in indictment is not pressed by the State, and the Court having charged the jury they retired at 3:35 P. M., with Constable Theodore Whitmyer and Mrs. Lucinda Shaner who were sworn to attend them.

Joseph A. Corio, Judge of the Court of Quarter Sessions, do hereby instruct the clerk of the court to hold the court open, and authorize the said clerk to receive the verdict of the jury in the case of State v. Morris E. Cohen, and the jury being absent until 9.05 P. M., they returned again into the court and being called all appear and being asked say that they have agreed upon a verdict and by their foreman further say that they find the defendant, Mor-

ris E. Cohen, guilty on first and third counts of indictment.

Whereupon it is on this 19th day of December, A. D. 1930, ordered that the defendant, Morris E. Cohen, be placed at the bar and he being accordingly set at the bar the Court doth order and adjudge that the defendant, Morris E. Cohen's, sentence for three years in State Prison suspended and ordered to pay a fine of $1,000.00 and report once a week to the probation officer for a period of three years.

Quarter Sessions Judgment Book No. 15, page 62.

NOTICE.

ATLANTIC COUNTY COMMON PLEAS COURT.

(QUARTER SESSIONS.)

STATE OF NEW JERSEY, v. MORRIS E. COHEN.	Notice.

To Claude W. Myrose, Court Stenographer of the Atlantic County Quarter Sessions Court in re State of New Jersey v. Morris E. Cohen, Sur Indictment for Assault and Battery, and Lewdness with another in Private, and Conviction upon both counts:

I hereby request you to furnish me with a transcript of the evidence taken in the trial of the above

named defendant, Morris E. Cohen, which trial was had at Mays Landing, before Judge Joseph A. Corio, on Friday December 5th, A. D. 1930. I will deposit with you with this notice such sum as you require for the furnishing of this transcript. Please name it and give me a receipt for the same.

Yours truly,

JOHN C. REED,
Attorney for Morris E. Cohen, Defendant.

Dated, December 9, 1930.
Atlantic City, New Jersey.

I, CLAUDE W. MYROSE, Court Stenographer of the Atlantic County Quarter Sessions Court of the State of New Jersey, hereby acknowledge this day of December A. D. 1930, the within request for a transcript of the evidence taken in the trial of the case of the State of New Jersey v. Morris E. Cohen and I acknowledge that I have received $60.00 deposit, the estimated cost of said transcript of said evidence at this time.

CLAUDE W. MYROSE,
Court Stenographer of the Atlantic County Quarter Sessions Court of the State of New Jersey.

Sixty dollars ($60.00).
Filed December 19, 1930, at 9 A. M.

WILLIAM A. BLAIR,
Clerk.

CERTIFICATE OF REASONABLE DOUBT.

ATLANTIC COUNTY COMMON PLEAS COURT.

(Quarter Sessions.)

10

State of New Jersey, v. Morris E. Cohen.	On Writ of Error to the Supreme Court. Certificate of Reasonable Doubt.

20 A writ of error having been issued out of the Supreme Court at the instance of the above named defendant, directed to Joseph A. Corio, Esq., Judge of the Atlantic County Common Pleas Court; and it appearing to this Court that a reasonable doubt exists as to the validity of the conviction of the said defendant.

It is on this 19th day of December, A. D. 1930, ordered that defendant be admitted to bail in the sum of five thousand dollars pending the disposition
30 of said writ of error.

Joseph A. Corio,
Judge.

Filed and entered December 19, 1930, at 9 A. M.
William A. Blair,
Clerk.

ATLANTIC COUNTY COURT OF QUARTER SESSIONS.

The State,	)	Sur Conviction for
v.		Assault and Bat-
Morris E. Cohen.	)	tery and Lewdness.

State of New Jersey, } *ss.*
County of Atlantic, }

Be it remembered that on this 19th day of December, nineteen hundred and thirty, Morris E. Cohen and Michael Georgetti of Atlantic City in the Court of Atlantic, State of New Jersey, personally appeared before the Judge of this Court of Common Pleas constituting the Court of Quarter Sessions in and for the County of Atlantic and jointly acknowledged themselves to be indebted to the State of New Jersey in the sum of five thousand dollars to be levied and made of their respective goods and chattels, lands and tenements if default be made in the following conditions, which conditions are, that the said Morris E. Cohen shall prosecute with effect a certain writ of error which he has sued out of the Supreme Court of the State of New Jersey to remove a certain indictment, proceeding and judgment thereon, which has been pronounced by the said Court of Quarter Sessions against the said Morris E. Cohen and shall bring the said writ

of error to a hearing at a term of the said Supreme Court, according to the law governing the same; and if the said judgment shall be affirmed by said Supreme Court, shall abide the judgment already pronounced upon him by the said Court of Quarter Sessions or which may hereafter be pronounced by said Court, and appear before the said Court of Quarter Sessions from day to day until discharged by the said Court; and further, in case the judgment pronounced against him be reversed and a new trial granted that he will immediately deliver himself to the said Court of Quarter Sessions, to abide whatever order the Court may make therein touching his trial of said indictment, and not depart the Court without leave, then this obligation to be void, otherwise to be and remain in full force and effect..

MORRIS E. COHEN (Seal),
1520 Atlantic Ave.,
Atl. City, N. J.
M. GEORGETTI (Seal),
Penn Atlantic Hotel,
Atl. City, N. J.

Taken and acknowledged before me this 19th day of December, A. D. 1930.

JOSEPH A. CORIO,
Judge.

Filed Dec. 19th, A. D. 1930, at 11:30 A. M.

WM. A. BLAIR,
Clerk.

STATE OF NEW JERSEY.

County of Atlantic.

I, William A. Blair, Clerk of the County of Atlantic, and also Clerk of the Common Pleas Court holden therein, said court being a court of record, having a common seal, do hereby certify that the foregoing is a true copy of the proceedings in the case of State v. Morris E. Cohen, as the same are filed, entered and impounded in my said office.

In testimony whereof, I have hereunto set my hand and affixed my official seal at Mays Landing, N. J., this 20th day of December, A. D. 1930.

Wm. A. Blair,
Clerk.

(Seal)

By .....,
Deputy Clerk.

[Endorsed]

CERTIFED COPY
of
PROCEEDINGS
State
v.
Morris E. Cohen.
Filed Jan. 7, 1931.
Fred L. Bloodgood,
Clerk.

TESTIMONY.

COURT OF QUARTER SESSIONS.

ATLANTIC COUNTY, NEW JERSEY.

STATE,
v.
MORRIS E. COHEN.

Before HONORABLE JOSEPH A. CORIO, Judge,
and a jury.

Mays Landing, N. J., Friday, December 5, 1930.

APPEARANCES:
ROBERT N. MCALLISTER, ESQ., for the State.
JOHN C. REED, ESQ., and WILLIAM E. STRINGER, ESQ., for the defendant.

Mr. Reed: For the purpose of this motion I ask your Honor's permission to withdraw the plea of

not guilty and move the dismissal of the second and third counts in this indictment, on the ground that the facts stated in the second count include no charge of public indecency.

There are two separate and distinct offenses set forth in the 51 Section of the Criminal Procedure Act of this State.

The first one is "open and notorious" acts of lewdness that may be seen, yet not necessarily seen, by the public; but they must take place within or in a public place.

There is no allegation in this count nor in the indictment that this took place in a public place.

The second Section of this Act denounces acts of lewdness and carnal indecency with another; and with another it may be committed in private.

It means that there must be some penetration of the parts, the sexual parts, or anus or mouth. That is what that provision in the statute provides; and it also denounces the Act.

The law on this subject is settled, in this State, in 46 N. J., p. 16, in an opinion by Justice Beasley.

Also, by law, as to the 2nd Section, is settled by the Court of Errors and Appeals, in an opinion by Mr. Justice Garrison, in the case of State of New Jersey v. Rodesky. I will give your Honor the page of the Criminal Procedure Act, page 85, of the volume which your Honor has.

In the Rodesky case, that was a penetration, in private, of the mouth of a little girl.

Also, no set of facts are alleged in either one of these counts.

There is no allegation that this complaining witness was captive with us.

That Section does not provide a punishment for rape, but it does provide punishment for indecent acts like emissio os.

In the second count of this indictment it does not set up practically any violation of either one of the paragraphs of Section 51 of the Criminal Procedure Act.

The limit of the State's charge against this defendant, is assault, or attempted assault; and I ask that these counts be stricken.

(Motion denied.)

(Exception to defendant.)

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

JOSEPH A. CORIO (Sealed),
Judge.)

Mr. Reed: We now renew our plea of not guilty.

The Court: Are you ready?

Mr. Reed: We are ready.

The Court: Is the defendant in Court?

Mr. Reed: Yes.

(Jury sworn.)

(Mr. McAllister to the jury.)

Mr. Reed: I want to object to the Prosecutor's opening on the ground that the facts stated, to be proved by the State, do not involve this defendant in any violation of the 2nd provision of Section 51 of the Crimes Act.

(Objection overruled.)

(Exception noted to defendant.)

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

JOSEPH A. CORIO (Sealed),
Judge.)

Mr. Reed: I also object to the Prosecutor's opening on the ground that no time is mentioned as to when any of these alleged crimes were committed.

The Court: That is subject to proof.

Mr. Reed: I now move to dismiss the indictment on the ground that the Prosecutor did not state or allege any time within which he intended to bring this defendant within the statutory limits. There is no date there.

(Motion denied.)

(Exception noted to defendant.)

(Whereupon the defendant, by his counsel, prays

a bill of exceptions, which is hereby allowed and sealed accordingly.

JOSEPH A. CORIO (Sealed),
Judge.)

STATE'S TESTIMONY.

(MRS.) ADELE HOLLAND, sworn.

By Mr. McAllister:

Q. Where do you live?
A. 1527 Pacific Avenue, Atlantic City, New Jersey.
Q. Do you know Frances Jackson?
A. I do.
Q. Where does she live?
A. She is a waitress in the Knickerbocker Hotel, Atlantic City, New Jersey.
Q. Do you know Morris E. Cohen?
A. I do, sir.
Q. Do you see him in Court?
A. I do, sir.
Q. Point him out to the jury?
A. He is right there, sir.
Q. Do you know what business he is in?
A. He is a dentist, sir.
Q. He is a dentist?
A. Yes, sir.
Q. Do you know where his office is?
A. 1520 Atlantic Avenue, Atlantic City, New Jersey.

Q. Did you ever go to his office?
A. I did, sir.
Q. What floor does he have that office on?
A. On the second floor, sir, in the Freeman Building.
Q. Second floor of the Freeman Building?
A. Yes, sir.
Q. Did you ever go to his office?
A. Yes, sir.
Q. When was that?
A. The first time?
Q. Yes, sir.
A. The 4th of January.
Q. Nineteen what?
A. 1930.
Q. That is this year?
A. Yes, sir.
Q. How many times did you go there altogether? That is, approximately?
A. Do you mean the nearest I can say?
Q. Just approximately.
A. About fifteen times.
Q. Over what period of time?
A. I would go about once a week, sometimes twice a week.
Q. During a period of how many months?
A. About three months.
Q. Did you go to his office on or about March 15th, 1930?
A. Yes, the nearest I can think, sir.
Q. Was there anything unusual happened that day?
A. Yes, sir.
Q. What did you go there for?

A. To have a tooth extracted.

Q. What happened?

A. I went there. It was during lunch hour when I got off from work. I always made my appointment during lunch hour. I went there and his colored maid was there. The other girl had gone to lunch so he told me that I would have to have several teeth extracted and he told me he would have to give me gas. He gave me gas and when I came out of the gas I had had my teeth extracted. So I got up and walked out from his dentist's chair and saw the young girl was in his office and he told her to go downstairs for something. I don't know what, and I went across to the waiting room and I was putting on my coat and hat and Dr. Cohen walked in and took hold of me, grabbed me and pushed me back and started to lift up my dress, and he had his privates out and he had it like in his hand, and by his coat and I told him to let me alone and he said he would smack me in the mouth if I didn't keep quiet. And there was another room there and he kept pushing me over, and there is a little cot there near the door, but the people outside I guess had heard him and when he seen they heard him he let go of me and I ran out of the office.

Q. I suppose when you came to, when you regained your senses, after taking the gas, you were in the dentist's chair?

Mr. Reed: Objected to as leading.

Q. Where were you when you recovered from the effects of the gas?

A. In the dentist's chair.
Q. In the private room?
A. In a little private compartment.
Q. What kind of apron did he have on in there?
A. It is an apron that just comes up to here.
Q. I can't see.
A. Shall I rise?
Q. Yes.
A. It covers like up to here.
Q. Where did it button?
A. I never noticed.
Q. In front?
A. I couldn't tell you. I never noticed, sir.
Q. When you walked out you say that something happened which you just related. You say you went out of the room?
A. Out of the little compartment into his other office.
Q. How big is the other office?
A. About one-quarter the size of this room, this court room. It isn't as big as that.
Q. About one-quarter as big?
A. I wouldn't say just that big. I couldn't tell you exactly how big it is. It wasn't as big as this.
Q. How was it furnished?
A. He has two desks in there, a dressing room and a place where you wash your hands. And he has another table on that side and a few chairs, as far as I can say.
Q. When you go in there and the doctor is busy, where do you wait?
A. He has a waiting room on the other side of the hall.
Q. That is not his office?

A. No, sir.

Q. Where was this colored girl that you speak of?

A. When I went in to have my teeth taken out she was there.

Q. In the office?

A. Yes, but when I came out of the gas she wasn't there. But when I walked out of the little room, after taking the gas, she was in this office, I didn't know what she was doing, but I heard Dr. Cohen tell her to go downstairs for something.

Q. What did she do?

A. She went out in back of me. As I walked out she walked out.

Q. Had you had some of your teeth extracted and fixed?

A. Yes.

Q. Had you paid the doctor?

A. Yes, sir.

Q. In full?

A. All but four dollars. I paid him $56.00.

Q. Did he complete your work?

A. No, sir.

Q. Did you ever go back after this day?

A. Yes, sir.

Q. Did you go alone?

A. No, sir.

Q. With whom did you go?

A. I went with Frances Jackson, Dorothy Christianson and Mary De Graaff. I went first with Frances Jackson and Dorothy Christianson and then I went with Mrs. DeGraaff.

Q. Did he finish your teeth?

A. No, sir, he had finished the bridge work but he had a top tooth off here that he had broken in my

mouth; that is why I had to return and he told me it didn't amount to anything and I went to another dentist. He kept slapping me every time I went there and kept on saying things, so I went to another dentist, and he had to take an X-ray and he said——

Mr. Reed: That is objected to as to what he said.

Q. Why did you take Frances Jackson and Dorothy Christianson and Mrs. DeGraaff on these occasions?

Mr. Reed: Objected to. We are not interested in this. We are interested in the charge of this alleged offense. We are not concerned with why she took them there.

Mr. McAllister: Question withdrawn.

Cross-examination.

By Mr. Reed:

Q. May I ask you how old you are?
A. Twenty-nine.
Q. What is your business?
A. I am not working at all, now, but when I did work around here I did waitress work.
Q. Are you married?
A. Yes, sir.
Q. How long have you been married?
A. Nine years.
Q. Nine years?
A. Nine years the 9th of January.

Q. Do you live with your husband?

A. Yes, sir.

Q. Did you live with your husband in the year 1930?

A. Always did, sir.

Q. Do you remember going to Dr. Cohen's office on January third this year?

A. I didn't go on the third.

Q. Aren't you mistaken?

A. I remember going there. I was sent there by the hospital.

Q. I asked you if you were not in his office on January third, 1930?

A. The nearest that I can tell, I went in there on the fourth, or the third. I am not positive.

Q. You went in there on the third and made an appointment for one o'clock of January fourth?

A. To have my two teeth fixed.

Q. Didn't you make an appointment for the fourth of January at one o'clock?

A. I am not sure, sir.

Q. Wasn't that the day the teeth were extracted?

A. I had two teeth extracted.

Q. On January fourth you had a tooth extracted in Dr. Cohen's office?

A. Two of them.

Q. Nothing occurred at that time that was in any way offensive to you?

A. No, sir.

Q. On January 11th you returned to Dr. Cohen's office, did you not?

A. Yes, sir.

Q. And you had an appointment at 1:30?

A. As near as I can tell.

Q. And you kept that appointment?

A. I don't know as I kept it at the exact time.

Q. You were there and he did work on your mouth, and at that time he did nothing to you that in any way was offensive to you?

A. No, sir.

Q. That was for bridge work to take the place of the teeth that he had extracted on the fourth? Is that true?

A. I had two teeth taken out then, yes.

Q. That was after the fitting to make the bridge work, to replace your two teeth that had been extracted?

A. It is not.

Q. What was your visit, then, on the 11th, for?

Mr. McAllister: Objected to.

(Objection sustained.)

Mr. Reed: What is the ground of the objection?

Mr. McAllister: It is irrelevant.

Mr. Reed: I have a right to examine the witness, in detail. She said in her main testimony that every time she went to the office of Dr. Cohen that he assaulted her. I have already shown that she was there twice and she says that the doctor's conduct on those occasions was all right.

The Court: I didn't understand that to be the testimony.

Mr. Reed: As I understand the witness, in answer to the Prosecutor's questions, she said that every time she went to the doctor's office the doctor assaulted her.

The Court: That is not my recollection of the testimony.

Mr. Reed: I would like to have that settled. That is the way I heard it.

The Court: The testimony indicates that on March 15th was when this assault took place, this alleged assault.

Mr. Reed: That date is not directly charged in this count. It says "on or about."

Mr. Reed : This is the complaining witness. My contention is that I have a right to cross-examine her in detail for the purpose of showing whether or not she is telling the truth about this visit on January 4th, 1930; and if I am mistaken about what she said, then of course I am mistaken; but I understood her to say that each time she went there that he was trying to assault her. And I believe that that statement occurred in the latter part of her testimony.

The Court: I don't know where you got that impression from.

Mr. Reed: I thought that I heard it from this witness.

The Court: The testimony shows that an assault took place on March 15th; and that is the only part of the testimony, as I understand it from the complaining witness, as to any assault, and so forth. Am I mistaken?

Mr. McAllister: That is the way I understood it. That is the way I always did understand it.

(At this point of the proceedings a five-minutes' recess was directed by the Court for the purpose of having recourse to the stenographic record of the complaining witness' testimony, of this morning, just above referred to. The stenographer's record appears as follows, page 12 of the transcript of this testimony, second question and answer thereto:

"Q. Did he finish your teeth?

A. No, sir. He had finished the bridge work but he had a top tooth off here that he had broken in my mouth. That is why I had to return and he told me it didn't amount to anything, and I went to another dentist. He kept slapping me every time I went there and kept on saying things, so I went to another dentist and he had to take an X-ray and he said,——

Mr. Reed: Objected to as to what he said.")

(At the end of the reading of the foregoing question and answer of the complaining witness as appears in this transcript of testimony, page 14, bottom of page, the last question asked the complaining witness, in direct examination was then repeated to the complaining witness as follows:

"Q. What was your visit then, on the 11th of January, 1930, for?")

Mr. McAllister: Objected to.

The Court: It is permitted.

By the Court:

Q. Why did you go there January 11, 1930?

A. To have my teeth attended to. He was treating my teeth, cleaning them, and all that. I don't know just what he did to them. He was doing something to my teeth. I don't know just what he did that day to my teeth.

By Mr. Reed:

Q. You have stated to the Court and jury that this man behaved in an indecent manner toward you, on the 15th?

A. As near as I can say, sir.

Q. Is there any doubt in your mind as to when it occurred?

A. It occurred; but if I must be exact on the date, I didn't write it down.

Q. Don't you think that this is an important and extraordinary thing, as far as you are concerned, whether it made any impressioin on you?

A. It is.

Q. Do you mean that such offense as this is made no impressioin on your mind, as to the date when it is alleged to have happened?

A. Of course it would be impressed on my mind. I wouldn't lie. I am here to tell the truth.

Q. We understand that.

A. Do you mean must I say exactly on the 15th?

Q. This is a serious thing. If this thing occurred it seems to me that you ought to remember the date. A professional man behaving in such a manner, if he did, should fix the date in your mind.

A. The nearest date I can give you?

Q. The nearest date that you can recall is March 15th?

A. Yes, sir.

Q. You do recall that you were in the doctor's office on March 14th?

A. I do not recall.

Q. You do not recall that?

A. No, sir.

Q. As a matter of fact, according to the appointment book of Dr. Cohen's, your name appears in there as being there at 1:30 on March 13th?

A. I didn't always keep my appointment. I couldn't always go at the time he wanted me to.

Q. It also appears by the same book—by the way, what time of day was it that you were there on the 15th? Do you remember that?

A. On the 15th? About what time? It was between 10:30 and 12, as near as I can think; about 12 or 12:30. It wasn't after 12:30.

Q. Are you sure of that?

A. It wasn't after 12:30.

Q. Are you positive that the time that this assault occurred was between 10 and 10:30?

A. Not 10; but between 10 and 12:30. I can't say the exact time.

Q. You don't know the time, you don't know the date, as to when this serious and offensive thing occurred. Is that correct?

A. That is correct. I never noticed the time.

Q. You have described the office of Dr. Cohen. Take that picture in your hand and examine it. You have been in this office many times?

A. Yes, sir.

Q. Is that a correct photograph of the office?

A. Yes, sir.

Q. In what room was it, or what compartment was it, or what booth was it, that you contend that the doctor exposed his private parts to you?

A. Right here, sir.

Q. In this room?

A. Yes, sir.

Q. May I have it marked for identification?

(Photograph marked DX1 for identification.)

Q. In your examination-in-chief you told the Court and jury and the Prosecutor that the doctor followed you out of this room into his office and that he pushed you over to a couch? Did you say that or not?

A. That he followed me into the waiting room.

Q. Not that. But that he pushed you into the waiting room?

A. I never said that.

Q. You didn't say that?

A. No, sir.

Q. In answer to another question by the Prosecutor in explaining where the colored girl or attendant was, you say you walked out into the hallway?

A. I walked into his office.

Q. Didn't you walk out into the hallway?

A. Yes, into the waiting room. She was going out also.

Q. What business did you have in the waiting room?

A. I had to get my coat and hat.

Q. Isn't this office of Dr. Cohen's over the Woolworth Five and Ten Cent Store?

A. Right above it?

Q. Yes.

A. I don't know that it is right above it, but somewhere near the Freeman Building.

Q. You know it is not in the Freeman Building, do you not?

A. If you say that.

Q. You say that it was in the Freeman Building?

A. That is the nearest that I can think.

Q. You don't seem to be frank or exact about any of these statements you have made this morning, as to their truth?

A. I am trying to tell you as near as I can what he did at the time, I told you as near as I can.

Q. And this offense occurred March 15th, 1930?

A. Yes, sir.

Q. And thereafter, on March 21, you visited Dr. Cohen's office again?

A. I don't remember going there on the 25th of March.

Q. You do not?

A. I do not, no, sir.

Q. It appears,——

Mr. McAllister: Objected to.

The Court: There is nothing pending. "It appears" is all that was said so far. It is unfinished.

Q. Did you visit Dr. Cohen's office on March 21st, 1930, or did you not?

Mr. McAllister: Objected to.

The Court: It is permitted.

By the Court:

Q. You may answer that question yes, or no.

A. That I went to the doctor's on the 21st? I don't remember going on the 21st, but I know I went after March 15th, with the ladies.

Q. Did you go on March 24th?

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

Q. Did you go there on March 26th?

A. When I went to take the impression, to have it taken.

Q. Did you go on March 26th, yes, or no?

A. Yes, I believe I did, to have my teeth fixed.

Q. Did you go on March 29th?

A. Yes, sir.

Q. Did you go on March 21st?

A. I don't remember.

Q. Did you go on April 5th?

A. Yes, sir.

Q. You remember that very well?

A. Yes, sir, because it was the last time.

Q. Did you get your bridge work done on that day?

A. Yes, I believe I did get my bridge work done.

Q. Did you go alone?

A. No, sir, I went with Mrs. DeGraaff.

Q. Did you make any complaint in her presence?

A. No, sir.

Q. Or to Dr. Cohen, that he had exposed his person to you?

A. No, sir, never.

Q. During the time you went to his office on the different dates after this alleged occurrence did you ever complain to Dr. Cohen about his having exposed his private parts?

A. I was ashamed.

Q. Did you do it? Did you ever complain?

A. Do you mean to Dr. Cohen?

Q. To anybody?

A. To nobody.

Q. You never did?

A. No, sir.

Q. Do you remember having a conversation with Dr. Cohen on April 5th?

A. No conversation.

Q. You didn't have any conversation?

A. No, sir.

Q. Did you tell him that you had consulted another dentist?

A. No, sir.

Q. Did you tell him that you had consulted Dr. Hyman?

A. I didn't know Dr. Hyman then.

Q. When was it you consulted Dr. Hyman?

A. April 15th.

Q. After April 15th did you visit Dr. Cohen's office?

A. On the 21st of April.

Q. Who was with you on that occasion?

A. I was all alone.

Q. Who else was with you in the office when you were there on that occasion?

A. A colored girl; not the colored girl he had; he had a new girl, a white girl, a new one.

Q. A white girl was there at that time?

A. Yes, sir.

Q. What time was it that you went there on the twenty-first?

A. Between 10 and 11 o'clock.

Q. Then did you at that time make any complaint to Dr. Cohen, about his having insulted you when you were there on March 15th?

A. Yes, sir.

Q. What did you say to him?

A. I told him that he had to finish the work in my mouth; that the other dentist would not do the work unless I paid him for it. I told him I had paid him $56 and that he ought to fix the rest of my teeth, without insulting me; and he said he would fix the rest of my teeth. He says I didn't want to give him what he wanted. So when he said that I ran out of the office.

Q. At that time this other girl was there, this white girl?

A. She was waiting there for a messenger.

Q. She was there?

A. Not in the office.

Q. Where was she?

A. In the waiting room paying a little boy some money, eighty-one cents.

Q. Do you mean to say that you could see what was going on, what she was doing, from the doctor's office?

A. I couldn't see what she was doing.

Q. How do you know then?

A. She came in and asked Dr. Cohen for the money to pay the messenger boy with. I never seen him.

Q. It was on April 21st, some 36 days after this alleged offense that you first complained to Dr. Cohen?

A. Around that, sir.

Q. And notwithstanding the fact that he had attempted to assault you repeatedly and put his hands on you, and tried to lift your clothes and expose his penis, that notwithstanding that fact, you visited him on the 24th, 21st and 26th of March and you said nothing at all to him then about his conduct, did you?

A. I had the girls with me.

Q. Did you say anything to him?

A. No, sir.

Q. Did you say anything to anybody else?

A. No, sir.

Q. Don't you think you should complain when a physician begins to do a thing of this kind?

A. I was afraid my husband would do something to him. That is the reason I didn't complain to anybody.

Q. What did you say to Dr. Cohen when you visited him on the 21st,—that you wanted your money back?

A. Never.

Q. You did not?

A. Never.

Q. Didn't you demand your money back and say to him that if he didn't pay it back you would do something to get it back?

A. No, sir, never.

Q. You never said that?

A. Never.

Q. I don't want to embarrass you, what I want to remember correctly what you say. I understood you to say in your examination-in-chief that the doctor forced you over into the waiting room. Is that correct?

A. I was in the waiting room and he forced me into a little compartment where he has a day-bed, into another little compartment; that is after you leave his office.

Q. My understanding of your testimony, of your direct examination, was, that when you came to, he tried to put his penis in your hand, then shoved you into this waiting room across the hallway. Is that true?

A. No, sir.

Q. He didn't do that?

A. No, sir.

Q. That was all a mistake, then. Isn't this a public hallway that separates the operating room from the waiting room?

A. Yes, sir.

Q. Did you make any outcry when this man exposed his person to you?

A. When do you mean?

Q. Did you scream when it occurred on March 15th?

A. I didn't scream. I was surprised and I pulled back.

Q. You didn't say anything, and that is a public hallway there?

A. He didn't do it in the public hallway.

Q. He followed you over the public hallway?

A. Just one step across.

Q. Didn't he follow you over the public hallway?

A. And closed the door of the waiting room.

Q. He didn't follow you over the public hallway?

A. Yes, sir.

Q. So that after he exposed his person to you in the office he followed you across the public hallway, with his person still exposed?

A. No, sir, he never had his person exposed before the girl. When he told his girl to go out of the office he had put it back.

Q. You must have been pretty well composed about this tremendous offense, if you went over to get your hat and coat, were you not?

A. What do you mean?

Q. Were you upset?

A. Certainly I was upset.

Q. How did you show that you were upset?

A. I was nervous. That is all, sir, like I am now.

Q. After this exposure, when you visited Dr. Cohen's office, you paid him money on account of this work?

A. I always paid him.

Q. Didn't you pay him after the exposure?

A. Yes, I always paid him.

Q. Didn't you pay him after the exposure?

A. Yes, I always paid him.

Q. Just a minute. So that on different occasions when you went to see the doctor, after he had insulted you, you gave him your money,—didn't you?

