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New Jersey Supreme Court

NEW JERSEY | ss.:

THE STATE OF NEW JERSEY,
TO GEORGE K. LARGE, Es-
quire, Judge of the Hunterdon 10
County Court of Quarter Ses-
sions,

GREETING:

Because in the record and proceedings and also in
the giving judgment upon a certain indictment against
Emory J. Snyder, late of the Borough of Hampton, in
the County of Hunterdon, for that at a Circuit Court,
holden at Flemington within and for said County of 20
Hunterdon, on the fourteenth day of December, nine-
teen hundred and sixteen, before Nelson Y. Dungan,
Esquire, then being judge of said Circuit Court, a cer-
tain issue duly joined in said court, between Sarah
Jane Snyder and Mabel Northcott, in an action at law,
came on to be tried in due form of law, and that upon
said trial, said Emory J. Snyder appeared as a witness
on behalf of said Mabel Northcott, and was duly sworn
and took his corporal oath upon the Holy Gospel of
God, administered in due form of law, to speak the 30
truth, the whole truth and nothing but the truth,
touching the matters in issue on the said trial, and
that upon the said trial certain questions became and
were material in substance as follows, that is to say,
whether the affections of the said Emory J. Snyder,
the husband of the plaintiff Sarah Jane Snyder, had
been and were, alienated by reason of the sayings and
doings of the defendant Mabel Northcott, as alleged in
the issue framed in the trial aforesaid; and whether
any damages, and if so, how much, had been suffered 40

thereby and therefrom; and the said Emory J. Snyder, being so sworn as aforesaid, then and there feloniously, falsely, knowingly, maliciously, voluntarily, wilfully and corruptly in matters material to the subject matter thereunder adjudication, did commit perjury, and did depose and swear, among other things, in substance and to the effect following: "During the first or second week of June, nineteen hundred and fourteen, Wilson and I came over together, and as we approached the house I
 10 heard a whispering noise, and as we were coming up the street I noticed something white laying off under the apple tree on west side of the house; as we approached I noticed this white form laying there, we walked in close by and I noticed there a man and a woman there. I said, 'what are you doing there?' and as I said that this man raised up and Mrs. Snyder got up and hollered "Oh! My God, Frank Smith now you see what you have done,' she repeated that a dozen times. I have not been in the Birmingham house since six o'clock, then it
 20 was about eleven o'clock."

Pro-ut the said indictment and the counts therein, whereof he, the said Emory J. Snyder hath been indicted, and is therefore before you convicted by a certain jury of the County of Hunterdon, taken between the State of New Jersey, and the said Emory J. Snyder, as it is said, manifest error hath intereverted to the great damage of the said Emory J. Snyder as from his complaint we have received information, we being willing, in his behalf, to correct the error in due manner,
 30 if any there shall be, and that speedy justice may be done unto him, the said Emory J. Snyder, command 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 held at Trenton, on the twenty-eighth day of June, instant. together with this writ, that the record and proceeding aforesaid being inspected, we may further cause to be done thereupon for correcting that error what
 40 of right and according to the law and customs

of the State of New Jersey, ought to be done.

WITNESS, Honorable William S. Gummere, Chief Justice of our Supreme Court at Trenton, this eighth day of June, A. D., nineteen hundred and seventeen.

WM. C. GEBHARDT,

F. A. POPE,

Clerk.

Attorney of Plaintiff in Error.

The answer of George K. Large, Judge of the Court of Quarter Sessions holden in and for the County of Hunterdon, and within named, the record and proceedings of the plaint whereof mention is within made, with all things touching the same, I send to the Justices of our Supreme Court of Judicature at Trenton, New Jersey, the day and year within contained, in a certain schedule to this writ annexed, as within I am commanded. 20

GEORGE K. LARGE,
Judge.

Attest:

JUDIAH HIGGINS,
Clerk.

Filed April 24, 1917.

HUNTERDON OYER AND TERMINER,

APRIL TERM, 1917

Hunterdon County, to wit:

10 The Grand Inquest of the State of New Jersey,
in and for the body of the County of Hunterdon,
upon their respective oath, present, that heretofore,
to wit, at the Circuit Court begun and holden at
Flemington, within and for the said County of Hun-
terdon, on the fourteenth day of December, in the
Year of our Lord one thousand nine hundred and six-
teen, before Nelson Y. Dungan, Esquire, then being
Judge of the said Circuit Court and holding then and
there the said Court in and for the County aforesaid,
a certain issue duly joined in the said Court between
one Sarah Jane Snyder and one Mabel Northcott, in
a certain action at law, came on to be tried in due
20 form of law, and was then and there tried by a cer-
tain jury of the country, duly summoned, empaneled
and sworn between the parties aforesaid; and that
upon the said trial, Emory J. Snyder, late of the Bor-
ough of Hampton, in the said County of Hunterdon
and State of New Jersey, appeared as a witness on
behalf of the said Mabel Northcott, the defendant,
and was duly sworn and took his corporal oath upon
the Holy Gospel of God, administered by Judiah Hig-
gins, then the duly qualified and authorized Clerk of
30 the Circuit Court aforesaid, before the said Nelson
Y. Dungan, Esquire, Judge as aforesaid, to speak the
truth, the whole truth, and nothing but the truth,
touching the matters in issue on the said trial, he,
the said Judiah Higgins, Clerk as aforesaid, having
full, sufficient and competent power and authority to
administer the said oath to the said Emory J. Sny-
der in that behalf before the said Nelson Y. Dungan,
Esquire, Judge of said Court as aforesaid; and that
at and upon the said trial certain questions became
40 and were material in substance as follows. that is to

say, whether the affections of the said Emory J. Snyder, the husband of the said plaintiff, Sarah Jane Snyder, had been and were, alienated by reason of the sayings and doings of the said defendant, Mabel Northcott, as alleged in the issues framed in the trial aforesaid; and whether any damages, and if so, how much, had been suffered thereby and therefrom; and the said Emory J. Snyder, being so sworn as aforesaid, and being then and there lawfully required to 10
depose the truth in the proceeding and suit aforesaid, at and upon the said trial of the proceeding and suit aforesaid, at the Court aforesaid, then and there feloniously, falsely, knowingly, maliciously, voluntarily, wilfully and corruptly, in matters material to the subject matter then and there under adjudication, did say, depose, swear and testify, among other things, in substance and to the effect following, that is to say:

“During the first or second week of June, nineteen hundred and fourteen, Wilson (meaning one Charles A. Wilson) and I came over together, and as we approached the house (meaning thereby the house in the Borough of Hampton in said County of Hunterdon where resided the said Emory J. Snyder and his wife, Sarah Jane Snyder, the plaintiff in said trial) I heard a whispering noise, and as we were coming up the street I noticed something white laying off under the apple tree on west side of house (meaning thereby the apple tree standing on west side of house upon 30
the premises in the Borough of Hampton aforesaid, occupied by the said Emory J. Snyder and his wife, Sarah Jane Snyder, the plaintiff in said suit or proceeding on trial as aforesaid); as we approached I noticed there was a man and woman there. I said, ‘What are you doing here’, and as I said that this man raised up and Mrs. Snyder (meaning thereby Sarah Jane Snyder, plaintiff in said trial as aforesaid, and wife of him, the said Emory J. Snyder) got up and hollered ‘Oh! my God, Frank Smith now you see 40

what you have done, (meaning thereby that the said Sarah Jane Snyder, wife of said Emory J. Snyder, and plaintiff in the suit or action aforesaid had been discovered in an act of adultery with the said Frank Smith), she repeated that a dozen times. I have not been in the Birmingham house since six o'clock, then it was about eleven o'clock." (Meaning eleven o'clock in the night time).

- Whereas, in truth and in fact, the said Charles
- 10 A. Wilson and the said Emory J. Snyder did not come over together and approach the house in the Borough of Hampton aforesaid, wherein resided the said Emory J. Snyder and his wife, Sarah Jane Snyder, the plaintiff in the aforesaid suit or action at law, during the first or second week of June, nineteen hundred and fourteen, at eleven o'clock in the night time; and whereas, in truth and in fact, the said Emory J. Snyder, at the time and place aforesaid did not hear a whispering noise; and whereas, in
- 20 truth and in fact, the said Emory J. Snyder was not in company with the said Charles A. Wilson and they were not coming up the street, at the time and place aforesaid, and did not notice something white laying off under the apple tree on west side of house, on premises occupied by the said Emory J. Snyder and his wife, Sarah Jane Snyder, plaintiff, as aforesaid, in the Borough of Hampton aforesaid; and whereas, in truth and in fact, on the first or second week in June, nineteen hundred and fourteen, they, the said
- 30 Emory J. Snyder and Charles A. Wilson, did not approach the place aforesaid, at the hour aforesaid, and he, the said Emory J. Snyder, did not notice a white form lying there at said place; and whereas, in truth and in fact, at the time and place aforesaid, to wit, during the first or second week in June, nineteen hundred and fourteen, under the apple tree on west side of the house occupied by the said Emory J. Snyder and said Sarah Jane Snyder, his wife, in the Borough of Hampton aforesaid, the said Emory J. Snyder and
- 40 the said Charles A. Wilson did not walk up close by,

and the said Emory J. Snyder did not notice there was a man and woman there, and did not say "What are you doing here"? and a man did not raise up, and the said Sarah Jane Snyder did not get up and holler, "Oh! my God, Frank Smith now you see what you have done", and did not repeat those words a dozen times, as the said Emory J. Snyder then and there well knew. And the said Emory J. Snyder had been in the Birmingham house between the hours of six and eleven o'clock (meaning thereby between the hours of six and eleven o'clock at night). 10

And so the jurors aforesaid, upon their oath aforesaid, do say, that the said Emory J. Snyder in manner and form aforesaid, did commit wilful and corrupt perjury against the form of the statute in such case made and provided, against the peace of this State, the government and dignity of the same.

And the jurors aforesaid, on their oath aforesaid, do further present that heretofore, to wit, at the Circuit Court begun and holden at Flemington, aforesaid, within and for the said County of Hunterdon, on the fourteenth day of December, in the year of our Lord one thousand nine hundred and sixteen, before Nelson Y. Dungan, Esquire, then being Judge of the said Circuit Court, and holding then and there the said Court in and for the county aforesaid, a certain issue duly joined in the said Court between one Sarah Jane Snyder and one Mable Nortcott in a certain action at law came on to be tried in due form of law, and was then and there tried by a certain jury of the country, duly summoned, empaneled and sworn, between the parties aforesaid; and that upon the said trial Emory J. Snyder, late of the Borough of Hampton, in the said County of Hunterdon and State of New Jersey, appeared as a witness on behalf of the said Mabel Northcott, the defendant, and was duly sworn and took his corporal oath, upon the Holy Gospel of God, before the said Nelson Y. Dungan, Esquire, Judge as aforesaid, to speak the truth, the whole truth and nothing but the truth, touching the matters in issue in the said 20 30 40

trial. He, the said Nelson Y. Dungan, Judge as aforesaid, having full, sufficient and competent power and authority to administer the said oath to the said Emory J. Snyder in that behalf; and that at and upon the said trial certain questions became and were material in substance as follows, that is to say, whether the affections of the said Emory J. Snyder, the husband of the said plaintiff, Sarah Jane Snyder, had been and were, alienated by reason of the sayings and doings of the said defendant, Mabel Nortcott, as alleged in the issues framed in the trial aforesaid; and whether any damages, and if so, how much, had been suffered thereby and therefrom; and the said Emory J. Snyder, being so sworn as aforesaid, and being then and there lawfully required to depose the truth in the proceeding and suit aforesaid, at and upon the said trial of the proceeding and suit aforesaid, at the Court aforesaid, then and there feloniously, falsely, knowingly, maliciously, voluntarily, wilfully and corruptly, in matters material to the subject matter then and there under adjudication, did say, depose, swear and testify among other things, in substance and to the effect following, that is to say:

“During the first or second week of June, nineteen hundred and fourteen, Wilson (meaning one Charles A. Wilson) and I came over together, and as we approached the house (meaning thereby the house in the Borough of Hampton, in said County of Hunterdon, where resided the said Emory J. Snyder and his wife, Sarah Jane Snyder, the plaintiff in said trial) I heard a whispering noise, and as we were coming up the street I noticed something white laying off under the apple tree on west side of house (meaning thereby the apple tree standing on west side of house upon the premises in the Borough of Hampton aforesaid, occupied by the said Emory J. Snyder and his wife, Sarah Jane Snyder, the plaintiff, in said suit or proceeding on trial as aforesaid); as we approached I noticed

this white form laying there, we (meaning him the said Emory J. Snyder and one Charles A. Wilson) walked up close by and I noticed there was a man and woman there. I said, 'What are you doing here', and as I said that this man raised up and Mrs. Snyder (meaning thereby Sarah Jane Snyder, plaintiff in said trial as aforesaid, and wife of him, the said Emory J. Snyder) got up and hollered 'Oh! my God, Frank Smith, now you see what you have done' (meaning thereby that the said Sarah Jane Snyder, wife of said Emory J. Snyder, and plaintiff in the suit or action aforesaid, had been discovered in an act of adultery with the said Frank Smith). She repeated that a dozen times. I had not been in the Birmingham house since six o'clock, then it was about eleven o'clock" (meaning eleven o'clock in the night time).

Whereas, in truth and in fact, the said Charles A. Wilson and the said Emory J. Snyder did not come over together and approach the house in the Borough of Hampton aforesaid, wherein resided the said Emory J. Snyder and his wife, Sarah Jane Snyder, the plaintiff in the aforesaid suit or action at law, during the first or second week of June, nineteen hundred and fourteen, at eleven o'clock in the night time; and whereas, in truth and in fact, the said Emory J. Snyder was not in company with the said Charles A. Wilson and they were not coming up the street, at the time and place aforesaid, and did not notice something white laying off under the apple tree on west side of house, on premises occupied by the said Emory J. Snyder and his wife, Sarah Jane Snyder, plaintiff, as aforesaid, in the Borough of Hampton aforesaid; and whereas, in truth and in fact, on the first or second week in June, nineteen hundred and fourteen, they, the said Emory J. Snyder and Charles A. Wilson, did not approach the place aforesaid, at the hour aforesaid, and he, the said Emory J. Snyder did not notice a white form lying there at said place; and whereas, in truth and

in fact, at the time and place aforesaid, to wit, during the first or second week in June, nineteen hundred and fourteen, under the apple tree on west side of the house occupied by the said Emory J. Snyder and said Sarah Jane Snyder, his wife, in the Borough of Hampton aforesaid, the said Emory J. Snyder and the said Charles A. Wilson did not walk up close by, and the said Emory J. Snyder did not notice there was a man and a woman there, and did not say,
10 "What are you doing here?" and a man did not raise and the said Sarah Jane Snyder did not get up and holler, "Oh, my God, Frank Smith, now you see what you have done," and did not repeat those words a dozen times, as the said Emory J. Snyder then and there well knew. And the said Emory J. Snyder had been in the Birmingham house between the hours of six and eleven o'clock (meaning thereby between the hours of six and eleven o'clock at night).

And so the Jurors aforesaid, upon their oath
20 aforesaid, do say that the said Emory J. Snyder, in manner and form aforesaid, did commit wilful and corrupt perjury against the form of the statute in such case made and provided, against the peace of this State, the government and dignity of the same.

HIRAM E. DEATS,
Foreman.

HARRY J. ABLE,
Prosecutor of the Pleas.

April 26th, 1917.

HUNTERDON COUNTY COURT OF QUARTER
SESSIONS.

BEFORE GEORGE K. LARGE, ESQ., JUDGE.

THE STATE	}	Indictment for Perjury.	10
vs.			
EMORY J. SNYDER.			

Prisoner enters plea of not guilty. Held in \$1000
bail for trial.

April 26th, 1917.

20

HUNTERDON COUNTY COURT OF QUARTER
SESSIONS.

EMORY J. SNYDER.	}	Indictment for Perjury.
vs.		
THE STATE		

Recognized with Jacob R. Smith in the sum of
\$1000.00 to appear before the Court of Quarter Ses- 30
sions, May 14, 1917.

HUNTERDON COUNTY COURT OF QUARTER
SESSIONS.

APRIL TERM, 1917.

THE STATE
vs.
EMORY J. SNYDER. } Indictment for Perjury.

10

It being made to appear to this Court that an indictment has been presented by the Grand Inquest of the State of New Jersey, in and for the County of Hunterdon for the term of April, 1917, and against Emory J. Snyder, the above named defendant, for the crime of perjury; and it further appearing that the number of jurors drawn and summoned for attendance in this Court for the above stated term, has, for sufficient reasons, been reduced below forty-eight, to wit, to the number of forty-one, and it being required by law that a list of forty-eight jurors (no larger number having been by special order of this Court directed), together with a copy of indictment found herein, be delivered to said defendant at least two days before the trial of said indictment.

20

It is thereupon on this fourteenth day of May, nineteen hundred and seventeen, ordered that the Commissioners of Juries of the County of Hunterdon shall add to the number of jurors drawn and summoned for the term aforesaid, seven more persons of the petit jury list of the body of this County, qualified to serve as jurors, so that there shall be made up the number of forty-eight; and that the list of forty-eight jurors so made up shall be delivered to the said defendant, together with a copy of said indictment, at least two days previous to his trial by the Sheriff of said County of Hunterdon.

30

A true copy:

GEORGE K. LARGE,

JUDIAH HIGGINS,

Judge.

40

Clerk.

May 31, 1917.

HUNTERDON COUNTY COURT OF QUARTER
SESSIONS.

BEFORE GEORGE K. LARGE, ESQ., JUDGE.

APRIL TERM, 1917.

10

THE STATE

vs.

EMORY J. SNYDER.

} Indictment for Perjury.

HARRY J. ABLE and
GEORGE W. DUNHAM,

Attorneys for State.

FREDERICK A. POPE and
HARRY L. STOUT,

Attorneys for Defendant. 20

JURY.

Raymond Anderson,
Raymond Williamson,
Arthur Lauderdale,
George Fitzner,
Walter Pond,
Alvah Honeyman,

Robert Potts,
Richard Slack,
Preston Emmons,
William Reed,
Clifton E. Van Hart,
Oliver Everitt.

30

State offered records of trial of Sarah Jane Snyder vs. Mabel Northcott, both the blotter and Circuit Court minutes, Vol. 16. Also Summons and Complaint and Answer in same case. All admitted.

WITNESSES FOR STATE SWORN.

Sarah Jane Snyder,
Walter Hammell,
Frank Smith

40

Mrs. Cora W. Smith,
Arthur Snyder.

Court adjourned at 3:15 P. M.

June 1, 1917.

10 THE STATE
vs.
EMORY J. SNYDER. } Indictment for Perjury.

WITNESSES FOR STATE CONTINUED.

Arthur Snyder, recalled,
Judiah Higgins.

20 State rested at 10:30 A. M. with consent of the
Court and counsel for defense to call a witness expected to arrive later.

Counsel for defendant moved for a verdict of acquittal and discharge of the prisoner. Denied.

Mrs. Cora Smith, the expected witness for the State, having arrived, she was called to the stand.

WITNESSES FOR DEFENDANT.

30

Emory J. Snyder,
Christopher Shrope,
Mabel Northcott.

WITNESSES FOR STATE IN REBUTTAL.

40

Minerva Mathews,
Sarah Jane Snyder,
Dr. Alfred G. Shepherd,
Mrs. Lucy B. Shepherd.

After hearing the evidence, the argument of counsel and the charge of the Court, the jury retired at 4:47 P. M. in charge of Constable John Wolf, who was sworn to attend them, to consider their verdict. Jury returned into Court at 7:30 P. M. and rendered a verdict of guilty against the defendant as charged in the indictment, and so say they all, with recommendation to the mercy of the Court.

10

June 4, 1917.

HUNTERDON COUNTY COURT OF QUARTER
SESSIONS.

THE STATE	}	Indictment for Perjury. Sentence on Conviction.
vs.		
EMORY J. SNYDER.		

20

Prosecutor moved for sentence against the defendant. The Court ordered the prisoner to the bar that sentence be imposed. He being accordingly sent to the bar, the Court did order and judge that the prisoner, Emory J. Snyder, be confined to the State Prison of the State at hard labor for not less than one year nor more than seven years and to pay the costs of prosecution.

30

40

HUNTERDON COUNTY COURT OF QUARTER

SESSIONS

	THE STATE	}	For Perjury.
	vs.		
10	EMORY J. SNYDER, Defendant.		

Transcript of notes taken in the above entitled cause, at the Court House, in Flemington, N. J., on May 31st and June 1st, 1917, before Hon George K. Large, Judge.

APPEARANCES:

20	H. L. STOUT FREDERICK A. POPE	}	For Defendant.
	GEORGE W. DUNHAM HARRY J. ABLE	}	For State.

By Mr. Able: I desire to offer the records of the court, including the minutes both on the blotter and the minutes contained in Circuit Court Vol. 16 of the case of Sarah Jane Snyder, plaintiff against Mabel Northcott, defendant, tried in the Hunterdon County Circuit Court in December term, 1916, for the purpose of showing that there was such a case and issue framed therein, and for the purpose of showing that it was tried before the Hunterdon County Circuit Court, a court of justice, and that the said court had jurisdiction for the trial of the case, and that Emory J. Snyder was sworn therein, and before whom the oath was taken, and all matters pertaining to that trial relevant to the issue here involved. I desire to offer those records for that purpose.

By the Court: Any objection to the admission of the record?

By Mr. Stout: Yes, because the record shows no more than that which the State can prove by witnesses. The record in another instance contains other matters that are not in this issue and should not be presented to the view of the jury. The defendant will admit that there was a trial had in the Hunterdon County Circuit Court and that that court had jurisdiction over the issue, that the suit was between Sarah Jane Snyder, plaintiff, and Mabel Northcott, defendant, that the defendant, Emory J. Snyder, was sworn on that trial by the Clerk of this Court, who was duly commissioned to administer the oath. Those matters are not disputed. That is as far as the record could be of benefit to the State, but by the admission of the record there are things there that would not be legal testimony on the part of the State and would prejudice the interest of the defendant. 10 20

By Mr. Able: If your Honor, please, the matters which are not to this issue are certainly capable of being taken care of by the court, and I insist that the records are properly admissible to prove the matters that have been stated as well as such other matters that are not stated that are material to this issue. I have offered them for that purpose and for no other purposes. I seek to bring nothing before the jury that is improper and feel that it is proper notwithstanding and to make a complete record of this trial. 30

By Mr. Stout: All matters that are material to the issue are admitted by the defendant. We would have no objection to the record if it set forth only the matters set forth by the prosecutor, but it contains more. And by containing those things which are not material to the issue and cannot be separated, it is very damaging to the defense and it is a matter that the jury have no right to know anything about. 40

By the Court: I think that if the prosecutor insists upon it that he has a right to the admission of the record and it will be admitted.

By Mr. Stout: Will you allow an exception?

By the Court: Yes.

Exception allowed and sealed. G. K. L. (L. S.)

10

By Mr. Stout: I object to the admission of the blotter.

By Mr. Able: For the purpose of showing the fact that he was sworn in the original entry is just as much material as anything possibly could be. That is the object in offering the blotter.

By the Court: The blotter is admitted.

20

By Mr. Able: I desire to offer in evidence the pleadings, that is to say, the summons and complaint filed in the Hunterdon County Circuit Court in the suit or action at law between Sarah Jane Snyder, plaintiff, and Mabel Northcott, defendant, which was tried at the December 1916 term of court, and also the answer which was filed in the same proceeding.

By the Court: Any objection?

30

By the Court: Summons and complaint admitted and marked S-3. Answer is marked S-2.

By Mr. Stout: We offered and stated our admissions and they are withdrawn, of course.

By the Court: You may have the privilege of calling Mr. Higgins.

40

SARAH JANE SNYDER, sworn.

Direct examination by Mr. Able.

Q. Where do you live? A. Westfield, N. J.

Q. How long have you lived there? A. I have lived there over a year.

Q. Where did you live immediately preceding your going to Westfield? A. I lived in Lebanon, before going to Westfield.

10

Q. How long had you lived at Lebanon? A. I could not say positively, but probably six or eight months. Maybe longer, I really could not tell.

Q. Before living at Lebanon, where did you live? A. Hampton.

Q. How long did you live at Hampton? A. A year or two years, probably a little more or little less.

Q. During what year did you live there?

Mr. Pope: I object.

20

Q. Where did you live in Hampton?

Mr. Pope: I object.

By the Court: The question is admitted.

A. I lived there in '14 and two years before that as near as I can tell.

Q. What time did you leave in '14?

30

By Mr. Pope: I object. We would like to ask this witness a question before this question is ruled upon.

By the Court: On what theory?

By Mr. Pope: For the purpose of proving anything else other than the fact of marriage. We offer to prove that this witness is the wife

40

of the defendant, and therefore is not a competent witness in this case, except to prove the fact of marriage.

By the Court: I guess there is no denial that she is the wife.

Mr. Stout: Then under the law she can only testify that she is the wife.

10

Mr. Able: We admit that she is the complaining witness upon which this indictment is found, and the evidence will show that as it progresses. I first want to show where she was and who she is.

Mr. Able:

Q. Are you the wife of Emory J. Snyder? A. I
20 am.

Q. Were you the plaintiff in the suit of Sarah Jane Snyder against Mabel Northcott? A. I was.

Mr. Pope: We object and ask that the answer be stricken out.

By the Court: The answer will be stricken out.

30 Q. Are you the complaining witness in this proceeding?

Mr. Stout: I object.

By the Court: Objection sustained.

Q. Are you the complainant against your husband in this indictment?

40

Mr. Stout: We object to that.

A. I was.

Mr. Stout: We pray an exception.

Exception allowed and sealed. G. K. L. (L. S.)

Q. Do you now offer yourself as a witness in these proceedings?

Mr. Stout: We object.

10

By the Court: You may answer.

A. I do offer myself.

By the Court: Is there any objection to the defendant making an inquiry whether or not she is in fact the complaining witness and offers herself as a witness?

20

By Mr. Able: Yes, on account of the immateriality. In the first place she testified.

By the Court: I think the defendant may ask.

By Mr. Pope:

Q. Did you make a complaint in this case against your husband charging him with perjury? A. I did. 30

Q. And before whom did you make that complaint? A. I asked my counsel to do it for me and asked the State to take it up.

Q. You asked your counsel and you asked the State? A. I asked my counsel as I was out of town.

Q. Then your counsel took it up for you? A. Upon my asking him, yes, as I did not know who the prosecutor was.

Q. Did you sign any complaint before a Justice of

40

the Peace or a Magistrate? A. I did not sign any papers.

Q. You just look at me, please. You signed no papers at all initiating criminal proceedings against your husband? A. No, I signed no papers.

Q. Why is it necessary for you to look at the prosecutor? A. I was not even looking at the prosecutor.

Q. Are you under subpoena to-day? A. I am.

10 Q. Have you your subpoena? A. My son has it. Would you like it?

Q. Is this the subpoena that was served upon you? (Shows subpoena.) A. Yes.

Q. By whom was it served, and when? A. It was sent to me.

Q. When did you receive it? A. I do not know whether—it was Monday, I think.

Q. It is in answer to that subpoena that you are here to-day? A. Yes.

20 Q. That is why you are a witness here to-day? A. I came here for that, but I am the one that was the complainant in the case.

Q. Did you make the complaint or did Judge Herr go to the prosecutor?

By the Court: She has answered that.

I do not think she has answered that.

30 By the Court: She said she directed her counsel to do it because she did not know who the prosecutor was.

Q. Were you subpoenaed as a witness to appear before the Grand Jury? A. I was.

Q. Did you appear before the Grand Jury? A. I certainly appeared.

Q. And you gave testimony there? A. I did.

40 Q. Was that the first time you saw the prosecutor in connection with this case? A. I certainly left

everything to my lawyer. That is the first I saw him.

Q. You came from Westfield to Flemington on that day? A. I certainly did.

Q. After you testified before the Grand Jury you saw the prosecutor? A. After I testified?

Q. Yes. A. No, before I testified. But I never saw him until that day.

Q. You saw him as you were attending the session in the grand jury room? A. I saw him before I went in the grand jury room. I went to see him myself. 10

Q. Well, did he send for you? I mean on the day the grand jury met? Did he learn that you were here in Flemington and did he seek you and have a conversation with you about your case?

By Mr. Able: I object to that.

By the Court: I sustain the objection.

Q. Did Judge Herr take you over to the prosecutor's office? 20

Mr. Able: I object to that.

By the Court: I sustain the objection.

Q. Where did you see the prosecutor on the day you came to testify before the Grand Jury? A. At his office here in town.

Q. In the grand jury room? A. No, in his office isn't in the grand jury room. 30

Q. Was that before the session of the Grand Jury?

By the Court: That question has been answered.

Direct examination continued by Mr. Able.

Q. Did you answer my inquire as to the period that you had lived in Hampton? 40

10 Mr. Pope: I object. We object to the competency. It appears that the witness has never made any complaint. There is no evidence produced that a complaint was ever made. The only thing she did was to go before the Grand Jury in obedience to subpoena, and when she came before the Grand Jury she testified against her husband. She doesn't offer herself as a witness here to-day against her husband; but she comes under subpoena issued by this Court which compels her to be here and she produces the subpoena and it is offered in evidence. She is not the complainant; she is not a voluntary witness; but she comes here under the writ of the State and under the penalties that fall thereon for disobedience.

20 By Mr. Able: It would appear that the objection made to the competency of this witness was rather far fetched. There is nothing in the law that absolutely requires any person to go before the magistrate and file a complaint, before the time, if brought to the Grand Jury. In this particular case the witness has stated that she caused the matter to be taken to the Prosecutor, whom she didn't know; that she came upon notice of the time that they sat. She had no other means of notice. She comes there and makes her complaint before she goes
30 in the grand jury room. She receives her notice to come here in the shape of a subpoena. I submit that the testimony on the cross-examination as to her competency is fully sufficient and ample.