A. I had to pay him.

Q. Didn't you give him your money?

A. Yes, sir.

Q. At the time you gave him your money you never complained about his having insulted you?

A. Do you mean Dr. Cohen?

Q. Yes.

A. I didn't talk at all to him.

Q. You didn't talk at all to him?

A. Just in a business way.

Q. Just in a business way?

A. Yes, sir.

Q. So that after this exposure you repeatedly went back to his office, at least according to the records here, 8 or 9 times?

A. I had to go back.

Q. And you paid him money on each one of these visits on account of the work that he had done for you?

A. I had to go there.

Q. Until you paid him $54.00?

A. $56.00.

Q. $56.00?

A. Yes, sir.

Q. And on the many other occasions when you visited him and made these payments, did you say anything to him about his conduct?

A. To himself?

Q. Yes, Dr. Cohen?

A. No, sir, just on the 21st I told him.

Q. It was on the 21st that you first told him? That was after you had visited another dentist?

A. After I had visited another dentist?

Q. Yes?

A. I didn't say anything to him.

Q. So that it was after you visited Dr. Hyman that

you went back and told him that he had insulted you, on March 15th?

A. I didn't tell him he insulted me.

Q. Didn't you consider it an insult?

A. I considered it an insult, but I mean that I didn't say to him that he could insult me all the time. I told him he wasn't going to insult me all the time. That is all I said.

Q. During most of the visits you made to Dr. Cohen's office, beginning in January, the 3rd of January on down to April 21st, the colored girl was there, Julia Hudgins; and also Mary Morrow, who is in charge of his office?

A. At what date?

Q. Well, I will read the dates. You made an appointment with Dr. Cohen on January 3rd, for January 4th, did you not?

A. Yes, as near as I can tell.

Q. With whom did you make that appointment?

A. Dr. Cohen made it.

Q. Who else was there?

A. The white girl.

Q. Will Mary Morrow please stand in court?

(Young lady rises in Court.)

Is this the young lady with whom you made the appointment? (Indicating young lady standing in Court room.)

A. Yes, sir.

Q. And you visited Dr. Cohen's office on January 4th, 1930, and you had the other teeth extracted that day?

A. Two, sir, yes.

Q. Who was present besides Dr. Cohen, in the room that day?

A. The white girl.

Q. The white girl, Miss Morrow?

A. Yes, sir.

Q. You visited this office on January 11th?

A. As near as I can tell.

Q. Who was present that day?

A. I don't rememer.

Q. You don't remember?

A. No, sir.

Q. Do you remember the time you were there on January 11th, 1930?

A. Between 10:30 and 12:30 is the nearest time that I can give.

Q. On the 18th you were at Dr. Cohen's office. Do you remember the time you were there that day?

A. I don't remember.

Q. You don't remember?

A. No, sir.

Q. The next time you were there was February 8th. Do you rememer what time you visited his office on February 8th?

A. I don't remember, sir. The only time that I know——

Mr. McAllister: Never mind that. There is nothing further pending. Just answer the questions.

Q. The next time that you appear to have visited Dr. Cohen's office, was on February 25th. Do you remember what time of day you visited on that date?

Do you remember who was present on any of those dates I mentioned, in the office of Dr. Cohen or in the operating room?

Mr. McAllister: That is objected to on the ground that it is immaterial who was present on the other days.

The Court: I think the questiion has been answered?

Mr. Reed: I am doing this to test her credibility. I think I have the right to test her credibility, by this examination.

(Objection sustained.)

(Exception noted to defendant.)

(Whereupon the defendant by his counsel prays a bill of exceptions which is hereby allowed, accordingly.

JOSEPH A. CORIO, (Sealed.)
Judge.)

By Mr. Reed:

Q. Do you remember the visit to Dr. Cohen's office on March 3rd?

A. I don't remember dates.

Q. Do you remember who was present on that day?

(Objected to.)

(Objection sustained.)

(Exception to defendant.)

(Whereupon the defendant by his counsel prays a bill of exceptions which is hereby allowed, accordingly.

JOSEPH A. CORIO, (Sealed.)
Judge.)

By Mr. Reed:

Q. Do you rememer a visit to Dr. Cohen's office on March 4th?

(Objected to.)

The Court: You have gone all over that.

Mr. Reed: I haven't gone over all the dates.

The Court: I think you have.

By Mr. Reed:

Q. Can you tell me how many teeth Dr. Cohen extracted for you?

A. Six, sir.

Q. Was it necessary to extract all of these teeth before the bridge work could be fitted?

A. Yes, sir.

Q. Isn't it a matter of fact that they were all extracted at once?

A. No, sir.

Q. It is not?

A. No, sir.

Q. After the teeth were extracted in January, on January 4th, 1930, didn't he then begin to treat your gums and fit the bridge work to your mouth?

A. He didn't fit the bridge work, only to the top jaw in February.

Q. Talk louder. We can't hear you.

A. He didn't fit the lower bridge work, because all my teeth were not, but he did fit the top bridge work in February.

Q. How many teeth did he take out to fit that part of the bridge work?

A. Only one.

Q. One?

A. Yes, with the gold cap.

Q. How many teeth did he take out to fit the lower bridge work?

Mr. McAllister: Objected to, on the ground that it is immaterial. We are not trying the question as to whether or not the doctor's dental work was perfect or imperfect nor as to the quality of his work. The questioin is, whether or not his conduct was as is charged in the indictment, and whether the act stated therein was committed. What he did to her mouth, I think, is incompetent and irrelevant.

The Court: I will permit the question.

Q. (Last question read to witness, as follows: "Q. How many teeth did he take out to fit the lower bridge work?")

A. Five, sir.

Q. When were they extracted?

A. He extracted two on January 4th; extracted one up here in February. Then he extracted some in March. I don't remember the date.

Q. You don't remember the dates in March?

A. No, sir, only the date March 15th.

Q. After the visit to Dr. Cohen's office on April 5, did you employ a lawyer?

(Objected to.)

(Objection sustained.)

Mr. Reed: Does your Honor overrule that questioin?

The Court: Yes.

(Exception noted to defendant.)

(Whereupon the defendant by his counsel prays a bill of exceptions which is hereby allowed, accordingly.

JOSEPH A. CORIO, (Sealed.)
Judge.)

By Mr. Reed:

Q. Did you at any time after the 25th or between the 25th and 21st of April employ counsel?

(Objected to.)

(Objection sustained.)

(Exception noted to defendant.)

(Whereupon the defendant by his counsel prays a bill of exceptions which is hereby allowed, accordingly.

JOSEPH A. CORIO, (Sealed.)
Judge.)

Q. Was the employment of counsel after you made the visit to Dr. Hyman?

(Objected to.)

(Objection sustained.)

(Exception noted to defendant.)

(Whereupon the defendant by his counsel prays a bill of exceptions which is hereby allowed, accordingly.

JOSEPH A. CORIO, (Sealed.)
Judge.)

By Mr. McAllister:

Q. After the time, which you say was on or about March 15, 1930, of the attack, how many visits did you make or on how many days did you return to Dr. Cohen's office?

A. I don't remember on how many days I returned to his office, but I returned several times.

Q. When you returned on these days did you go alone?

A. No, sir.

(Objected to.)

Mr. Reed: There is nothing new in that. She has already said the day on which she took these women there.

The Court: That is correct.

Mr. Reed: It is a reiteration of her main story.

The Court: You have that in her main story, that she returned on several occasions, with Mrs. Christianson and the other ladies.

(Objection sustained.)

By Mr. McAllsiter:

Q. I believe you have stated that April 21, 1930, was the last day that you were at the doctor's office. Who was with you on that day?

Mr. Reed: Objected to. There is nothing new on that day. She has already testified as to that.

The Court: I think the jury is very well acquainted as to that phase of the case.

Mr. McAllister: She was alone that day.

The Court: It clearly indicates the way she was there.

Mr. Reed: Your Honor, please?

The Court: There is nothing pending.

By Mr. McAllister:

Q. On March 15th how much had you paid on account of the doctor's bill?
A. The nearest I can say, is around $40.00,—the nearest.
Q. How much was the doctor's bill altogether?
A. Sixty dollars.
Q. On March 15th did you have your bridges in?
A. I had one top bridge in.

Frances Jackson, sworn.

By Mr. McAllister:

Q. Do you know Mrs. Holland?
A. Yes, sir.
Q. Did you ever go any place with her?
A. Yes, to Dr. Cohen's office.

The Court: Ask the witness to speak louder so the jury may hear.

Witness: Dr. Cohen's office.

By Mr. McAllister:

Q. Was that before——

Mr. Reed: Objected to. I do not think that the State has the right to lead the witness. There is some leeway, discretionary with your Honor. That is an important part of this case. I would ask that the Prosecutor be confined to develop his case according strictly to the evidence.

The Court: The form of your question is objectionable. Fix the date.

Q. Do you know why you went to the doctor's office with her?

Mr. Reed: Objected to. It is not important. It is irrelevant.

The Court: It is permitted.

(Exception noted to defendant.)

(Whereupon the defendant by his counsel prays a bill of exceptions which is hereby allowed, accordingly.

JOSEPH A. CORIO, (Sealed.)
Judge.)

Q. Do you know?
A. She said she didn't want to go alone.

Mr. Reed: That is objected to. That was said outside of the presence of the defendant and I ask that that be stricken.

The Court: It may be stricken out. The jury will pay no attention to that reply.

By Mr. McAllister:

Q. How many times did you go with Mrs. Holland to Dr. Cohen's office?
A. Twice.

Cross-examination.

Mr. Reed: No questions.

DOROTHY CHRISTIANSON, sworn.

By Mr. McAllister:

Q. Did you ever go to Dr. Cohen's office?
A. Yes, sir.
Q. With whom did you go?
A. I went with Frances Jackson and Mrs. Holland.
Q. Speak louder so the jury can hear you.
A. With Frances Jackson and Mrs. Holland.
Q. You went with Frances Jackson and Mrs. Holland?
A. Yes, sir.

Q. How many times did you go?
A. Twice for myself and twice with Mrs. Holland.
Q. When did you go with Mrs. Holland?
A. I don't remember the dates.

Cross-examination.

Mr. Reed: No questions. I move that her testimony be stricken out. It has no bearing on this proceeding.

(Motion denied.)

(Exception to defendant.)

(Whereupon defendant by his counsel prays a bill of exceptions which is hereby allowed and sealed accordingly.

JOSEPH A. CORIO, (Sealed.)
Judge.)

MRS. MARY DEGRAAFF, sworn.

By Mr. McAllister:

Q. Did you ever go to Dr. Cohen's office?
A. Yes, sir.
Q. With whom did you go?
A. With Mrs. Holland.

Q. On how many occasions?
A. Two occasions.
Q. Do you know the dates?
A. In March. I don't know the exact date. The 5th of April—5th of June, I mean.
Q. Who was with you on the 5th of June?
A. Mrs. Holland.
Q. Do you know why you went?

Mr. Reed: Objected to. We have had this in before. I think it is unfair.

The Court: I will permit it if the witness knows, if she answers yes.

Mr. Reed: I object to the question. It allows her to guess. If she answers will your Honor allow me an exception?

Q. Do you know why you went?
A. I went with Mrs. Holland to get a little bridge work done.
Q. Do you know the reason why you went with Mrs. Holland?
A. I went with her for company, to get the work done.

Mr. Stringer: She can answer yes, or no.

The Court: The question is to be answered yes, or no, but the witness is not permitted to give the reason, at this time.

By the Court:

Q. Do you know why you went with Mrs. Holland to the doctor's office?

A. I just went for company; that is all.

Mr. Stringer: We are willing to have that in.

By Mr. McAllister:

Q. How was it that you went with Mrs. Holland?

Mr. Reed: That is objected to on the ground that it has no bearing in this case, as to how or even why she went.

The Court: If you believe the question improper why don't you ask her if she went with Mrs. Holland and if so, at whose request did she go with Mrs. Holland, if she is able to answer.

Q. At whose request did you go with Mrs. Holland?

A. Mrs. Holland's request. She asked me to go.

Cross-examination.

Mr. Reed: We move to strike out all the testimony of this witness.

(Motion denied.)

Mr. Reed: We object on the ground that it is irrelevant, incompetent and immaterial.

(Motion denied.)

(Exception noted to defendant.)

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

JOSEPH A. CORIO, (Sealed.)
Judge.)

STATE RESTS.

Mr. Reed: I desire to move again to strike the third count in this indictment.

My contention is that that portion of this indictment is intended to denounce indecent connection with another.

I refer your Honor to a case, the opinion being by Mr. Justice Garrison, N. J. Ct. of Appeals, where they deal with an unnatural offense like emissio os or anything that is shocking to the public if committed in private.

The Statute says, "with another," meaning that they must be together to do this act.

There is no evidence here that should permit this jury to consider that the State has shown Dr. Cohen with another.

It does not mean, against the will of the other but with another.

The only crime that that section of this Statute

denounces is when a man with a woman had committed some unnatural act of lewdness or indecency; and those acts are well known.

I do not think that there is any proof here, anything in this case now, except an attempt to assault, if there is proof of that.

So that I think this count, like the second count, should be stricken.

And my motion is to that effect at this time.

Mr. McAllister: The essence of the offense is the intention to debauch the morals of the public.

The essence of the offense is that it presents itself in such a way that it becomes an affront to good morals and good manners of the people and tends to corrupt the public morality (57 Law, p. 209). (Also 6 N. J. Law, p. 311.)

The crime is committed if the person intentionally makes such exposure.

It is not necessary that a person see such exposure, if made in a public place with intent, but it is such exposure as would have been seen if the persons who could have seen, had looked.

And that Section of the Crimes Act which dealt with "public exposure" under such charge, has been changed since the Van Houten Case, (46 Law) amended, to read "also in private".

In State v. Spriggs, tried in this Court, that went to the Supreme Court, in which the indictment read "in public".

Mr. Reed: I think my friend entirely misunderstands the Van Houten Case.

That was a case where the defendant insisted on urinating in a private yard, which yard was overlooked by three or four different dwellings. The Court there properly said that if the defendant insisted upon doing that, that that was an act of open and notorious lewdness.

What we are trying under Count 3, is a private act with another that tends to debauch the morals of the community.

My friend is right in the matter of the other decision, made before the amendment to the Crimes Act was made.

There is absolutely no proof that what was done here was done with another.

It must be done with consent and it must be indecent.

I therefore press my motion.

(Denied.)

(Exception noted to defendant.)

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

JOSEPH A. CORIO, (Sealed.)
Judge.)

DEFENSE TESTIMONY.

MARY MORROW, sworn.

By Mr. Reed:

Q. Where do you live?

A. 1520 Atlantic Avenue.

Q. What is your business?

A. Dental hygienist.

Q. By whom are you employed?

A. Dr. Cohen.

Q. How long have you been employed by Dr. Cohen?

A. Eight years.

Q. What are your duties in connection with appointments and your attendance at Dr. Cohen's office?

A. My duties are to receive the patients and to see that they leave the office. Also, of course, to take care of them at the chair and to take care of the bookkeeping.

Q. Do you know this complaining witness, Mrs. Adelle Holland?

A. Yes, sir.

Q. Did you keep a book for Dr. Cohen showing all appointments with the doctor during the year 1930?

A. Yes, sir.

Q. Is that the book showing those appointments?

A. Yes, sir.

Q. Will you please take it and look at the entry

of January 4th, 1930, and tell me whether or not you made that entry in relation to Adelle Holland?

(Book shown witness.)

A. Yes, sir, I did.
Q. What does the entry show?
A. Bridge work, fillings and cleaning, and section.
Q. At what time was that appointment made for?
A. One o'clock.
Q. Did the doctor have other appointments before and after that?
A. Yes, sir.
Q. What were they?
A. One and one-thirty.
Q. What about prior to one o'clock?
A. Nothing between 11:30 and one o'clock, with Dorothy Christianson.
Q. Were you present when Dorothy Christianson came to keep the appointment on January 4th?
A. Yes, sir.
Q. What work was done for her at that time?
A. To get her teeth extracted.
Q. Examine this photograph and say whether or not that is a correct photograph of the doctor's room.
A. Yes, sir. That is a correct photograph.

Mr. Reed: I offer in evidence this photograph.

Mr. McAllister: Let me see it.

(Photograph shown Prosecutor.)

Can I ask a few questions about it?

Mr. Reed: Sure.

By Mr. McAllister:

Q. What room is this, shown here?
A. That is the extracting room.
Q. Which is the extracting room?
A. Here, on the right. This other one is the room for other patients, and this is the laboratory.
Q. Is there a chair in there?
A. Yes, sir.
Q. There is no chair in there (indicating)?
A. No, sir.
Q. This is where they have their teeth extracted?
A. Yes, sir.
Q. What do you call this room?
A. That is just the reception room, not the waiting room.
Q. That is not the waiting room?
A. No, sir.
Q. That is the reception room?
A. Yes, sir.
Q. Is there any desk in this room?
A. Yes, sir.
Q. Where is the desk?
A. It is not on there. There are two desks in that room.
Q. Is there a door there?
A. One going to the hallway.
Q. There is no other door?
A. No, sir.

Q. Where is the door that enters the room where there is a couch?

A. That is not the waiting room.

Q. Where is the door to that?

A. You would have to see a picture of the waiting room to see that door.

Q. What is this room?

A. That is not the waiting room.

(DX1, photograph, admitted).

Mr. Reed: I would like to have this photograph tacked up on the blackboard.

By Mr. Reed:

Q. This is an accurate photograph of the operating room of Dr. Cohen, is it?

A. Yes, sir, it is.

Q. Where is it located?

A. At 1520 Atlantic Avenue, Atlantic City, New Jersey.

Q. Is that in the Freeman Building?

A. No, sir.

Q. In what building is it?

A. It is over Woolworth's five and ten cent store.

Q. Will you tell the jury what this room is, here?

A. That room on the right is the dissecting room.

Q. What are the other rooms?

A. One is for extracting, and his laboratory.

Q. What is this?

A. The other room is a room where he receives other patients.

Q. Is this the room in which the teeth of Adelle Holland were extracted on January 4th?

A. Yes, sir.

Q. Were you there, present, when that extracting took place?

A. Yes, sir.

Q. Did Dr. Cohen administer gas?

A. No, sir.

Q. Who else was present outside of Dr. Cohen and yourself when her teeth were taken out?

A. I was there and Julia Hudgins.

Q. Was Julia there?

A. Yes, sir.

Q. Was that door closed?

A. No, sir.

Q. Do you know how many teeth were extracted?

A. Four teeth.

Q. Four teeth?

A. Yes, sir.

Q. Were they from the upper or the lower jaw?

A. From the lower jaw.

Q. Did Dr. Cohen have you there to assist him at that time?

A. Yes, sir.

Q. And thereafter, when did this Adelle Holland next visit Dr. Cohen's office. Will you refer to your book?

(Witness looks at book.)

A. After January 4th 1930?

Q. Yes. The next date, as I have it, appears to be about ——

A. January 11th.

Q. At what time of day was that appointment?

A. 1.30.

Q. Was there anybody had an appointment with Dr. Cohen before her?

A. No, sir.

Q. Nobody had an appointment before her?

A. Not between 11.30 and 1.30.

Q. Did she keep that appointment?

A. Yes, sir.

Q. When was the next time she made an appointment with Dr. Cohen?

A. Saturday January 18th.

Q. What were the hours of that appointment?

A. 2 o'clock in the afternoon.

Q. Was there anybody had an appointment before her that day?

A. Yes, one-thirty.

Q. Was there anybody had an appointment after her?

A. Yes, at two-thirty.

Q. When was the next time that Adelle Holland visited Dr. Cohen's office? February 8th appears to be the date in my record.

Mr. McAllister: I suppose this is all in her handwriting.

Mr. Reed: Yes. We are going to put the book in evidence.

A. February 8th, 2.30.

Q. No one had an appointment before her at that time?

A. One at two o'clock and one at three.

Q. When was the next date she had an appointment with Dr. Cohen, which she kept. February 15th I have it, at two-thirty.

Q. Was there anyone had an appointment before or after her on that date?

A. One at two and one at three.

Q. What was the next date? According to my record it is February twenty-fifth.

A. Yes, at nine-thirty in the morning.

Q. Was anybody ahead of her?

A. One at nine and one at ten.

Q. The next date. According to my records she next appeared, February 26th. Did she keep that appointment?

A. Yes, sir. At 10.30 in the morning.

Q. Nobody ahead of her or back of her in time of appointment?

A. Yes, one at ten and one at eleven.

Q. The next time she had an appointment with Dr. Cohen was on March 1st, according to my records. Will you tell me when it was on that date?

A. At two o'clock in the afternoon.

Q. Did anybody have an appointment ahead of her?

A. Yes, sir.

Q. Did anybody have an appointment back of her?

A. Yes, sir.

Q. According to my record, the next time she appeared at Dr. Cohen's office was March 4th. At what time on that day was it?

A. Ten o'clock.

Q. Did anybody have an appointment ahead of that? On that day?

A. No, sir.

Q. That was the first appointment on that day?

A. Yes, sir.

Q. On what date was that?

A. That was on Tuesday, March 4th.

Q. Was anybody after that on that date?

A. Yes, at ten thirty.

Q. When was the next time she appeared at Dr. Cohen's office by appointment?

A. Thursday, March 6th.

Q. What time of the day was that?

A. 10 o'clock in the morning.

Q. Was there any appointment ahead of her on that date?

A. At nine-thirty and one at ten-thirty.

Q. When was the next time Adelle Holand appeared at Dr. Cohen's office? It is on March tenth according to my records.

A. Yes, at one o'clock.

Q. Did anybody have an appointment prior to that?

A. No, none between eleven and one.

Q. Was anybody there by appointment after that?

A. Yes, one-thirty.

Q. The next appointment appears, according to my record, on March 15th. Will you examine as to that?

A. Yes, sir.

Q. Was she there that day?

A. Yes, sir.

Q. What time was the appointment on that day?

A. At 4 o'clock in the afternoon.

Q. Was anyone ahead of her on that day?

A. Yes, sir.

Q. At what hour?

A. Three-thirty o'clock.

Q. Was there anybody there by appointment that day after that time? Following her?

A. Yes, sir.

Q. At what hour of that day?

A. One at four-thirty and one at five o'clock.

Q. Just turn around and tell this jury so they can hear you, whether you were present when she came in at four o'clock on March 14th, 1930?

A. Yes, sir.

Q. Do you remember any conversation that was had about the work to be done for her that day?

A. No; I had given her an appointment on January third, for tooth extraction, and she had it extracted and there was no complaint made.

Q. Up to March 14th were you present at all these interviews, and did you make all of these appointments?

A. Yes, sir.

Q. Are these appointments in your handwriting?

A. Yes, sir.

Q. Were they written in the book at the time the appointment was made?

A. Yes, sir.

Q. Were you present at all times when Adelle Holland was in Dr. Cohen's office, from January 4th down to March fourteenth?

A. Yes, sir.

Q. Do you remember what Dr. Cohen did for Mrs. Adelle Holland on March 14th?

A. He took an impression for a bridge.

Q. A lower or upper bridge?

A. A lower bridge.

Q. When had the teeth been extracted for that bridge?

A. January 4th.

Q. Turn to your book record and see whether Mrs. Holland had an appointment with Dr. Cohen on March 15th?

A. Yes, sir.

Q. What time of that day was that?

A. At four o'clock in the afternoon.

Q. Did Dr. Cohen have an appointment with another patient prior to that time?

A. Yes, sir, one at one o'clock and one at four, when she had the appointment.

Q. Was there any appointment prior to that? Just before that?

A. One at 3.30 o'clock

Q. Was there one immediately after that?

A. Yes, sir, at 4.30.

Q. Were you present at the doctor's office on the 14th and 15th at the time that these appointments were kept?

A. Yes, sir.

Q. Who else was present?

A. Julia was there; and another patient was there.

Q. What was the name of the other patient?

A. Miss Eisenhardt

Q. In operating the business there did you some-

times have a patient in one booth and a patient in the other booth, getting ready?

A. Yes, sir.

Q. Was that the case on March 15th?

A. Yes, I had Miss Eisenhardt in the other chair.

Q. Which chair was she in?

A. In the chair on the left-hand side.

Q. Where did Mrs. Holland go in this room?

A. Here (indicating).

Q. Were you there?

A. Yes, sir.

Q. Did Dr. Cohen extract any teeth for her on that day?

A. Not on the 15th.

Q. Did he treat her, or take an impression of the gums?

A. He took an impression.

Q. The doctor was there and Mrs. Holland was there?

A. Yes, sir.

Q. And Julia was there?

A. Yes, sir.

Q. And Miss Eisenhardt?

A. She was there, and another patient.

Q. And you were there?

A. Yes, sir.

Q. When this impression was made for this lower bridge, did Dr. Cohen close the door to the extracting room?

A. No, not close that door.

Q. You heard the statement made by Mrs. Holland?

A. Yes, sir.

Q. Of course, it is rather vague and indefinite in my mind, but whatever she complains of must have occurred on March 14th or March 15th. You were present at the doctor's office on both these days?

A. Both days.

Q. You were in attendance upon her and the doctor?

A. Yes, sir.

Q. That is true?

A. Yes, sir.

Q. Did Dr. Cohen at that or any other time, upon a visit to his office by Mrs. Holland, when you were there, take his penis out and put it in Mrs. Holland's hand?

A. No, sir.

Q. Does the doctor wear an apron?

A. At times he wears an apron; sometimes he wears a coat.

Q. Did he have an apron on that day?

A. I couldn't tell you.

Q. You heard Mrs. Holland tell this jury and the Court that he put his penis in her hand and that then he pushed her over to the waiting room and knocked her down and put her on the couch?

A. Yes, sir.

Q. Were you there?

A. No, sir, I never seen such a thing occur in the office.

Q. Were you there?

A. Yes, sir.

Q. Did it occur?

A. No, sir.

Q. Did it occur that day or on any other day that you were there?

A. No, sir, it did not.

Q. After March 14th and March 15th, did Mrs. Holland visit Dr. Cohen's office?

A. Yes, sir.

Q. Will you look at the book and tell us when the next appointment is?

A. The next appointment is March twenty-first.

Q. What time of the day was that appointment?

A. 2 o'clock in the afternoon.

Q. Was anybody ahead of her?

A. Yes, sir.

Q. Was anybody back of her?

A. Yes, sir.

Q. Did you receive this patient and prepare her for the doctor's work that day?

A. Yes, sir.

Q. That is your duty?

A. That is my duty.

Q. Did you receive her again after March 21st? March 24th I think is the date.

A. There was an appointment there at nine-thirty, for March the twenty-fourth.

Q. Were you there at that time?

A. Yes, sir.

Q. Did she keep that appointment on that day?

A. Yes, sir.

Q. Was there anybody had an appointment with the doctor that day prior to that time?

A. Yes, sir, one at nine o'clock and one at ten o'clock.

Q. Did you prepare this patient for treatment by the doctor?

A. Yes, sir, I did.

Q. Did you ever talk to Mrs. Holland after March 14th and March 15th, when she came to the doctor's office?

A. No, sir.

Q. Did she ever make any complaint to you that Dr. Cohen had insulted her by putting his private parts in her hand?

A. No, sir, she did not.

Q. This waiting room is on one side of the public hallway and the operating rooms on the other?

A. Yes, sir.

Q. There is a public hallway there?

A. Yes, sir, there is.

Q. There are numerous tenants in this building?

A. Yes, sir.

Q. How long have you been with Dr. Cohen?

A. Seven years.

Q. At four o'clock in the afternoon is the Woolworth store a busy place?

Mr. McAllister: Objected to. That is leading.

Mr. Reed: I have previously stated that I do not object to leading questions. I have never known a case to be reversed on account of the allowance of a leading question. It is discretionary with your Honor. I will lead just as little as I possibly can.

By Mr. Reed:

Q. Is that a busy place during that time at Woolworth's five and ten cent store?

A. Yes, sir.

Q. Could people hear an outcry?

(Objected to.)

(Objection sustained.)

Q. When did Mrs. Holland next appear at Dr. Cohen's office by appointment, my date here is March twenty-sixth.

A. March twenty-sixth at two o'clock.

Q. Did she keep that appointment?

A. Yes, sir.

Q. Was there anybody who had an appointment prior to that time on that day?

A. There was one at one-thirty and one at two-thirty that day.

Q. Did she ever bring anybody with her into the office, or into the operating room?

A. No, sir, the only patients that would be sitting in that room would be patients having work done; then the other patients would be in the other chair. We have a waiting room.

Q. When did Mrs. Holland next appear? March the twenty-ninth is my date.

A. Yes, at two o'clock.

Q. At what time of day did she have her appointment for?

A. Two o'clock in the afternoon.

Q. Was there any appointment that day prior to that hour?

A. None from 11.30 to 2 o'clock.

Q. Was there any appointment that day after that hour?

A. After that, the other one at 2.30 o'clock.

Q. When was the next time she appeared at the doctor's office?

A. March thirty-first.

Q. What time of day was it she had the appointment for?

A. At four o'clock, in the afternoon.

Q. Did anybody have an appointment prior to that time?

A. Yes, one at three-thirty and one at four-thirty.

Q. When next did Mrs. Holland visit Dr. Cohen's office?

A. April 5th.

Q. Were you there April 5th when she came?

A. Yes, sir.

Q. At what time was her appointment on that day? At what hour did she come there?

A. At two-thirty in the afternoon.

Q. Was there anybody there prior to that?

A. There was one at two o'clock. Her appointment was two-thirty. There was one appointment at two o'clock and one at three.