By the Court: I think the witness is competent.

40 Mr. Pope: We pray an exception.

Exception allowed and sealed. G. K. L. (L. S.)

Q. What time did you live in Hampton in 1914?

A. I left the last time was in September, just before school opened, I think it was.

Q. Were you living in Hampton from the first of January, 1914, to the first of September continuously?

A. Excepting for a couple of weeks.

Q. Now can you tell when those two weeks were excepted out? A. I think around the last of June or the first of July. I am not sure. 10

Q. Were you in Hampton in May and June, 1914?

A. Yes, I was.

Q. Did you bring a suit at law against any person, and if so, whom did you bring it against?

Mr. Stout: I object.

By the Court: You may answer the question. 20

Mr. Stout: We pray an exception.

Exception allowed and sealed. G. K. L. (L. S.)

A. Mabel Northcott.

Q. Did you bring a suit in the Hunterdon County Circuit Court against Mabel Northcott for alienation of the affections of your husband?

Mr. Stout: We object to that. 30

By the Court: You may answer it.

Mr. Stout: We pray an exception.

Exception allowed and sealed. G. K. L. (L. S.)

A. I did bring a suit against her.

Q. Were you present during that trial? A. I was. 40

Q. When was it heard by the court, if you recollect? A. I really forget the date.

Q. What month? A. I am not positive whether it was in December or not, because I had two suits and I get the months mixed up.

Q. Was that case tried before Judge Dungan? A. Yes, I think that was his name.

Q. Do you remember who was the Judge that sat at the trial which you had against Mrs. Northcott for alienating your husband's affections? A. I think they called him Judge Dungan.

Q. Were you present at that trial and did you hear the testimony that was there introduced? A. I did.

Q. Did you hear the testimony that was given upon that trial by your husband, Emory J. Snyder? A. I did.

Q. Do you remember on whose behalf he testified? Which side of the case did he testify on? A. Against me.

20 Q. In whose favor? A. His own self.

Mr. Stout: I object to that and ask that the answer be stricken out.

By the Court: The answer will be stricken out.

Q. On whose behalf did your husband testify in that suit, on the behalf of the plaintiff or on the behalf of the defendant? A. The defendant.

Q. Did you hear his testimony? A. I did.

Q. Was there any testimony introduced during the progress of the trial relative to a happening said to have occurred in the first or second week of June, 1914? A. Did I hear him testify to some happening?

Q. Was there any happening testified about. A. I did hear him testify to that.

Q. Can you give the language or the substance of the language which your husband testified to a happening in which you were involved?

40

Mr. Pope: I object. For the reason that under the statute this witness is not qualified to give testimony of this character against her husband.

By the Court: You may answer it.

Mr. Pope: We pray an exception.

Exception allowed and sealed. G. K. L. (L. S.) 10

A. I will give it as near as I can. He said one night near eleven o'clock he and Charles Wilson were coming up the street and it seemed Charles Wilson was coming after a setting of eggs. As they came up they heard a noise, as near as I can tell you, and looking they saw two figures on the ground and they saw something white and they seemed to be two forms and the form of a man seemed to be higher than the other one and as he approached the form, I think he said, raised up, this man or something and it was under an apple tree, I think he said, on the west side of the house and he said this man went down the road and how he knew it was me, he said I cried out, "My God, Frank Smith, see what you have done now." And that is how he knew it was me. He said more, but I cannot just recall it. 20

Q. When did he say this happened? A. In June, 1914. He also swore that after that he never lived with me. 30

Mr. Stout: I object to that.

By the Court: That answer merely states as to what he testified to. Of course, he cannot be convicted of any perjury not charged in the indictment.

By the Court: The answer may stand. 40

Q. Now Mrs. Snyder have you stated all that your husband testified to relative to the happening, we will term it under the apple tree in June, 1914?

A. No.

Q. State what he testified to that you have not stated? A. If I remember he said he said nothing to the man.

Q. What further did he state? A. I think he said he wouldn't have known who the man was if it
10 hadn't been for what I said.

Q. Did he say what became of the parties? A. I think he said, I won't be sure, that the man went down the road.

Q. What did he say became of you?

Mr. Pope: I object to that.

By the Court: You may answer it.

20 A. He said I broke in two locks.

Q. You have stated that your husband testified that there were two forms, one was a man and one was a woman and when he came up to where they were and said something that the woman says. "Oh, my God, Frank Smith, see what you have done now." Then did he say what the man did or what the woman did?

Mr. Pope: I object to that.

30

By the Court: You may answer it.

A. I think he said the man went down the road and I came in the house, but I broke two locks to get in.

Q. What did he say, if anything, that the parties did as he caught them there? A. I think he said the man raised up, but I do not remember what he did say about the woman.

40

Q. Where did he say the man was? A. He said the man was higher than the woman.

Q. You have testified to the language or substance of the language given in the testimony by your husband given in the suit of Snyder vs. Northcott in December term last, is that testimony then given by him, true or false?

Mr. Stout: I object to that.

10

By the Court: I sustain the objection.

Q. Were you in June, 1914, in the night time under an apple tree on the west side of the house wherein you resided in Hampton, N. J. with a man A. I was not.

Q. Were you lying on the ground in the month of June under an apple tree on the west side of your house, in Hampton, and did your husband, in company with Charles Wilson, appear and find you there with a man. A. He did not, nor I was not.

20

Q. Did you in the month of June, 1914, under an apple tree on the west side of the house where you resided in Hampton while with a man, at a time that you were lying on the ground and the man was present and the man higher up, state "Oh, my God, Frank Smith, now you see what you have done," and if so, did you repeat the same expression a dozen times?

30

Mr. Stout: I object to that.

By the Court: You may answer it. Modify it to the first or second week in June.

A. I was not and I did not repeat any such thing. I was not on the ground.

Q. Have you been present in the company with Frank Smith at any time near the first or second week of June, 1914, when your husband was present also?

40

Mr. Pope: I object to that question. For the reason already stated.

By the Court: You may answer it.

Mr. Pope: We ask an exception.

By the Court: Exception is allowed.

10 Exception allowed and sealed. G. K. L. (L. S.)

A. I do not know just how to answer that.

Q. You can answer whether you were present when your husband was present with Frank Smith?

A. The last week in May, 1914?

Q. State what was said and done at that time, if you please?

20 Mr. Pope: I object to that question. Because the inquiry should be confined to June, 1914, and also because she is an incompetent witness against her husband.

By the Court: You may answer the question.

We pray an exception.

By the Court: Exception allowed.

30 Exception allowed and sealed. G. K. L. (L. S.)

A. I had Mr. Smith come up to watch Mr. Snyder over at Mrs. Northcott's. I went down and Mr. Smith came up a little way behind me. I went over to the Northcott house, and I cannot remember positively whether Mr. Smith went along or whether he went a little way back of me. I saw Mr. Snyder and Mrs. Northcott sitting in the house near the window.

40 Mr. Stout: I object to that.

By the Court: A continuous statement by the witness I think is proper.

Q. Go on and tell what happened to the best of your recollection? A. And, as I said before, I saw Mr. Snyder sitting in the house with Mrs. Northcott, she having a light waist on and he, light shirt sleeves. Mr. Smith stood by the gate when Mr. Snyder crossed over. Mr. Snyder come over and said, "Now I have got you, now I have got you." I am not positive, but I have a faint recollection of him saying, "Damn you, Frank Smith, get the hell down." I do not know just the words he did use. He went on into the house and he says, "Now I have gained a point, now I have gained a point." He says to me, "If you should bring a case against me, of any kind, I will win my case by lying or buying my witnessess. I do not remember any more. 10

Q. Whatever you recollect? A. Mr. Smith went down to his home and I went in the house. The door was opened or he let me in, but anyway I went in without any trouble. I cannot remember anything more. 20

Q. Any other circumstances that happened at that time? A. He told me long before that ever happened——

Mr. Stout: I object and ask that the answer to be stricken out.

30

By the Court: That may be stricken out.

Q. Did you have any conversation after the time which you have related referring to the same incident, with your husband, and if so when and what was it? A. I do not remember him ever telling me again about it more than if I brought up any case against him that he would win it if he had to buy his witnesses or by lying,

Q. When was this? A. When he came down to 40

Lebanon to Dr. Shepard's and on other occasions. That was the threat he held over my head.

Cross examination by Mr. Pope.

Q. After this occurred in June or the latter part of May you had your husband arrested, didn't you, for non-support? A. I did.

10 Q. Now you had him arrested within a very short time after the meeting between yourself and Frank Smith and Mr. Snyder, didn't you? A. I did, but it was not over that.

Mr. Pope: I ask that that be stricken out. That portion that does not answer the question.

By the Court: That answer may stand.

20 Q. How soon after your husband met you in the yard with Frank Smith did you go away? A. I went away the next morning.

Q. How long did you remain away? A. I do not know exactly, maybe a week, and he sent my little boy to ask me to come home.

Q. It was not longer than a week was it? A. I could not tell you. It may have been longer.

Q. Was it as much as two weeks or three weeks? A. It was not three weeks.

30 Q. Was it two weeks? A. I do not know that it was.

Q. When you came back you went before a Justice of the Peace and had him arrested for non-support? A. Yes, it was after I came back.

Q. How soon after, do you know? A. Quite a little time. I really do not know just the time.

Q. It was within two or three days, wasn't it? A. I do not think so. I do not know, but I do not think so.

40 Q. Before whom did you have him arrested? A. Squire Fitzgibbons.

Q. Now I wish you could just stop and think and tell this jury as nearly as you can at this time, how long it was after you returned before you went to Squire Fitzgibbons and had your husband arrested?
A. After I returned when?

Q. You know what I am talking about. A. I do not because he put me out three different times.

Q. I am talking about the time that you are talking about. The time you went away and when you came back. A. I went back the second time. When do you mean? 10

By the Court: We are speaking of the first time.

Q. I am talking about the time you say that you and Mr. Smith met your husband one night coming from Mrs. Northcott's and when this conversation occurred when you went on into the house and after that, the next day, you went away and remained away for some time, a week or more, and then came back. Now, how soon was it that you came back after that time, that you went before Squire Fitzgibbons and had your husband arrested? A. I could not tell you. 20

Q. Tell me as near as you can? A. I think it was in the month of July.

Q. That was the second time you had him arrested? A. I only had him arrested once for non-support.

Q. You went away the first time? A. Yes. 30

Q. Didn't you remain a few days? A. I could not say how long.

Q. Didn't you return and stay home about two weeks before you had him arrested? A. I could not say.

Q. Then that is as near as you can tell? A. Yes.

Q. You can't say whether the circumstances of having your husband arrested before Fitzgibbons was one, two or three weeks after the occurrence at the gate with Mr. Smith? A. I had him arrested once and I 40

think it was in July. I was in Plainfield and Judge DeMeza told me——

By the Court: The part as to what Judge DeMeza said will be stricken out.

Q. Did you go in that house that night first or did your husband go in the house first? A. I do not remember, but I think he went in first. Yes, he must have. He left the door open.

Q. Did he leave the door open? A. I went in without any trouble.

Q. Did he close the door? A. I do not remember but I know I went in without any trouble.

Q. Now you went down and asked Mr. Smith to come up that night, didn't you? A. I did.

Q. Had you ever had him come up before. A. To watch him?

Q. Yes. A. No, I never had.

Q. Had you ever had anyone else to come there and watch your husband before? A. Yes, well——

Q. Yes or no? A. I cannot answer it by yes or no.

Q. You cannot answer yes or no? A. I have asked a woman.

Q. You didn't have anyone do it? A. No.

Q. The only one that ever came there with you and helped you to watch your husband was Frank Smith? A. Yes, a good friend of Mr. Snyder.

Mr. Pope: I ask that the last part of answer be stricken out.

By the Court: That will be stricken out.

Q. You say he said, "Now I have got you, now I have gained a point?" A. He said, "I have gained a point" in the house.

Q. He told you that? A. Yes.

Q. He told you that if you ever brought any suits

against him he would win by lying or buying his witnesses? A. He told me that that night.

Q. He told you that several times? A. Yes, before I ever knew anything about Frank Smith coming up to watch him.

Q. He told you that he would beat you in any case if he had to lie and buy his witnesses? A. He said if I interfered between him and Mabel Northcott he would win his suits by lying or buying witnesses.

Q. He told you that several times? A. Yes. 10

Q. Each time he told you he would win his cases if he had to lie and buy his witnesses? A. Yes, on different occasions.

Q. He never brought any suit against you? A. No, I do not see where he had grounds to.

By the Court: The last part of answer will be stricken out.

Q. He never produced any witnesses against you, did he? A. I think he tried to. 20

Q. Did he ever have any trial with you? A. He was to the Northcott trial.

Q. I am talking about you? A. The non-support trial.

Q. Did he produce any witnesses against you? A. I do not remember about witnesses. It was too long ago.

Q. You didn't have any trial, did you? A. I don't know what you call it. 30

Q. There was no judge or jury, was there? A. No, there was a Justice of the Peace.

Q. He didn't have any witnesses, did he? A. I do not remember about that.

Q. He didn't even testify against you, did he? A. He denied everything.

Q. You also brought suit against him for divorce, didn't you? A. I certainly did.

Q. Did he produce any witnesses against you then 40

on his trial before the Vice-Chancellor? A. I think he did, Mrs. Northcott.

Q. Were they sworn? A. Yes, sir. Mrs. Northcott, her son and Mr. Wilson.

Q. That was your suit against him? A. It certainly was.

Q. That was tried before Vice-Chancellor Backes? A. I forget his name.

Q. And your divorce case was dismissed, wasn't it?

Objected to.

By the Court: I think that question is improper and it will be stricken out.

Mr. Pope: We pray an exception.

Exception allowed and sealed. G. K. L. (L. S.)

20

Q. What makes you think that it was in May and not the first or second week in June that you were there with Mr. Smith? A. Because I know it was in May. It was before Decoration Day. I thoroughly remember that. I had a friend up from Plainfield on Decoration.

Q. Who was it? A. Miss Matthews.

Q. And you know it was before? A. I certainly do.

30 Q. How do you know? A. Don't you suppose I know I was in my own home on Decoration.

Q. This was before Miss Matthews came up? A. Yes.

Q. That was three years ago? A. Yes.

Q. How is it your memory is so accurate on that point and not on some other circumstances I have asked you about? A. Don't you think you would remember an occasion when you were turned out of your home and taken back and taken to an entertainment. I certainly remember it, yes.

40

Q. How many days before Miss Matthews came to visit you did this occur, your meeting Mr. Smith? A. I do not remember how many days.

Q. I asked you how many days before Miss Matthews came up did this thing occur? A. This thing occurred where we stood by the gate in the latter part of May and Miss Matthews came up to spend Decoration, as Mr. Snyder brought me home on Friday night.