Q. Did you make all these appointments for Dr. Cohen and make the entries in this book?

A. Yes, sir.

Q. All the entries you made for her are in your handwriting?

A. Yes, sir.

Q. You also collect money for Dr. Cohen and make entries in this book?

A. Yes, sir.

Q. During this period of time, from January 4th to April 5th, did Mrs. Holland make payments to you on account of the work she had done by Dr. Cohen?

A. Yes, sir.

Q. How many payments were made after March 14th and March 15th?

A. One on February 8th, another on February 25th; one on March 3rd and the last one, April 5th.

Q. How much did she pay on April 5th?

A. $5.00

Q. What was the usual amount of her payments?

A. Well, on three different occasions she paid $5.00 and another time she paid $10.00, March 3rd and March 15th; and April 5, the last payment, was $5.00.

Q. Did she actually make the payment on April 5th, to Dr. Cohen or to you?

A. To me.

Q. Did she get her bridge work that day?

A. Yes, sir.

Q. Did she make any complaint to you about the character of the work or Dr. Cohen's treatment of her at that time?

A. No, sir, none whatever.

Q. What was her attitude toward the doctor at that time?

Mr. McAllister: Objected to.

(Objection sustained.)

Mr. Reed: If this woman was insulted on all these occasions, and outrageously assaulted, she would certainly show it by her demeanor.

By Mr. Reed:

Q. Did she behave like an ordinary respectable woman toward Dr. Cohen on all these visits?
A. Yes, sir.
Q. When was it that you first learned of any difficulty between Mrs. Holland and Dr. Cohen?

(Objected to.)

(Objection sustained.)

Q. Did you ever hear of any complaint made by Mrs. Holland against Dr. Cohen, and if so, when?
A. Yes.

(Objected to.)

(Objection sustained.)

Q. You did hear of it?
A. Yes.

Mr. McAllister: I ask that that be stricken.

The Court: It may be stricken. Strike it out.

Mr. Reed: I would like an exception.

(Exception noted to defendant.)

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

JOSEPH A. CORIO (Sealed),
Judge.)

By Mr. Reed:

Q. Did you have any conversation with Mrs. Holland?

A. Did I?

Q. Yes.

A. No, sir.

Q. When she came in did you prepare her for the doctor?

Mr. McAllister: Objected to.

A. Yes, sir.

Q. Did she ever complain to the doctor about any offensive conduct on the part of the doctor toward her?

Mr. McAllister: Objected to.

A. No, sir.

(Objection sustained.)

Q. Were you present at the time that she came to the doctor's office on April 21st?

A. No, sir.

Q. Where were you at that time?

A. I was out for a few days. I wasn't in the office.

Q. Turn to that date and see whether there is any record of her being there at that time?

A. No, sir, none there at all.

Q. You heard it stated that she was in Dr. Cohen's office on June 5th?

A. Yes, sir.

Q. Was she there on June 5th?

A. June 5th?

Q. Yes.

A. No, sir.

Mr. McAllister: Are you going to offer in evidence this book?

Mr. Reed: I offer this book in evidence, now.

(Book marked DX2, "Appointment Book," marked on first page thereof.)

(DX2, "Appointment Book, 1930," admitted in evidence.)

(Recess to 1:30 P. M.)

AFTER RECESS, 1:30 P. M.

MARY MORROW, resumed.

Cross-examination.

By Mr. McAllister:

Q. On March 15th, 1930, according to your records Mrs. Adelle Holland had an appointment at 4 o'clock with Dr. Cohen?

A. Yes, sir.

Q. Who was the patient that you mentioned that was there?

A. There was a patient there, one at one-thirty and one at four-thirty.

Q. Which patient was present?

A. The patient, Miss Eisenhardt, she was getting a lower plate made.

Q. Miss Eisenhardt?

A. Yes, sir.

Q. Show me where in the book under date of March 15th, Mrs. Eisenhardt's name is?

A. Right here—Eisenhardt.

Q. She was put down for what hour?

A. She was put down for five o'clock.

Q. What time did Mrs. Holland get there?

A. At four o'clock.

Q. Miss Eisenhardt was there an hour ahead of time?

A. No, she wasn't. We had an extraction between that. You will notice that in the book.

Q. The next is four-thirty.

A. Mrs. Gaskell. She was there for an extraction and Miss Eisenhardt was there during the extraction, in the waiting room.

Q. She was there at 5 o'clock?

A. When she was there, yes. She was there before the appointed time. She was never on time.

Q. She was not?

A. No, sir.

Q. Does the book show whether or not these appointments were kept by Mrs. Holland?

A. Yes, sir.

Q. Was either one of them kept?

A. Yes, sir.

Q. Do you know how much the total bill was?

A. $60.00.

Q. And she paid how much?

A. $45.00.

Q. Altogether?

A. Yes, sir.

Q. As to March 15th? Were the teeth finished?

A. No, the teeth were not finished.

Q. What was left to be finished?

A. She said it would be impossible for her to pay $60 to the doctor, but he reduced the bill to $50. It is erased out and put in "$50."

Q. She still owes the doctor then, $5.00?

A. Yes, sir.

Q. Her teeth are not finished yet?

A. No, sir.

Q. Mrs. Holland had an appointment with the doctor on March 10th, at one o'clock. Is that correct?

A. Yes, sir.

Q. Do you remember whether she was there that day?

A. I couldn't tell you without looking at my book. I don't keep the appointments in my head.

Q. So that the only way you know that Mrs. Eisenhardt was there that day is by the book?

A. I made them previous to that day, to the day of the appointment, before that day; and she had been in the office other days when Mrs. Holland was not present.

Q. I didn't ask you that.

(Last question read to witness as follows: "Q. So that the only way you know that Mrs. Eisenhardt was there that day is by the book?")

A. Yes, certainly.

Q. Do you remember distinctly, Mrs. Eisenhardt being there on March 15th?

A. Yes, I do.

Q. Was there anything unusual happened on the 15th?

A. No, sir.

Q. Was there anything unusual happened on the 10th of March?

A. No, sir.

Q. How is it you don't know who the patient was on March tenth, that was there before Miss Eisenhardt or after Mrs. Holland?

A. I go according to the book. As they come in I mark them in the book.

Q. Was there anything unusual on the 15th that happened that called it to your attention?

A. No, sir.

Q. How is it you don't know?

A. I can tell you whether there is a patient before or after, by the book.

Q. You say that Mrs. Eisenhardt was there at the time?

A. Yes, sir.

Q. Who was there at the time of the appointment on March 10th?

A. Just as the book tells you.

Q. It doesn't tell me anything.

A. Then there was no one there between 11 and 1 o'clock.

Q. Was there anyone else present there that day besides Mrs. Holland?

A. Yes, sir.

Q. At the time Mrs. Holland was there?

A. No, I don't think so.

Q. Do you know?

A. No, I don't know.

Q. Why are you so positive about the 15th of March?

A. Well, I know Mrs. Eisenhardt never kept her appointments on time. She has often called up and said she would be there in the office in five minutes. She is a business woman and has often phoned down and said if we can take care of her right away she will come in. The appointment is never entered unless the patient really comes in.

Q. What happened to Miss Eisenhardt that day?

A. She had an impression taken.

Q. What happened to Mrs. Holland?

A. She had an impression taken, too, for a bridge.

Q. Do you know that on account of this book?

A. No, sir.

Q. How do you know that?

A. That was the only thing that she had done, the teeth removal and the bridge work.

Q. What happened to her on the 14th?

A. The doctor treated her gums.

Q. What makes you remember that?

A. It is necessary to treat the gums after extractions, if the gum is not ready to take the impression.

Q. When was the examination?

A. January sixth.

Q. She was still being treating for extraction, on the 14th?

A. Yes, positively necessary.

Q. You didn't have "treatment" in the book for that day, March 14th?

A. "Bridge" it is marked.

Q. It says "bridge?"

A. Of course, the doctor can't place a bridge there unless the gums are healed up. It would be impossible for any dentist to do that.

Q. What treatment did he give her on March 10th?

A. Treatment of the gums.

Q. Her gums?

A. Yes, sir.

Q. What do you mean by "bridge," what kind?

A. Removable bridge.

Q. Does that fit the gums?

A. Yes, sir.

Q. Where?

A. Around the neck of the teeth.

Q. What was the matter with her gums?

A. They were not healed after extraction.

Q. They were extracted January what?

A. January 4th.

Q. January 4th?

A. Yes, sir.

Q. And they were not healed March 10th?

A. No. We have already had patients where they didn't heal up in six months.

Q. What did she go there on March the 6th for?

A. For treatment I suppose; whatever the book calls for. I can't tell you from memory.

Q. The book calls for a bridge?

A. After she had the teeth extracted that was the only thing to be done after that, the bridge work. That was all that she was going to have done.

Q. What was Mr. Gaskell getting done?

A. Extraction.

Q. Were there any fillings being done for her?

A. No, sir.

Q. Look at the book?

A. There is Mr. and Mrs. Gaskell.

Q. I said, "Mr. Gaskell."

A. Mr. Gaskell was having fillings and cleanings. There are different Gaskells.

Q. How much did Mr. Gaskell pay you?

A. Three dollars.

Q. How can you tell which is Mr. Gaskell?

A. I notice on one of our appointments there was Mr. and Mrs. Gaskell.

Q. Who was Mr. Gaskell?

A. This one day we had Mr. Gaskell.

Q. How do you know?

A. How do I know?

Q. Yes.

A. It tells you right there, "cleaning."

Q. It doesn't tell you his initial?

A. No, it doesn't.

Q. Was Mrs. Holland there on March 4th?

A. Yes, sir.

Q. The same thing that day?

A. She didn't have her bridge work attended to that day. There must have been something before the bridge work; you must heal the gum.

Q. How many Mrs. Glenns did you have?

A. Only one.

Q. What happened to her?

A. I couldn't tell you, without looking at the book.

Q. How do you remember that she had her gums treated?

A. That was the only thing, to extract the teeth, treat her gums and put the bridge back again.

Q. She said some of her teeth were extracted in January and some at a later date—to be exact, March 15th. Is she wrong?

A. I don't remember her having her teeth extracted in January; only the extraction on March 15th.

Q. How many teeth were extracted on that day?

A. Four.

Q. How many teeth did she have extracted altogether?

A. Four.

Q. She is wrong? She says there were six?

A. Yes.

Q. What does that represent?
A. Where the bridge was placed.
Q. Is that a lower bridge?
A. Yes.
Q. Where is the upper bridge?
A. No upper bridge.
Q. Only one bridge?
A. Only one bridge, lower removable bridge.
Q. Did she have anything done to the upper part of her mouth?
A. No, sir.
Q. Are you sure of that?
A. Positive.
Q. Were you there on every occasion when she called?
A. All but the last one.
Q. You recall everything except that last one?
A. Yes, sir.
Q. Did she have her gums prepared that day? Did you prepare her gums that day?
A. I did not prepare her gums.
Q. What did you do?
A. Received the patients, placed them in the chairs and got them ready for the doctor.
Q. Did you have a desk?
A. Yes.
Q. Where is the desk?
A. In that room there. That doesn't show on the picture.
Q. Where is the waiting room?
A. On the other side of the hallway.
Q. You take them out of that room?
A. Yes.

Q. How do you get the patients over there?

A. By a buzzer we have connected with the other door.

Q. They walk into the waiting room?

A. Exactly.

Q. How are they signalled to come into the reception room?

A. I signal.

Q. You go out and get them?

A. Yes, sir.

Q. Do you recall your going on the 15th and getting her in?

A. I recall at the time every patient that comes in.

Q. Every patient?

A. Yes. I have to take them all in.

Q. What time did you go to lunch?

A. Twelve to one.

Q. Twelve to one?

A. Yes, sir.

Q. How late did you work?

A. How late what?

Q. How late did you work?

A. According to whether the doctor has a patient, after six o'clock I am free to go. We go by appointments in the evening.

Q. Is there ever a patient that comes into the office that you are not there?

A. No, sir.

Q. Since the past 8 years.

A. No, sir, the doctor makes the appointment if they should come there, and gives them an appointment for the following day, because it is impossible for me to do it if I am not there.

Q. I thought you said you make the appointments?
A. If I am not there the doctor does it.
Q. All these appointments here were made by you?
A. Yes, sir.
Q. They are in your handwriting?
A. Yes, sir.
Q. How long have you worked for the doctor?
A. Between seven and eight years.
Q. At the same place?
A. At the same place.
Q. You are sure that she had nothing done to the upper part of her mouth?
A. No, sir.
Q. Which office did he go in on the 15th?
A. This place here.
Q. Isn't that the place where he pulls the teeth out?
A. Yes, sir.
Q. Do you know on what chair the work is done in that room?
A. If an extra patient comes in for treatment we can put them in that chair; for bridge work I can place them in that chair.
Q. It is not exclusively an extracting room?
A. No, we have had two patients; one in for extracting and one in the other for fitting work.
Q. There was no other patient in the other chair on this day, was there?
A. Yes, sir.
Q. Who was it?
A. Miss Eisenhardt. That is what the book calls for.
Q. She had teeth extracted?
A. No, she had an upper plate made.

JULIA HUDGINS, sworn.

By Mr. Reed:

Q. Where do you live?
A. Where do I live?
Q. Yes.
A. 1511 Baltic Avenue, Atlantic City.
Q. Are you married?
A. Yes, sir.
Q. Where do you work?
A. 1520 Atlantic Avenue.
Q. For whom do you work?
A. For Dr. Cohen.
Q. How long have you worked for Dr. Cohen?
A. For three years.
Q. Were you working for Dr. Cohen in January, February, March and April of this year, 1930?
A. Yes, sir.
Q. Did you see Mrs. Adelle Holland, who was on the stand this morning, before ?
A. Yes, sir.
Q. You have seen her before?
A. Yes, sir.
Q. What time did you come on duty at Dr. Cohen's office during this period?
A. I came on duty at twelve o'clock.
Q. At twelve o'clock noon?
A. Twelve o'clock noon, yes, sir.
Q. Do you remember whether or not you were present in the doctor's office on March 14th and March 15th this year, at one o'clock?

A. Yes, sir.

Q. Was Mrs. Holland a patient of the doctor's at that time?

A. Yes, sir.

Q. How often have you seen Mrs. Holland at Dr. Cohen's office?

A. Fifteen or twenty times.

Q. What are your duties after you come on to work, what do you do?

A. I clean the doctor's office and take care of the patients who come into the office, and observe the conduct of the patients that comes into the office.

Q. You stay there all the time?

A. Yes, sir.

Q. Who else is there during the time that you come on duty, until you leave?

A. Miss Morrow.

Q. Do you remember Mrs. Holland visiting the doctor's office on March 14th and 15th?

A. Yes, sir.

Q. Were you in the operating room on those days?

A. Yes, sir.

Q. Did anything happen or occur that day, March 15th, between Mrs. Holland and Dr. Cohen, anything unusual?

A. No, sir.

Q. Do you remember in what room Dr. Cohen treated Mrs. Holland on the 14th and 15th when she was there?

A. Yes, sir.

Q. In what room was it? Please show the jury by using the photograph?

A. In this room. (Indicating.)

Q. Was there any gas administered on either one of these days?

A. No, sir.

Q. Were you present at the time that Dr. Cohen extracted Mrs. Holland's tooth?

A. Yes, sir.

Q. Do you remember what day that was?

A. Yes, sir.

Q. When was it?

A. January the fourth.

Q. Did he give her gas on that day?

A. No, sir.

Q. At any time during the time that you were on duty when Mrs. Holland came to the office, did he ever administer gas to her to extract any teeth?

A. No, sir.

Q. Did Dr. Cohen, while Mrs. Holland was in this extracting room, expose his person to you or her at that time?

A. No, sir.

Q. Did he send you out of the room to go on an errand as Mrs. Holland has testified?

A. No, sir, never.

Q. You were there during all the time that she was there?

A. Yes, sir, I was.

Q. During the time that Mrs. Holland visited Dr. Cohen's office, after March 14th and March 15th, did you ever see her after that?

A. After the fifteenth?

Q. Yes.

A. Yes.

Q. Did she ever make any complaint to you about Dr. Cohen, as to his having insulted her?

A. No, sir, never.

Q. There is a door leading into this office, shown on this photograph, is there not? There is a door?

A. Yes, sir.

Q. Does that lead in from the hallway?

A. Yes, sir.

Q. Is that door ever locked?

A. No, sir, never.

Q. Are there different people going up and down that hallway all times of the day?

A. All times of the day.

Q. People can enter this office from that hall, at any time, without being admitted?

A. Yes, sir.

Q. Do people do that occasionally?

A. Yes, sir.

Cross-examination.

By Mr. McAllister:

Q. What are your duties around this office?

A. To clean the doctor's office and observe the conduct of patients who come in.

Q. Observe the conduct of patients who come in?

A. Yes, sir.

Q. What do you mean when you say, "Observe the conduct of patients?"

A. To see what they say and how they act, and everything.

Q. All patients?

A. All patients.

Q. What else do you do?

A. Clean the doctor's office.

Q. What particular things do you observe about a patient when he or she comes in, we will say for example, a lady walks in. What do you observe?

A. Just watch while the doctor is working on them, how they act, or anything. If they don't do or say anything there is nothing to remember about it.

Q. After that, if there is something that you do remember about, what do you do about it?

A. What do I do about it? I don't do anything about it?

Q. You don't?

A. No. If someone complains or says anything, I remember it. Then, if they don't say anything, I don't, either, but I remember what is going on.

Q. But suppose they do say something, what do you do about it?

A. Do something about what?

Q. Every different action? You observe their actions, don't you?

A. I keep it to myself.

Q. You just keep it to yourself?

A. Yes, unless I have to tell it. Then I will tell it then.

Q. Are you pleased to tell it?

A. If I have to, yes.

Q. If you "have to"—what do you mean by that?

A. In a case like this.

Q. You were kept there observing the actions of Mrs. Holland?

A. Yes, to remember what I see and hear.

Mr. Stringer: Objected to. There is no testimony here that she was supposed to observe the actions of Mrs. Holland, and I ask that that be stricken out.

Mr. McAllister: She is testifying to it now.

Mr. Stringer: Will you go back to the record?

The Court: Proceed.

By Mr. McAllister:

Q. You were kept there observing Mrs. Holland?

Mr. Reed: Objected to. I haven't heard any ruling on that objection, your Honor.

The Court: I do not think your objection is well taken. The testimony that she has just given is that she observes the actions and conduct of all patients that come in. And the Prosecutor is asking her as to one patient, in that respect.

Mr. McAllister: The question was as to whether she was kept there to observe the actions of Mrs. Holland, and she said she was.

By Mr. McAllister:

Q. What did you see and hear about the actions of Mrs. Holland? Who were you going to tell that to or have you told that to?

A. Not anything on the 15th.

Q. Did you notice anything on the other days?

A. It was on the 21st of April.

Q. The twenty-first of April?

A. Yes, sir.

Q. Tell us what you observed on that date?

A. She came in on that date and demanded her money and told the doctor that she had been to see Dr. Hyman and that Dr. Hyman said the work was no good, and she said she wanted her money back and she told him if he didn't give her the money back she would have him arrested, and the doctor told her she could do as she pleased.

Q. She then went out?

A. Yes, sir.

Q. Where did the conversation take place?

A. In the doctor's office.

Q. Where?

A. Where?

Q. Where in the office?

A. At his desk. He was sitting at his desk.

Q. Where were you sitting?

A. I was standing in the room.

Q. In that room shown in that picture there?

A. Yes, sir.

Q. You were kept there to observe?

A. Yes, sir.

Q. Did you make any memorandum of it?

A. No, I didn't have to. I just remembered it.

Q. You remembered it?

A. Yes, sir.

Q. Do you remember what happened on the 15th?

A. Sure.

Q. What happened on the tenth. Do you remember that?

A. Not anything happened.

Q. What happened on the 15th?

A. Not anything happened.

Q. How do you remember the 15th if nothing happened?

A. I remember the time she came in. I don't remember just the 15th.

Q. Do you remember all the patients?

A. Yes, I remember all the different patients that came in as often as she did.

Q. Do you remember the three Gaskells?

A. Yes.

Q. Who were they?

A. I don't remember three. I remember two.

Q. Who were the two that you knew?

A. One had a filling and the other had extractions.

Q. How many teeth did Mrs. Holland have pulled out?

A. Four.

Q. How do you know that?

A. I seen the doctor when he pulled them out.

Q. How many teeth did Mr. Gaskell have pulled out?

A. He had one.

Q. How many teeth did Mrs. Hostetter have pulled out?

A. Mrs. who?

Q. Mrs. Hostetter?

A. I don't know anything about Mrs. Hostetter.

Q. What did Mrs. B. Rice have done to her teeth?

A. I don't know that. I don't remember everybody.

Q. What makes you remember Mrs. Holland so well?

A. She was there so much. I remember several that was there as much as she was.

Q. What?

A. I remember several that was there as much as she was.

Q. The fact that she came often made you see how many teeth she had out?

A. No, for the extracted teeth were all loose. The doctor just fitted them on.

Q. Were you there?

A. Yes, sir.

Q. Where was it?

A. In the extracting room.

Q. You were there?

A. Yes, sir, I was there.

Q. Your duties there were to observe patients and to clean up?

A. Yes, sir.

Q. Your hours of duty were what?

A. From twelve to four and from five to eight.

Q. What about the patients that come in before twelve? Who takes the time to observe them?

A. Before twelve?

Q. Yes.

A. I don't know. I am not there before twelve.

Q. Who does that?

A. Miss Morrow.

Q. Who?

A. Miss Morrow does that.

Q. Who is she?

A. The lady that was just up here.

Q. What do you do if he has to have extra help?

(Objected to.)

(Question withdrawn.)

Q. Was there anything else given to Mrs. Holland other than gas, in the extraction of her teeth?

A. Was there anything else given to her?

Q. Yes. Was there anything else administered to her?

A. No, not anything.

Q. Do they administer other things beside gas to patients?

A. In injecting teeth, if you want it, if it is necessary.

Q. What else do they inject?

A. They inject novocaine.

Q. Was novocaine injected into her teeth?

A. No, sir.

Q. Did you observe what was done on the fifteenth?

A. What was done on the fifteenth? I think that he made an impression for her bridge that day.

Q. What did he do on the fourteenth?

A. Well, all I know is that after he extracted her teeth he just treated her gums and when she came in he had nothing else to do but just to heal the gums.

Q. How do you know?

A. I heard him say, "We haven't very long to go now."

Q. How long have you been there?

A. Three years.

DR. MORRIS E. COHEN, sworn.

By Mr. Reed:

Q. How old are you?
A. Thirty-eight.
Q. Are you single or married?
A. Married.
Q. Do you live with your wife?
A. Yes, sir.
Q. Have you a family?
A. Yes, sir.
Q. How much of a family have you?
A. One child.
Q. How old is that child?
A. Twelve years of age.
Q. From what school of dentistry are you graduated?
A. University of Pennsylvania.
Q. How long have you been practicing dentistry?
A. Eighteen years.
Q. How long have you been practicing in Atlantic City?
A. Eight years.
Q. Do you know Adelle Holland, the lady that appeared on the witness stand against you this morning?
A. Yes, sir.
Q. How long have you known her?
A. Since January fourth this year.
Q. Do you have an employe, Mary Morrow?
A. Yes, sir, I do.
Q. Does she keep office records for you?

A. Yes, sir.

Q. Will you look at that book, January 4th, 1930, and tell me in whose handwriting are those items?

A. Miss Morrow's.

Q. Does she make all the entries in that book for you when she is present?

A. She does.

Q. Did you do any work for Adelle Holland?

A. I did.

Q. What was it?

A. Extraction and a removable bridge.

Q. On what date was it, during the time she visited your office, that you extracted her teeth?

A. On January 4th.

Q. Did you ever extract any teeth for her on any other day?

A. No, sir, that was the only day.

Q. How many teeth did you extract for Adelle Holland?

A. Four.

Q. Where were they taken from?

A. The lower four central incisors.

Q. Does this card represent—who made that mark on there?

A. I did.

Q. Does that represent an extraction?

A. Extraction of the teeth, yes.

Q. Were those four teeth in her extraction that you made?

A. Those four teeth were extracted by me and removable plates made.

Q. You made this mark here, to show the work that has been done?

A. Yes, sir.

(DX3, admitted in evidence.)

Q. In what condition did you find Adelle Holland's gums after you extracted these four teeth?

A. They were pussy, and she had sores on her lips.

Q. Did you have to treat her gums?

A. I had to treat them for three months before I could put a bridge in.

Q. What did the treatment consist of?

A. Treating of her gums.

Q. How did you treat them?

A. By a certain kind of medicals.

Q. She appears to have called at your office quite a number of times. Can you remember the times you treated her gums for this pussy condition you speak of?

A. I treated her for about fifteen to twenty times, I believe.

Q. During the time—say, for instance, March 14th and 15th; do you remember her coming to keep an appointment with you at that time?

A. I do remember, yes.

Q. Did you extract any teeth for her on that day?

A. No, sir, I did not.

Q. When you extracted those four teeth, that is represented on this card, did you administer gas to Mrs. Holland?

A. It was not necessary to administer any anaesthetic to her.

Q. Why wasn't it necessary to administer any to her?

A. Her teeth and gums were in such a condition,

so pussy and so loose, they could be taken out without anaesthetic.

Q. Who were present when you removed these four teeth?

A. Myself and Miss Morrow and Miss Hudgins.

Q. Mrs. Holland says that on March 14th or 15th, I don't know what day the Prosecutor is going to claim that this offense occurred, that you administered gas to her and that when she came out of the influence of the gas, you had your private part, your penis, in your hand and that you put her hand upon it, is that true?

A. Absolutely untrue.

Q. Did you, either on March 14th or March 15th, push her to a waiting room on the other side of the hallway and throw her on the couch?

A. No, sir.

Q. Did you ever lift up her clothes with your penis in your hand?

A. No, sir.

Q. After March 14th or 15th, did Mrs. Holland ever come to your office?

A. Yes, sir, she came up on the fifth of April.

Q. Do you recall now how many times she came after March 15th, to your office?

A. She came in about a half dozen times after March 15th.

Q. After March fifteenth?

A. Yes, sir.

Q. Did she ever complain to you that you had insulted her by lifting up her clothes?

A. She never did.

Q. Finally, on April 5th, do you remember her calling then for her bridge work?

A. She did, yes.

Q. Do you remember the conversation you had with her at that time?

A. She wanted her bridge and didn't want to pay for it. I told her she would have to pay for it, then she could get it; that she couldn't get it without the money.

Q. Did she then pay for it?

A. She finally paid; she said she couldn't pay any more. I said, "You can pay;" she said, "I can't pay it."

Q. The bridge work was finished?

A. Yes.

Q. When did you next see Mrs. Holland?

A. I seen her on the 21st of April.

Q. Did she come to your office that day?

A. Yes, sir.

Q. Who was present?

A. My nephew was there and Miss Hudgins.

Q. Did you have any conversation with Mrs. Holland that day?

A. She came in and complained about her work.

Q. What did she say?

A. She said she went to Dr. Hyman and he advised her to have me arrested for that kind of work and demanded her money back.

Q. What did you say to her?

A. I said, "You do just as you please. You get out of this office." I said to her to get out.

Q. What did she say when she went out?

A. She said she was going to fix me.

Q. Did she, at that time or at any other time prior to your arrest, accuse you of having exposed your private parts to her?

A. No, sir. Never.

Q. After she was there on the 21st of April, did you receive a letter from a lawyer?

A. I did.

Q. Is this the letter?

(Paper shown witness.)

A. This is the letter.

(Objected to.)

Mr. Reed: I offer in evidence this letter.

The Court: If the Prosecutor objects I will sustain the objection.

(Objection noted.)

Mr. Reed: Will your Honor allow me an exception?

The Court: Yes.

(Exception noted to defendant.)

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

JOSEPH A. CORIO (Sealed),
Judge.)

By Mr. Reed:

Q. After you received this letter did you see him?
A. I called him up and asked him about it.

(Objected to.)

Q. Did you see him?
A. No, sir.
Q. Did you communicate with him in any way?
A. Yes, I did.
Q. As a result of that communication what occurred?

(Objected to.)

A. He told me ——

The Court: Just a moment.

Mr. Reed: You can't tell what he said to you.

Q. Were you finally arrested?
A. Yes, right after that.
Q. When was it that you were arrested?
A. The 22nd, I think, or the 23rd, of April.
Q. April 22nd or April 23rd?
A. Yes, sir.
Q. Was that the first time that you knew what you were charged with by Mrs. Holland?
A. Yes, sir. That was the first time.
Q. Mrs. Adelle Holland testified this morning that each time she came to your office that you attempted to take liberties with her. Is that true, or not?

A. Absolutely untrue. I never looked at her.

Q. Is this a correct photograph of your office?

A. Yes, sir.

Q. Is this the room in which Mrs. Holland received treatment?

A. Yes, sir.

Q. Did you use this room to extract teeth and do your work in?

A. Yes, sir.

Q. Was that door ever closed?

A. Never closed.

Q. Do you remember whether or not you treated her on March 14th or March 15th?

A. I did. I remember treating her on the 15th.

Q. In what room was that?

A. In the extracting room.

Q. Show that to the jury?

A. The extracting room is on the right.

Mr. Reed: The defendant points to a room on the right as the room.

Q. Is that right?

A. Yes, sir.

Q. During the time from the date of the first visit on January 4th to April 21, 1930, did Adelle Holland ever accuse you of anything indecent in the way of your conduct toward her, or assaulting her, or raising her clothes, or anything of the kind?

A. No, sir, she did not.

Q. Will you please explain so that the jury may understand, what this line here indicates, what these two teeth are for and what becomes of these two teeth?

A. The two end teeth on there is a bottom for the bridge; that holds the bridge in between where we extracted the four teeth, that is where we place it.

Cross-examination.

By Mr. McAllister:

Q. In whose handwriting is this?
A. Mary Morrow's.
Q. Have you the folio for 1930, here?
A. Yes.
Q. Where is it?
A. No, we put the year down on the folio.
Q. That is the year?
A. Yes, 1930; this year.
Q. You pulled out four teeth?
A. Yes, sir.
Q. Teeth in front of her mouth?
A. Yes.
Q. Including these teeth here?
A. Yes, sir.
Q. You put a bridge there?
A. Yes, sir.
Q. You are sure about that?
A. Absolutely.
Q. What was complained of by Mrs. Holland, do you know ?
A. I don't know. If it wasn't any good I would want to hear it.
Q. Was it concerning lower teeth?
A. The lower teeth, yes.
Q. Is this diagram the main lower teeth?

A. The lower teeth only.
Q. What for—a lower removable bridge?
A. Lower removable bridge.
Q. Lower removable bridge work?
A. Yes, sir.
Q. Fillings and cleanings?
A. Yes, sir.
Q. And lower extractions?
A. Lower extractions.
Q. Is that correct?
A. Yes, sir.
Q. When did you take the impression?
A. On the fifteenth or twentieth. I don't remember the exact date.
Q. You took the impression on the twentieth?
A. The fifteenth or twentieth. I don't remember the exact date, when it was. I took the impression around that time.
Q. That is when the gums were healed?
A. The gums were healed? They were never healed. They are not healed today, I don't believe.
Q. How long have you been practicing dentistry?
A. For 18 years.
Q. In that place?
A. No, sir; eight years over there.
Q. Where did you practice before that?
A. Bridgeton.
Q. Bridgeton, New Jersey?
A. Yes, sir.
Q. What made you leave Bridgeton?

Mr. Reed: Objected to.

(Objection sustained.)

Q. How long did you practice in Bridgeton?
A. For ten years.
Q. Are you a married man?
A. Yes, sir.
Q. Are you living with your wife?
A. Yes, sir.
Q. Where do you live?
A. 32 South California Avenue.
Q. How long have you lived there?
A. Five years.
Q. Where did you live before that?
A. I lived in Bridgeton.
Q. Is this your license, or is it the business of a corporation?
A. A corporation.
Q. What is the corporation's name?
A. Boardwalk Dentist.
Q. Where do you have that name displayed?
A. Where?
Q. Yes.
A. On the door, on the front.
Q. Are you the president?
A. No.
Q. Who is the president?
A. Harry Segal.
Q. Where does he live?
A. Wildwood.
Q. Who is secretary?
A. Mary Morrow.
Q. Who?
A. Mary Morrow.
Q. Where does she live?
A. Miss Morrow resides right here in Atlantic City.

Q. She is the secretary?
A. Yes, sir.
Q. Does she have any interest in the corporation?
A. Yes, sir.
Q. How many shares of stock does she hold?
A. I don't remember how many she holds.
Q. Who is the treasurer?
A. I am.
Q. How many shares of stock do you hold?
A. I don't recall.
Q. You don't know that?
A. No, sir.
Q. And you don't know how many shares of stock she holds?
A. No, sir.

Mr. Reed: This is objected to. I think counsel has gone far enough.

The Court: I do not think so. He is testing the credibility of this witness.

Mr. Reed: This is objected to on the ground that the ownership of this business is not involved in this trial, and, therefore, improper; and it is not relevant because it was not drawn into the controversy by his examination-in-chief. The question is, therefore incompetent, irrelevant and immaterial.

The Court: It is permitted.

(Exception noted to defendant.)

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

JOSEPH A. CORIO (Sealed),
Judge.)

By Mr. McAllister:

Q. Do you know how many shares of stock the Wildwood man holds?

A. I do not.

Q. Who took this picture?

A. The Atlantic Foto.

Q. Is that you in the picture?

A. Yes, sir.

Q. Is that the girl?

A. Yes, sir.

Q. Where is the colored girl?

A. She was not there the morning that was taken.

Q. She wasn't there observing the patients?

Mr. Reed: Objected to as being an improper question. I ask that that be stricken out.

The Court: It may be stricken out.

By Mr. McAllister:

Q. What else do you have in this room, the extracting room?

A. That is all I have there, a chair and gas machine.

Q. Where did you get the medicine that you treated the girl's gums with?

A. Where?

Q. Yes.

A. At the drug store.

Q. Where did you keep it?

A. Right there.

Q. In the room?

A. Yes.

Q. All the time?

A. All the time.

Q. I thought you only kept the extracting chair there?

A. I keep the medicine closet in that room.

Q. Can you see the medicine closet?

A. No, that is on this side of the wall.

Q. Which side?

A. The inside wall.

Q. Why didn't you leave these doors open?

A. I don't know why.

Q. I mean when the picture was taken?

A. I don't know why they left them open; but they was closed at the time.

Q. You didn't bring a picture of the waiting room?

A. No, sir.

Q. Where is the couch?

A. They didn't put them in.

Q. Where is the couch?

A. In the room; in the waiting room.

Q. Where is the waiting room?

A. Right across the hallway.

Q. How many rooms are there where the waiting room is situated?

A. One room.

Q. The couch is in the waiting room?

A. Yes, sir.

Q. Where do the patients hang their clothes?

A. In the operating room; they bring their clothes with them.

Q. In the room where they are they bring their clothes with them?

A. Yes, sir.

Q. Where do they hang them up?

A. We have clothes trees there.

Q. Where?

A. In this room.

Q. Where is it in the picture?

A. There they are; two clothes trees there. That is a clothes tree there.

Q. You see it, do you?

A. Yes, sir.

Q. They hang them there?

A. Yes, sir.

Q. Did Mrs. Holland have her clothes hanging on one of those trees?

A. She didn't have any clothes.

Q. She was naked?

A. She came in with her hat and coat on and she hang them up in there. Didn't take it anywhere else.

Q. How do you remember that?

A. Everybody does.

Q. Mrs. Eisenhart was there on the fifteenth?

A. I don't remember who was there on the fifteenth. Miss Morrow keeps the records.

Q. You don't remember Mrs. Eisenhart being there?

A. I remember her being there; but I don't remember the date she was there. Whether it was the fifteenth or sixteenth, I don't know. I didn't take notice whoever was there.

Q. Did you ever send the colored girl on errands?

A. Never did.

Q. Never?

A. No, sir.

Q. Who does your errands?

A. I do it myself.

Q. You do all your errands yourself?

A. All my errands.

Q. What are the duties of this colored girl?

A. To clean the office and watch the conduct of every one that comes in there.

Q. Are you in the habit of having many come in there?

A. Yes, like I had this morning.

Q. What?

A. Yes, we have others come in there. And everybody that comes in there she observes their conduct.

Q. Does she make a report?

A. Not unless we have to.

Q. What?

A. Unless we have to. Unless we have to make a report, then she does.

Q. Did she make any report to you on Mrs. Holland?

A. No.

Q. Was that because she wasn't there?

A. She was there.

Q. Because the colored girl wasn't there?

A. The colored girl was there. She observed every conduct of her.

Q. What else did she say on April 21st?

A. She was going to expose me, she was going to disgrace me, and everything, if I didn't give her her money back.

Q. Go ahead. What else did she say?

A. She said plenty that I don't remember. She said too much of it.

Q. What did you say or do?

A. I opened the door and told her to get out. That is what I told her to do.

Q. Did she pay you any money on April 21st?

A. No, didn't pay me any money on the 21st, at all.

Q. When was the last time she paid you any money?

A. On April fifth.

Q. Did you charge her $50.00 for one bridge?

A. Yes, sir.

Q. Did you know the condition of her gums when you made the price?

A. Did I know the condition? She came in all bandaged up, with pus coming out of her gums, and chin, and teeth all loose. I noticed everything when she came in the first time.

Q. When does the girl clean the office?

A. From twelve to eight.

Q. She cleans from twelve to eight?

A. Yes. She is there to clean from twelve to eight, P. M.

Q. On September 15th she had pretty nearly paid your bill?

(Objected to.)

Mr. Reed: That is not correct. You mean March 15th.

Mr. McAllister: I mean March 15th.

A. No, she was nowheres near paying the bill.
Q. How much did she pay you altogether?
A. I don't know. The book shows.
Q. The book shows $40; is that right?
A. Whatever it shows.
Q. The bill was $50?
A. The bill was $60.
Q. Did she say to you—by the way, when she came back after the 15th, did she have some people with her?
A. No, she never had anybody with her.
Q. She always came alone?
A. She always came alone.
Q. Did you walk out into the waiting room to see who was with her?
A. Never go into the waiting room.
Q. How do you know then that she didn't have somebody with her?
A. I know she didn't. She went right out.
Q. Did you watch her walking off?
A. No, I didn't watch her walking off. I seen her walking in the hallway.
Q. Can you see the hallway from your office?
A. Yes, there is a window there.
Q. On the 21st of April she came back and complained to you about her upper jaw?
A. She didn't complain to me about her upper jaw. It had nothing to do with her upper jaw.

Q. You are sure about that?

A. Absolutely.

Q. When was this diagram made?

A. A couple of months ago, or so.

Q. When was it made, do you know?

A. No, I don't recall when it was made.

Q. January 4th?

A. No, I don't recall when it was made. It was made sometime this winter, this fall.

Q. You don't make them?

A. What?

Q. You don't make them?

A. No.

Q. How did that come to be made?

A. I have them made for the office.

Q. Several what?

A. Several cuts.

Q. What?

A. Several cuts—do you refer to the picture?

Q. No. Have you the other cuts with you?

A. Of this photo?

Q. Yes.

A. No.

Q. Of the office?

A. No, that is the only one I got, I have several over in there, pictures of the office; I have them hanging over in the office.

Q. Do you see that card on the stand, right here?

A. Yes, sir.

Q. When was that made?

A. January 4th; when the patient comes in.

Q. You didn't make anything?

A. No, sir, the young lady makes it out.

Q. Did you make a mark across here, in the teeth?

A. I did.

Q. Is that your mark on there?

A. Yes, sir, it is.

Mr. Reed: We rest.

Mr. McAllister: Just a moment. Will Mrs. Holland please come up here?

(Mrs. Holland comes forward.)

By Mr. McAllister: (Addressing Mrs. Holland, with defendant witness still in the witness chair.)

Q. Will you show to the jury which teeth you had put in there?

Mr. Reed: Objected to. The witness is under cross-examination. The Prosecutor has no right to project this woman into the picture. He can recall her to the witness stand, if he likes. But he must conclude this cross-examination of this witness, first.

The Court: Isn't this cross-examination?

Mr. Reed: No, he asks this woman here, the complaining witness, not on the stand, what was done.

The Court: He is asking the doctor to point to the teeth that were put in. He isn't asking the woman the question.

By Mr. McAllister: (Addressing defendant witness in box.)

Q. Will you show the work that was done in the girl's mouth?

Mr. Reed: Objected to, as improper cross-examination. It is also objected to as incompetent, irrelevant and immaterial.

(Objection overruled.)

(Exception noted to defendant.)

JOSEPH A. CORIO (Seal),
Judge.

A. I don't want to look in her mouth.

DEFENSE RESTS.

MRS. ADELLE HOLLAND, recalled, in rebuttal.

By Mr. McAllister:

Q. On April 21st, 1930, after you had visited Dr. Hyman, which teeth were you complaining about to Dr. Cohen?

Mr. Reed: Objected to. There is no evidence that she was complaining about any of her teeth.

The Court: I think that the direct examination shows that she did complain about her teeth. I do not know in detail what the testimony was, but that is in the record.

Mr. Reed: She has already testified and said what she said to the doctor about her teeth. Certainly this is not rebuttal. It is part of the State's case in chief and the State has no right to recall the witness to ask her anything that is part of its main case. She can be called for the purpose of contradiction, only. She fully stated what her complaint was and also testified to what she said on the 21st, in her direct examination and under cross-examination by the Prosecutor.

Mr. McAllister: I asked her which teeth, the upper or lower.

Mr. Reed: It is objected to. I cannot concede that he has any right to ask her as to which teeth she complained about. That is part of her main case, if she has any.

The Court: Confine yourself strictly to the fact of rebuttal testimony.

By Mr. McAllister:

Q. Did you complain about your upper teeth, on the 21st of April?

Mr. Reed: Objected to as leading; puts words

of the answer in her mouth after she has already testified as to what she complained of at that time.

The Court: It is rebuttal, because the doctor denied that he did any work on her upper teeth. And the Prosecutor wants to show that he did do work on her upper teeth.

Mr. Reed: I think the Prosecutor may ask questions along the line suggested by your Honor, but this certainly is not a proper question.

Mr. McAllister: I am asking her which teeth he talked about to her on the 21st, whether the upper or lower teeth.

Mr. Reed: I think you can ask her along the line suggested by his Honor.

Mr. McAllister: I will ask the question and if you don't like it you can object.

Mr. Reed: I will, promptly.

By Mr. McAllister:

Q. On April 21st, 1930, which teeth did you complain of to the doctor?

Mr. Reed: Objected to, on the ground that it is not rebuttal.

The Court: It is not rebuttal.

By Mr. McAllister:

Q. Did you on April 21st go to Dr. Cohen's office?
A. I did, sir.
Q. At that time did he look in your mouth?
A. No, sir.
Q. Did you speak to him?
A. Yes, sir.
Q. About your teeth?
A. Yes, sir.
Q. About the upper or lower teeth?
A. The upper teeth.
Q. Did he do work on these teeth?
A. Yes, sir.
Q. Where?
A. These two, here, this bridge; these teeth here.

Mr. Reed: Objected to. She is pointing to these teeth that she told all about in her examination-in-chief.

The Court: The Prosecutor wants to show that the witness had work done on her upper teeth and which is denied by the defendant.

Mr. Reed: We have it before the jury. When she pointed to her teeth she pointed to her upper teeth, and that is all that she ever did point to in her examination-in-chief. And she said that he had left in her upper jaw a broken tooth. That is what she said. That is not rebuttal and I do not think that the Prosecutor should be permitted to put a witness on the stand in this manner. This is a serious thing.

Mr. McAllister: It is serious to the State, too.

Mr. Reed: Then the State should conduct its case according to the rules of evidence.

STATE RESTS.

Mr. Reed: The defendant moves for a directed verdict of not guilty, on the third count, on the ground that there is no evidence of any private act of indecency committed with another, in accordance with a second paragraph of Section 51 of the Crimes Act.

(Motion denied.)

(Exception noted to defendant.)

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

JOSEPH A. CORIO (Sealed),
Judge.)

BOTH SIDES CLOSE.

(Mr. McAllister to the jury.)

(Mr. Reed to the jury.)

(Mr. McAllister summation.)

Mr. Reed: I want to object at this time to the State's reference to the witness' interest in the company. It is not cognizable in this case; has nothing whatever to do with this proceeding.

The Court: You will need the record to show that.

Mr. Reed: Yes.

Before Honorable Joseph A. Corio, Judge,
and a jury.

Mays Landing, N. J., Friday, December 5, 1930.

CHARGE OF THE COURT.

Ladies and gentlemen of the jury: In this indictment you will observe there are three counts.

The first count charges assault and battery.

The second count has been abandoned by the State. You will, therefore, give that no consideration whatever. You will treat it as if it were not in this indictment. So that you will pay no attention to the second count.

The third count charges the defendant with what is commonly known as the crime of lewdness and as to which I respectfully charge you to read this count so that you may deal with the testimony in detail.

Assault and battery has been defined under our laws, to be as follows:

"Assault is an attempt or offer to do physical violence but falls short of the actual violence."

It is an attempt.

As an illustration. If the foreman attempts to strike me and stops, that is an assault, if he does not strike me. That is an attempt on his part to do physical violence.

Battery is the act of laying hands upon another person. The least touching is battery, with an intent, of course, to do bodily harm; and both assault, and battery, are blended together.

When there is an attempt to do violence and the attempt is consummated by an actual commission of physical violence, even though that violence may be of such force as to do physical injury, there must be an intent to commit assault and battery, as I have defined to you.

Lewdness has been defined by statute to be as follows: "Any person shall be guilty of open lewdness or guilty of public indecency, grossly scandalous and tending to debauch the morals and manners of the people, or any person who shall, in private, be guilty of any act of lewdness or carnal indecency with another, grossly scandalous and tending to debauch the morals and manners of the people" is guilty of violating this statute.

So that your first count deals with assault and battery and your third count deals with lewdness.

As to whether or not there was an assault and battery, coupled with lewdness, is answered by the testimony that you have been listening to, produced by the State's witnesses.

I am able to assist you in determining this case, only as to the law and as to your right of consideration concerning the testimony that has been produced.

You have the right to give all the testimony that you have heard, the consideration that it rightfully and legally deserves, so that you may be able to render a true verdict according to the evidence.

You are, therefore, confined to this particular case and the testimony of the witnesses presented both by the State and by the defendant.

You have the right to disregard any part or all of the testimony of anyone of the witnesses either for the State or for the defense. In the final analysis your duty is to determine the facts. And you are supreme in that determination. It is for you to say what the facts are, whether or not this defendant is guilty as charged in this indictment, or whether or not he is not guilty as charged in this indictment.

All of these inquiries, repeating again, you must receive from the testimony which you have heard in the presentation of this case.

Under the criminal law of this State, the State, that is, the Prosecutor, in presenting the State's case, must satisfy you beyond a reasonable doubt as to the guilt of this defendant. Beyond a reasonable doubt does not mean any doubt or every doubt, but "beyond a reasonable doubt." And that has been defined by our highest tribunals to be as follows: "It is that state of the case which, after the entire comparison and consideration of all the evidence," and that means the State's evidence and the defendant's evidence, "leaves the minds of the jurors in that condition that they cannot say that they feel an abiding conviction to a moral certainty, of the truth of the charge" contained in this indictment.

So then, after the entire comparison of this case, if you have an abiding conviction to a moral certainty, as to the truth of these charges contained in

this indictment, there arises a reasonable doubt, and if you so arrive at that conclusion, you must resolve that reasonable doubt in favor of this defendant and find him not guilty.

On the other hand, if, after the entire comparison and consideration of all of the evidence, you have an abiding conviction to a moral certainty of the truth of the charges contained in the indictment, then there is no reasonable doubt and it would be clearly your duty to bring in a verdict of guilty.

I charge you to give this case the consideration that it rightfully and legally deserves. Confine your deliberation to all of the testimony, the evidence, that you have heard.

Compare the testimony, give it the weight, the reliability that you may determine that it rightfully deserves. Determine the facts and then you can conclude whether or not this defendant is guilty, beyond a reasonable doubt, of the charges contained in this indictment. And if you come to the conclusion that he is guilty, then your verdict is one of guilty. If you come to the conclusion that the State has not convinced you, beyond a reasonable doubt, as to his guilt, then you must give him the benefit of that doubt and return a verdict of not guilty.

You will take out with you the picture, the book, the card and the indictment.

You may retire.

Mr. Reed: I wish to take exception to that part of your Honor's charge which instructs the jury to read the third count of the indictment; on the ground that that was no proof produced by the State, showing the commission of any act of private or public lewdness with another.

(Exception noted to defendant.)

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

JOSEPH A. CORIO (Sealed),
Judge.)

Mr. Reed: I wish to take exception also to that part of your Honor's charge in which the Court defines the law of assault and also of battery.

(Exception noted to defendant.)

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

JOSEPH A. CORIO (Sealed),
Judge.)

Mr. Reed: I wish to take exception also to that part of your Honor's charge in which the Court instructs the jury on the subject of reasonable doubt.

(Exception noted to defendant.)

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

JOSEPH A. CORIO (Sealed),
Judge.)

Mr. Reed: I wish to take also a general exception to your Honor's charge.

(Exception noted to defendant.)

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

JOSEPH A. CORIO (Sealed),
Judge.)

(Jury out.)

Before Hon. Joseph A. Corio, Judge.

Mays Landing, N. J., Friday December 19, 1930.

Appearances:

Robert N. McAllister, Esq., for the State.

John C. Reed, Esq., and William E. Stringer, Esq., for defendant.

(Defendant appears before the Court.)

Mr. McAllister: The State now moves for sentence of Morris E. Cohen, who was convicted before your Honor upon an indictment, under two counts; one count being assault and battery and the other count being the charge of lewdness in private.

Mr. Reed: I now desire to make a motion in arrest of judgment on both counts of the indictment in this case.

With respect to the count charging assault and battery there is no evidence of any intent on the part of this defendant to do any bodily harm.

With respect to the third count of the indictment, it is our contention that there is no evidence of any violation of the charge set forth in paragraph 2 of

Section 51 of the Crimes Act, that is the act of private indecency with another.

The third ground for the motion in arrest of judgment is that this verdict is against the weight of the evidence.

The Court: The motion is denied.

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

JOSEPH A. CORIO (Seal),
Judge.)

The Court: Do you wish to be heard as to the sentence?

Mr. McAllister: I have nothing to say. I leave it to your Honor's judgment.

The Court: In lieu of a State's prison sentence the Court places you on probation for a period of three years, to report to the probation officer once every week; and in addition thereto you will pay a fine of one thousand dollars.

I certify that the foregoing is a full, true and correct transcript of the stenographic notes taken by me in the above entitled cause, including the testimony of the witnesses, objections of counsel and rulings of the Court.

GEORGE O. CALIERT,
Official Stenographer.

I, JOSEPH A. CORIO, Judge of the Atlantic County Court of Quarter Sessions, hereby certify that the foregoing transcript of the record and proceedings had before me, together with the return made by the clerk of this court, with the writ of error in this cause, constitutes the entire record of all proceedings had before me, in the trial of the issue joined between the State of New Jersey and Morris E. Cohen, as directed to be returned by me in the writ of error to me addressed in this cause.

JOSEPH A. CORIO,
Judge of Atlantic County Court of Quarter Sessions.

EXHIBIT DX2.

SATURDAY, JANUARY 4, 1930

	Name	Operation	Debit	Credit	
	Morning				
8:					
8:30					10
9:	Mr Fleisman	Upper plate	75.00	35.00	
9:30	Eleanor Hamilton	Fillings & cl.	12.00	3.00	
10:	Mr Turner	Ext.	3.00	3.00	
10:30	Miss A. Berry	Ext	5.00	5.00	
11:	Miss Humpries	Ext	3.00	3.00	
11:30					
12:					
	Afternoon				
12:30					
1:	Mrs D. Holland	Bri Work fills & Ext	60.00	5.00	20
1:30	Pearl Holmes	Repair Bridge	10.00	10.00	
2:	Mr Wm. Sprague	Plate repair	8.00	8.00	
2:30	Mrs Lincoln	Bridge	20.00	5.00	
3:	Mr R. M. Rifleinyn			7.00	
3:30	Reba Chrisfield	upper plate	60.00	10.00	
4:	Joseph Metzger	Partial upper	45.00	20.00	
4:30	Mrs M. Chase	Cap	12.00	3.00	
5:					
5:30					30
6:					
	Evening				
6:30					
7:					
7:30					

8:
8:30
9:

SUNDAY, JANUARY 5, 1930

	Name	Operation	Debit	Credit
	Morning			
8:				
8:30				
9:				
9:30				
10:				
10:30				
11:	Harold Green	4 pi bridge	40.00	10.00
11:30	Miss Holland	BriWorkfills&cl.	60.00	5.00
12:				
	Afternoon			
12:30				
1:				
1:30				
2:				
2:30				
3:				
3:30				
4:				
4:30				
5:				
5:30				
6:				
	Evening			
6:30				
7:				
7:30				
8:				

8:30
9:

SATURDAY, JANUARY 11, 1930

	Name	Operation	Debit	Credit
	Morning			
8:				
8:30				
9:				
9:30				
10:	Mr Fleisman	upper plate	75.00	55.00
10:30				
11:	Eleanor Hamilton	Fills & cl.	12.00	3.00
11:30	Miss E. Lingelboch	Fills & cl.	20.00	7.00
12:				
	Afternoon			
12:30				
1:				
1:30	Miss A. Holland	Bridge	60.00	5.00
2:	Mr Wm. Sprague	Plate repair	8.00	8.00
2:30	Miss Reba Chrisfield	upper plate	60.00	30.00
3:	America Hockody	upper partial	50.00	50.00
3:30				
4:				
4:30				
5:				
5:30				
6:				
	Evening			
6:30				
7:				
7:30				
8:				
8:30				
9:				

SATURDAY, JANUARY 18, 1930

	Name	Operation	Debit	Credit
	Morning			
8:				
8:30				
9:				
9:30				
10:				
10:30				
11:	Beothy Godfrey	Fillings & cl.	20.00	
11:30				
12:				
	Afternoon			
12:30				
1:	Mrs A. Lincoln	Bridge	20.00	5.00
1:30	Mrs Brower	Ext	25.00	25.00
2:	Miss A. Holland	Bridge	50.00	10.00
2:30	Miss Reba Chrisfield	upper plate	60.00	30.00
3:				
3:30				
4:				
4:30				
5:				
5:30				
6:				
	Evening			
6:30				
7:				
7:30	Mrs F. Buzzell	Fillings	25.00	9.00
8:				
8:30				
9:				

SATURDAY, FEBRUARY 8, 1930

	Name	Operation	Debit	Credit
	Morning			
8:				
8:30				
9:				
9:30				
10:	Miss B. Godfrey	Fillings & cl.	20.00	2.00
10:30	Miss Beatty Early	Fills, cl, & ext.	25.00	25.00
11:				
11:30				
12:				
	Afternoon			
12:30				
1:				
1:30				
2:	Miss Little	Lower plate	20.00	10.00
2:30	Miss A. Holland	Remov. Bri.	50.00	10.00
3:	Mrs Reese	Partial upper	45.00	45.00
3:30	Mr Garrison	Fillings	5.00	5.00
4:				
4:30				
5:				
5:30				
6:				
	Evening			
6:30				
7:				
7:30	Mrs L. Crowe	upper plate	30.00	16.00
8:				
8:30				
9:				

SATURDAY, FEBRUARY 15, 1930

	Name	Operation	Debit	Credit
	Morning			
	8:			
	8:30			
	9:			
	9:30			
10	10:			
	10:30 Anna Duhill	Plate Caps & ext.	75.00	
	11: Mrs Bour	Plate repair	6.00	6.00
	11:30			
	12:			
	Afternoon			
	12:30			
	1: Mrs Lincoln	Bridge	20.00	5.00
	1:30 Mrs Brower	upper plate	28.00	15.00
	2: Miss Beatty Godfrey	Fillings & cl.	20.00	2.00
20	2:30 Miss A. Holland	Bridge	60.00	15.00
	3: Miss Doskin	upper partial	50.00	17.00
	3:30 Miss Hearne	Teeth cleaning	3.00	3.00
	4: Mary Johnson	Fills & cl.	30.00	5.00
	4:30 Lulu Harris	Bridge	45.00	12.00
	5:			
	5:30			
	6:			
	Evening			
	6:30			
30	7:			
	7:30 Mrs Brown		45.00	8.00
	8: Sarah Kearns	Partial l o w e r fills & cl.	50.00	11.00
	8:30			
	9:			

TUESDAY, FEBRUARY 25, 1930

	Name	Operation	Debit	Credit
	Morning			
8:				
8:30				
9:	Mrs Adams	Fillings	6.00	6.00
9:30	Mrs A. Holland	Fillings & cl.	50.00	25.00
10:	Mrs Mgt. Ryder	Lower plate	25.00	5.00
10:30	Mrs Mc Henry	Upper & lower	40.00	20.00
11:				
11:30				
12:				
	Afternoon			
12:30				
1:				
1:30	Mr G. B. Harkins	Fills & ext.	8.00	8.00
2:	Mr R. M. Patterson	Upper & lower partials	85.00	25.00
2:30	Mrs Barrone	Bridge	95.00	45.00
3:	Mrs Booye	Full upper partial lower	40.00	14.00
3:30	Mrs Byrd	upper & lower	45.00	25.00
4:				
4:30				
5:				
5:30				
6:				
	Evening			
6:30				
7:				
7:30				
8:	Mrs A. Howard	Fillings & cl.	25.00	2.00
8:30				
9:				