Q. You are satisfied in your own mind it was the last week in May? A. I know so. 10

Q. It was after that that your friend, Miss Matthews, came to visit you? A. Yes, after Mr. Snyder brought me home.

Q. Did she stay over night? A. Yes, she went home on Sunday night. Mr. Snyder, my son and I went to the depot with her.

Q. Do you remember what evening it was that Miss Matthews came to visit you? A. She came on Saturday afternoon and went home on Sunday night. 20

Q. She stayed one night? A. Yes.

Q. She came on Decoration Day? A. She came on Saturday afternoon.

Q. What I want to know is whether or not that was Decoration Day, do you remember? I understood you to say it was Decoration Day, now I want to know? A. Yes.

Q. You told us a few minutes ago that Miss Matthews came to visit you and spent Decoration Day? A. I didn't say she spent the day. 30

Q. I want to know if she was there on that holiday? A. Yes, I am positive.

Q. You are positive she stayed one night and went back the next day? A. Yes.

By Mr. Able: Re-direct.

Q. Mrs. Snyder, on cross examination Mr. Pope inquired about the divorce case which you had brought

against your husband. Was your husband sworn in that case? A. He certainly was.

Q. Was there any testimony introduced into that case that referred to the matters which he testified to about having happened under the apple tree, in the alienation case? A. There was, but differently from what he testified in the alienation case.

Q. With what difference, if you recollect?

10 Mr. Pope: I object.

By the Court: I do not think they inquired into the testimony.

Q. Was there anyone present at the time when Mr. Smith was at your house and your husband came across the street from Mrs. Northcott's? A. My little boy.

20 WALTER HAMMELL, sworn.

Direct examination by Mr. Able.

Q. What is your business? A. Stenographer.

Mr. Pope: We will admit he was the stenographer and took the record at the trial in December, 1916, between Sarah Jane Snyder and Mrs. Northcott.

30

Q. Now, Mr. Hammell, will you refer to your notes and tell the court and jury what testimony was given in the case mentioned between Mrs. Snyder and Mrs. Northcott in December, 1916, relative to an episode or happening underneath an apple tree on the west side of the house of Emory Snyder and wife in Hampton, N. J., by Emory Snyder? A. Q. Do you remember one night about what we have been talking, about the apple tree episode? If so, just tell us
40 about it. The next morning that question was re-

peated. That day was the 13th, this is the 14th. The answer is—A. About the first week or second week of June, 1914, I was in town and on my way home I stopped in Mr. Wilson's store and Mr. Wilson asked me— MR. HERR: I object to what Mr. Wilson said. THE COURT: Don't repeat what Mr. Wilson said. A. On our way home— Q. Just a minute, while you don't dare tell exactly the words that this man said, you have a right to tell that you discussed a matter which led you to go over to the house with Mr. Wilson that night, so as to show why you went over there with him. MR. HERR: I object to that. THE COURT: It is rather suggestive, of course. BY THE COURT: Q. You went to Mr. Wilson's store, you said? A. Yes. Q. Had a conversation with him? A. No, I had no conversation with him, no real conversation. Q. Didn't you talk with him? A. He asked me— Q. Not what he asked you. He talked to you? A. He talked to me. BY MR. GEBHARDT: Q. And you arranged to go over to the house for what purpose? A. To get a setting of eggs. Q. And did he go? A. He did. Q. Now go ahead and tell just where you went, what you saw and what you heard. A. We come over together, and as we approached the house, I heard a whispering noise, and I says to Mr. Wilson, I says— THE COURT: Not what you said. A. Well, as we was coming up the street I noticed something white laying off under the apple tree. Q. Now, which apple tree? A That is the apple tree on the west side of the house. Q. Where is the Birmingham house with reference to the apple tree, from this apple tree you are speaking about now? A That is east. Q. Well, is the house between this apple tree and the Birmingham house? A. Yes. Q. Is it possible to see from this apple tree the Birmingham house? A. No. Q. Go ahead now. A. As we approached, why I noticed this white form laying there. We walked up close by and I noticed there was a man and woman there. Q. Could you tell who the man was? A. No, I

couldn't; I don't know who the man was, and I says, "What are you doing here?" and as I said that this man raised up and Mrs. Snyder got up and hollered, "Oh, my God, Frank Smith, now you see what you have done." She repeated that a dozen times. Q. How did she say it, in what way, in what way did she say this, use these words, in a calm, cool way or what? A. No, very loud. She repeated it several times. Q. Then how long at that time, how long had it been since you had been over in the Birmingham house where Mrs. Northcott lived, that is, how many hours or half hours or whatever time it was? A. Well, at quitting time, six o'clock at night; I had not been over since that. Q. And what time did you go to town? A. About between seven and eight o'clock. Q. And this was what time? A. This was about eleven o'clock at night.

That is all on the direct examination. On the cross:

20 Q. Didn't you say on one occasion, well, immediately after that, a day or two after this affair under the apple tree as you say occurred, didn't you go down to Mrs. Smith's house or where she lived and say to her and her husband, tell her that that was all a joke about catching her husband up there? A. Nothing like that. Q. Didn't you say you saw them there and you were just going to give her a scare and you said, "Now I have got you," and to Frank you said, "Take her, take her along with you;" that she was scared to death and said "Emory, Emory," and screamed, and the next morning you drove her out? A. She certainly did some screaming. Q. No, no, didn't you say this to Mrs. Smith? A. To who? Q. Mrs. Frank Smith? A. I did not. Q. Didn't you continue to go down there when Frank was there and when she was there, during the whole summer? A. I have went there. Q. Did you say anything to Frank about it? A. No, I never did. Q. You never upbraided him or found a bit of fault with him? A. I didn't associate with him

40 after that.

Q. This testimony was given and taken on what day? A. December 14th, 1916.

Q. Were you present in court, Hunterdon County Circuit Court, during the progress of the trial you have just been reporting when Emory J. Snyder was sworn? A. Yes, sir, I was.

Q. Do you remember before whom the oath was taken? A. Judge Dungan.

Q. Who administered the oath? A. The Clerk.

Q. How, what form, what was done? A. As I 10
remember it was done on the Bible.

Cross examination by Mr. Pope:

Q. You really did not know how it was administered? You did not pay any attention? A. Not particularly.

FRANK SMITH, sworn.

20

Direct examination by Mr. Able:

Q. Where do you live? A. Hampton, N J.

Q. Do you know Emory J. Snyder? A. Yes, sir.

Q. Do you know Sarah Jane Snyder? A. Yes,
sir.

Q. Were you present in Hunterdon County Circuit Court, held in December last, in the court room at a trial between Sarah Jane Snyder, as plaintiff, and Mabel Northcott, as defendant? A. No, sir. 30

Q. Do you know how long Emory Snyder and his wife resided in Hampton? A. Four or five years, I guess.

Q. How long have you been there? A. About four years. I think they come there a year before we did.

Q. How far did you live from Snyder and his wife? A. Three houses in between.

Q. Do you know the family well? A. Yes, sir.

Q. Were you to Mr. Snyder's place either on the 40

outside or inside in the first or second week of June, 1914? A. Not that I remember.

Q. Were you at Mr. Snyder's place near that time?

A. Yes, sir, off and on every once in a while.

Q. Where you there at a time, in the night time when Mr. and Mrs. Snyder were present? If so, when was it, as near as you can recollect?

10 Mr. Pope: I object unless confined to the first or second week in June.

A. The alleged occurrence was the last week in May.

Mr. Pope: We object to that because that is not the time charged in the indictment.

By the Court: You may answer it.

20 A. She came to my house one evening between nine and ten o'clock, and asked me to come up and watch her husband at Northcott's.

Q. Did you go? A. Yes, sir.

Q. What did you do? A. She went up in a very fast manner and I didn't hurry myself. She went beyond me a little ways. About that time Mr. Snyder comes along from Northcott's and says, "Now I got you, take her along with you," and went in the house. That is all there was to that.

30 Q. Was there anyone else present? A. The boy was there in the house, that is all.

Q. What part of the house? A. He was running around in there.

Q. Inside? A. Yes, by the door and standing in the window.

Q. Mr. Smith, what is your first name? A. Frank.

Q. Frank Smith is your whole name? A. Yes.

40 Q. Were you in the first or second week of June, 1914, at the home or on the premises of Emory Snyder

and his wife, Sarah Jane Snyder? A. The first week in June?

Q. Yes, answer that question? A. I could not say. I probably was.

Q. Were you there the first or second week in June in the night time? A. Not that I know of. We were all friends and went back and forth.

Q. Were you on those premises during the first or second week in June, 1914, under an apple tree on the west side of the house in the night time? A. No, sir. 10

Q. Have you at any other time been under an apple tree on the west side of the Snyder house, in Hampton, N. J., with Mrs. Snyder in the night time? A. No, sir.

Q. Now, Mr. Smith, when was the next time that you saw Mr. Snyder after this time you have related? A. A day or two afterwards.

Q. Where was he then? A. He come down to my house.

Q. Who was with him, any one? A. No. 20

Q. Did he mention that occurrence? A. Yes, he said he had a great joke on his wife. He told my wife, my mother and myself.

Q. What did he say? A. I didn't pay much attention to it. It is insignificant to me.

Q. How often have you conversed with Mr. Snyder wherein the subject of your having been up there on that evening was brought up? A. I didn't listen to him.

Q. With what frequency? A. He would often speak of it. 30

Q. What did he say? A. The same thing about what a joke he had on his wife. He used me for a goat.

Q. Now, Mr. Smith, did you hear the testimony of the stenographer just on the stand? A. I heard some of it.

Q. Did you hear the testimony as given in the alienation suit? A. I didn't hear much of it.

Q. Now, Mr. Smith, it has been testified that Sny- 40

der on the occasion of the alienation suit between his wife and Mrs. Northcott swore and gave evidence to the effect that he came over or up the street with Mr. Wilson and that as they were coming up the street he noticed something white laying off under the apple tree. That the apple tree was on the west side of the house and that as he approached he noticed this white form laying there and we (meaning himself and Wilson) walked up close by and noticed there was a man
10 and woman there and that he said, "What are you doing here?" and as he said that this man raised up and Mrs. Snyder got up and hollered, "Oh, my God, Frank Smith, now you see what you have done" and that she repeated that a dozen times and that it occurred about eleven o'clock at night during the first or second week of June, 1914? What have you to say about that happening? A. It is a lie.

Mr. Stout: I object to that. Answer the
20 question. We ask that the answer be stricken out and object to the question.

By the Court: The question may stand and the answer, also.

We pray an exception.

By the Court:
Exception allowed and sealed. G. K. L. (L. S.)
30

Q. Do you know anything about such happening?
A. No, sir.

Cross examination by Mr. Stout.

Q. You were not at Emory Snyder's place the first or second week in June, in the night time? A. No.

Q. When were you there? A. I been there lots of times. I often walked up there.
40

Q. Were you there one night when he and Charles Wilson was there in June? A. No, sir.

Q. The last time you were there was in May? A. I may have been there in June, but not under such circumstances.

Q. You were there in May with Mrs. Snyder, weren't you? A. Yes, the last week in May.

Q. Why do you fix it in May? A. I know it was in May because the first of June is my wedding anniversary, and it was before that.

10

Q. You were not at the Snyder place with Mrs. Snyder when Emory Snyder came across and spoke to a man in June? A. No, that was in May.

CORA W. SMITH, sworn.

Direct examination by Mr. Able:

Q. Where do you reside? A. Hampton, N. J.

Q. Are you the wife of Frank Smith, who immediately preceded you on the stand? A. I am.

20

Q. Do you know Emory J. Snyder? A. Yes, sir.

Q. Do you know Sarah Jane Snyder? A. Yes, sir.

Q. Do you know Mabel Northcott? A. I do.

Q. Were you present in court in December, 1916, during the trial of an action at law between Sarah Jane Snyder and Mabel Northcott? A. Yes, sir.

Q. Was Emory J. Snyder sworn on that trial? A. Yes, sir.

30

Q. On the part of the plaintiff or defendant? A. The defendant.

Q. Did you hear his testimony? A. Yes, sir.

Q. Did you hear the testimony of the evidence that was read by the stenographer, Mr. Hammell, on the stand a while ago? A. I heard part of it. I didn't hear it all.

Q. Can you remember the testimony that was given by Emory J. Snyder relative to an alleged happening under an apple tree wherein was involved

40

Mrs. Snyder and a man? Do you remember any such testimony having been given? A. Yes, I do remember it.

Q. Relate to the jury to the best of your recollection the substance of that testimony?

Mr. Pope: Is there any use taking the time.

By the Court: She was present at the trial.

10

A. Yes, I am familiar with it.

Q. When did you first learn anything about such a happening? A. At the alienation suit of Mrs. Snyder and Mrs. Northcott.

Q. Did you know anything about a happening wherein Mrs. Snyder was involved and your husband was involved, before that? A. No, I never heard of such an occurrence until that time.

Q. Had you heard of any happening wherein
20 your husband was involved and Mr. Snyder and Mrs. Snyder was present? A. Only what I was told.

Q. Did you hear Emory Snyder talk anything about such a happening? A. Yes.

Q. What did he say? A. He said he had a great joke on his wife and how he frightened her. He said, "Now I got you, now I got you, take her along." He said, "My God, how she was scared."

Q. When was this? A. A few days after I came home.

Q. When did you come home? A. On the first
30 day of June.

Q. Have you heard him talking anything about that same matter more than the time you have related? A. No.

Q. Now, Mrs. Smith, how frequently has Mr. Snyder been at your house since June, 1914? A. All of that Summer and Fall and part of the Winter. He was there continually. Sometimes three and four times a day.

40

Q. Was your husband home when he was there?
A. Oh, yes.

Q. Did he say anything to your husband about any relationship he had had with his wife, that you heard? A. He never mentioned such a thing.

Q. Were they working together all that time?
A. All that Summer and Fall.

Q. Did they go around together some? A. Yes, they did. They were on very friendly terms all that Summer and Fall.

10

Q. Did you hear Mr. Snyder make any remarks about his wife after that time, I am relating to the first or second week of June, 1914, when this testimony, as given, says that he saw this happening?
A. Yes, his main talk was he wanted to get a divorce from her.

Mr. Pope: We object to that.

Q. What manner of conversation did Snyder hold about his wife after this time he caught her in this act with Smith?

20

Mr. Pope: We object.

By the Court: Objection sustained.

Q. Did you hear Snyder talk about his wife after that time. A. Yes.

Q. Did you hear him make any allusion to the happening which is said to have occurred in his yard in June, 1914? A. No, he never did.

30

Cross examination by Mr. Pope.

Q. You say you had been away, Mrs. Smith? A. Yes, for a few days.

Q. When did you go away? A. I do not remember the day.

Q. How long were you away? A. I do not remember.

40

Q. You came back after the first of June? A. On the first day of June.

Q. Was that your way of remembering it? A. Yes.

Q. As long as a week? A. Approximately.

ARTHUR SNYDER, sworn.

Direct examination by Mr. Able.

10

Q. Arthur, are you the son of Emory J. Snyder and Sarah Jane Snyder? A. I am.

Q. Is that your father and this your mother? (Indicates.) A. Yes.

Q. Do you remember of your mother going after Frank Smith in the Spring of 1914? A. I do.

Q. Do you know what she went after him for? A. Yes.

Q. Do you remember a happening which occurred in front of your house in the Spring or Summer of 1914 when Frank Smith was there and your father and mother? A. Yes.

Q. What did you see and what did you hear when they were all there together?

Mr. Pope: We object unless it is confined to the month of June.

By Court: He may answer it.

30

We pray an exception.

Exception allowed and sealed. G. K. L. (L. S.)

A. My mother went down for Frank Smith and she went down to get him to come up and watch my father. He was over to Mrs. Northcott's.

40

Mr. Pope: We move that that be stricken out. The answer should be stricken out be-

cause it states the witness's version and conclusion as to what his mother's object was.

By Court: The answer may stand.

We pray an exception.

Exception allowed and sealed. G. K. L. (L. S.)

My mother come up a little ways ahead of Mr. 10
Smith and went on over and Mr. Smith come up later.
All the time I was standing in the doorway. Mr. Smith
didn't go much further than the gate.

By the Court: What gate?

A. The gate in front of our house. Frank come
back again and then my mother come back. About
that time I saw my father coming and I said I better
beat it. 20

By the Court: Strike out what the witness
said.

A. My father come over and I went to bed.

Q. When was this? A. The last of May.

Q. What year? A. 1914.

Q. Do you remember the happenings in your
family after that time that you have testified to? A.
I think the next morning my father drove my mother 30
out.

Q. Where did she go and where did you go? A.
My mother went down to my grandmother's and I
went down and come back again to our house and
stayed with my father.

Q. When did your mother come back, if she did?
A. A short time after that.

Q. Do you remember what was the occasion for
her coming back? A. My father and I went down and
he stood by the bridge a short ways from my gand- 40

mother's and he sent me in to get my mother to come on home.

Q. Tell what you did and what your father did?

A. My father said one night, "We are going down to get your mother." My father stood by the bridge and told me to go in and get my mother. I went in and got her and we stood and talked a few minutes and then come up home.

10 Q. How long was she up home? A. I couldn't tell you.

Q. Was she there some time? A. Not longer than a week.

Q. I mean after she come back. You understand me. Your mother went away the next day after Frank Smith was up there watching your father. Then you say she was gone a short while and you and your father went for her and she come home with you. My question is, how long did she remain there after that, can you recollect? A. No, I cannot.

20 Q. Was she there some little time? A. I don't think it was very long.

Q. When she came back where did she sleep?

Mr. Pope: I object to that.

By the Court: I am inclined to think that is objectionable. I think it is too remote from the issue.

30 Q. Did you father say anything to your mother that you heard, I mean about the night when Smith was up there, after she came back to the house? A. I do not know.

Q. Did you hear your father then or at any time afterwards, when in the presence of your mother, say anything to her about having been on the west side of your house in Hampton, under an apple tree with a man? A. I did not.

40 Q. Haven't heard him find any fault with her about such a happening? A. Not as I can remember.

Q. Were you away from home nights along that time much? A. No, I was not.

Q. Who did you live with? A. My father and mother.

Q. Where were you nights? A. Home.

Q. Do you remember of being away from your mother on any night in the first or second week of June, 1914? A. Not that I can remember.

Cross examination by Mr. Stout.

10

Q. What is your first name? A. Arthur.

Q. How old are you? A. I will be fifteen in August.

Q. You were then twelve years old? A. Just about.

Q. Now you remember the fact that Mr. Smith came to your house one night with your mother? A. He came a little ways behind her, yes.

Q. You remember the fact that your father came there while Smith was there? A. Yes.

20

Q. When your father came you went upstairs, didn't you? A. I did.

Q. How soon after your father came down to where Smith was did you go upstairs? A. Right away.

Q. Did you hear your father say anything to either your mother or Mr. Smith at that time? A. I did not.

Q. Did you hear your father come to bed? A. I did not.

30

Q. Did you hear your mother come to bed? A. I did not.

Q. Did you hear any talk between your father and mother? A. Yes, but I could not understand what they said.

Q. Where were your father and mother, upstairs or down? A. They stayed downstairs for a few minutes.

Q. Did you hear what they talked about? A. I could not say.

40

Q. You said you did not hear your father come to bed? A. I did.

Q. You said this occurrence was some time the last week in May. What makes you certain of that?

A. Why because Miss Matthews come up there about that time.

Q. How long did she stay? A. Over Saturday night.

10 Q. You were twelve years old at that time and you merely fix it the last week in May because Miss Matthews was there? A. It was before Miss Matthews came up.

Q. The next morning your mother went away? A. My father drove her away.

Q. Did you go with her? A. I went down to my grandmother's with her and then I came back.

Q. You say your father drove her away, what do you mean? A. He said she had to get out.

20 Q. How long after that did you and your father go down to bring her home? A. I could not tell you the exact time.

Q. Was it two or three days? A. It might have been.

Q. Your mother came home and Miss Matthews came up and spent Decoration Day. How long did your mother remain home then? A. I could not tell.

Q. She did go away after that? A. After what?

Q. Didn't she leave about the first or second week in June? A. I could not tell you.

30 Q. Didn't you go with her and didn't your father go to the hotel? A. I don't know where he went but I went with my mother.

Q. Where did you go? A. To Lebanon, to Dr. Shephard's.

Q. That was about the first or second week in June? A. I could not tell you.

Q. Your mother was home several days, two or three weeks after she came back from your grandmother's. A. I could not say.

40 Q. You went with your father to bring your mother back the first time? Did you carry a note

from your grandmother or mother to your father?

A. Not as I remember.

Q. In which your mother wanted him to come and take her back? A. Not as I know of. He asked Mrs. Northcott whether he should take her back or not.

Q. In your presence? A. Not in my presence.

Q. You were there with him? A. I was.

Q. What did you say Mrs. Northcott said to your father? A. We were over there one night, Bert, Mrs. Northcott, my father and I were in the kitchen. After 10
a while we said we would go home. I started to go home and Mrs. Northcott and my father were still talking. I waited a few minutes and I heard my father ask Mrs. Northcott whether he should take my mother back again. I began to cry then.

Q. Did you ever tell that before? A. To my mother.

Q. You have been sworn in this case two or three times? A. Yes.

Q. You do not speak to your father, do you? A. 20
He doesn't speak to me either.

Q. You are not on good terms with him, are you? A. You wouldn't call it good terms.

Q. You never told that until now? A. Yes, I have told it to people before. I do not know just who, but I have told it before.

Q. Have you ever told Judge Herr? A. I do not know whether I have or not.

Q. Can't you remember now whether you brought a letter from your mother to your father? A. I do 30
not remember.

Q. Didn't you coax your father to take your mother home? A. Yes.

Q. Didn't she stay home two or three weeks and then wasn't there a flare up in the family? A. After she came home?

Q. Yes, wasn't there a flare up then and your mother left again. Did she leave a second time? A. Yes.

Q. Didn't your father, in your presence, accuse 40

your mother of wrong doing? A. Not that I know of.

Q. What did he say to her? A. He told both of us we had to get out. He said he couldn't afford to keep Mrs. Northcott, my mother and I. He even helped us pack our trunk.

Q. He didn't charge your mother with any wrongdoing? A. I do not think so.

Q. That was in June? A. I could not just tell you.

10 Q. It was after your mother came back from your grandmother's? A. Yes.

By Mr. Able.

Q. After your mother come back from your grandmother's she lived there in Hampton until you went to Lebanon, did she not? A. She did.

Q. Where did she live in Hampton after she came back from your grandmother's? A. In our own house.

20 Q. Did you go down to Lebanon with your mother? A. I did.

Q. Do you remember how long you had been in Lebanon before you went to school? A. A very short time.

Q. How long? A. We went there in September and school began on the 8th. I went right to school.

Q. Had you been at Hampton from the time your mother came back from your grandmother's until you went to Lebanon? A. I was.

30 Q. Have you repeated all that happened between your father and your mother between the time she came back from your grandmother's until you went down to Lebanon to live? A. All I can remember.

Adjourned.

ARTHUR SNYDER.

Cross examination by Mr. Stout (Continued.)

Q. Yesterday I understood you to say to the prosecutor that you and your mother remained at Hampton until you had gone down to Dr. Shephard's and you were only there at Shephard's a short time before you began to go to school, which was in September. I want to just have you turn over in your mind whether or not you were somewhere else in the meantime? A. No, sir. 10

Q. Weren't you and your mother at Westfield some time before you went to Dr. Shephard's? A. I do not remember.

Q. When you and your mother left Hampton, didn't you go to Westfield for some time? A. We might have went there for a day but we came right back.

Q. Weren't you there for some time? A. Not that I remember. 20

Q. You went to Westfield and stayed there sometime and came back to Hampton and stayed a day or two and then went to Lebanon? A. I didn't say we stayed a day or two at Hampton.

Q. You were at Westfield awhile? A. Not that I remember.

Q. Cannot remember being to Westfield? A. No.

Q. Didn't you write your father some letters while at Westfield? A. I wrote him some letters but I couldn't tell you when. But I know I wrote them. 30

Q. You and your mother went to your grandmother's, that is your mother went down to your grandmother's A. Yes.

Q. She was there a few days? A. I think she was.

Q. Then she came back and was home a few days? A. Yes.

Q. Then you and your mother went to Westfield? A. I do not remember going to Westfield. 40

Q. What did you mean when you said you came back to Hampton and stayed a day or two. Where had you been? A. I think I said we went down to my cousins and came back to Dr. Shephard's.

Q. Where were you all the time from the time you went to your cousins until you went to Dr. Shephard's? A. I wasn't at Westfield.

Q. Where were you all this time until September when you went to Dr. Shephard's? A. I could not tell
10 you.

Q. You were not in Hampton? A. Not all the time.

Q. You cannot remember where you were? A. I do not know.

Q. You testified yesterday your father did not speak to you. Do you remember the trial of the divorce suit? Hasn't your father written you several times?

20

Mr. Able: I object.

By the Court: The one question may be admitted.

Q. Hasn't your father written you several times?
A. In 1917?

Q. Yes. A. He hasn't written me in 1917.

Q. Did you have a conversation with your father since the trial of the alienation suit in which he wanted you to come and stay with him? A. Yes, I have.
30

Q. He has asked you to come up and wanted you to come and didn't he ask you to write to him? A. He did.

Q. In the Summer of 1915 didn't you live with your father? A. I stayed with him but you wouldn't call it the whole Summer.

Q. You have not written to your father as he requested you to write to him. Did he know your address? A. I don't know whether he did or not.
40

Q. You never told him? A. He never asked me either.

Q. You never wrote him either? A. I did not.

By Mr. Able.

Q. After this trouble between your father and your mother that Mr. Stout has been inquiring about did you and your mother visit about? Did you and your mother go visiting people? A. Well, I don't know whether we did or not. 10

Q. Did you go visiting down to Miss Matthew's? A. I remember going there.

Q. Did you go to Miss Edwards, a cousin? A. I do not remember that.

Q. Where does Miss Matthews live? A. Plainfield.

Q. Where did you go to after you came back from there? A. After we left Miss Matthews?

Q. Yes. A. I could not tell you. 20

Q. Do you know where you were living between the time this trouble was that Mr. Stout was inquiring about until you went to Lebanon, where were you stopping? A. I do not quite know what you mean.

Q. You remember the difficulty between your parents? A. I do.

Q. You remember about what time of year that was? A. Yes.

Q. About what time in the year was it? A. In May, I think. 30

Q. Then did you go away from the house with your mother? A. We went to grandmother's and I came back again.

Q. Do you remember how long you and your mother were back? A. I do not.

Q. How old were you? A. About 12.

Q. Do you remember now after that difficulty that you have in mind the place you were at with your mother or alone between that time and the time you 40

went to Lebanon to Dr. Shephard's? A. I remember going to Miss Matthews' and that is about all.

Q. Where did you live before you went to Dr. Shephard's? A. We lived home.

Q. Where was your residence? A. In Hampton.

Q. Was your father there? A. I think he was.

Q. All the time? A. Not all the time.

Q. Where was he? A. I could not tell you.

Q. Didn't you see him? A. Yes.

10 Q. Where? A. He would come up to the house.

Q. Didn't you know where he lived? A. I suppose down to my grandmother's.

Q. Did you see him there? A. Sometimes I saw him there and sometimes over to Mrs. Northcott's where he was working.

Q. Where was he when you and your mother left Hampton to go to Lebanon? A. I could not tell you.

Q. You remember going to Lebanon, don't you? A. I do.

20 Q. Who conducted the preparations for going there, the packing? A. My father.

Q. Where did he do that work? A. In the house.

Q. Do you remember any conversation he had with your mother at that time? A. No, but I remember what he told me.

Mr. Pope: I object.

By the Court: You may answer it.

30

We pray an exception.

Exception allowed and sealed. G. K. L. (L. S.)

A. He helped us pack and he gave me his trunk and told us we had to get out because he couldn't afford to keep my mother, myself and Mrs. Northcott. He gave me \$5.00 to go to Lebanon and told us we had to get out, and we did so.

40

Q. Did he come to any place you were at after

that? A. He come to Dr. Shepard's two or three times.

By Mr. Stout.

Q. Your father was working for Mrs. Northcott?

A. He was.

Q. Do you mean to say to the jury that he said to you you would have to go away as he could not keep you and your mother and Mrs. Northcott? A. He certainly did. 10

Q. He was living at home and furnishing a living? A. Not very much.

Q. He hadn't been living at Northcott's? A. He was there most of the time.

Q. He was working there, wasn't he? A. Yes.

Q. Come back at noon and got his dinner? A. Yes.

Q. Come back and got his supper? A. Yes, and also went back and didn't come home again nights. 20

Mr. Stout: I ask that that be stricken out.

By the Court: I think it is all right.

Mr. Stout: I ask an exception.

Exception allowed and sealed. G. K. L. (L. S.)

Q. Didn't he work there for a year? A. I could not tell you how long he worked there. 30

Q. A long time? A. Yes, quite a long time.

JUDIAH HIGGINS, sworn.

Direct examination by Mr. Able.

Q. Mr. Higgins, you reside in Flemington? A. I do.

Q. What is your occupation? A. County Clerk. 40

Q. Of Hunterdon County? A. Yes, sir.

Q. Were you County Clerk of Hunterdon County during December term of Court, 1916? A. I was.

Q. Do you remember a term of the Hunterdon County Circuit Court being held in December, 1916? A. I do.

Q. Were you clerk of that court at that time? A. I was.

10 Q. Do you remember the trial of an action during that term wherein Sarah Jane Snyder was plaintiff and Mabel Northcott was defendant? A. I do.

Q. Were you present in the court and preformed the functions of your office? A. I was.

Q. Did you swear the witnesses in that case? A. I did.

Q. Did you administer an oath to Emory J. Snyder in that trial to tell the truth, the whole truth and nothing but the truth.? A. I did.