WEDNESDAY, FEBRUARY 26, 1930

	Name	Operation	Debit	Credit
	Morning			
	8:			
	8:30			
	9: Mr Max Baltar			
	9:30			
10	10: Mrs. Benner	Hecolate	40.00	20.00
	10:30 Mrs A. Holland	Bridge & fillings	50.00	25.00
	11: Mrs Lincoln	Bridge	20.00	5.00
	11:30 Mrs Mc Henry	upper & lower	40.00	20.00
	12:			
	Afternoon			
	12:30			
	1:			
	1:30 Mrs Lincoln	Bridge	20.00	5.00
20	2: Mr Frank Goode	1 pi bridge	23.00	3.00
	2:30 Miss Odessa Smith	Bridge	25.00	25.00
	3: Mrs Howard	Fillings		
	3:30 Mrs Benner	Hecolite Plate	40.00	20.00
	4: Marie Allebaugh	Cap & Fillings	30.00	5.00
	4:30			
	5:			
	5:30			
	6:			
	Evening			
30	6:30			
	7:			
	7:30			
	8:			
	8:30			
	9:			

SATURDAY, MARCH 1, 1930

	Name	Operation	Debit	Credit
	Morning			
8:				
8:30				
9:	Marie Allebaugh	Cap & filling	30.00	5.00
9:30				
10:				
10:30	Mrs Holland	Bridge	50.00	35.00
11:	Miss Godfrey	Fillings & cl.		6.00
11:30				
12:				
	Afternoon			
12:30				
1:	~~Mrs Barrone~~	~~Bridge~~	~~90.00~~	~~45.00~~
21:30	Miss A. Holland	Bridge	50.00	35.00
2:	Mrs Brower	upper plate	28.00	15.00
2:30	Mrs Wm. Herin	Fills & cl.	25.00	10.00
3: 2	Mrs. Mc Henry	upper & lower	40.00	20.00
3:30	Lulu Wingate	Bridge	40.00	20.00
4:	Mary Johnson	Cap & fills	30.00	15.00
4:30				
5:				
5:30				
6:				
	Evening			
6:30				
7:				
7:30	Mrs Doskin	Remov. Bridge	50.00	37.00
8:	Mrs Conover			
8:30				
9:				

10

20

30

MONDAY, MARCH 3, 1930

	Name	Operation	Debit	Credit
	Morning			
8:				
8:30				
9:30	Miss D. Holland	Bridge	50.00	25.00
9:30	Miss Hand	Ext.	6.00	6.00
10:	Mrs Schinn	Upper & lower	100.00	70.00
10:30	Mrs Glenn	Extr	35.00	5.00
11:	Mr Strouse	Plate repair	5.00	2.00
11:30				
12:				
	Afternoon			
12:30				
1:	Lulu Wingate	Bridge	40.00	20.00
1:30	Mr Patterson	Upper & lower partials	85.00	25.00
2:	Mr Frank Goode	Bridge	23.00	10.00
2:30	Mrs Barrone	Bridge	90.00	45.00
3:	James Tatum	Plate & Bridge	144.00	55.00
3:30	Marie Allebaugh	Fillings	30.00	5.00
4:				
4:30				
5:	Mr Rose	upper & lower	45.00	10.00
5:30				
6:				
	Evening			
6:30				
7:				
7:30				
8:				
8:30				
9:				

TUESDAY, MARCH 4, 1930

	Name	Operation	Debit	Credit
	Morning			
8:				
8:30				
9:				
9:30				
10:	Miss A. Holland	Bridge	50.00	35.00
10:30	Mrs Barrone	Bridge	90.00	45.00
11:	Mrs Glenn	Caps & fills	35.00	5.00
11:30				
12:				
	Afternoon			
12:30				
1:				
1:30				
2:	Mrs Thorpe	Fillings	5.00	5.00
2:30	Miss Conover	Fillings	8.00	5.00
3:	Mrs Foyfield	Remov. Bridge	35.00	23.00
3:30	David M. Calder	Lower partial white clasp	30.00	5.00
4:	Beatty Godfrey	Fillings	20.00	8.00
4:30				
5:				
5:30				
6:				
	Evening			
6:30				
7:				
7:30				
8:				
8:30				
9:				

THURSDAY, MARCH 6, 1930

	Name	Operation	Debit	Credit
	Morning			
8:				
8:30				
9:				
9:30	Mr Blizzard	Plate & cap	100.00	100.00
10:	Miss A. Holland	Bridge	50.00	40.00
10:30	Mrs Barrone	Bridge	90.00	45.00
11:	Mrs Glenn	Caps & fills.	35.00	15.00
11:30	Miss Byrd	Adjustment.		
12:				
	Afternoon			
12:30				
1:				
1:30				
2:	Mrs Eliz. Higbee	Plates	55.00	5.00
2:30	Mr R. M. Patterson	Upper & lower partials	85.00	25.00
3:	Miss Lulu Wingate	Bridge	40.00	20.00
3:30	Ada Johnson	Bridge	18.00	5.00
4:	Mrs Shibe	Lower plate	45.00	15.00
4:30				
5:				
5:30				
6:				
	Evening			
6:30				
7:	Mrs G. Huber	Upper & Lower	100.00	25.00
7:30	Mr G. Wiessner			10.00
8:				
8:30				
9:				

MONDAY, MARCH 10, 1930

	Name	Operation	Debit	Credit
	Morning			
8:				
8:30				
9:	Mrs Gordon	upper plate	75.00	5.00
9:30	Miss N. Young	Ext & Bridge	125.00	20.00
10:	Mrs Barrone	Bridge	90.00	45.00
10:30	Mrs Glenn	Caps.	35.00	25.00
11:	Mrs Mc Henry	upper & lower	40.00	20.00
11:30				
12:				
	Afternoon			
12:30				
1:	Miss O. Holland	Bridge	60.00	45.00
1:30	Mrs. Barrone	Bridge	90.00	45.00
2:	Miss D. Christianson			1.00
2:30	Frances Jackson	Partial upper	50.00	5.00
3:	Mrs I. Wood	upper Partial	43.00	17.00
3:30	Miss Ada Johnson	Bridge	18.00	18.00
4:	Mr Blizzard	upper Plate	100.00	100.00
4:30				
5:				
5:30				
6:				
	Evening			
6:30				
7:				
7:30				
8:				
8:30				
9:				

FRIDAY, MARCH 14, 1930

	Name	Operation	Debit	Credit
	Morning			
8:				
8:30				
9:				
9:30	Mrs Harmon	Bridge	25.00	5.00
10:				
10:30				
11:				
11:30				
12:	Miss A. Carter	Cap.	10.00	5.00
	Afternoon			
12:30				
1:	Miss Eisenlohr	upper plate	25.00	10.00
1:30	Miss A. Holland	Bridge	60.00	45.00
2:	Mrs Chambers	Plate repair	4.00	2.00
2:30	Mrs I. Wood	upper partial	43.00	20.00
3:	Mrs Shibe	Lower plate	45.00	20.00
3:30				
4:				
4:30				
5:				
5:30				
6:				
	Evening			
6:30				
7:				
7:30				
8:				
8:30				
9:				

SATURDAY, MARCH 15, 1930

	Name	Operation	Debit	Credit
	Morning			
8:				
8:30				
9:	Mrs Harmon	Bridge	25.00	12.00
9:30				
10:				
10:30	Mr Joseph Lemm	Fills & cl	25.00	25.00
11:				
11:30				
12:				
	Afternoon			
12:30				
1:	Mrs Brower	upper plate	28.00	15.00
1:30	Mrs Mgt. Hank	Partial upper	100.00	15.00
2:	Mrs Wm. Herin	Fillings & cl.	25.00	15.00
2:30	Mr Primrose	upper plate	40.00	
3:	Miss L. Loboro	Fills cl. & ext.	22.00	2.00
3:30	Mr T Gaskill	Fillings & cl.	25.00	10.00
4:	Miss A. Holland	Bridge	60.00	45.00
4:30	Mrs Gaskill	Ext.	4.00	4.00
5:	Miss Eisenlohr	upper plate	25.00	25.00
5:30				
6:				
	Evening			
6:30				
7:				
7:30				
8:				
8:30				
9:				

FRIDAY, MARCH 21, 1930

	Name	Operation	Debit	Credit
	Morning			
8:				
8:30				
9:				
9:30				
10:				
10:30				
11:	Miss Emily Eckbold	Fillings & cl	30.00	2.50
11:30				
12:				
	Afternoon			
12:30				
1:				
1:30	Mrs M. Bland	Upper & Lower	100.00	5.00
2:	Miss A. Holland	Bridge	60.00	45.00
2:30	Mrs Mgt Hank	Upper Partial	100.00	50.00
3:	Mrs Booye	upper & lower	40.00	17.00
3:30				
4:				
4:30				
5:	Mrs Waterhouse	Mays Landing		
5:30				
6:				
	Evening			
6:30				
7:				
7:30				
8:				
8:30				
9:				

MONDAY, MARCH 24, 1930

	Name	Operation	Debit	Credit
	Morning			
8:				
8:30				
9:	Mr Gaskill	Fillings & cleaning	25.00	20.00
9:30	Miss A. Holland	Bridge	60.00	45.00
10:	Louise Herd	Bridge	65.00	10.00
10:30	Mrs Giovanni	Bridge		
11:	Mrs Barrone	Bridge	90.00	55.00
11:30				
12:				
	Afternoon			
12:30				
1:	Mr D. Colder	Lower partial	30.00	5.00
1:30	Miss G. Rankin	Bridge	55.00	15.00
2:	Miss B. King	Bridge	75.00	4.00
2:30	Mr R. M. Patterson	Upper & lower partials	85.00	35.00
3:	Miss Rose Wilson	Partial Plates	85.00	10.00
3:30	Mr James Tatum	Bridge	144.00	104.00
4:				
4:30				
5:				
5:30				
6:				
	Evening			
6:30				
7:	Mr Mangaura	Ext.		
7:30				
8:				
8:30				
9:				

WEDNESDAY, MARCH 26, 1930

	Name	Operation	Debit	Credit
	Morning			
8:				
8:30				
9:				
9:30	Mrs Deck	Ext.	3.00	3.00
10:				
10:30				
11:	Mrs Steurtz	Plate repair	10.00	5.00
11:30				
12:				
	Afternoon			
12:30				
1:				
1:30	Mr D. Colder	Lower Plate	30.00	10.00
2:	Mrs A. Holland	Bridge	60.00	45.00
2:30	Mrs Barrone	Bridge	90.00	55.00
3:				
3:30	Francis Woermer	Fillings	10.00	3.00
4:				
4:30	Mr James Tatum	Bridge	144.00	104.00
5:				
5:30				
6:				
	Evening			
6:30				
7:				
7:30				
8:				
8:30				
9:				

SATURDAY, MARCH 29, 1930

	Name	Operation	Debit	Credit	
		Morning			
8:					
8:30					
9:					
9:30					
10:	Joseph Jerome	Ext.			10
10:30	Mrs Schroeder	Hecolite plate	35.00	15.00	
11:					
11:30					
12:					
		Afternoon			
12:30					
1:					
1:30					
2:	Mrs A. Holland	Bridge	60.00	45.00	
2:30	Mrs Booye	upper & lower	40.00	17.00	20
3:	Mrs Wm. Herin	Fillings & cleaning	25.00	15.00	
3:30					
4:	Mrs B Belgrade	Bridge	20.00	5.00	
4:30					
5:					
5:30					
6:					
		Evening			
6:30					30
7:					
7:30					
8:					
8:30					
9:					

MONDAY, MARCH 31, 1930

	Name	Operation	Debit	Credit
	Morning			
8:				
8:30				
9:	Nellie Young	Bridge	125.00	50.00
9:30	Mrs W. Wilson	upper plate	50.00	25.00
10:	Miss Rose A. Wilson	Partial upper & lower	85.00	35.00
10:30	Mrs Schroeder	Adjustment	35.00	35.00
11:	Mrs Beatty	Extraction	6.00	6.00
11:30				
12:				
	Afternoon			
12:30				
1:				
1:30				
2:	Mr R. M. Patterson	Upper partial	85.00	45.00
2:30	Mrs Booye	upper plate	40.00	30.00
3:	Mrs A. Wrigley	Ext.	4.00	4.00
3:30	Mrs MacMullen	Inlays.		
4:	Mrs A. Holland	Bridge	60.00	50.00
4:30	Mr James Tatum	Bridge	144.00	104.00
5:				
5:30				
6:				
	Evening			
6:30				
7:				
7:30	Mrs Courdery	Bridge recemted		
8:				
8:30				
9:				

SATURDAY, APRIL 5, 1930

	Name	Operation	Debit	Credit	
	Morning				
8:					
8:30					
9:					
9:30					
10:	Mrs Giovanni	Bridge	40.00		10
10:30	Mrs Gooley	Treatment.	2.00	2.00	
11:	Mrs F. Jones	Treatment		7.00	
11:30	Mrs Lovett	Ext.	3.00	3.00	
12:					
	Afternoon				
12:30					
1:	Mr Deck	Fills, & cl.	8.00	8.00	
1:30	Thomas Cope	Extraction	100.00	20.00	
2:	Nellie Young	Bridge	125.00	50.00	20
2:30	Mrs A. Holland	Bridge	60.00	50.00	
3:	Mrs Wm. Herin	Fillings	25.00	20.00	
3:30					
4:					
4:30					
5:					
5:30					
6:					
	Evening				
6:30					30
7:	Sarah Kearns	Lower partial	50.00	44.00	
7:30					
8:					
8:30					
9:					

.)

arge	Credit
0.00	5.00
0.00	5.00
	5.00
	10.00
	15.00
	5.00

10

20

30

Miss A. Holland

1527 Pacific Ave

Charge to Atlantic City Folio 1930

Referred by N.J.

REMARKS:

Lower Remov.
Bri Work, Fillings, + Cl.
(Lower Extraction
Jan. 4th - 1930)

The L. D. Caulk Company, Milford, Delaware

(On reverse side of photostat.)

Date	Charge	Credit
Jan. 4th—30	60.00	5.00
" 11th—"	50.00	5.00
Feb. 8th—"		5.00
" 25th—"		10.00
Mar. 3rd—"		15.00
Apr. 5th —"		5.00

REASONS FOR REVERSAL.

NEW JERSEY SUPREME COURT.

ATLANTIC COUNTY.

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THE STATE OF NEW JERSEY,
Defendant-in-Error,
v.
MORRIS E. COHEN,
Plaintiff-in-Error.

In Error.
Reasons for Reversal.

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And now comes the said Morris E. Cohen, by John C. Reed, his attorney, and says, that in the record and proceedings aforesaid, and also in giving the judgment aforesaid, there is manifest error, and said Morris E. Cohen says that said judgment should be reversed, and assigns the following reasons or causes for said reversal.

1. Because the said trial Judge erroneously refused to quash the second and third counts of said indictment. 30

2. Because the said trial Judge erroneously refused to strike or quash the second and third counts in said indictment on the opening of the Prosecutor

of the Pleas, who, in his statement of facts, did not bring the defendant within Section 51 of the Crimes Act.

3. And further because the Prosecutor of the Pleas, in his opening to the jury, did not allege the time of the commission of the alleged offense which would bring the same within the statute of limitations.

4. Because the said trial Judge erroneously refused to permit the complaining witness to answer the following question:

> "Q. The next time that you appear to have visited Dr. Cohen's office, was on February 25th. Do you remember what time of day you visited on that date? Do you remember who was present on any of those dates I mentioned, in the office of Dr. Cohen or in the operating room?"

5. Because the said trial Judge erroneously refused to permit the complaining witness to answer the following question:

> "Q. Do you remember who was present on that day?"

6. Because the said trial Judge erroneously refused to permit the complaining witness to answer the following question:

> "Q. After the visit to Dr. Cohen's office on April 5, did you employ a lawyer?"

7. Because the said trial Judge erroneously refused to permit the complaining witness to answer the following question:

"Q. Did you at any time after the 25th or between the 25th and the 21st of April, employ counsel?"

8. Because the said trial Judge erroneously refused to permit the complaining witness to answer the following question:

"Q. Was the employment of counsel after you made the visit to Dr. Hyman?"

9. Because the said trial Judge erroneously refused to strike the testimony of the witness, Frances Jackson, on the ground that it was irrelevant, incompetent and immaterial and had no bearing on the issue.

10. Because the said trial Judge erroneously refused to strike the testimony of the witness, Dorothy Christianson, on the ground that it was irrelevant, incompetent and immaterial, and had no bearing on the issue.

11. Because the said trial Judge erroneously refused to strike the testimony of the witness, Mary DeGraaff, on the ground that it was irrelevant, incompetent and immaterial, and had no bearing on the issue.

12. Because the said trial Judge erroneously re-

fused to permit the witness, Mary Morrow, to answer the following question:

"Q. Could people hear an outcry?"

13. Because the said trial Judge erroneously refused to permit the witness, Mary Morrow, to answer the following question:

"Q. What was her attitude toward the doctor at that time?"

14. Because the said trial Judge erroneously refused to permit the witness, Mary Morrow, to answer the following question:

"Q. When was it that you first learned of any difficulty between Mrs. Holland and Dr. Cohen?"

15. Because the said trial Judge erroneously refused to allow in evidence a letter written by the lawyer of the complaining witness to Dr. Cohen in relation to the alleged offense for which the defendant was being tried.

16. Because the said trial Judge erroneously permitted the Prosecutor to ask the following question of the defendant:

"Q. How many shares of stock does she (Mary Morrow) hold? (In the Boardwalk Dentist Corp.)"

17. Because the said trial Judge erroneously permitted the following conduct on the part of the Prosecutor of the Pleas, that is the following ques-

tions to be asked of the State's complaining witness and the defendant, whilst the defendant was still under cross-examination:

"Mr. Reed: We rest.

Mr. McAllister: Just a moment. Will Mrs. Holland please come up here?

(Mrs. Holland comes forward.)

By Mr. McAllister (addressing Mrs. Holland, with defendant witness still in the witness chair):

Q. Will you show to the jury which teeth you had put in there?

Mr. Reed: Objected to. The witness is under cross-examination. The Prosecutor has no right to project this woman into the picture. He can recall her to the witness stand, if he likes. But he must conclude this cross-examination of this witness, first.

The Court: Isn't this cross-examination?

Mr. Reed: No, he asks this woman here, the complaining witness, not on the stand, what was done.

The Court: He is asking the doctor to point to the teeth that were put in. He isn't asking the woman the question.

By Mr. McAllister (addressing defendant witness in box):

Q. Will you show the work that was done in the girl's mouth?

Mr. Reed: Objected to, as improper cross-examination. It is also objected to as incompetent, irrelevant and immaterial.

(Objection overruled.)

(Exception noted to defendant.)

A. I don't want to look in her mouth."

18. Because the said trial Judge erroneously permitted the following testimony in rebuttal:

"By Mr. McAllister:

Q. Did you on April 21st go to Dr. Cohen's office?

A. I did, sir.

Q. At that time did he look in your mouth?

A. No, sir.

Q. Did you speak to him?

A. Yes, sir.

Q. About your teeth?

A. Yes, sir.

Q. About the upper or lower teeth?

A. The upper teeth.

Q. Did he do work on these teeth?

A. Yes, sir.

Q. Where?

A. These two here, this bridge; these teeth here.

Mr. Reed: Objected to. She is pointing to these teeth that she told all about in her examination-in-chief.

The Court: The Prosecutor wants to show that the witness had work done on her upper teeth and which is denied by the defendant.

Mr. Reed: We have it before the jury. When she pointed to her teeth she pointed to her upper teeth, and that is all that she ever did point to in her examination-in-chief. And she said that he had left in her upper jaw a broken tooth. That

is what she said. That is not rebuttal and I do not think that the Prosecutor should be permitted to put a witness on the stand in this manner. This is a serious thing.

Mr. McAllister: It is serious to the State, too.

Mr. Reed: Then the State should conduct its case according to the rules of evidence."

19. Because the said trial Judge erroneously refused to direct a verdict of not guilty on the third count on the ground that there was no evidence of any lewdness in private, in accordance with the second paragraph of Section 51 of the Crimes Act.

20. Because the Prosecutor of the Pleas was erroneously permitted to address the jury on the subject of the interests of the different witnesses in the corporation which owned the business over the objection of the defendant's attorney.

21. Because the said trial Judge erred in charging the jury as follows:

"The third count charges the defendant with what is commonly known as the crime of lewdness and as to which I respectfully charge you to read this count so that you may deal with the testimony in detail."

22. Because the said trial Judge erroneously charged the jury to read the third count of the indictment.

23. Because the said trial Judge erroneously charged the jury as to the definition of "assault and battery."

24. Because the said trial Judge erroneously charged the jury as follows:

> " 'Any person shall be guilty of open lewdness or guilty of public indecency, grossly scandalous and tending to debauch the morals and manners of the people, or any person who shall in private be guilty of any act or lewdness or carnal indecency with another, grossly scandalous and tending to debauch the morals and manners of the people' is guilty of violating this statute."

25. Because the said trial Judge erroneously charged the jury that the third count dealt with lewdness.

26. Because the said trial Judge erroneously charged the jury that there could be an assault and battery coupled with lewdness.

27. Because the said trial Judge erroneously charged the jury upon the subject of "a reasonable doubt."

28. Because the said trial Judge erroneously refused to grant a motion in arrest of judgment on the first count of said indictment, charging assault and battery.

29. Because the said trial Judge erroneously refused to grant a motion in arrest of judgment in respect to the third count of said indictment, there being no evidence to support a violation of paragraph 2, Section 51, of the Crimes Act, that there had been committed by the defendant an act of private indecency with another.

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30. Because the said trial Judge erroneously refused to grant a motion in arrest of judgment on the ground that the verdict was against the weight of evidence.

31. Because the verdict is not supported by the evidence.

Respectfully submitted,
JOHN C. REED,
Attorney for and of Counsel with Plaintiff-in-Error.

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RULE OF AFFIRMANCE.

NEW JERSEY SUPREME COURT.

No. 1. May Term, 1931.

THE STATE OF NEW JERSEY, *Defendant-in-Error,* v. MORRIS E. COHEN, *Plaintiff-in-Error.*	In Error to Atlantic County Quarter Sessions Court. Rule of Affirmance.

This cause having been duly argued at the May Term, 1931, of this Court, by John C. Reed, of counsel for the plaintiff-in-error, and Louis A. Repetto, Prosecutor of the Pleas of Atlantic County, of counsel for the defendant-in-error, and the Court having considered the same, and finding no error in the record or proceeding in the Atlantic County Quarter Sessions Court.

It is thereupon ordered and adjudged that the judgment of the Atlantic County Quarter Sessions Court removed by the writ of error in this cause be affirmed with costs, and that the record be remitted to the Atlantic County Quarter Sessions Court to be

proceeded with in accordance with this judgment and the practice of said Court.

Entered Dec. 23, 1931, on motion of

LOUIS A. REPETTO,

Prosecutor of the Pleas of Atlantic County and Attorney for Defendant-in-Error.

A true copy.

OPINION.

(Filed Dec. 10, 1931.)

NEW JERSEY SUPREME COURT.

No. 1. May Term, 1931.

THE STATE OF NEW JERSEY,
v.
MORRIS E. COHEN.

On Writ of Error to Atlantic County Court of Quarter Sessions.

Argued before GUMMERE, Chief Justice, and JUSTICES PARKER and CASE.

For plaintiff-in-error, JOHN C. REED.
For defendant-in-error, LOUIS A. REPETTO, Prosecutor of the Pleas.

The opinion of the Court was delivered by
GUMMERE, C. J.

The writ of error in this case brings up for review the conviction of the defendant had upon the trial of an indictment presented against him by the Grand Jury of Atlantic County. The indictment contained three counts, the second of which was abandoned by the State when the trial of the case was moved. The first count charged the defendant with committing an assault and battery upon one Adele Holland. The third count charged that the defendant did, with malicious intent, in private, commit an act of lewdness and carnal indecency with the said Adele Holland, which was grossly scandalous and which tended to debauch the morals and manners of the people, in that he did at the time and place stated in the count, expose his private parts to the said Adele Holland. The result of the trial was the conviction of the defendant upon each of these counts.

The proofs submitted on the part of the State showed that Mrs. Holland went to the office of the defendant, who was a dentist practicing in Atlantic City, for the purpose of having some of her teeth extracted and certain bridge work done; that she visited his office on several occasions for that purpose; that on one of these occasions, after having had some of her teeth extracted, she left the office and went into the waiting room, and that as she was putting on her hat and coat there, the defendant came into the room, grabbed hold of her, pushed her back into the office, and then started to lift up her

dress; that at this time he indecently exposed his person; that she told him to let her alone, and that he replied that he would smack her in the mouth if she did not keep quiet; that he then pushed her over to another room, where there was a little cot near the door, but that he suddenly let go of her and ran out of the office, there being people in the waiting room, who might perhaps have heard the noise. This testimony was denied by the defendant, but the jury evidently believed it, as their verdict finding him guilty on the first count indicates.

The first ground upon which the plaintiff-in-error seeks a reversal is that count No. 1, as he alleges, does not properly charge a crime denounced by the laws of New Jersey. Just what counsel means by this assertion it is somewhat difficult to understand, in view of the fact that this count charges the offense of assault and battery in the usual form. However, we are not called upon to consider this ground for reversal. Section 44 of our Criminal Procedure Act (Comp. Stat., p. 1834), requires that, "Every objection to any indictment, for any defect of form or substance apparent on the face thereof, shall be taken before the jury shall be sworn and not afterwards." In the present case no objection to the first count of the indictment was made until after all the testimony in the case had been submitted. The failure to make an objection to an indictment before the jury is sworn, as provided in this section, is a bar against any attack upon the indictment in a court of review. *Shuster v. State,* 62 N. J. L. 521; *State v. Sharkey,* 73 N. J. L. 491; *State v. Sing Lee,* 94 N. J. L. 270.

The next ground upon which we are asked to re-

verse the conviction under review is that the third count of the indictment does not properly charge a crime denounced by the laws of New Jersey. This count is based upon Section 51 of our Crimes Act (*Comp. Stat.*, p. 1762), which provides that, "Any person who shall in private be guilty of any act of lewdness or carnal indecency with another, grossly scandalous and tending to debauch the morals and manners of the peoples, shall be guilty of a misdemeanor." The indictment follows the language of the statute and clearly charges the offense specified therein. In the case of *Graves v. State*, 45 N. J. L. 203, Chief Justice Beasley, delivering the opinion of this Court, declared that, "An indictment charging a criminal offense in the language of the statute is constitutional and legal." This principle was approved in *State v. Brand*, 77 N. J. L. 486, Chancellor Pitney, delivering the opinion of the Court of Errors and Appeals, declaring that the general rule is well-established that, "In charging a statutory offense, it is sufficient to lay a charge in the words of the act, without a particular statement of facts such as will bring the accused within its operation." In view of these decisions, it is plain that this ground of reversal is without merit.

It is further urged before us as a ground for reversal that the conviction is not supported by the evidence. Assuming that what is meant by this assertion is that the verdict is contrary to the weight of the evidence, we have carefully examined the testimony and have satisfied ourselves that the jury was fully justified in finding the defendant guilty on both the first and the third counts of the indictment.

The only other grounds for reversal are directed at some fourteen alleged errors of the trial Court in its rulings upon testimony. No good purpose would be served by reciting the evidence upon which the challenged rulings are based. In disposing of this contention, it is enough to say that we consider that each one of the rulings made the subject of criticism by counsel was entirely proper and free from legal error.

The conviction under review will be affirmed.

WRIT OF ERROR.

NEW JERSEY, ss.

The State of New Jersey to our Justices of our Supreme Court, Greeting:

(Seal) Because in the record and proceedings and also in the giving of the judgment upon a certain indictment which was in our said Supreme Court, before you, between the State of New Jersey, defendant-in-error, and Morris E. Cohen, plaintiff-in-error, on a writ of error issued out of the Supreme Court, to the Judges constituting the Court of Quarter Sessions, in and for the County of Atlantic, as is said, manifest error hath intervened to the great damage of the said Morris E. Cohen, as from his complaint we have received information, we being willing in this behalf to correct the error in due manner, if any there shall be, and that speedy justice be done to him, the said Morris E. Cohen, do command you that if judgment be

given, then you send distinctly and openly under your seal, the entire record, proceedings and indictment aforesaid, with all things touching and concerning the same, to our Court of Errors and Appeals, before the Judges thereof, on the second day of February, A. D. 1932, and this writ and that the record and proceedings aforesaid being inspected we may cause further to be done what of right and according to law ought to be done.

Witness, Honorable Edwin Robert Walker, Chancellor and President Judge of our said Court of Errors and Appeals, at Trenton, aforesaid, on the 29th day of December, A. D. 1931.

Thomas A. Mathis,
Clerk.

John C. Reed,
Attorney.

[Endorsed]

Due and legal service of a copy of the within writ duly acknowledged this 29th day of December, A. D. 1931.

(Signed) Louis Repetto,
Prosecutor of the Pleas
of Atlantic County.

ASSIGNMENT OF ERRORS.

NEW JERSEY COURT OF ERRORS AND APPEALS.

10

THE STATE OF NEW JERSEY, *Defendant-in-Error,* v. MORRIS E. COHEN, *Plaintiff-in-Error.*	On Error to Supreme Court. Assignment of Errors.

20 Afterward, to wit, in the New Jersey Court of Errors and Appeals, in the last resort in all causes, comes the said Morris E. Cohen, by John C. Reed, Esquire, his attorney, and says:

That in the record and proceedings aforesaid, there is manifest error in the judgment, in this, to wit:

1. That the Supreme Court error in giving judgment for the defendant-in-error, the State of New
30 Jersey, instead of for the plaintiff-in-error, Morris E. Cohen; for one or more of the assignments of error and causes for reversal filed in the New Jersey Supreme Court and brought up with the record.

JOHN C. REED,
Attorney for and of Counsel with the Plaintiff-in-Error.

New Jersey Court of Errors and Appeals

THE STATE OF NEW JERSEY,

Defendant-in-Error,

vs.

MORRIS E. COHEN,

Plaintiff-in-Error.

On Error to Supreme Court.

BRIEF OF DEFENDANT-IN-ERROR.

This matter comes before this court on a writ of error to the Supreme Court, and out of which court a writ of error had previously been sued out to the Atlantic Quarter Sessions, where the defendant had been indicted, and convicted on December 5, 1930, and which judgment was affirmed in Supreme Court, 108, N. J. L., p. 216. The indictment is as follows:

THE INDICTMENT.

ATLANTIC COUNTY, to wit:

The Grand Inquest of the State of New Jersey in and for the body of the County of Atlantic upon

their respective oath and affirmation, those who affirmed having first alleged themselves to be conscientiously scrupulous against taking an oath, present that, Morris E. Cohen, late of the City of Atlantic City, in the said County of Atlantic, on and about the fifteenth day of March in the year of our Lord one thousand nine hundred and thirty, at the City of Atlantic City aforesaid, in the County aforesaid and within the jurisdiction of this court, with force and arms, in and upon one Adele Holland, in the peace of God and of this State then and there being, an assault did make, and he, the said Morris E. Cohen, then and there did beat, wound and ill-treat and other wrongs to the said Adele Holland, then and there did, to the great damage of the said Adele Holland, to the evil example of all others in like case offending, contrary to the form of 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 oath and affirmation aforesaid, do further present that the said Morris E. Cohen on and about the fifteenth day of March, in the year of our Lord one thousand nine hundred and thirty, at the City of Atlantic City, in the County aforesaid, and within the jurisdiction

of this Court, did with malicious intent commit an act of open lewdness, and notorious act of public indecency, grossly scandalous, wherein and whereby he did show and expose his private parts to one Adele Holland, and which act tended to debauch the morals and the manners of the people, to the evil example of all others in like case offending, contrary to the form of 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 oath and affirmation aforesaid, do further present that the said Morris E. Cohen, on and about the fifteenth day of March, in the year of our Lord one thousand nine hundred and thirty, at the City of Atlantic City, in the County aforesaid, and within the jurisdiction of this Court, did with malicious intent, in private, commit an act of lewdness and carnal indecency with one Adele Holland, which was grossly scandalous, and which tended to debauch the morals and the manners of the people, in that he, the said Morris E. Cohen, did at the time and place aforesaid, expose his private parts to the said Adele Holland, to the evil example of all others in like case offending, contrary to the form of the statute in such case made and provided and against the

peace of this State, the government and dignity of the same.

(Count two was abandoned, and the State relied upon counts one and three.)

It will be noted that count one, which alleges Assault and Battery, is drawn in the usual form. No attack, however, can now be entered at this time on this count, for the reason that no objection to this count was made, as is required, before the Jury was sworn. Objection was made later, but Section 44 of the Criminal Procedure Act, provides, "that every objection must be made before, and not after, the Jury is sworn."

In State vs. Sharkey, 73 N. J. L., p. 491, it was held: "that when no objection to an indictment is made before the Jury is sworn, the Statute (44 Crim. Pro.) is a bar against any attack upon the indictment in a court of review."

Objection to the third count in the indictment, and which is to the effect that it does not properly charge a crime denounced by the laws of New Jersey, seems frivolous. The count follows strictly the language of Section 51 of the Crimes Act, and by so doing, the count certainly is not objectionable. In Graves vs. State, 45 N. J. L., p. 203, Chief Justice

Beasley speaking for the Court, said: "An indictment charging an offense in the language of the Statute, is both constitutional and legal."

Again, in State vs. Brand, 77 N. J. L., p. 486, it was held: "That it was sufficient to lay the charge in the words of the act, without a particular statement of the facts, which will bring the accused within its operation."

In State vs. Grossman, 94 N. J. L., p. 301, the Court held: "A motion to quash an indictment is addressed to the discretion of the court, and a ruling on such motion is not reviewable on strict bill of exception, or under the 136 Section of the Criminal Procedure Act."

In view of the act and these decisions, it is quite clear that an attack upon count three is now without merit.

STORY OF THE CRIME.

Adele Holland, a married woman, living with her husband, and aged twenty-nine years, went to the defendant, Morris E. Cohen, a dentist with offices on the second floor of a building in the central part of Atlantic City, for the purpose of having some dental work done. She was employed, and arranged

her appointments with the dentist for lunch hour. It seems she went there several times, both before and after the attack. But on the day of the attack she went alone, and was advised by Dr. Cohen that she would have to have several teeth extracted. He gave her gas, and when she came out of the influence, the teeth had been taken out. She walked from the dentist chair into another office where a young colored girl attendant was, and Dr. Cohen directed this colored girl to go downstairs. The colored girl went out and Mrs. Holland crossed the room to a sitting room where she had left her hat and coat. Dr. Cohen followed her into this room and closed the door after him, and while she was putting on her coat, he suddenly grabbed hold of her and pushed her backward toward where a small cot stood.

During this time his trousers were opened and his privates exposed, and he was attempting to lift up her dress. She told him to let her alone and fought to escape, and he told her that if she would not keep quiet, he would smack her in the mouth. He continued to push her and she continued to endeavor to get away. During all of which time his privates were exposed and he was trying to lift up her dress.

Some noise from an adjoining room caused him to let go of her and he left the room.

Mrs. Holland also left the office, and by her testimony it appears that she did not then tell her husband for fear of trouble; and though she went to his office afterward, because she had paid him and felt that he should finish his work, she went on these occasions with women friends. It seems that they accompanied her without knowledge of the reason for so doing. Dr. Cohen, however, did not finish the work. And she said that her visits after the attack, she was obliged to discontinue, because he kept slapping her and saying to her things that were offensive.

When in the Supreme Court this same case was briefed by this same counsel, and on page two of that brief, the four grounds for relief were set out, as follows:

1. Do counts 1 and 3 (count 2 having been abandoned) properly charge a crime denounced by the laws of New Jersey?

2. Is the verdict against the weight of the evidence?

3. Is the verdict supported by the evidence?

4. Was defendant prejudiced by the Court's refusal to permit certain testimony or to reject any that was admitted either in chief or by way of cross-examination of any of the witnesses?

ARGUMENT.

Two various types of offences, when closely inter-related, may be included in one indictment. State vs. Mussikee, 101 N. J. L., p. 268.

And, if either of these counts should be faulty, one good count is sufficient. State vs. Startup, 39 N. J. L., p. 423.

The first count being drawn in the usual form, is supported by proof that the victim, Mrs. Holland, left the dentist chair and went for her hat and coat in an adjoining room. The dentist followed and closed the door. He then grabbed hold of Mrs. Holland, pushed her toward a cot, and lifted up her dress; to all of which she protested. Whereupon he threatened to "smack her in the mouth," if she did not keep quiet. His conduct showed clearly that he intended to force intercourse with her. (See State of Case, p. 22, line 5 etc.).

Such an attack is certainly Assault and Battery.

Count two was abandoned by the State.

Count three charges Lewdness and Carnal Indecency. The latter part of Section 51 of the Crimes Act stipulates, "that any person who shall in private be guilty of any act of lewdness, **or** carnal indecency, with another, etc." This indictment charges the defendant as being guilty of an act of lewdness **and** carnal indecency, with one Adele Holland, etc.

It would seem that the defendant could be convicted if guilty of lewdness alone, or carnal indecency alone. Being charged with both will not release the defendant from guilt, if the proof should sustain but one or the other.

The proof supporting this count quite clearly shows (State of Case, page 22, lines 5 etc.), that while the assault and battery was committed, the defendant throughout was exposing his person to Mrs. Holland. Certainly that was a lewd act and it was an indecent act, such as can well come under the head of carnal indecency.

In State vs. Schoudel, 57 N. J. L., p. 209, the court said: "The essence of the offence is that it presents itself in such way that it becomes an affront to good morals and good manners, and that it tends to corrupt or offend the public morality."

AS TO THE ADMISSION AND REJECTION OF TESTIMONY.

Complaint is made that the court ruled improperly on the admission and rejection of testimony.

Nine excerpts are set out in the brief of plaintiff-in-error as harmful to him.

On page 25 of the brief of plaintiff-in-error, we find what is there marked as Nos. 4, 5 and 6; and on page 26, Nos. 7, 8, 12, 13 and 14; and on page 27, No. 15.

No. 4 refers to a question not allowed by the Court. There is no reference as to where this appears in the record. It seems that in the case of State vs. Herron, 77 N. J. L., p. 525, **"it is encumbent upon the plaintiff-in-error to point out the precise evidence which was erroneously admitted or rejected, in order to relieve the Court and the State of the burden of reading the whole record."**

This doctrine is also held in State vs. Blaine, 104 N. J. L., p. 325.

However, this question seems to have been answered throughout the testimony of the complaining witness.

No. 5 is a question as to whether she remembered who was present on a certain day. This appears on page 43 of the State of Case, and on line 10, the Court directs attention that the question has been answered. That is not disputed, but counsel sought to press the question again, to test her credibility, as he stated.

Nos. 6 and 7 asked if she had employed a lawyer; and certainly that was irrelevant. State of Case, p. 46 - line 10 + " 32.

No. 8 asked about the employment of counsel after seeing another dentist; which is again irrelevant. Case, p. 47 - line 12.

No. 12 is a question addressed to a defendant's witness, whether people could hear an outcry; and certainly was properly not allowed. Case, p. 72 - line 8

No. 13 is a question to Mary Marrow asking her Mrs. Holland's attitude toward the Doctor at that time. It is difficult to understand what time was meant, and the question is irrelevant. However, this question though objected to by the State, and the objection sustained, no exception was taken. (State of Case, p. 75, lines 1 etc.).

No. 14 asks this same witness for the defendant, when she first learned of the trouble between Mrs. Holland and Dr. Cohen. Certainly that has no place

in the case. It was objected to (State of Case, page 75, line 15) and objection sustained, but no exception taken.

No. 15 complains that a letter written by a lawyer of Mrs. Holland was not admitted. It had no place in the case, and the State is not bound by any such letters or any conversation with outside persons.

All of these numbered items, except No. 5, are without direct reference to the record. (See case of State vs. Herron, 77 N. J. L., p. 525, and case of State vs. Blaine, 104 N. J. L., p. 325, above mentioned).

On page 32 of the brief of plaintiff-in-error, the location of this office is described in a manner which is not supported by one line of testimony in the record, except that the office was over a five and ten cent store. And the attack did not occur as set out in that paragraph. We must read the story of the victim, Mrs. Holland, as set out on page 22 of the State of Case.

On page 39 of the brief, we find reasons, Nos. 9, 10 and 11, as follows:

No. 9 complains because the testimony of Frances

Jackson, who had accompanied Mrs. Holland to the Dentist's office on two occasions after the attack, was not stricken from the record. Everything was stricken from the record, except that she accompanied Mrs. Holland on two occasions (State of Case, pages 49, 50 and 51). The testimony was not harmful to the defendant, and it corroborated Mrs. Holland, who gave testimony of like character.

No. 10 is a like complaint relating to the testimony of Dorothy Christianson, State of Case, p. 51, who says that she went with Mrs. Holland and Frances Jackson on two occasions. No objection was made to this, and after the testimony was in, a motion was made to strike it out. This was refused. Certainly this testimony corroborated Mrs. Holland and was not harmful to the defendant.

No. 11 is a like complaint concerning the testimony of Mary DeGraaff, State of Case, p. 52, who went with Mrs. Holland on two occasions and went at the request of Mrs. Holland. While some objection was made for the moment, no exception was taken, and on the contrary, Mr. Stringer, who was associated with counsel in the trial of the case, says, (State of Case, page 54), "We are willing to have that in"—meaning the testimony of Mrs. DeGraaff.

A moment later, however, Mr. Reed moved to strike out all the testimony, and the motion was denied. Certainly this testimony was again corroboration of Mrs. Holland's, and certainly could not be complained against.

We find on page 41 of plaintiff's brief, the sixteenth reason for reversal is, because the Court permitted the State to ask a witness for the defense "How many shares of stock does she own in a certain corporation"—meaning Mary Morrow. This was certainly not harmful.

The seventeenth reason, and set out on page 42 of the plaintiff's brief, relates to the manner of offering testimony by the State. It seemed (State of Case, page 117) that Mrs. Holland was recalled and the Prosecutor asked the defendant, while under cross-examination to point to some work done in the woman's mouth. This was permitted by the Court and certainly cannot be complained about. Such matters are always within the control of the court. An examination of page 117 (State of Case) will disclose that the defendant, Dr. Cohen, was on the witness stand and under cross-examination. At the close of his examination his counsel said, "We rest". The Assistant Prosecutor trying the case,

then asked Mrs. Holland to step forward, and he then asked the defendant to show the Jury which teeth he had put in the woman's mouth. Defendant's counsel objected, claiming that the Prosecutor had no right to bring the woman forward, and saying that he must first close his cross-examination of defendant. The Court reminded him that it was cross-examination, but counsel seemed to think that he was asking Mrs. Holland the question, and he pressed the objection; the objection was over-ruled and exception was taken and allowed. Whereupon the witness answered (State of Case, page 118, line 20) "I don't want to look in her mouth."

The rule we think is, that the Court may in its discretion admit in rebuttal, or further cross-examination, evidence which might properly be introduced in chief. Unless this discretion is abused, certainly no reversal will result. This same doctrine is referred to in State vs. Genese, 102 N. J. L., bottom of page 141.

The eighteenth reason set out on page 43 of plaintiff's brief, relates to the same incident and is certainly a matter under the control of the court. The defendant was in no way harmed.

The twentieth reason, as set out on page 44 of

the plaintiff's brief, the defendant complains that the Prosecutor in summing up was permitted to refer to the interest of some of the defendant's witnesses in the business operated by Dr. Cohen. This matter was inquired about when Dr. Cohen was under cross-examination. (State of Case, page 108 and 109). The interest of witnesses may always be inquired into, for the purpose of testing their credibility, or showing bias.

ON MOTIONS FOR DISMISSAL.

On page 45 of the brief of plaintiff-in-error, we find he advances reasons 28, 29 and 30. They are directed to the refusal of the Court to direct a motion, for the reason that there was no evidence to support either count in the indictment. The State insists that there is evidence. Mrs. Holland says so with great certainty, and it was a question for the Jury to say if the Jury believed her. The Court was fully justified in overruling the motion.

Some reference is made to the fact that defendant was supported by two witnesses who happened to be employees in his office. The fact that defendant had three witnesses, as against Mrs. Holland alone, would not justify the Court in taking the case from the Jury. The Jury might still believe Mrs.

Holland in preference to all of the defendant's witnesses, and they did so.

AS TO THE COURT'S CHARGE.

On page 47 of the brief of plaintiff-in-error, we find the beginning of an attack upon the charge of the Court. On page 48 complaint is made of this particular portion of the charge, (State of Case, page 124) "The third count charges the defendant with what is commonly known as the crime of lewdness and as to which I respectfully charge you to read this count so that you may deal with the testimony in detail."

Certainly there is nothing to complain about in that portion of the charge. The reason is without merit.

On page 49, we find the 23rd reason to the effect that the Judge erroneously charged the Jury as to the definition of Assault and Battery. It is true the Court in his charge gave a definition of Assault and Battery as set out (State of Case, page 124, line 30), and which is as follows:

> "Assault and battery has been defined under our laws, to be as follows:
>
> Assault is an attempt or offer to do physical

violence but falls short of the actual violence.

It is an attempt.

As an illustration. If the foreman attempts to strike me and stops, that is an assault, if he does not strike me. That is an attempt on his part to do physical violence.

Battery is the act of laying hands upon another person. The least touching is battery, with an intent, of course, to do bodily harm; and both assault, and battery, are blended together.

When there is an attempt to do violence and the attempt is consummated by an actual commission of physical violence, even though that violence may be of such force as to do physical injury, there must be an intent to commit assault and battery, as I have defined to you."

The testimony in support of this charge shows that Dr. Cohen, while this woman was unsuspectingly putting on her hat and coat preparatory to leaving the office, suddenly entered the room and closed the door behind him, grabbed her, pushing her toward a small cot, and attempted to lift her dress. It was also evident from the fact that his

privates were exposed, that he intended to force intercourse with this woman. It may be safely said, hence, that this assault was one made with evil intent, and therefore the testimony justified the Jury in finding the defendant guilty on that count.

The twenty-fourth reason is that the Judge erroneously charged, relative to lewdness (State of the Case, page 125, lines 14, etc.) as follows:

> "Any person shall be guilty of open lewdness or guilty of public indecency, grossly scandalous and tending to debauch the morals and manners of the people, or any person who shall, in private, be guilty of any act of lewdness or carnal indecency with another, grossly scandalous and tending to debauch the morals and manners of the people', is guilty of violating this statute."

It was undoubtedly the intent of the Statute to leave to the Jury to say whether the act performed and set out in the indictment and proof was one of lewdness or carnal indecency, or both, and the Jury having heard Mrs. Holland testify that Dr. Cohen, while violent hands were placed upon her, had his person exposed and was pushing her toward a cot. Certainly there was an evil thought in his mind,

and a very indecent act performed, and the Jury undoubtedly concluded that that was an act which was grossly scandalous and would tend to debauch the morals and the manners of the people.

As before cited in our brief, the Court said, in State vs. Schoudel, 57 N. J. L., p. 209: "the essence of the offence is that it presents itself in such a way that it becomes an affront to the good morals and the good manners, and that it tends to corrupt or offend the public morality."

If a man stood nude in his own bathroom, he certainly could not be charged with lewdness, but if, while in that same condition, he strode to and stood before an open window, so that he might be observed and with the evident intent of attracting attention to him, it certainly would be an act of lewdness. In the case of State vs. Van Houten, the Supreme Court held as follows:

> "The crime of indecent exposure is committed if a person intentionally makes such exposure in the view from the windows of two neighboring dwelling houses." (46 N. J. L. p. 16).

Complaint is made in the argumentative para-

graph set out on page 50 of the brief of plaintiff-in-error, that the Court's definition does not define. But we will reply that no definition is needed. It is for the Jury to say whether the conduct of the accused is a violation of the Statute **and it must be borne in mind that Dr. Cohen at this time was prompted by evil desire.**

AS TO THE WEIGHT OF THE EVIDENCE.

Plaintiff-in-error complains that the verdict was contrary to the weight of the evidence. Much, or nearly all of the evidence has been so discussed throughout these briefs, that little is left to be said here.

On page 55 of the brief of the plaintiff-in-error, we find an attack upon Mrs. Holland that is entirely inconsistent. She is accused of being a woman of experience, simply because she is a waitress. We submit that no matter what her employment may be, so long as it is of decent and moral character, that she is entitled to protection, and any who outrage her or attempt to do so, should answer. The weight of the evidence, of course, does not mean the greater number of witnesses. This was made clear to the Jury in the Court's charge, and much criticism has been heaped upon Mrs. Holland be-

cause she did not do certain things, or had done certain things. In each case, however, she seems to have given a very good explanation for her conduct, **and the Jury believed her.**

At the bottom of page 55, of the brief of plaintiff-in-error, the assertion is made that Dr. Cohen had been engaged as a practicing dentist for eighteen years, without a stain upon his name. There is no proof of that, and none was offered. If Dr. Cohen bore such a splendid reputation, someone at least should have been called forth to say so.

The State contends that the indictment is without fault;

That the case was tried without fault;

That the proof was sufficient and that the charge of the Court was fair.

Respectfully submitted,

LOUIS A. REPETTO,
Prosecutor of the Pleas,
and Attorney for Defendant-in-Error.

NEW JERSEY COURT OF ERRORS AND APPEALS.

The State of New Jersey,
Defendant-in-Error,

v.

Morris E. Cohen,
Plaintiff-in-Error.

On Writ of Error.

BRIEF FOR PLAINTIFF-IN-ERROR.

Morris E. Cohen, the plaintiff-in-error, was tried and convicted in the Atlantic County Quarter Sessions Court upon an indictment (S. C., pp. 5-7) charging him, count one, as follows: That Morris E. Cohen, late of the City of Atlantic City, in the said County of Atlantic, on and about the fifteenth day of March, in the year of our Lord one thousand nine hundred and thirty, at the City of Atlantic City aforesaid, in the county aforesaid and within the jurisdiction of this Court, with force and arms, in and upon one Adele Holland, in the peace of God

and of this State then and there being, an assault did make, and he, the said Morris E. Cohen, then and there did beat, wound and ill-treat and other wrongs to the said Adele Holland, then and there did to the great damage of the said Adele Holland, to the evil example of all others in like case offending, contrary to the form of the statute in such case made and provided, and against the peace of this State, the government and dignity of the same; Count Two as follows: That the said Morris E. Cohen, on and about the fifteenth day of March, in the year of our Lord one thousand nine hundred and thirty, at the City of Atlantic City, in the county aforesaid and within the jurisdiction of this Court, did with malicious intent commit an act of open lewdness, and notorious act of public indecency, grossly scandalous, wherein and whereby he did show and expose his private parts to one Adele Holland, and which act tended to debauch the morals and the manners of the people, to the evil example of all others in like case offending, contrary to the form of the statute in such case made and provided, and against the peace of this State, the government and dignity of the same; Count Three as follows: That the said Morris E. Cohen, on and about the fifteenth day of March, in the year of our Lord one thousand nine hundred and thirty, at the City of Atlantic City, in the county aforesaid and within the jurisdiction of this Court, did with malicious intent, in private, commit an act of lewdness and carnal indecency with one Adele Holland, which was grossly scandalous, and which tended to debauch the morals and the manners of the people, in that he, the said

Morris E. Cohen, did at the time and place aforesaid, expose his private parts to the said Adele Holland, to the evil example of all others in like case offending, contrary to the form of the statute in such case made and provided, and against the peace of this State, the government and dignity of the same.

The State abandoned Count Two.

The jury retired at 3.35 P. M. and returned at 9.05 P. M., with a verdict that "they find the defendant, Morris E. Cohen, guilty on first and third counts of indictment" (S. C., pp. 9-10), and the plaintiff-in-error was thereupon sentenced to three years in State Prison, sentence suspended, and ordered to pay a fine of $1,000.00 and report once a week to the probation officer for a period of three years (S. C., p. 10).

That conviction is before this Court for review under Sections 136 and 137 of the Criminal Procedure Act, upon the certification of the entire proceedings had at the trial of the case (S. C., p. 132). The writ of error was thereupon sued out by the plaintiff-in-error and the case was taken to the Supreme Court and that Court affirmed the conviction (S. C., pp. 166-170), and thereupon writ of error was sued out by the plaintiff-in-error and the case was brought into this court for review.

The evidence produced on the part of the State tended to show that the prosecuting witness, Adele Holland, had been a dental patient of the plaintiff-in-error (who has been a practicing dentist in Atlantic City for the past ten or twelve years), said relation of dentist and patient having begun January 4, 1930, and ended April 21, 1930. During the time of

the existence of the relation of dentist and patient, Adele Holland, the prosecuting witness, made some twenty visits to the office of plaintiff-in-error. A photograph of the plaintiff-in-error's office was admitted in evidence and marked DX1 (S. C., p. 61). This photograph will be used at the oral argument but has not been printed in the state of the case. These visits began January 4, 1930, and continued until April 21, 1930. It was the theory of the State, and the evidence of Adele Holland unsupported was that on the fifteenth of March, 1930, when the prosecuting witness visited the office of the plaintiff-in-error, she had extracted on that date some two teeth from her upper set of teeth and that she was given gas at the time of the extraction. Thereafter she testified (S. C., p. 22) as follows:

> "I went there. It was during lunch hour when I got off from work. *I always made my appointment during lunch hour.* I went there and his colored maid was there. The other girl had gone to lunch, so he told me that I would have to have several teeth extracted and he told me he would have to give me gas. He gave me gas, and when I came out of the gas I had had my teeth extracted. So I got up and walked out from his dentist's chair and saw the young girl was in his office and he told her to go downstairs for something. I don't know what, and I went across to the waiting room and I was putting on my coat and hat and Dr. Cohen walked in and took hold of me, grabbed me and pushed me back and started to lift up my dress, and he had his privates out and he

had it like in his hand, and by his coat, and I told him to let me alone and he said he would smack me in the mouth if I didn't keep quiet. And there was another room there and he kept pushing me over, and there is a little cot there near the door, *but the people outside I guess had heard him, and when he seen they heard him he let go of me and I ran out of the office.*"

Thereafter, the prosecuting witness visited the office of plaintiff-in-error seven times, and at no time upon any of the visits did she complain of the conduct of the plaintiff-in-error.

The prosecuting witness was a married woman, a *WAITRESS,* experienced, twenty-nine years of age, had been married for nine years. Yet, notwithstanding the fact that the office of the plaintiff-in-error was located over one of the largest Woolworth Five and Ten Cent Stores conducted in Atlantic City, and notwithstanding the fact that there was an open hallway, and notwithstanding the fact that the office of plaintiff-in-error was in a large apartment house, she made no outcry at the time of the alleged misconduct on the part of the plaintiff-in-error. Neither did she complain to her husband or inform any person of the alleged misconduct of the plaintiff-in-error until after she had visited a competitive dentist by the name of Dr. Hyman in April, 1930, who told her to go back and demand her money back and have the plaintiff-in-error arrested. This conversation took place in the office of plaintiff-in-error, and at its conclusion the prosecuting witness said that she would "fix" the plain-

tiff-in-error and then left. See S. C., p. 102: "She said she was going to fix me." Thereafter the plaintiff-in-error was arrested.

This was all of the testimony produced by the State except that the State called three witnesses, three women, alleged friends of the prosecuting witness, who knew nothing of the assault, who had never been told anything of the assault by the prosecuting witness, yet who testified that they had accompanied the prosecuting witness to the office of plaintiff-in-error. The testimony of the plaintiff-in-error was a full and complete denial of any misconduct of himself towards the prosecuting witness, and he was fully corroborated by the testimony of Mary Morrow and Julia Hudgins. As is customary in offices of dentists, Mary Morrow and Julia Hudgins, two female attendants, were present at all of the interviews when the prosecuting witness was present, or any other female patient was present, the dentist being compelled to maintain attendants to prevent unjust claims.

It is to test the legality of the conviction of the plaintiff-in-error that this writ of error was sued out.

A number of causes for the reversal of the conviction have been assigned, for trial errors, plainly prejudicial to the defendant below. The following exhibits the more conspicuous of these, upon which the plaintiff-in-error mainly relies.

I.

One of the grounds upon which the plaintiff-in-error relies for the reversal of the judgment of conviction is that the evidence produced by the State does not bring the charges in this case within the language of the statute upon which these charges are based.

(a) Assuming that the acts of the plaintiff-in-error attempted to be proved by the State in support of Count One in the indictment were sufficient to convince the jury beyond a reasonable doubt that the plaintiff-in-error had actually done that which was charged, the acts charged do not constitute the commission of the crime of assault and battery as defined and set forth in common law and the statutes of this State.

(b) Assuming that all of the acts of the plaintiff-in-error attempted to be proved by the State in support of Count Three in the indictment were proved, these acts do not constitute any act of lewdness or carnal indecency with the prosecuting witness, Adele Holland, participating therein, as such acts of lewdness and carnal indecency are set forth in the statutes of the State of New Jersey. See Section 51, *Crimes Act,* C. S., p. 1762.

As to proposition "a," in Volume 2, *Greenleaf on Evidence,* p. 70, sect. 82, an assault is defined to be "an inchoate violence to the person of an-

other, with the present means of carrying the intent into effect. Mere threats alone do not constitute the offense: there must be proof of violence actually offered."

There must be malicious intent and that intent must be to do bodily harm to the person of another. The intention within the mind of the offender allegedly assaulting, the purpose already formed within his mind and which he purposes to consummate, must be to inflict, because of some malice, bodily harm to the person towards whom that malice is directed. Both malice and intent may be inferred from recklessness, or a wanton disregard for the safety of others, but in all events the intended results or the ultimate consequences of such recklessness or disregard must be some hurt, injury or wounding of the body of another.

In Volume 2, *Greenleaf on Evidence*, p. 71, sect. 84, battery is defined to be "the actual infliction of violence on the person of another."