20 Q. How was the oath administered? A. On the Holy Bible.

Q. Before whom? A. Judge Dungan.

Q. Was he holding court at that time? A. Yes, sir.

Q. When was, if you remember, when was Mr. Snyder sworn? A. I will have to refer to my blotter. December 13, 1916.

30 By the Court: Aren't we wasting a lot of time on this. Do you admit the fact that Mr. Snyder was sworn.

Admitted that Mr. Snyder was sworn.

12th. Three called on the 12th. Case was adjourned until the following morning and plaintiff's witnesses were finished that day and defendant's witnesses were started and Emory J. Snyder was the last witness on

Q. Was his evidence continued? A. I think that was the only day he testified.

40 Q. The 13th? A. Yes, the case opened on the

WALTER S. HAMMELL, RE-CALLED

CORA W. SMITH, RE-CALLED

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December 13th. Court adjourned until the following morning and there were three witnesses for the defendant and that was all.

Q. Was Snyder's testimony continued on the 14th? A. There is no record of his being on the stand.

Q. Was he the last witness on the 13th? A. The last witness for the defense that day.

Q. Do you remember whether he was recalled on the 14th? A. I do not.

10

Q. You only have a record of the day he was sworn? A. I think if he had been recalled it would be so marked on the records.

WALTER S. HAMMELL, recalled.

Direct examination by Mr. Able.

Q. Mr. Hammell, will you, it is believed you have told us this before, but we would like to get it clear, tell us when Emory J. Snyder was sworn and when his testimony was taken and if continued? A. He started on the 13th and continued on the morning of the 14th.

20

Q. The testimony which you read before the jury was given on what day? A. The 14th.

MRS. CORA SMITH, recalled.

Direct examination by Mr. Able.

30

Q. You were on the stand yesterday and it was inquired of you whether Emory J. Snyder had been at your house after the month of May and the month of June, 1914, and you stated that he had, and conversations were asked of you that were had between yourself and he or in your presence, which related to his wife and matter pertaining to the difference between him and his wife. Now I desire to ask you this morning whether or not there were any matters of conver-

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sation which you had with him relative to his relationship with his wife which you did not relate yesterday?

10 Mr. Pope: I object to the question. This is clearly a part of the direct examination, the witness has been off of the stand and should not be called back now to testify to further conversation, aside from that the conversations are remote, refers to a collateral matter and have no bearing upon this issue.

By the Court: The witness may answer.

Mr. Pope: We pray an exception.

Exception allowed and sealed. G. K. L. (L. S.)

20 A. Mr. Snyder was at our house a great deal and he talked of getting a divorce from his wife and said he could not get it on any grounds.

By the Court: When was this?

A. After June, 1914, and all that Summer.

Mr. Pope: I object. For the reason stated.

By the Court: I think that is material.

30 Mr. Pope: We pray an exception.

Exception allowed and sealed. G. K. L. (L. S.)

40 A. He said he could not get it on anything else but desertion, and he found it would take two years to get a divorce on the grounds of desertion. At one time he come in and said his wife had left her position in Lebanon and gone to work for some widower. He said he didn't think she would fall in

love with that fellow because there couldn't be any such good luck.

Q. Do you recollect any further conversation on the same subject? A. He talked one time of going to Ohio, and he said the kid (meaning Mrs. Northcott) didn't want him to go.

By the Court: The jury will disregard the remark of the witness as to what the defendant meant.

10

A. He talked at one time of going to Ohio to see if he could get a divorce. He was looking up all the time to see how he could get one.

Q. Give just the conversations. A. That is all he talked about, divorce.

Q. In the matter of going to Ohio did he say anything about the time it would take to get a divorce?

Mr. Pope: I object, for the reasons just stated; and this is matter remote, collateral, and immaterial to this issue.

20

By the Court: It may be material.

Mr. Pope: We pray an exception.

Exception allowed and sealed. G. K. L. (L. S.)

A. He didn't tell why he did not go only in regard to what Mrs. Northcott said. The reason he did not go was on account of Mrs. Northcott did not want him to go.

30

By Mr. Pope: I ask that that be stricken out. That is not responsive, and states a conclusion.

By the Court: That is a statement.

40

We pray an exception.

Exception allowed and sealed. G. K. L. (L. S.)

Q. Can you recall any other conversation with Snyder relative to his affairs between his wife and himself? A. Nothing, only he wanted a divorce on the grounds of desertion.

10

THE STATE RESTS.

20

Mr. Pope: I move for a direction of a verdict for the defendant. Our first reason is—that the evidence set forth in the indictment and upon which perjury was assigned was illegal and not material to the issue pending in the Hunterdon County Circuit Court between Sarah Jane Snyder, plaintiff, and Mabel Northcott, defendant. And for that reason cannot be made the basis of a charge of perjury.

My second reason for asking for a direction of a verdict is—that there is no evidence tending to corroborate except the testimony of the so-called complaining witness in this case.

By the Court: The motion is denied.

Exception allowed and sealed. G. K. L. (L. S.)

30 EMORY J. SNYDER, sworn.

Direct examination by Mr. Pope.

Q. Are you the defendant, Emory J. Snyder? A. I am.

Q. And the husband of Sarah J. Snyder? A. I am.

Q. Father of the young man on the stand this morning? A. I am.

40 Q. How old are you? A. 41.

Q. Did you testify in this court in the month of December, 1916, in a suit then pending between Sarah Jane Snyder, your wife, and Mabel Northcott? A. I did.

Q. Were you present in court yesterday when the witness, Mr. Hammell, who was the court reporter, read your statement? A. I was.

Q. You heard it read? A. I did.

Q. Did you testify in substance as he read it? A. I did.

10

Q. Was it true? A. It was.

Q. You testified of an occurrence which took place on the first or second week of June, 1914, how do you fix the time as being the first or second week in June? A. I remember distinctly it was a couple of weeks before my wife had me arrested.

Q. What date were you arrested? A. 22nd of June, 1914.

Q. By whom? A. Christopher Shrope.

Q. Who was he? A. One of the marshals of Hampton.

20

Q. How long before that do you think this occurred. A. About two weeks. I remember, she left the next morning and went down to mother's and returned in three days, and I remember it was on Saturday night. About eight or ten days after that she had me arrested.

Q. Were you arrested after that? A. Yes.

Q. When was that? A. July of the same year.

Q. Who arrested you? A. Mr. Shrope.

30

Q. That was in July of the same year? A. Yes.

Q. Upon whose complaint? A. My wife's.

Q. What were you arrested for the latter part of July? A. For non-support.

Q. On this night of the alleged occurrence in the first or second week in June did you know who it was? A. I did not then.

Q. What business were you in at that time? A. The poultry business.

Q. Did you sell eggs? A. Yes.

40

Q. Who was with you on this night? A. Charles A. Wilson.

Q. Did you get any eggs that night? A. I did not.

Q. When did you get them? A. The next morning.

Q. How? A. I took them over to him.

Q. Did you ever refuse to speak to your boy? A. Never in my life.

10 Q. Have you written him letters? A. I have.

Q. Has he replied to them? A. He has.

Cross examination by Mr. Able.

Q. Now, Mr. Snyder, you state that this occurrence when you saw your wife in a compromising situation with a man was in the first or second week in June?

20 Mr. Pope: I object.

By the Court: You may answer it.

Mr. Pope: We pray an exception.

Exception allowed and sealed. G. K. L. (L. S.)

Q. What time in the night was it? A. About eleven o'clock.

30 Q. You cannot fix a date except that it was in the first or second week in June? A. About the 10th of June.

Q. You are sure about that A. I am sure.

Q. This was rather an unusual occurrence, wasn't it? A. What do you mean?

Q. You had caught your wife in this position with a man on any other occasion? A. No.

Q. Never afterwards? A. No.

40 Q. Didn't it impress you as being rather unusual?

A. It certainly was unusual, why wasn't it.

Q. You were very much incensed over it? A. I was.

Q. What did you say to your wife? A. When?

Q. When you caught her there in the position you testified you found her? A. I did not say anything. I asked them what they were doing. I didn't know then it was my wife.

Q. When you walked up what was said? A. All I heard was, "Oh, my God, Frank Smith, now see what you have done." 10

Q. How often was that repeated? A. Two or three times.

Q. Where was the man when this expression was made? A. I do not know.

Q. How close were you to the man and woman? A. They were right in front of me.

Q. Where was it they laid? A. On the west side of the house under the apple tree.

Q. How far is that from the public road? A. 20 About 25 feet.

Q. You were right alongside of them? A. Yes.

Q. Could you see the forms? A. I could see them.

Q. Who was on the ground? A. My wife and a man.

Q. Were they alongside of each other? A. No.

Q. What was their relative positions? A. The man lying on top.

Q. They were in that position when you walked up to them and you were within one or two feet of them? A. Yes, a couple of feet. 30

Q. You walked up and saw your wife lying on the ground, it was she wasn't it? A. Yes, from her voice.

Q. The man was on top and you said, "What are you doing here?" A. Yes.

Q. Then what was said by either of the parties? A. Only what she hollered and I went on in the house.

Q. What became of the man? A. I do not know.

Q. Couldn't you see? A. It was dark.

Q. Where was the man? A. He just raised up and I went away.

Q. Your wife hollered and you walked right in the house? A. I do not remember. I went in the house but I don't know whether I walked or ran.

Q. Were you afraid? A. No.

Q. When she spoke you knew it was your wife? A. Yes.

10 Q. When she used the name Frank Smith, did you know of any Frank Smith? A. I knew Frank Smith.

Q. Did you know of more than one? A. No.

Q. Frank Smith and you were friendly and associated together? A. Not with him alone.

Q. You have been at his house, haven't you? A. Never at his house. I been to his father's and mother's house.

Q. Have you been where Frank Smith and his wife lived? A. Yes.

20 Q. That is their home? A. Their father and mother's house where they lived.

Q. Have you been at the house where Frank Smith and wife live? A. He lives with his father and mother and I been there.

Q. Is that the home of Frank Smith and his wife? A. Yes.

Q. How long have they lived there? A. Four years.

30 Q. You could hear clearly the name Frank Smith and you never knew any other man by the name of Frank Smith. Now do you mean to tell us you heard your wife use the name Frank Smith and you didn't know who was there? A. No, only what he said. I couldn't swear to it.

Q. You said you were mad? A. Of course.

Q. You didn't say a word except "What are you doing here?" A. That is all.

40 Q. After your wife made this expression you didn't say another word but turned around and walked or ran in the house? A. Yes, and locked the door.

Q. Did you see where the man went? A. No.

Q. Did you testify in the suit in this court last week I think it was, of the State against Charles A. Wilson? A. I did.

Q. Did you, on the stand testify that the man got up and went away and you didn't take notice who it was? A. I suppose he went away.

Q. Did you testify to that? A. I do not remember how I worded it.

Q. You don't know how you worded it? A. No. 10

Q. An incident of that kind is not capable of being worded in different ways to have different meanings? A. I do not understand what you mean.

Q. If you seen a man raise off the ground and pass off your property to your right or to your left in a given direction you would have known that fact would you not? A. A. Possibly and possibly not. When you are excited you do not remember everything. It is impossible.

Q. Was your excitement such that you were unable to observe where the man went? A. After I left I didn't see the man. 20

Q. Then you were mistaken when you testified that the man went away or walked away? A. I suppose he went away. I didn't find him there the next morning so he must have gone away.

Q. You didn't say a word to him or to your wife, your wife in a reclining position on the ground and a man on top, and you didn't say a word but turned around and walked away? A. Only what I have stated. 30

Q. That is "What are you doing here?" A. Exactly.

Q. When did you next see your wife? A. In the house.

Q. Did she come in the house? A. She broke the door in.

Q. And where did she go when she come in? A. Come inside and then I put her out.

Q. That night? A. Yes.

Q. Where did she go? A. She went out in the 40

street and hollered and said if I let her in that night she would go away in the morning and would never bother me and in the morning she went away.

Q. Did you let her in? A. She came back in.

Q. Now Mr. Snyder did she holler? A. Yes, it was pretty loud. You could hear it some distance.

Q. Who were your nearest neighbors? A. Mrs. Smith.

Q. Who is she? A. Clara J. Smith.

10 Q. Where did she live? A. Across the street.

Q. How far? A. Oh, probably 125 feet.

Q. Is she a widow woman? A. Yes.

Q. Who lived with her? A. Two elderly women, her daughter and grandson.

Q. Who are they? A. The oldest one's name was Moore, about 84 years old, and the other one's name was Horne, about 65 years old.

Q. Who was the daughter? A. Mrs. Northcott.

Q. Who was the boy? A. Mrs. Northcott's son.

20 Q. Who lived in the next house? A. Arnours.

Q. How far do they live? A. Probably 250-300 feet.

Q. Who was the other neighbor? A. I am not sure whether there was anybody living in the other house. I am not positive.

Q. When she came back in the house what took place between you and she?

Mr. Pope: I object.

30

By the Court: You may proceed.

A. Nothing in particular only what practically would.

Q. What did you say? A. I do not remember.

Q. Did you ask her who it was that was with her? A. I did not.

Q. What did you say to her? Can you recollect any of the conversation? A. I do not remember any
40 conversation.

Q. When did she go away? A. The next morning.

Q. Who went with her? A. I do not remember whether Arthur went or not.

Q. How long did she remain away? A. Three days.

Q. Where did she go from your place, if you know? A. She went to my mother's.

Q. She went to your mother's? A. Yes.

Q. Did you afterwards go down to your mother's place after your wife? A. Yes, I went down, I believe 10
on Saturday night when she came home.

Q. Who did you see there?

Mr. Pope: I object.

By the Court: Objection is sustained.

Q. Who went with you?

Mr. Pope: I object to that. 20

By the Court: You may answer it.

We pray an exception.

Exception allowed and sealed. G. K. L. (L. S.)

A. Arthur went with me. I sent him in and told her to come on home.

Q. Did you say anything at this time about this occurrence under the apple tree? A. No. 30

Q. When did you mention it to her next? A. I do not remember of having a conversation with her about it.

Q. You never talked with her about it? A. She left me about two months afterwards. I never had any chance.

Q. How long did she live there after she came back from your mother's? A. She left on the 24th of June, 1914. 40

Q. Where did she go? A. I do not know.

Q. How long was she gone? A. About three weeks.

Q. Did she live with you? A. She come in the house and I said I didn't have any time to talk to her, I had to go to work. She said she would do as she was told to do and the next day she had me arrested.

Q. You said you were arrested on June 22, 1914—

10 Mr. Pope: I object to that.

Q. What were you arrested for?

Mr. Pope: I object.

By Court: I think he testified why. I will sustain the objection.

Q. You were arrested on June 22nd, 1914? A.
20 Yes, sir.

Q. At the instance of your wife? A. Yes.

Q. And you were arrested again in July? A. Yes.

Q. At her instance for non-support? A. Yes.

Q. Did you have a hearing? A. I had a hearing
before Justice Fitzgibbons.

Q. Did you give testimony before the Justice?

Mr. Pope: I object to the question.

30 By the Court: You may answer it.

Mr. Pope: We pray an exception.

Exception allowed and sealed. G. K. L. (L. S.)

A. I don't remember whether I did or not.

Q. Do you remember of giving your testimony before Justice Fitzgibbons? A. I do not remember much about it.

40 Q. During that trial or hearing did you make any

mention about your wife and having caught your wife in this position which you say she occupied? A. Not to my knowledge, no.

Q. What was the outcome of that hearing?

Mr. Pope: I object to the question.

By the Court: Objection is sustained.

Q. Mr. Snyder, when was the first time that you mentioned this alleged happening after you say it occurred in June, 1914? A. If I remember the first time was to Judge Herr. 10

Q. When was that? A. That was two or three months before the divorce suit.

Q. When was the divorce suit? A. I think it was the alienation suit that was first.

Q. Well, when was the alienation suit? A. In December last, if I remember right.

Q. December, 1916? A. Yes. 20

Q. Between June, 1914, and December, 1916, you did not mention the fact of your having caught your wife as you say in the position which you have testified to with another man to any person?

Mr. Stout: I object to that.

Mr. Able: Well, to Judge Herr.

A. I may have told my counsel in Plainfield, DeMeza and Crane, but they advised me not to do such a thing. 30

Q. You recollect testifying last week in the Wilson case? A. Yes.

Q. Didn't you testify in that case that you had never mentioned this fact to anyone except Judge Herr and that was about the time of the alienation suit? A. I do not remember just what I testified to, whether I said anybody or not. 40

Q. Your memory is not deficient? A. A little, yes.

Q. You are unable to remember from week to week? A. No, I can remember.

Q. You consider the matter of no importance then? A. What do you mean?

Q. The matter of the fact that you caught your wife in the position you say you did, did you consider it of no importance? A. I do not consider it of any im-
10 portance to talk to my neighbors about it.

Q. After you had become separated from your wife you say in July, 1914—

A. She come back and left after that.

Q. You had been living together? A. She had been living in the house.

Q. You lived in the house, too? A. Yes, she was there from the 10th to the 24th.

Q. You were there, weren't you? A. Yes.

Q. Did you see her after she left? A. After she
20 left on the 24th, yes.

Q. Where did you see her?

Mr. Pope: I object. That is collateral and immaterial. It relates to a matter not connected with this case. And it can't be contradicted.

By the Court: You may answer it.

30 We pray an exception.

Exception allowed and sealed. G. K. L. (L. S.)

A. I saw her in Hampton and in Westfield.

Q. Where did you see her in Westfield?

Mr. Pope: I object to that. This is collateral and immaterial, and not cross examination.

40 By the Court: You may answer it.

Mr. Pope: We pray an exception.

Exception allowed and sealed. G. K. L. (L. S.)

A. I remember I saw her on the street one day and at some doctor's or dominie's, some say he was a doctor and some say he was a dominie.

Q. Did you call on your wife after—

Mr. Pope: I object to that. This is collateral and immaterial, and not cross examination. 10

By the Court: You may answer it.

We pray an exception.

Exception allowed and sealed. G. K. L. (L. S.)

Q. Did you call on your wife after she had left your domicile? A. Yes, at Westfield. 20

Q. Any other place? A. Yes, when she was working at Shephard's.

Q. You went to Shephard's, did you, how often? A. Probably two or three times I went down to Shephard's.

Q. Did you stay over night?

Mr. Pope: I object. This is collateral and immaterial and can't be contradicted. 30

By the Court: You may answer it.

Mr. Pope: We pray an exception.

Exception allowed and sealed. G. K. L. (L. S.)

A. I never stayed over night.

Q. You never stayed over night? A. No.

Q. Was your son at Dr. Shephard's and your wife?

A. Yes. 40

Q. Do you remember about what time in the year it was when you called at the doctor's house? A. No.

Q. How long did you stay?

Mr. Pope: I object. Not proper cross examination; purely collateral and immaterial.

By the Court: You may answer it.

10 Mr. Pope: We pray an exception.

Exception allowed and sealed. G. K. L. (L. S.)

A. I cannot tell just how long. Probably a couple of hours.

Q. Were you there in the day time or in the night time? A. I have been there in the day time and in the evening.

20 Q. How long did you stay when you went in the evening? A. Probably an hour or so. I do not know.

Q. Do you recollect that on one of these visits to Dr. Shephard's that you remained over night and remained in the room with your wife?

Mr. Pope: I object. It is immaterial, remote, collateral, relates to matter not involved in this inquiry, and it is not cross examination.

30 By the Court: You may answer it.

Mr. Pope: We pray an exception.

Exception allowed and sealed. G. K. L. (L. S.)

A. I did not stay over night. I went up in the room and talked to them.

Q. What time did you go away from the room? A. Probably nine or ten o'clock.

Q. Not later than ten o'clock? A. I wouldn't be positive.

Q. Was your wife and boy both there? A. Yes.

Q. You left them both in the room? A. No the boy was running around with the other children. There was eight or nine, the house was full.

Q. Did you say good-bye to the boy? A. I do not remember.

Q. You went to see him, didn't you? A. Yes.

Q. Mr. Snyder, my understanding of your testimony this morning was that you now fix June 10th, as the time when this episode occurred wherein you found your wife and a man in the yard? A. About June 10th, yes. 10

Q. I understood you to say June 10th? A. About June 10th.

Q. Before or afterwards? A. According to the records when I look it up it was about June 10th.

Q. What records do you refer to? A. From my being arrested. 20

Q. Had you had any trouble with your wife before that? A. Before June 10th, yes.

Q. Had any trouble with her before that time wherein Frank Smith appeared? A. I had no trouble, but Frank Smith called there several times.

Q. Had you had any experience wherein you found Frank Smith and your wife at the gate before that time in the night time? A. Not alone, as I remember.

Q. You didn't see them together? A. Not alone, as I remember. 30

Q. Did you find them there one night when you came across the street from the house on the opposite side? A. No.

Q. Did you see them at one time? A. No.

Q. You have not had any trouble with your wife from her having watched you at Mrs. Northcott's prior to June 10th, 1914, wherein Frank Smith was present? A. You refer to Frank Smith?

Q. I refer to the time when Frank Smith was at 40

the gate when you came across? A. No, not that I remember, that is alone in the night time.

Q. There was no such occurrence as far as you are concerned? A. No.

Q. Do you remember of a lady having visited your place in Hampton on Decoration Day, 1914? A. I do not.

Q. Do you know Miss Minerva Matthews? A. I do.

10 Q. Did she ever visit your place? A. Yes, once.

Q. When was that? A. A short time after we moved to Hampton.

Q. Was that before this happened? A. It was not before I had any trouble.

Q. Was it before you had this trouble? A. It was before I had any Frank Smith trouble. I had a bunch of other trouble.

Q. Had she been down to your mother's and come back on the Friday evening with you and your son on the day before Miss Matthews was at your place? A. 20 She had not.

Q. You testified that after this occurrence that you say happened under the apple tree on the west side of the house in your yard you drove your wife out and she went down to your mother's? A. She went away herself the next morning.

Q. You and your boy went down to your mother's and brought her home? A. Yes.

Q. Was Miss Matthews at your house before or 30 after that time? A. Before that time.

Q. Had your wife been away from home before that time, I mean under similar circumstances? A. I do not know what you mean.

Q. Had you had any quarrel where you had driven her out? A. She went away quite often when she got on her rampages.

Q. Had she been down there to stay more than one day when you had ordered her out or she had left? A. That might have occurred. Sometimes she would get 40 intoxicated.

Q. You say she got intoxicated? A. Yes.

Q. Where? A. Wherever she was.

Q. Tell us the place? A. Around the house and down to mother's. My mother drove her out on account of having whisky.

Q. Where is your mother? A. Home.

Q. Is she able to travel? A. No.

Q. How long has your wife been drinking? A. She has drank for six, seven or eight years.

Q. Now, Mr. Snyder, the night you say you had this trouble had she been drinking? A. I think she had. 10

Q. How did you discover that? A. I smelt whisky.

Q. Could you smell whisky when she laid on the ground? A. No.

Q. When did you come in contact with it? A. When she come in the house.

Q. Did you put her out for being drunk or for what you saw outside? A. For what I saw outside. 20

Q. The fact of her being intoxicated didn't bother you? A. No.

Q. You didn't object to that? A. I didn't say anything about it. There were other matters then.

Q. You were on the stand last week, were you not? A. Yes.

Q. Did you either on direct or cross examination on that suit testify about your wife drinking? A. I did not.

Q. You knew it then? A. Yes, I wasn't asked the questions. 30

Q. Were you asked to-day? A. You asked me what troubles I had.

Q. As a matter of fact you do remember that Minerva Matthews was at your house visiting? A. Yes.

Q. You know Minerva Matthews was visiting at your house on May 30th, 1914? A. I do not.

Q. Do you know when she was there? A. No, not exact time. 40

Q. You are positive that at the time she was there it was not after you had had a fight or disturbance with your wife whereby she had been away from home and you had brought her home? A. She was there previous to this here apple tree episode.

Q. What I am inquiring about is this after the apple tree episode occurred, your wife went down to your mother's? A. Yes.

10 Q. She was there a day or so and you and your boy brought her back? A. Yes.

Q. Was Miss Matthews at your home after that time? A. No.

Q. You were living home while Miss Matthews was there? A. Yes.

Q. You were occupying the same room with your wife? A. If I remember right she slept with my wife and I slept downstairs.

Q. It is well known, this fact about your wife drinking?

20

Mr. Pope: I object.

By the Court: Objection is sustained.

A. With what frequency did your wife become intoxicated?

Mr. Pope: I object to that.

30

By the Court: I do not think that is admissible.

Q. Now who was with you this night, when you say was June 10th, it is alleged you saw your wife under the apple tree? A. Charles A. Wilson.

Q. Where was he? A. With me.

Q. Where in relation with the other two people? A. He was right back of me. He stood right behind me.

40

Q. What did he do? A. I don't know what he done.

Q. What became of him? A. I do not know.

Q. Did you see where he went? A. No.

Q. He came with you, did he not, and you and he were on an errand? A. Yes, he came after a setting of eggs.

Q. Did you say anything about the eggs? A. No, I went right in the house.

Q. Did you make any remark to him about these 10 people being there? A. No.

Q. You didn't talk to Charles Wilson, to your wife or to either of the men? A. I did not talk to either of the men, but I told you I put my wife out when she come in the house.

Q. You didn't say anything to Wilson? A. Why no. I don't know whether he was there then.

Q. Where was Wilson when you went in the house? A. I don't know where he was. When I left 20 he was beside me. I don't know where he went.

Q. Did you leave him in the yard? A. Yes.

Q. You saw these two people? A. Yes.

Q. Wilson was with you looking? A. Yes.

Q. You said, "What are you doing here?" A. Yes.

Q. The woman says, "Oh, my God, Frank Smith now see what you have done." When she said that what did you do? A. I went in the house.

Q. Did Wilson do anything before you went in the house? A. I do not know as he did. I don't know 30 what he done.

Q. Where was he when you went in the house? A. Standing by me.

Q. You didn't make any remark to him then? A. Not at that time.

Q. Now you have stated that Miss Matthews was not at your place on May 30th, 1914? A. I think she was there before that.

Q. Do you have any recollection of having met 40

at or near your gate, Frank Smith and your wife in the night time before Miss Matthews came?

Mr. Pope: I object to the question.

By the Court: I think that question has been answered before.

10 Q. Now after this occurrence, as alleged by you, and after your wife had had you arrested and was living apart from you did you still visit the house of Frank Smith?

Mr. Pope: I object to that. It is too remote. It is collateral and has no bearing upon the issue involved in this case.

By the Court: Answer the question.,

20 Mr. Pope: We pray an exception.

Exception allowed and sealed. G. K. L. (L. S.)

A. I visited Frank Smith's father and mother's house where he lived at that time.

Q. Well, now Frank Smith lived there with his father and mother?

30 By the Court: That has been covered.

Q. Did you go down there with frequency?

By the Court: He testified he went there.

Q. Did you hold any conversation with them, in the presence of Frank Smith and his wife, wherein your wife was mentioned?

40 Mr. Pope: I object, For the reason just stated.

By Court: You may answer.

We pray an exception.

Exception allowed and sealed. G. K. L. (L. S.)

A. I may have mentioned about my wife and that I had a lot of trouble and might have talked about it.

Q. Did you say anything to Frank Smith or his wife about Frank being up there? A. I never said anything about it. 10

Q. You were there frequently with Smith and his wife and visited backwards and forwards, did you not?

Mr. Stout: I object.

By the Court: I think that has been answered before.

20

By the Court.

Q. Were there any lights on the street that night?
A. No, not in front of the house.

Q. No light burning at all? A. No.

Q. What house, if any, is one the west side of your house? A. Arnours.

Q. How far away is that? A. 250-300 feet.

By Mr. Stout.

30

Q. Will you describe this street you speak of?
A. It is a private street.

Q. Does it run into another road? A. About 200 feet past our house it runs into a farm.

Q. It is a lane, then? A. Yes.

Q. It is a street that people pass thru to get to the farm? A. That is all, except to go to the farm.

Q. It isn't what you call a street, that is travelled by the public? A. No. 40

Q. Your wife in her examination said you told her you would buy your witnesses? A. I never said such a thing.

By Mr. Able.

Q. Is there a street lamp on that street? A. Yes.

Q. Who maintains the lamp? A. The borough.

10 CHRISTOPHER SHROPE, sworn.

Direct examination by Mr. Stout.

Q. Do you live in Hampton, N. J.? A. Yes, sir.

Q. What position do you hold? A. Borough Marshal.

Q. For how long have you held that position? A. Since 1913, along September.

Q. Do you know Emory J. Snyder? A. Yes, sir.

20 Q. As Borough Marshal did you arrest him in the month of June, 1914? A. On the 22nd.

Q. Where did you take him under that warrant? A. To Glen Gardner.

Q. Who was the complainant. His wife.

Q. Did you arrest him again? A. Yes.

Q. When? A. On the 1st of August, 1914.

Q. And upon whose complaint? A. His wife's.

30 Q. Was that the day you arrested him or brought him to Flemington? A. He was arrested and brought to Flemington the same day, August 1st, 1914.

Cross examination by Mr. Able.

Q. What did you say he was arrested for on June 22nd, 1914? A. I didn't say.

Q. What was he arrested for?

Mr. Pope: I object.

40

By the Court: The question will be admitted.

We pray an exception.

Exception allowed and sealed. G. K. L. (L. S.)