To constitute battery, therefore, the intended injury of an assault must be carried into effect. While there can be assault without battery, there cannot be battery without assault. All the elements, including malicious intent, that are required by the definition of an assault must be present, and it must be out of the result of these elements of assault that a battery arises. The acts by virtue of which the stage of mere assault is abandoned and the stage of assault and battery is assumed must be acts resulting in an *intended* violence or injury to the body of another.

Attention is now called to Volume 2, *R. C. L.*,

p. 592, sect. 6, where it says: "It seems that where the unlawful act in which the defendant was engaged at the time of the alleged assault was merely *malum prohibitum* and not *malum in se,* it is essential to establish an intent on the part of the defendant to inflict injury on the prosecuting witness before a conviction can be sustained. *Commonwealth v. Adams,* 114 Mass. 323; 19 Am. Rep. 362.

In *Wharton's Criminal Procedure,* Volume 2, p. 1274, sect. 893, it says: "that all acts of lewdness described in the statute being *malum prohibitum*— wrong because prohibited— * * * ." This authority is here cited and quoted merely to establish that acts of lewdness prohibited by statute are *malum prohibitum* as described in the citation from *R. C. L.* immediately above cited.

The plaintiff-in-error now urges that, assuming the acts charged in Count Three were proved, such acts were wrong merely because they are *mala prohibita.* To sustain a conviction on the first count in the indictment, therefore, there must first be proved an intent upon the part of the defendant to inflict some bodily injury on the body of the prosecuting witness during the commission or in order to effect the commission of these *mala prohibita.* (See Volume 2, *R. C. L.,* p. 592, sect. 6, *ubi supra.*)

Now, the evidence produced by the State in support of Count One in the indictment does not prove or allege any such intent to do bodily harm as is required under the laws of this State and under the common law. The evidence is found S. C., p. 22,

folios 3 to 28, in the direct testimony of the prosecuting witness, Adele Holland.

Assuming, of course, as we are assuming here, that the statements of fact found in the above-cited testimony are true, the intention of the plaintiff-in-error cannot be said to be more than merely to expose his private parts to the prosecuting witness, Adele Holland, with the hope or intention of persuading or inducing her by that act to indulge in sexual intercourse with him.

The plaintiff-in-error strenuously contends that the evidence produced by the State does not prove by any supported allegation of fact, or by any possible legal presumption or assumption from such supported allegation of fact, that there was here present in this case that *VITAL* element, the intention of the plaintiff-in-error to inflict bodily harm or injury on the prosecuting witness; and before the facts as alleged and offered to be proved by the State; that is, the evidence offered by the State in support of its charges against the plaintiff-in-error, can be said to bring the offenses thus proved, assuming again that they are proved, within the meaning of the statute and the common law, upon which this indictment was found, *the vital,* important, necessary element of intent in the mind of the plaintiff-in-error to inflict injury and bodily harm upon the prosecuting witness must be established by the State beyond a reasonable doubt.

The plaintiff-in-error therefore insists that the acts attempted to be proved by the evidence of the State do not bring such acts or offenses within the meaning of the statute or the common law upon

which the first count in this indictment was found; and that the conviction resulting from the evidence, which lacks any evidence of intent, was an error, and that this error did great harm and injury to the plaintiff-in-error.

As to proposition "b," if it is assumed that the plaintiff-in-error did all that the State said he did, out of the mouth of the prosecuting witness, Adele Holland, in an effort to establish violation of Section 51 of the *Crimes Act,* C. S., p. 1762, the acts attempted to be proved do not constitute the commission of an act of lewdness and carnal indecency with the prosecuting witness, Adele Holland, participating therein.

The Court's attention is called to the case of *State v. Micholis,* 99 N. J. L., p. 31 (1923), the opinion of the Court being rendered by Justice Trenchard.

> "It will be perceived that that section (Section 51 of the Crimes Act) in its original form struck at open lewdness or acts of public indecency, the natural tendency of which was to debauch the morals and manners of the people. The addendum of 1906 makes punishable acts of lewdness or carnal indecency, which, if committed in public, tend to debauch the morals and manners of the people, even when committed in private. As a result, the statute in in its present form makes criminal, 'any act of *lewdness or carnal indecency WITH AN-*

> *OTHER,* grossly scandalous and tending to debauch the morals and manners of the people,' whether the act be openly and publicly done or whether done in private in the presence of no one except the two *PARTICIPANTS.*"

The plaintiff-in-error urges that the allegations of fact taken from the evidence produced by the State in support of Count Three in the indictment do not bring the acts of the plaintiff-in-error, assuming that such acts have been established or proved, within the definition, "an act of lewdness or carnal indecency with another * * * done in private in the presence of no one except the two *PARTICIPANTS,* (1) because the purpose of this addendum or amendment to Section 51 of the *Crimes Act,* which addendum or amendment was passed by the Legislature in 1906 (P. L. 1906, p. 101), was not to prevent such acts as alleged by the State to constitute the offense in the case at bar, but to prevent acts of an entirely different nature.

The plaintiff-in-error therefore respectfully submits that the real purpose of this Act or addendum of 1906 was to obviate a deficiency or omission in Section 51 of the *Crimes Act* as that Act existed prior to the passage of the said addendum, and to add thereto certain other specific offenses of an indecent nature which, prior to such addendum, were not prohibited by said statute.

This statute as it read before the Amendment of 1906 provided that: "any person who shall be guilty of open lewdness, or any notorious act of public indecency, grossly scandalous and tending to

debauch the morals and manners of the people, shall be guilty of a misdemeanor" (C. S., p. 1762, Sect. 51). This particular section was added to the Crimes Act by the Legislature in 1898 (P. L. 1898, p. 808).

As was noted by Mr. Justice Trenchard in *State v. Micholis, ubi supra,* it struck at open lewdness or acts of public indecency, the natural tendency of which was to debauch the morals and manners of the people. The offense alleged in that case was that the defendant urinated in a place where people who, though not intending to see him, might accidentally see him from the windows of their houses. In an English case, *Rex v. Crunden,* 2 Comb. 89 (1809), it was held that a man who undressed himself on the beach and bathed in the sea near inhabitable houses from which he might be seen, did, by committing such an act, commit an offense of open lewdness. It would be tedious, indeed, to enumerate the offenses which have been found by various Courts and jurisdictions as being *contra bonas mores.* The point the plaintiff-in-error is endeavoring to establish here is that it was to prevent and punish such acts of open lewdness or such acts against the sense of public decency that this Act of 1898, which became the first part of Section 51 of our *Crimes Act* (S. C. 1762), was passed by the Legislature.

Now, during the course of the eight years between the passage of the original Act in 1898 and the passage of the amendment thereto in 1906, it became apparent that there were offenses in private, offenses not against the public decency but against

the common conception of decency as entertained by an average, reasonable, moral person. It was discovered that such indecencies were not indictable either under any existent statute or at common law. Hence it was that in 1906 the Legislature amended the Act of 1898 to include in addition to acts of public lewdness and offenses against public morals, ANY ACT OF LEWDNESS OR CARNAL INDECENCY *"WITH ANOTHER"* IN PRIVATE. *Rex. v. Watson,* 2 Cox, C. C. 376.

Such acts as are alleged by the indictment and by the State do not constitute acts for the prevention of which this statute of 1906 was enacted.

(2) Because the offense which the statute prohibits is an act of "LEWDNESS or CARNAL INDECENCY, * * * ."

"Carnal Indecency" does not mean rape, assault with intention to rape, or even illicit intercourse when done in private by two consenting parties. Private carnal indecency to be within the meaning of this statute must be some abnormal or unnatural offense, which act is prohibited not because it is, *ab natura,* contrary to the law, nor because it is *malum in se,* but because it constitutes an act or offense which disgusts the moral sensibilities or the sensibilities of decency of a normal and average person.

The evidence by which the State seems to have established such act of carnal indecency does not bring the acts so attempted to be proved within the definition of *carnal indecency* in private. The evidence thus relied upon is found in the direct ex-

amination by the State of the prosecuting witness, Adele Holland (S. C., p. 22).

By no stretch of the imagination can we assume that the acts testified to by this witness, if they are true, constitute an act of *carnal "indecency"* or even of carnal abuse, which essentially implies a debauchery of the female organs by the genital organs of a male. See *State v. Rodesky,* 86 N. J. L. 220 (1914). This was a case upon an indictment charging private carnal indecency under Section 51 of the Crimes Act. The evidence offered at the trial by the prosecuting witness, a girl of seven years of age, was that while she and the defendant were alone together in a toilet room, he exhibited to her his private parts and put it in the mouth of the little girl above mentioned. Mr. Justice Garrison in delivering the opinion of the Court of Errors and Appeals, says: "It is not alleged that there was any exposure or debauchery of the female sexual organs." This conviction was reversed because the facts as alleged did not bring the offense within the meaning of the statute.

(3) Because finally, he offense which the statute prohibits must be an act of *lewdness or carnal indecency WITH ANOTHER.*

It is the conception and insistment of the plaintiff-in-error that this section of Section 51 of the Crimes Act cannot be violated except by two beings who both must participate in the act of private indecency. See *State v. Micholis, ubi supra,* at the beginning of this argument. Note particularly the language used by Mr. Justice Trenchard in his opin-

ion. The parties offending under the second or "private" part of Section 51 of the Crimes Act are carefully referred to as *PARTICIPANTS*. He also notes the fact that the addendum to Section 51 of the Crimes Act, which addendum was made in 1906 and under the provision of which addendum count three in the indictment upon which the plaintiff-in-error in this cause was tried was found, makes criminal any act of lewdness or carnal indecency *WITH ANOTHER* * * * whether the act be openly and publicly done or whether done in the presence of no one except the two *PARTICIPANTS*. Now, there can be no crime committed under this section of Section 51 of the Crimes Act unless there are *PARTICIPANTS* because the Legislature has so said and because this Court has so said.

The words *"WITH"* and *"PARTICIPANTS"* appearing as they do in the statute mean that the act of carnal indecency must be a mutual one, done with the consent and in the willingness of both parties to participate, in said act. Thus it is done not *AGAINST* another, nor in abuse of another, but *WITH* or in collaboration with another, thus making the parties *PARTICIPANTS*. The plaintiff-in-error insists that there is no ambiguity in this statute; that it is plain; and that it cannot be extended by construction. The context and meaning of the statute is clear, plain, and without ambiguity, and does not cover the allegations of count three, or the proof adduced to sustain count three does not meet the requirements of the statute.

We desire once again to call the Court's attention to the evidence of the prosecuting witness (S. C.,

p. 22). This testimony does not in any way support any contention, assumption, inference or presumption that the acts alleged to have been done by the plaintiff-in-error were committed with the consent, collaboration, indulgence or participation of the prosecuting witness. The contrary is shown by the testimony of the prosecuting witness. We urge for the plaintiff-in-error that such consent and participation is required by both parties. It is a germane and elemental requirement to support a conviction under this section of Section 51 of the Crimes Act.

It is further urged, therefore, that the evidence adduced by the State in support of count three in the indictment does not constitute an act of carnal indecency as defined and set forth in Section 51 of the Crimes Act, because the purpose for which the statute was passed was not to prevent acts such as are alleged to have been committed by the plaintiff-in-error; because the acts alleged to have been committed by the plaintiff-in-error do not constitute acts of *carnal indecency;* because the acts testified to as having been committed by the plaintiff-in-error do not constitute acts of *carnal indecency WITH ANOTHER, i. e.,* in the willingness of the *PARTICIPANTS* to participate in an indecent, carnal, secret pleasure.

Therefore, it is urged, that upon the third count of the indictment the Court should have arrested judgment and directed a verdict of not guilty, and for the errors alleged to have been made, the conviction now should be reversed, set aside and for nothing holden.

II.

The second ground upon which the plaintiff-in-error relies for reversal of the judgment of conviction is that the allegations in the indictment are not sufficient to apprise the plaintiff-in-error of the charges upon which he stands accused, nor are they sufficient to be pleaded in a plea of *autrefois* acquit.

(a) As to the time upon which the alleged offenses took place.

(b) As to the specific acts upon which the plaintiff-in-error stands accused.

The time set forth in both the first and third counts of the indictment as the time of the alleged violation of the statute is "on and about the fifteenth day of March in the year of our Lord one thousand nine hundred and thirty."

The plaintiff-in-error now urges that generally an indictment for assault and battery must set out *distinctly* the time of the offense charged; and by virtue of the facts disclosed by the evidence in the case under review, the specific day and the specific time at which the said alleged acts took place should have been set forth in the indictment.

Volume 1, *Wharton's Criminal Procedure*, p. 340, sect. 299, says: "that the general rule of criminal pleading which requires that the indictment or information must set out distinctly the time of the offense charged or the instrument will be fatally de-

fective applies to an indictment or information charging an assault or an assault and battery." *Nicholson v. State,* 54 Am. Sec. 168; *State v. Roach,* 2 Amer. Sec. 626; *Barnes v. State,* 96 Amer. St. Rep. 801; *State v. Beckwith,* 18 Am. Sec. 46.

It is urged that it was extremely important, vitally important, that the day upon which the assault was said to have been made by the plaintiff-in-error should have been stated in the indictment in order to apprise him of the charge of which he stood accused. The first charge was assault and battery. As it will be shown below in the further argument, there were presented to the plaintiff-in-error several opportunities for committing such acts of assault and battery, all of which might have been "on and about the fifteenth day of March." Since the plaintiff-in-error's plea is a blanket denial of all the charges, and assuming such denial to be true, he is at a loss as for what day he should prepare his defense. Should he prepare it for one day, and the State should allege another which may, mind you, be sufficiently named in the indictment as to uphold, then the plaintiff-in-error comes into court totally unprepared and at a complete inability to defend himself. Such pleading is illegal, unjust and unfair.

Moreover, it is a well-known presumption in law that every defendant is innocent of the charge of which he stands accused. That presumption continues down to his conviction, and his conviction cannot be had except upon convincing the jury beyond a reasonable doubt. Therefore, it was clear that the State should allege specifically the day

upon which the alleged acts or offenses were committed by the plaintiff-in-error.

The third count of the indictment charges that the plaintiff-in-error on the fifteenth day of March or thereabouts committed an act of private lewdness and carnal indecency.

The attention of the Court is now called to the exhibit of the plaintiff-in-error, identified as DX2, which is found S. C., pp. 133-153. This exhibit is the appointment book of the plaintiff-in-error. In it are recorded the appointments made with the plaintiff-in-error by his clients, said records having been made by one Mary Morrow, the plaintiff-in-error's assistant, who appeared on the stand and to whose testimony we shall have occasion to refer hereafter. Now, looking at the entries made on January 4, 1930, a Saturday, it is found an appointment had been made by Mrs. D. Holland for one o'clock on that day. Referring now to the testimony of Mary Morrow (S. C., p. 62—folios 1 to 5), we find this appointment was kept. The entries, which hereafter will mean the entries in the appointment book, for January 5, 1930, a Sunday, show an appointment with Mrs. Holland at 11:30 (S. C., p. 134). The keeping of this appointment is not confirmed by the witness, Mary Morrow. The entry for Saturday, January 11, 1930 (S. C., p. 135), shows an appointment for "Miss A. Holland" at one-thirty o'clock, which appointment, Mary Morrow, who shall hereafter be referred to as the witness, alleges was kept (S. C., p. 63). The entry for Saturday, January 18, 1930, shows an appointment for "Miss A. Holland" at two o'clock (S. C., p. 136) which appointment the

witness alleges was kept (S. C., p. 63). The entry for Saturday, February 8, 1930, shows an appointment at two-thirty o'clock (S. C., p. 137), which appointment the witness alleges was kept (S. C., p. 63).

And so on down to the entry for March 15, 1930, which was a Saturday. Prior to March 15, 1930, there had been thirteen appointments for thirteen separate days, covering a period from January 4, 1930 to March 14, 1930. Twelve of these appointments appear from the testimony of Mary Morrow to have been kept (S. C., pp. 133-146 and S. C., pp. 63-65). Now, the entries show that on Saturday, March 15, 1930, there was an appointment made for Mrs. Holland at four o'clock (S. C., p. 147). This appointment was kept, according to the testimony of Mary Morrow and was kept as to time (S. C., p. 67).

Following this appointment of March 15, 1930, and at frequent intervals thereafter until April 5, 1930, the entries show six further appointments made by the prosecuting witness, Adele Holland (S. C., pp. 148-153). All of these appointments were kept according to the testimony of Mary Morrow (S. C., pp. 72-73).

Further, on p. 153, S. C., the entry for April 5, 1930, the date which is to be taken as the date when the plaintiff-in-error and the prosecuting witness severed business relations, shows a debit of $60.00 and a credit of $50.00. On p. 154½ S. C., there is an account of this made on the back of the diagram, a photostatic copy of which diagram is printed at p. 154, S. C. This shows that on April 5, 1930, the

prosecuting witness paid to the plaintiff-in-error the sum of $5.00. Now, the plaintiff-in-error urges that here there is ample proof that he, the plaintiff-in-error, had open to him at least nineteen, possibly twenty, opportunities to commit the offenses alleged in the third count of the indictment, all of which opportunities fall within the legal interpretation of "on and about March 15, 1930." For, it is a well-known rule that if time be alleged incorrectly in an indictment this defect will be remedied by proving any time within the statute of limitations. Should the plaintiff-in-error therefore prepare his defense for the 14th of March, the 4th of January, the 5th of April, or when? Why should he pick March 15th, by chance or supposition, when it might have been "about" that date?

Now it appears (S. C., p. 19) that the plaintiff-in-error's counsel objected to the fact that in his opening to the jury, the prosecutor of the pleas did not aver the date to be proved as that upon which the acts complained of had been committed. Thus, up to the very beginning of the testimony, in a case, where, by its peculiar circumstances time is elemental to the defense, there had been no specific time alleged. Finally (S. C., p. 21, folio 30), the prosecuting witness named the day to be March 15, 1930.

The plaintiff-in-error therefore strongly urges that such indefiniteness as to the time alleged for the commission of the acts of which he stood charged was injurious, prejudicial and erroneous and did him great harm and prejudice, and therefore is an

additional reason why the conviction complained of should be reversed, set aside and for nothing holden.

The further reason that the allegations in the indictment were not sufficient in apprising the plaintiff-in-error of the charges upon which he stood accused, is that they do not charge specific acts in violation of the particular statutes upon which the indictment was found.

The first count charges assault and battery in that "he did then and there beat, wound and ill-treat and other wrongs to the said Adele Holland then and there did." This count was based upon Section 113 of our *Crimes Act* as found in C. S., p. 1782. See Volume 1, *Wharton's Criminal Procedure,* p. 340, sect. 299.

The third count in the indictment, however, charges that the plaintiff-in-error did "*with malicious intent,* in private, commit an act of lewdness and carnal indecency with one Adele Holland * * * in that he * * * did, at the time and place aforesaid, expose his private parts to the said Adele Holland * * *."

The plaintiff-in-error urges that this charge does not allege acts prohibited under Section 51 of the *Crimes Act,* C. S. 1762, upon which the indictment was found, but rather alleges a series of acts, all incompatible with one another, only one of which is prohibited by the said statute, under which this indictment was had. When committing an act of lewdness and *carnal indecency WITH ANOTHER,* there can be no malicious intent. Much of the argument here would be a repetition of the argument heretofore made in this brief. An act of *carnal in-*

decency WITH ANOTHER is an act in which both parties participate willingly, and it is wrongful and prohibited by statute not because it is an act of abuse but because it is an act the nature of which makes it repulsive to an ordinary sense of moral decency. Hence, to allege "malicious intent" was certainly erroneous. Moreover, it confuses the charge and the plaintiff-in-error was not sufficiently apprised as to the act of which he stood accused.

The charge in Count Three of the indictment goes on to specify that the particular act of lewdness and carnal indecency which the plaintiff-in-error committed with Adele Holland was that he did "at the time and place aforesaid EXPOSE HIS PRIVATE PARTS TO THE SAID ADELE HOLLAND." The plaintiff-in-error now urges that such an act is not an act of *carnal indecency*. Attention is here again referred to the argument heretofore made in this brief.

An act of carnal indecency is properly charged as being an act in violation of Section 51 of the Crimes Act. But the distinctiveness of the charge of *carnal indecency* is clouded in this instance by the alleged malicious intent and the meticulous recital of the specific art of carnal indecency as that of exhibiting the private parts of a male to a female. We submit that this is not an offense under Section 51 of the Crimes Act.

III.

The third ground upon which the plaintiff-in-error relies for the reversal of the judgment of conviction

is that the trial Judge erroneously refused to permit, or erroneously permitted over objection, certain testimony to be barred from or entered in the record as the case may be.

The first division of these grounds for reversal is that the trial Judge erroneously refused to permit certain testimony to be given to the jury. In the plaintiff-in-error's reasons for reversal there are enumerated nine such instances where the trial Judge refused to permit testimony, relevant, competent and material to the issue being tried, these reasons being numbers 4, 5, 6, 7, 8, 12, 13, 14 and 15 and are as follows:

> "No. 4. Because the said trial Judge erroneously refused to permit the complaining witness to answer the following question:
>
> 'Q. The next time that you appear to have visited Dr. Cohen's office, was on February 25th. Do you remember what time of day you visited on that date? Do you remember who was present on any of those dates I mentioned in the office of Dr. Cohen or in the operating room?' "

> "No. 5. Because the said trial Judge erroneously refused to permit the complaining witness to answer the following question:
>
> 'Q. Do you remember who was present on that day?' "

> "No. 6. Because the said trial Judge erroneously refused to permit the complaining witness to answer the following question:

'Q. After the visit to Dr. Cohen's office on April 5, did you employ a lawyer?' "

"No. 7. Because the said trial Judge erroneously refused to permit the complaining witness to answer the following question:

'Q. Did you at any time after the 25th or between the 25th and 21st of April, employ counsel?' "

"No. 8. Because the said trial Judge erroneously refused to permit the complaining witness to answer the following question:

'Q. Was the employment of counsel after you made the visit to Dr. Hyman?' "

"No. 12. Because the said trial Judge erroneously refused to permit the witness, Mary Morrow, to answer the following question:

'Q. Could people hear an outcry?' "

"No. 13. Because the said trial Judge erroneously refused to permit the witness, Mary Morrow, to answer the following question:

'Q. What was her attitude toward the doctor at that time?' "

"No. 14. Because the said trial Judge erroneously refused to permit the witness, Mary Morrow, to answer the following question:

'Q. When was it that you first learned of any difficulty between Mrs. Holland and Dr. Cohen?' "

"No. 15. Because the said trial Judge erroneously refused to allow in evidence a letter written by the lawyer of the complaining witness to Dr. Cohen in relation to the alleged offense for which the defendant was being tried."

It is now the intention to argue these reasons collectively under the first division of the third ground for reversal.

The 4th reason for reversal (S. C., p. 156), is that said trial Judge erroneously refused to permit the complaining witness to answer the following question:

"Q. The next time that you appear to have visited Dr. Cohen's office, was on February 25th. Do you remember what time of day you visited on that date? Do you remember who was present on any of those dates I mentioned, in the office of Dr. Cohen or in the operating room?"

The State objected to this question as being irrelevant and his objection was sustained. It is urged that the cross-examination of the prosecuting witness by the above question was entirely proper and that it was highly prejudicial and hurtful to the plaintiff-in-error when this right was denied him. In the direct testimony of the prosecuting witness, upon whose testimony the State *entirely* depended for this conviction, such testimony being found S. C., p. 21, folios 20-30, the witness stated that over a period of three months she made some fifteen visits to the office of the plaintiff-in-error. One of these visits was made on February 25, 1930, and it was

solely to test her credibility that the question, which was excluded, was sought to be answered, and the plaintiff-in-error says that this was error. In *Wigmore on Evidence,* Volume 2, p. 329, sec. 944, we find that "even in this first class of evidence we find * * * a species of corollary which provides that in extracting evidence by cross-examination, the largest possible scope shall be given to evidence attempted to be procured in that way; the scope in a given instance being left chiefly to the discretion of the trial Court." *Stevens v. Beach,* 12 Vt. 587; *Perkins v. Adams,* 5 Metc. 48; *Hathaway v. Crocker,* 7 Metc. 266; *Langley v. Wadsworth,* 99 N. Y. 63, 1 N. E. 106.

One of the above cases, *Hathaway v. Crocker,* is particularly in point. The opinion was rendered by Shaw, C. J.:

> "In cross-examination, an adverse party is usually allowed great latitude of inquiry, limited only by the sound discretion of the Court, with a view to test the memory * * * of the witness * * * to enable the jury to judge of the degree of confidence they may safely place in his testimony."

In Volume 2, *Wigmore on Evidence,* p. 425, Sec. 995, we find further that

> "subject to the general principle that the trial Court's discretion rules, the testing of a witness' capacity of recollection, by cross-examination upon other circumstances, even unconnected with the case in hand, is a recognized and common method of measuring the weight of his testimony. Repeated instances of inability

> to recollect give the right to doubt the alleged recollection of a material fact; the force of the instances depending on the greater or less probability that the one thing could be forgotten while the other is remembered."

Considering, therefore, the facts, that it was upon the testimony of this witness alone that the State depended for a conviction, it was highly injurious, prejudicial and erroneous for the trial Judge to refuse to permit not only this but any other question tending to effect her credibility as a witness.

The 5th reason for reversal (S. C., p. 156), is that the said trial Judge erroneously refused to permit the complaining witness to answer the following question:

> "Q. Do you remember who was present on that day?"

This question may be found in the body of the testimony in S. C., p. 43, folio 30. For authorities and argument on this reason, refer to the argument above.

The 6th reason for reversal (S. C., p. 156), is that the said trial Judge erroneously refused to permit the complaining witness to answer the following question:

> "Q. After the visit to Dr. Cohen's office on April 5, did you employ a lawyer?"

The 7th reason for reversal (S. C., p. 157), is that the said trial Judge erroneously refused to permit

the complaining witness to answer the following question:

> "Q. Did you at any time after the 25th or between the 25th and 21st of April, employ counsel?"

The 8th reason for reversal (S. C., p. 157), is that the said trial Judge erroneously refused to permit the complaining witness to answer the following question:

> "Q. Was the employment of counsel after you made the visit to Dr. Hyman?"

The 15th reason for reversal (S. C., p. 158), is that the said trial Judge erroneously refused to allow in evidence a letter written by the lawyer of the complaining witness to Dr. Cohen in relation to the alleged offense for which the defendant was being tried.

The exclusion of all the above questions, together with the exclusion of the letter above referred to, by the trial Judge was error, because they form a vital link in a chain of evidence by which the plaintiff-in-error attempted to show why, after having been silent as to the alleged attack upon her for more than a month—thirty-six days, to be exact—the prosecuting witness did finally employ counsel and prosecute him upon said charges, but said prosecution was not until after she had visited the office of a competitive dentist, Dr. Hyman.

In *Wigmore on Evidence,* Volume 2, p. 497, sect. 1042, it says: "A failure to assert a fact, when it would have been natural to assert it, amounts, in

effect, to an assertion of the non-existence of the fact. This is conceded as a general principle of evidence." This statement is made by Professor Wigmore in his chapter on Self-Contradiction, a division of his topic, Testimonial Impeachment. It is further amplified and made directly applicable to the instant case in the same volume, p. 655, sect. 1135, where Professor Wigmore says that "* * * This failure to speak, as also already seen, may perhaps be explained away in some fashion; but, unless so explained, it stands, in effect, as a Self-Contradiction. Now, when a woman charges a man with a rape, and testifies to the details, and the accused denies the act itself, its very commission thus coming into issue, the circumstance that at the time of the alleged rape the woman said nothing about it to anybody constitutes, in effect, a Self-Contradiction of the above sort. * * * That she did not, that she went about as if nothing had happened, was, in effect, an assertion that nothing violent had been done. * * * If the silence is conceded by the prosecution, the silence may nevertheless be explained away as due to fear, shame, or the like, so that it loses its significance as a suspicious inconsistency." See also *State v. DeWolf,* 8 Comm. 99; *Baccio v. People,* 41 N. Y. 268; *State v. Neal,* 21 Utah 151, 60 Pac. 510. This rule is also well established in New Jersey. See especially the opinion in *State v. Rodesky* (1914), 86 N. J. L., p. 220, Court of Errors and Appeals. The pertinent part is found at page 222 in this opinion of the Court of Errors and Appeals. We urge that it was a harmful and manifest abuse of the trial Court's discretion in not permitting the

prosecuting witness to be examined as to all the details tending to either show the absence of a complaint, or when the fact of a complaint's having been finally made, to show any suspicious circumstances surrounding the making of said complaint; or a failure not to make a complaint.

The alleged offense was said to have been committed within a stone's throw of three of the largest banks in Atlantic City, in close proximity to two of the largest office buildings in Atlantic City, and over one of the biggest stores in Atlantic City, Woolworth's Five and Ten Cent Store, and the streets are constantly full and were full of people. This was in an open office in the presence of two other persons and in a hallway constantly full of people, and the failure to make an outcry and complain then, at the time, when she could have been fully protected, leads to the unalterable conclusion that nothing like what the prosecuting witness claimed happened did happen.

In the cross-examination of the prosecuting witness, plaintiff-in-error's counsel brought out (S. C., p. 37), that the prosecuting witness had not communicated to anybody the fact that she had been abused and assaulted and insulted by Dr. Cohen. She was married, yet she didn't tell her husband, and she didn't tell anybody; and the reason that she gives for not having made known of the plaintiff-in-error's offense was that she was afraid her husband would do something to Dr. Cohen, and, it is submitted, this is not a good reason, and that it is certainly no reason in law for not making a complaint. If fear is to be an excuse, that fear must be that if

there is a complaint made, further bodily harm will result to the complaining witness from the hands of the person who assaulted her. That fear must arise from threats made by the plaintiff-in-error to the complaining witness, rather than by a solicitous regard for the safety of the plaintiff-in-error, or person who had abused or assaulted her, as this witness testified. The natural course of any natural, normal mind, or person would be that this insult, this attempt at rape, should be punished by physical injury. And we submit that this statement is unworthy of belief, that that was the prosecuting witness' excuse for not making known to anyone that she had been insulted and assaulted.

How can the prosecuting witness explain that she revisited the office of the plaintiff-in-error on frequent occasions for treatment, the last such visit being April 5, 1930 (S. C., p. 34). She then stated that at this time she did not know Dr. Hyman (S. C., p. 35). She consulted Dr. Hyman April 15, 1930 (S. C., p. 35), and she then re-visited the plaintiff-in-error's office on April 21, 1930, and advised him that he would have to finish her work without insulting her: "That he ought to fix the rest of my teeth, without insulting me; and he said he would fix the rest of my teeth. He says I didn't want to give him what he wanted. So when he said that I ran out of the office," or as plaintiff-in-error says (S. C., p. 102): "What did she say? She said she went to Dr. Hyman and he advised her to have me arrested for that kind of work and demanded her money back. What did you say to her? I said, 'You do just as

you please. You get out of this office.' I said to her to get out." * * * "She said she was going to fix me."

It is now obvious that it is germane to this inquiry whether the decision of the prosecuting witness to consult counsel was made in the ten days elapsing between the last treatment by plaintiff-in-error and her first consultation with Dr. Hyman, which is set as April 5th and April 15th; or between the period after her visit to Dr. Hyman and her last visit to plaintiff-in-error's office, when she did, if nothing more, complain of her work, which is set as April 15th and April 21st; or finally, whether a visit to counsel was made after her visit to plaintiff-in-error's office on April 21st.

The general purpose of her visit to an attorney or counsel might have been different at all of these intervals, for her state of mind would have been different. What was the occasion or impelling force that brought her to betake herself to a lawyer and complain of an alleged assault thirty-six days after that assault was alleged to have taken place, when she herself admits that she kept silent during those thirty-six days. What changed her mind? Was it because he again assaulted her on April 5th? There is no evidence that he did. Was it because on April 15th Dr. Hyman told her that plaintiff-in-error's work was no good, or was it after April 21st when she had again seen plaintiff-in-error and when from all of the testimony the jury might have inferred that there had been engendered in her mind a malice against the plaintiff-in-error? And then, besides, what had become of the fear that "her husband would do something" to the plaintiff-in-error if he

found out about this assault? It doesn't appear that the husband ever was told. If he was told, he did not commit any act of violence against the plaintiff-in-error. We feel that the trial Court fell into serious error when he refused, over objection, to permit the prosecuting witness to be cross-examined; that all of the questions were relevant, material and competent, and proper cross-examination and that the Court should have allowed and permitted and commanded the prosecuting witness to answer the same.

From the testimony of the plaintiff-in-error, however, counsel attempted to prove that after the visit of the prosecuting witness on April 21st, he, the plaintiff-in-error, received a letter from a lawyer. He identified the letter and it was offered in evidence. The State objected and this objection was sustained by the trial Court. The plaintiff-in-error submits that this letter was material, competent and extremely relevant; and that the Court fell into error when it excluded its contents.

The suspicious character of the prosecuting witness' complaint was already before the jury. Under the circumstances, it was distinctly within the province of that jury to determine why, after being silent during the first flush of indignation and sense of having been outraged, this woman suddenly made up her mind to make this tremendous accusation against the plaintiff-in-error, after she had had a month to cool off. As Blackstone says, "Charges of this character are easily made and hard to disprove," and as the law of evidence bearing upon this particular cross-examination shows, all of the ques-

tions asked the prosecuting witness were admissible and proper cross-examination. See *State v. Knapp*, 45 N. H. 155; *People v. McGee*, 1 Denio N. Y. 19.

We, therefore, insist that the trial Court fell into serious prejudicial error when it refused to allow the questions to be answered as set forth in the 6th, 7th and 8th reasons for reversal, and when the said trial Court refused to allow the letter to be introduced into evidence as set forth in the 15th reason for reversal.

The twelfth reason for reversal is that the said trial Judge erroneously refused to permit the witness, Mary Morrow, to answer the following question:

"Q. Could people hear an outcry?"

The prosecuting witness testified (p. 38, S. C.), that when the alleged assault was made on her she made no outcry despite the fact that she was within a few steps of a public hallway. She also testified that the office of plaintiff-in-error was in close proximity to a Woolworth's Five and Ten Cent Store. Now, assuming that the alleged attack had been made, the natural inclination of any properly constituted female under such circumstances would have been to make an outcry, to attempt to attract the attention of passers-by. There isn't any doubt but that if she screamed, she would be within the hearing of many people. Her failure to make this outcry is a strong inference that nothing that she testified to as having happened did happen. She cannot escape from the fact that she was near a public hallway and directly above a large and active Five and

Ten Cent Store, Woolworth's Store. See Volume 2, *Wharton's Criminal Evidence,* p. 1824, sect. 946.

Now, our purpose is to consider both the 13th and 14th reasons for reversal.

The thirteenth reason for reversal is that the said trial Judge erroneously refused to permit the witness, Mary Morrow, to answer the following question:

> "Q. What was her attitude toward the doctor at that time?"

The fourteenth reason for reversal is that the said trial Judge erroneously refused to permit the witness, Mary Morrow, to answer the following question:

> "Q. When was it that you first learned of any difficulty between Mrs. Holland and Dr. Cohen?"

These two questions above are found in the body of the evidence in S. C., pp. 74-75.

Now, this witness had already testified that on the day of the alleged attack she was in the office of the plaintiff-in-error, in direct contradiction with the evidence of the prosecuting witness. The evident purpose of the questions under discussion was to show that if this act occurred, as the prosecuting witness says it did occur, on March 15th, then the prosecuting witness had there in the very place where the attack occurred another person of her own sex, and she, the prosecuting witness, had every right to complain to one of her own sex, rather than leave the office as if nothing at all had occurred. As

we have seen before, Professor Wigmore says that among all the surrounding facts of an alleged attack of this sort, silence upon the part of the complaining witness may, unless she excuse herself in some way, becomes, in fact, an assertion that no attack occurred. It is respectfully submitted that all the surrounding facts should have been placed before the jury. The jury were entitled to all of the facts, and the plaintiff-in-error was thus prejudiced and injured and the jury confused.

Moreover, the fact that the prosecuting witness returned to the plaintiff-in-error's office and acted entirely in a normal manner is evidence which should most certainly be before the jury for due consideration. This witness, Mary Morrow, was at the office when the prosecuting witness visited it, and she was in a position to observe the manner and demeanor of the prosecuting witness, and she could see what was done and she could hear what was said; and the plaintiff-in-error says and urges that her testimony as to these facts was admissible and that the denial of this testimony by the Court was highly prejudicial and erroneous.

It is urged now by the plaintiff-in-error that the verdict of judgment for conviction should be reversed for the reasons set forth in reasons for reversal, 4, 5, 6, 7, 8, 12, 13, 14 and 15. The exclusion of the admission of the testimony in question is highly prejudicial to plaintiff-in-error's defense.

Now, the second division of the grounds for reversal is that the learned trial Judge fell into error when he permitted certain testimony to be given. In plaintiff-in-error's reasons for reversal are enumer-

ated seven such instances of the trial Judge's errors in permitting testimony allegedly incompetent, immaterial and irrelevant, these reasons for reversal being numbers 9, 10, 11, 16, 17, 18 and 20. It is now the intention to argue these reasons collectively under this second division of the third ground for reversal.

The 9th, 10th and 11th reasons for reversal (S. C., p. 157), are as follows:

> "No. 9. Because the said trial Judge erroneously refused to strike the testimony of the witness, Frances Jackson, on the ground that it was irrelevant, incompetent and immaterial and had no bearing on the issue."
>
> "No. 10. Because the said trial Judge erroneously refused to strike the testimony of the witness, Dorothy Christianson, on the ground that it was irrelevant, incompetent and immaterial, and had no bearing on the issue."
>
> "No. 11. Because the said trial Judge erroneously refused to strike the testimony of the witness, Mary DeGraaff, on the ground that it was irrelevant, incompetent and immaterial, and had no bearing on the issue."

The testimony of the three witnesses above referred to may be found in S. C. pp. 49-59. These witnesses were put on the stand by the State for the purpose of attempting to corroborate the statement of the prosecuting witness that after the alleged assault (of which no complaint has been made), she

would not go back to the office of the plaintiff-in-error alone, but took these witnesses with her. Here it is necessary to understand that the operating room is on one side of the hallway and the waiting room on the other side; that this was a large apartment house and that the hallway was used by all of the tenants in the apartment house; and that all of the doors were wide open, and that anybody could open them without knocking, that none of the doors were locked.

Now, we submit that there was a further purpose and attempt to show the harmful inference that the jury had every right to take from the prosecuting witness' failure to make a prompt complaint. The State's explanation of these circumstances was this: she did not complain because she was afraid her husband would do something to the man who had assaulted her. However, in order to save herself from further abuse when she again visited the office of such a man, she resorted to the expediency of taking company. Under the circumstances, the State should have shown that these witnesses knew the purpose for which they were invited to accompany the prosecuting witness, and that unless they did know what they were there for, and unless it is shown that they did know, then their testimony is hearsay, irrelevant, immaterial and incompetent and has no bearing on the issue.

See Volume 4, *Wigmore on Evidence*, p. 372, sect. 2061. See *Zabriskie v. State*, 43 N. J. L. 640; *State v. Brown*, 64 N. J. L. 414.

This was therefore grievous error on the part of the trial Court.

The sixteenth reason for reversal is because the said trial Judge erroneously permitted the Prosecutor to ask the following question of the defendant:

> "Q. How many shares of stock does she (Mary Morrow) hold? (In the Boardwalk Dentist Corp.)"

This question was asked by the State in its cross-examination of the plaintiff-in-error. Plaintiff-in-error's counsel objected and it was submitted by the State that their purpose was to test the credibility of the witness, whereupon the Court allowed the question to be answered.

The plaintiff-in-error concedes that the impeachment of the defendant as a witness was a right of which the adverse side is invested by the rules of evidence, but the scope of such impeachment is limited; and we here submit that to impeach by showing the defendant's inability to remember matters not relevant to the issues in the case at bar is beyond the limits of right to impeach. 28 *R. C. L.*, p. 621, sect. 209, is quite pertinent. It says here that "the weight of authority is to the effect that the waiver of privilege extends no further than to facts or circumstances tending to shed light on the commission or character of the particular offense charges. Cross-examination as to other separate and distinct transactions and offenses is not permissible unless they are relevant and material to the case."

The purpose of this question must have been to impeach the anticipated testimony of Mary Morrow if she became a witness in behalf of the de-

fense. No argument need be made that such anticipated impeachment is contrary to all the rules of evidence and extremely prejudicial to the plaintiff-in-error.

The seventeenth reason for reversal is because the said trial Judge erroneously permitted the following conduct on the part of the Prosecutor of the Pleas; that is, the following questions to be asked of the State's complaining witness, whilst the defendant was still under cross-examination (S. C., p. 158).

> "Mr. Reed: We rest.
> Mr. McAllister: Just a moment * * * ."

This situation is found in the body of the State of the Case, p. 117. The Prosecutor had finished his cross-examination of the plaintiff-in-error and plaintiff-in-error's counsel indicated that he rested his case; whereupon, as shown by the stenographic report, the following occurred:

> "By Mr. McAllister (addressing Mrs. Holland with plaintiff-in-error still in the chair):
> Q. Will you show to the jury which teeth you had put in there?"

The plaintiff-in-error's counsel here objected that such proceedings were out of order. He asked that the State conclude its cross-examination first and then recall Mrs. Holland if it pleased. The Court said he was not addressing Mrs. Holland, but the plaintiff-in-error, and allowed the question as cross-examination. The State then did address the plaintiff-in-error and asked him to show the work he did

on the prosecuting witness' mouth. Plaintiff-in-error's counsel again objected but the Court allowed the State to proceed. The plaintiff-in-error insists that all of this had been brought out in the testimony of the prosecuting witness and by that of the plaintiff-in-error. Both conceptions of the work plaintiff-in-error had done was before the jury and definitely in evidence. Hence it was highly prejudicial for the trial Court to permit such a scene and such testimony to be taken after the defense had rested its case.

The eighteenth reason for reversal is because the said trial Judge erroneously permitted the prosecuting witness to give testimony in rebuttal about the work done on her teeth by the plaintiff-in-error. This testimony is found S. C., p. 121. The 18th reason for reversal is found S. C., p. 160.

As to the prosecuting witness' cross-examination, she testified that in February the plaintiff-in-error had fitted the top bridge work, and that to do this he extracted only one tooth, "the one with the gold cap." We submit that that fact, before testified to, was definitely before the jury. In the direct testimony (S. C., p. 99) the plaintiff-in-error had testified that he had extracted four teeth on January 4th, that they were the lower four central incisors, and that they were the only teeth he ever did extract. Further, in the cross-examination of the plaintiff-in-error, by the State (S. C., p. 115), the plaintiff-in-error said that when the prosecuting witness returned to his office on April 21, she did not complain about her upper teeth, because he had nothing to do with her upper teeth. These two as-

sertions constitute a denial of the testimony of the prosecuting witness, and the assertions were already in evidence and before the jury, and it is submitted that this controversy should have been stopped. But, at the end of its cross-examination, the State again brought the prosecuting witness forward, had her re-assert that the plaintiff-in-error had worked on her upper teeth, and then had her point out, or attempt to point out, which particular teeth they were that he had worked on. Then, not content, the State introduced her again in rebuttal to establish these same facts. We submit that the trial Court fell into serious error by allowing such testimony in rebuttal, and that such allowance of said testimony was greatly prejudicial and harmful to the plaintiff-in-error.

The twentieth reason for reversal (S. C., p. 161) is because the Prosecutor of the Pleas was erroneously permitted to address the jury on the subject of the interests of the different witnesses in the corporation which owned the business, over the objection of the defendant's attorney.

The issue in the trial was whether the plaintiff-in-error had in fact assaulted or committed an act of carnal indecency with the prosecuting witness as charged in the indictment. The impeachment of plaintiff-in-error's witnesses was not an issue injected by law, but a privilege allowed the State by the rules of evidence; but if, in order to impeach, the State attempted to show an interest in one of the parties, that interest must be personal. The plaintiff-in-error was treasurer of this corporation. But his conviction on these charges could not have

dissolved or injured that corporation in any way, and hence could not have injured any of the witnesses in his behalf, because they also were members of such corporation. Its only benefit might be to instill in the minds of the jury that wrong inference or sense of doubt which they had no right in law to gather from the facts of remote business connection. It was therefore grievous error to permit the State over the objection of counsel to bring these facts of kindred membership in a corporation to the minds of the jury. Such conduct was highly prejudicial to the plaintiff-in-error.

IV.

The fourth ground upon which the plaintiff-in-error mainly relies for reversal of the judgment of conviction is that the trial Court erroneously refused to allow certain motions made by the counsel for the plaintiff-in-error. These are reasons for reversal Numbers 19, 28, 29 and 30 as found in the state of the case. It is now our intention to argue these reasons separately under this group.

The nineteenth reason for reversal is (S. C. 161) because the said trial Judge erroneously refused to direct a verdict of not guilty on the third count on the ground that there was no evidence of any lewdness in private, in accordance with the second paragraph of Section 51 of the Crimes Act. We have argued this ground at length in the second division under the first ground for reversal.

The twenty-eighth reason for reversal is (S. C.,

p. 162) because the said trial Judge erroneously refused to grant a motion in arrest of judgment on the first count of said indictment, charging assault and battery.

The Judge's power to grant such a motion, if it is warranted, is, of course, not in question. The reasons supporting this motion are set forth in this brief in Argument I.

The twenty-ninth reason for reversal is (S. C., p. 163) because the said trial Judge erroneously refused to grant a motion in arrest of judgment in respect to the third count of said indictment, there being no evidence to support a violation of paragraph 2, Section 51 of the Crimes Act, that there had been committed by the defendant an act of private indecency with another.

This reason has been fully argued before.

The thirtieth reason for reversal is (S. C., p. 163) because the said trial Judge erroneously refused to grant a motion in arrest of judgment on the ground that the verdict was against the weight of evidence.

There will be in the ensuing argument two issues: (1) Did the evidence prove that the plaintiff-in-error committed any act of abuse upon the prosecuting witness; (2) or if the evidence proves that the plaintiff-in-error did commit an act, did that act constitute the offenses of assault and battery and of carnal indecency, within the meaning of the statutes upon which the first and third counts of the indictment were found?

The issue here is clearly drawn. The prosecuting witness says the plaintiff-in-error did act as charged

he acted, and the plaintiff-in-error says he did not, and the plaintiff-in-error is corroborated by two witnesses, Mary Morrow and Julia Hudgins, who were present at the time of the alleged offense. It was for the jury to decide which contention was the true one, by the evidence, by clear, convincing evidence, convincing them beyond a reasonable doubt. There is no need for arguing the respective merits in detail. We will call the attention of the Court to certain elements or circumstances which the plaintiff-in-error believes to show clearly that he was not guilty of the crimes of which he now stands convicted, and pray a reversal of said conviction and that this Court give careful, considerate attention and consideration to all of the evidence in this case, together with the respective exhibits introduced in evidence and brought up, and the exclusion of testimony and the admission of illegal testimony.

The acts that are alleged to have been committed by the plaintiff-in-error do not constitute the offense of assault and battery, and further do not constitute an act or crime of *CARNAL INDECENCY "WITH ANOTHER,"* within the meaning of the statutes upon which the first and third counts of the indictment were found. The trial Court, therefore, fell into error when it failed to grant the motions above made.

V.

The fifth ground upon which the plaintiff-in-error mainly relies for reversal o fthe judgment of con-

viction is that the trial Judge in his charge to the jury gave certain erroneous instructions which were greatly harmful and prejudicial to the plaintiff-in-error. This group comprises reasons for reversal Numbers 21, 22, 23, 24, 25, 26 and 27.

The twenty-first reason for reversal (S. C., p. 161) is because the said trial Judge erred in charging the jury as follows:

> "The third count charges the defendant with what is commonly known as the crime of lewdness, and as to which I respectfully charge you to read this count, so that you may deal with the testimony in detail."

The offense prohibited by the statute upon which this count was based is a misdemeanor, not a crime. Further, the count charges an act of LEWDNESS AND CARNAL INDECENCY "WITH ANOTHER" IN PRIVATE. Commiting an act of CARNAL INDECENCY WITH ANOTHER *PARTICIPANT* IN PRIVATE could in no way be said to be the commonly known act of lewdness. The language of the Court in this particular instance of its charge greatly confused the minds of the jurors and did certainly mislead them in determining the specific nature of the acts which it was necessary for the State to prove to warrant a conviction. The jury had every right to be instructed upon the legal meaning of the acts of which the plaintiff-in-error stood accused, and if they were not so charged except to the extent of admonishing them to read the count so that they might deal with the testimony in detail, there was great and mani-

fest error committed by the trial Court against the plaintiff-in-error. This same argument applies to reason for reversal Number 22 (S. C., p. 161), where error is assigned because the said trial Judge erroneously charged the jury to read the third count of the indictment.

The twenty-third reason for reversal (S. C., p. 162) is because the said trial Judge erroneously charged the jury as to the definition of "assault and battery."

The Judge's charge as to assault and battery is found S. C., pp. 124-25. We respectfully submit that in a case where the circumstances are such as in this case, it is essential to establish an intention upon the part of the plaintiff-in-error to inflict bodily harm. See Volume 2, *R. C. L.*, p. 592, sect. 6 (*ubi supra*). The very essence of the offense was the intent to do bodily harm. It was the Court's duty and the jury had a right to be advised as to this, as a matter of law, and great and harmful injury resulted to the plaintiff-in-error when the Judge erroneously failed to so charge.

The twenty-fourth reason for reversal (S. C., p. 162) is because the said trial Judge erroneously charged the jury as follows:

> " 'Any person shall be guilty of open lewdness or guilty of public indecency, grossly scandalous and tending to debauch the morals and manners of the people, or any person who shall in private be guilty of any act of lewdness or carnal indecency with another, grossly scandalous and tending to debauch the morals and

manners of the people' is guilty of violating this statute."

Now, this part of the charge was manifestly erroneous. Examine the language for a moment. "Lewdness" has been defined by statute to be "any person shall be guilty of open lewdness or guilty of public indecency, grossly scandalous and tending to debauch the morals and manners of the people." That much of the sentence, we suppose, defines open lewdness. We submit that it defines nothing. It is incomplete; it is senseless. It says, in other words, simply this: "The statute says that lewdnes is 'any peron shall be guilty of open lewdness or guilty of public indecency, grossly scandalous and tending to debauch the morals and manners of the people.'" The language alone here had no other effect than to so confuse the minds of the jury that when they began their deliberations they had absolutely no legal conception as to what their deliberations should be about. Moreover, this definition, or attempted definition, is of "open lewdness." Immediately following this paragraph in his charge, the trial Judge said: "So that your first count deals with assault and battery and your third count deals with lewdness. And, so far as the jury is concerned, lewdness legally is as it was defined in this charge. The consequence, then, is that despite the fact that the second count in the indictment, which charged open lewdness, had been abandoned by the State, this highly erroneous charge serves only to resurrect that count and send the jury to their deliberations, charged that if the

acts of the plaintiff-in-error fall within the scope of this baffling and obscure definition of lewdness, then it is their duty to convict. We vigorously, strongly insist now and here that this was error, manifest error, injurious and harmful to the plaintiff-in-error.

Now, the second part of this definition of lewdness is as follows: "Lewdness" has been defined by statute to be as follows: "any person * * * or any person who shall, in private, be guilty of any act of lewdness or carnal indecency with another, grossly scandalous and tending to debauch the morals and manners of the people" is guilty of violating this statute. Once again we desire to call the attention of this Court to this definition. And where is the definition? Is the jury to infer from this scramble of English grammar and rhetoric what lewdness is legally, or are they left to their own resources, to convict if they think the plaintiff-in-error's acts alleged to have been proved are acts of carnal indecency with another? We strenuously insist that this charge was confusing and was a misquotation of the law and was highly injurious to the plaintiff-in-error.

The twenty-fifth reason for reversal (S. C., p. 152) is because the said trial Judge erroneously charged the jury that the third count dealt with lewdness.

Immediately following that part of the charge argued directly above, *i. e.*, the Court's definition of lewdness, the Court charged the jury that the first count of the indictment dealt with assault and battery and the third count with lewdness. A mere reading and examination will show that the third

count charges the plaintiff-in-error with committing, with malicious intent, an act of *lewdness and carnal indecency WITH ANOTHER* in private. The learned trial Judge summed this all up and said it dealt with simply lewdness. Again, we plead that this be impressed upon the minds of this Court. Such an openly and erroneous charge left the minds of the jury with a perverted and wrong idea of what the evidence tended to prove or what the evidence should prove. Under such circumstances as these and under such a charge as this, the plaintiff-in-error was stripped of practically every right the law gives him to insure a fair trial. He becomes charged by the Judge, not by the indictment, for when the jury reads the charge they turn to the Court for a legal interpretation and explanation, and this charge was what they were given.

The twenty-sixth reason for reversal is (S. C., p. 162) because the said trial Judge erroneously charged the jury that there could be an assault and battery coupled with lewdness.

The jury had not been told what the legal definition of lewdness was; the charge of carnal indecency with another had been practically wiped out by the trial Judge, and now the jury is told that, coupled with this vague act of lewdness as defined by the Court, there could be a further offense of assault and battery. Manifest error was done to the plaintiff-in-error by this charge, and we submit that upon this point alone this conviction should be set aside.

Finally, counsel for the plaintiff-in-error took a general exception to the charge of the Court. Plaintiff-in-error now prays that this Honorable Court

will generally review said charge and reverse the judgment of conviction on the ground that it was, *in toto,* highly erroneous, confusing to the jury, and manifestly harmful and injurious to the plaintiff-in-error.

VI.

The sixth and final ground for reversal of the judgment of conviction is that the verdict is contrary to the weight of the evidence.

The plaintiff-in-error submits that the issue in this case is the very commission itself of the offenses alleged against him. The prosecuting witness says the plaintiff-in-error did certain things and he says he did not do them. He does not admit them and offer a legal excuse therefor; he simply says, "I did not do those things." It was consequently the distinct duty of the State to establish, not by a fair preponderance of believable testimony, but by proof so convincing that there remains no moral uncertainty, no reasonable doubt, of the guilt of the accused. Now, the State attempted to do this by the testimony of one witness alone, the prosecuting witness. It behooves us, then, to inquire here into the strength of her testimony, how much of it is evidence and how much of that evidence is to be believed?

She visited the office of the plaintiff-in-error on some nineteen or twenty occasions, covering a period of time of three months from January 4th to April 21st, 1930. In the middle of these visits was one

made on March 15th. This was in the neighborhood of the twelfth or thirteenth visit; there were six visits after that. She does not say he insulted her upon any of these dozen or more visits prior to March 15th. On that day, however, the plaintiff-in-error became a villain, an ogre. He grabbed her, lifted up her dress, exposed his privates and threatened to smack her, etc. Yet, while she was in a place as public as Grand Central Station in New York City (from a comparative standpoint), as Woolworth's Five and Ten Cent Store in Atlantic City, she made no outcry; and she says that she made no outcry because she was startled. If she really was startled, wouldn't it be more believable that she did make an outcry rather than utter silence and dependence upon her own resources to escape? Professor Wigmore says that this absence of any assertion of misdoings when such assertion would be natural, amounts to another assertion, that there were no misdoings. And, all of the criminal cases that have to deal with this subject have ruled the same way. Yet, notwithstanding this, the prosecuting witness continued to visit the plaintiff-in-error's office; made no complaint to the authorities; made no complaint to her husband; and she made no complaint to anyone in whom she felt she might confide. Her excuse was that she was afraid that her husband might do something to plaintiff-in-error. But she did take precaution when she did make these other subsequent visits to the alleged attacker of taking company, a girl friend, or two girl friends, on one occasion. The girl friends sat in the waiting room while she went into the office

across the hall to expose herself to another attack. We submit that there is no consistency here and that the whole thing is unbelievable. The words of Blackstone previously referred to are here repeated, "that charges of this character are easily made and hard to refute."

Then, at last, she did make a complaint to a lawyer. What finally compelled her to do this? It's in the evidence that she went to Dr. Hyman on April 15th. Dr. Hyman told her that Dr. Cohen's work was poor. She returned to plaintiff-in-error on April 21st and demanded the return of her money, which plaintiff-in-error refused. Then she went to see her lawyer: to make a complaint of an alleged assault thirty-six days previous? Or, to demand her money back and "get even" with her malefactor? Which is the obvious reason under the circumstances?

Here was a woman who at the time of the alleged attack was twenty-nine years of age, married for nine years, a WAITRESS (and waitresses are experienced—it's general knowledge, everybody knows that), who made no outcry, who made no complaint to the authorities, or to anyone, and who for thirty-six days kept silence and then, because of the fact that the plaintiff-in-error refused to return her money, charged him with this heinous crime. Now, this testimony of the prosecuting witness was in no way corroborated, not a bit. She was definitely contradicted by the plaintiff-in-error, a man who had been engaged as a practicing dentist in the State of New Jersey for eighteen years without a stain upon his name; she was contradicted by

Mary Morrow, who was an attendant, and Julia Hudgins, who was also in the office of the plaintiff-in-error.

It is almost unbelievable that upon such testimony a conviction could be obtained. The prosecuting witness was not even sure as to when this offense occurred. The testimony of Mary Morrow, the attendant, was that she was not only present on the 15th of March, but on every other occasion, with but one exception, when the prosecuting witness visited the office of plaintiff-in-error. The prosecuting witness made no outcry; she made no complaint, and that her demeanor was in no way altered at any time during any of her visits to the plaintiff-in-error's office.

Moreover, as the photograph shows, Mary Morrow was in a position where she could see all that happened on March 15th, and she says that nothing as described by the prosecuting witness did happen. In no way was her testimony impeached or contradicted.

Julia Hudgins testified to the same effect.

Now, we submit that for the foregoing reasons, the judgment of conviction in this case should be set aside for nothing holden, and reversed.

Respectfully submitted,

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