A. His wife can tell the cause. I forget.

Q. You say you forget? A. Yes, sir.

Q. What happened on that arrest? What did you do with him? A. I took him down before Mr. Shannon.

Q. Did they have a hearing? A. They had a 10 hearing and he gave bail.

Q. Did you hear any evidence given there? A. Only he and the Justice of the Peace.

Q. Did you hear any evidence? A. I did not.

Q. You don't know what the arrest was for? A. Sure.

Q. Did you read a warrant to him? A. Yes, but it has been so long ago I forget.

Q. All you know is that you arrested him on June 22nd, 1914? A. On the complaint of his wife, under- 20 stand.

Q. Have you got the papers with you referring to his arrest? A. Only a memoranda.

Q. Who made the memoranda? A. I made it myself.

Q. Where did you get your information? A. Haven't I got a right to make a memoranda.

Q. Where did you get your information from? A. Well, I always keep these things most generally. I always keep a little record. 30

By Mr. Stout:

Q. Have you got your record with you? A. Yes, sir.

Mr. Stout: Produce it.

Produces memoranda.

By Mr. Able.

Q. Is that all the record you have got with regard to the arrest on June 22nd, 1914? A. That is all.

Q. Your record was made when? A. It was made on that same day, in the evening.

Q. Did you insert in your record the cause of this arrest? A. I did not.

10 Q. Did you insert in your record what he was arrested for in August? A. Disorderly person.

By Mr. Stout.

Q. Do you keep a record so as to make up a bill of costs? A. Yes, sure.

Q. When you serve a paper you make your memoranda? A. Sometimes you don't get it and you have to keep a memoranda.

20

MABEL NORTHCOTT, sworn.

Direct examination by Mr. Pope:

Q. Did you, in the month of May and June, 1914, live in the Borough of Hampton? A. Not in the Borough of Hampton, but just outside the limits.

Q. In the vicinity of the home occupied by Emory J. Snyder? A. Just opposite.

30

Q. Just state to the jury whether or not in the month of June, 1914, in the evening, you heard any unusual noise which attracted your attention to the Snyder home? A. One evening mother and I were sitting in the dining room. We were reading quietly. All the rest of the people had gone to bed. I had two old ladies to look after and my son. They had retired and mother and I were sitting in the dining room reading. All of a sudden, it was a little late, between half-past ten and eleven, all of a sudden we

40

heard a woman's voice, and upon hearing this woman's

voice screaming, I left the dining room and went in the butler's pantry. It being June, all the windows were open. Just as I reached the window I heard this woman screaming "Oh, my God, Frank Smith, now see what you have done," and then she says, "Emory, let me in, Emory, let me in." At that there was no response. We couldn't see, of course, I say we because my mother was with me. Just at that time she says, "I am going over to Mrs. Smith's. I am going over to Mrs. Smith's," and just at that moment the lights were put out in our house. Then she says, "They have put the lights out on me, what shall I do. Emory, let me in." Then as I passed from the butler's pantry I heard a sound of wood breaking, and after that things were seemingly quiet. 10

Q. Can you fix a date when this was, or approximately? A. Yes, I think I can. I remember it was about two weeks after this occurrence that Mrs. Snyder left or went out of Hampton, and I think it was the 24th of June, if I remember rightly, because I remember making out a check for my mother for Mrs. Snyder's father, who left the preceding week. He came over to say good-bye, for he had been working for mother and I made out the check for him and had mother sign it. 20

Q. When was that? A. That was the 19th or 20th of June.

Q. This occurrence or noise occurred or happened how long before the making out of that check? A. I think it was about nine or ten days before. 30

Q. That is the best? A. That is the best I can remember, yes.

Cross examination by Mr. Able.

Q. Do you draw many checks? A. Quite a few.

Q. Is it a special event with you to draw a check?

A. What do I understand by that?

Q. If you draw a check do you always make a note of the time? A. No, not exactly. 40

Q. Who did you say you drew this particular check for you mentioned? A. Baltus W. Pickell.

Q. Who is he? A. Mrs. Snyder's father.

Q. You paid him for some work he had done for you? A. That is what the check was for.

Q. Because you drew a check for him at that time you recollect the date when this screaming, that you have testified to, occurred? A. Yes.

Q. Have you got the check? A. I have not.

10 Q. Have you got the stub? A. I have not.

Q. How do you fix it so definitely? A. Understand the check belonged to my mother.

Q. How are you able to fix the date without either the possession of the check or its stub? A. Because I remember making out the check in the kitchen at the table.

Q. How does that help you to fix the exact date? A. Because it was so short a time before she went away.

20 Q. How do you happen to know when she went away? A. I refer to that because I know it was a very few days after Mr. Pickell came for his check.

Q. Now, you say you drew a check in your kitchen, and that was a very short time before Mrs. Snyder went away. Now, I ask you when she went away? A. The 24th of June.

Q. How do you fix that date? A. Because it was the middle of the following week after her father left.

30 Q. After you had written a check for your mother? A. Yes.

Q. Because you wrote a check for your mother you are able to remember this date? A. Yes.

Q. How many checks have you made out for your mother in the past two years? A. Not any.

Q. When did you stop making these checks? A. When we gave up the business and mother went away.

Q. When did she go away? A. After I moved over in the little place where I am residing at.

Q. What is it, a place you bought? A. Yes.

40 Q. Who owned it? A. My mother.

Q. Are you now living in the house which Mrs. Snyder formerly lived with her husband? A. I am.

Q. When did you get it? A. 1915.

Q. Mrs. Northcott, how long did you say your mother had been away? A. Since May, 1915.

Q. Your mother took her check book and stubs with her? A. I presume so.

Q. You didn't have those to refer to? A. I did not.

Q. You know you wrote a check in June, what date did you say it was? A. June 19th or 20th. 10

Q. June 19th or 20th you wrote a check for your mother and you know that was just after a happening which occurred wherein you heard some screaming and you fix it from your memory? A. Yes.

Q. Who else did you draw a check for in 1914? A. Probably E. P. Baylor.

Q. Do you know? A. Not positively.

Q. Who else? A. Well, several others, perhaps Emory J. Snyder. 20

Q. Do you know as a matter of fact? A. Yes, I have.

Q. Are you acquainted with Mr. Snyder? A. I am.

Q. How long have you been acquainted with him?

Mr. Pope: I object.

By the Court: Answer the question. 30

We pray an exception.

Exception allowed and sealed. G. K. L. (L. S.)

A. Since I moved to Hampton in April, 1914.

Q. Were you the defendant in a suit in the Hunterdon County Circuit Court in 1916, December, wherein Sarah Jane Snyder sued you for the alienation of her husband's affection? A. Yes. 40

Mr. Pope: We object.

By the Court: The question is admitted.

We pray an exception.

Exception allowed and sealed. G. K. L. (L. S.)

10 Q. Emory Snyder, the defendant in this suit, testified in your behalf against his wife, did he not?

Mr. Pope: I object to that.

By the Court: The question is admitted.

We pray an exception.

Exception allowed and sealed. G. K. L. (L. S.)

20 A. I don't know as I would say that it was in my behalf.

Q. On whose behalf did he testify? A. That I hardly know.

Q. Did you hear him testify on that trial? A. I presume I did.

Q. Do you know? A. Yes, I was there.

30 Q. Did you hear him testify with relation to his wife being under an apple tree on the west side of their house in the night time? Did you hear him testify to that? A. Yes.

Q. Now when he so testified on that alienation suit, as we term it, can you remember in whose behalf the testimony was given? A. No, I cannot say that I can answer that accurately.

Q. When he testified he caught his wife on the ground with another man was he testifying in his wife's behalf? A. I do not know.

Q. Who was he testifying for? A. I do not know.

40 Q. Now, Mrs. Northcott, what time did you say

you heard this screaming or hollering? A. Between half-past ten and eleven.

Q. Did you go outside? A. I did not.

Q. What did you do after you heard it? A. I listened for more.

Q. Did you hear more? A. I did.

Q. Any more than you have testified to? A. No.

Q. Have you testified to all you heard? A. I have.

Q. You didn't go outside to inquire or see who it was? A. I did not. 10

Q. Were you in court a week ago when the trial of Charles A. Wilson was being held? A. I was.

Q. Did you hear Emory Snyder testify in that case?

Mr. Pope: I object to that.

By the Court: The question will be admitted. 20

Mr. Pope: We pray an exception.

Exception allowed and sealed. G. K. L. (L. S.)

A. I did.

Q. Did you hear him testify about the fact of having found his wife on the ground with a man?

Mr. Pope: I object. 30

By the Court: Objection is sustained.

Q. Are you on friendly relations with Mrs. Snyder? A. Not at the present time.

Q. How long have you been unfriendly with her?

Mr. Pope: I object.

Question is withdraw. 40

Q. Are you friendly with Emory J. Snyder?

Mr. Pope: I object.

By Court: Answer the question.

We pray an exception.

Exception allowed and sealed. (L. S.)

10

A. He is an acquaintance of mine, yes.

Q. An acquaintance? A. Yes.

Q. Where does he live? A. In Hampton?

Q. Where does he live? A. On my premises?

Q. In your house? A. Yes.

Q. How long has he lived in Hampton, on your premises and in your house with you?

Mr. Pope: I object.

20

By the Court: Answer the question.

We pray an exception.

Exception allowed and sealed. G. K. L. (L. S.)

A. Since about the 1st of April, 1917.

Q. Before that time had he been working for you or about your place? A. He had.

30

Q. Had he at any time before this, either taken his meals or roomed in your house? A. He has taken his meals in my house and roomed on my premises.

Q. Did he room on your premises before that time? A. He did.

Q. For a period of how many years?

Mr. Pope: I object to the question.

By the Court: The question is admitted.

40

We pray an exception.

Exception allowed and sealed. G. K. L. (L. S.)

A. Mr. Snyder has been in my employ since the 25th of May, 1915. Up until the first of April, 1917, he has roomed on my premises, over the feed room that connects with the chicken house.

Q. Since then he has roomed where? A. In the house. 10

Q. In the house where you live? A. Yes.

Q. With that association that you have had during that period of time with Mr. Snyder, he is an acquaintance of yours? A. He is.

By Mr. Pope:

Q. Mr. Snyder is in your employ? A. Yes.

Q. And still is? A. Yes.

Q. What is your business? A. I am in the poultry business. 20

By the Court:

Q. Do you pay him? A. I pay him \$20 a month.

By Mr. Pope:

Q. Does your work take all of his time? A. He has some time to himself when he is through with what work there is for him to do. What leisure time he has to himself he can use to himself. 30

MINERVA MATTHEWS, sworn.

Direct examination by Mr. Able.

Q. Where do you live? A. Plainfield, N. J.

Q. Do you know Emory J. Snyder? A. I do.

Q. Do you know Sarah Jane Snyder? A. Yes. 40

Q. How long have you known them? A. I have known Mrs. Snyder for over twenty years. Mr. Snyder I only knew about a year or so before they were married.

Q. And how long is that? A. Fifteen or sixteen years.

Q. Do you know when they lived in Hampton? A. Yes.

10 Q. Have you visited them there? A. Yes, I went up there on May 29th and stayed over until May 30th, in the evening.

Q. What year? A. 1914.

Q. Do you know whether there had been any disturbances in the family of Snyders before you went there? A. Yes, I had a letter from Mrs. Snyder saying she had some trouble around the first of May.

20 Q. Do you know how long Mrs. Snyder had been in the house when you went there? A. Only as I got there on Saturday night, she had come back the Friday night before.

Q. What was the relationship between them while you were there? A. Like it always had been. He always has been very sarcastic to his wife.

By the Court: The last part will be stricken out.

Q. Where did Snyder sleep in the house? A. Upstairs in one of the bedrooms.

30 Q. What bedroom? A. The one beyond where I slept. We all went up together. Mr. and Mrs. Snyder went on in their room and I heard them all talking when I went to sleep.

Cross examination by Mr. Pope.

Q. When were you up there? A. The 29th of May. I always go up to the cemetery to my father's and mother's graves, at New Germantown, on Deco-

ration Day, and I thought I would go on up to visit Mrs. Snyder. That is the time I went.

Q. What day of the week was it? A. Saturday.

Q. You returned on Sunday? A. Yes, Sunday afternoon.

Q. You remained one night? A. Yes.

Q. At Mr. Snyder's house? A. Yes.

Q. You went there on Saturday? A. Yes, and on Saturday evening Mr. and Mrs. Snyder, Arthur and I went to some entertainment.

10

Q. Where did you go to the entertainment? A. To some lodge room, I do not know just what the entertainment was.

Q. That was on Saturday night? A. That was on Saturday evening, May 29th, 1914.

Q. You say you were only there one night? A. Yes, one night.

Q. You returned home on Decoration Day? A. Yes, and on Sunday morning we all went to church. Sunday afternoon all three took a walk.

20

Q. What is there about the occurrence that makes you so positive it was on the 29th of May? A. Because I always go to my father's and mother's graves on Decoration or as near as I possibly can, and Decoration Day came on Sunday, and I went up on Saturday before.

Q. If you were to be told that Decoration Day did not come on Sunday and Saturday was not the 29th of May— A. I do not think that can be disputed.

30

Shows calendar (1914).

Q. Show calendar on which May 30th was on Saturday. You are shaking in your belief? A. The only difference is I happened to go on Decoration Day instead of the day before.

Q. You might be mistaken about some of the other facts? A. Oh, no, I am not.

40

By Mr. Able.

Q. How long have you known Mrs. Snyder? A. Over twenty years.

Q. Have you known her well? A. Yes, we have been very intimate.

Q. Do you know anything about her drinking?

Mr. Pope: I object.

10

By the Court: Answer the question.

We pray an exception.

Exception allowed and sealed. G. K. L. (L. S.)

A. I have known Mrs. Snyder over twenty years and have never seen or heard of her being under the influence of liquor in any way.

20

By Mr. Pope.

Q. How frequently have you visited Mrs. Snyder?

A. When she lived at Whitehouse I visited. When she was at Westfield I saw her once or twice a week. While at Scotch Plains I was there off and on.

Q. While at Hampton were you there? A. Yes, once.

Q. They went to Hampton in 1913? A. Yes.

Q. They lived there a year before you went to visit
30 them? A. Yes.

Q. The time you went to visit them was on the 29th of May? A. You have shown me it was on the 30th, but I went on Saturday.

Q. What you mean to say is that on the occasion of your visits you never saw Mrs. Snyder taking any liquor? A. Never at any time.

Q. Where did they live before moving to Hampton? A. Between Plainfield and Scotch Plains.

Q. Where do you live? A. Plainfield, N. J.

40 Q. Are you married? A. No.

MRS. SARAH JANE SNYDER, recalled.

Re-direct examination by Mr. Able.

Q. It has been testified by your husband that you are a drinking woman and become intoxicated?

A. It is not true.

Re-cross examination by Mr. Pope.

10

Q. Do you mean to tell this jury you do not use liquor. A. I mean to say I do not drink liquor or become intoxicated.

Q. Do you use liquor? A. No.

Q. You do not use intoxicating liquor? A. I do not drink liquor. The doctor prescribed it for me.

Q. How many times during the past year or during the past two years has the doctor prescribed liquor for you? A. I do not remember any in the past three years.

20

Q. You mean to tell the jury you have not taken any intoxicating liquor during the past three years? A. I have not.

Q. Did you during the year 1914? A. I do not remember taking any during the year 1914.

Q. Did you take it during the year 1913? A. I have had it administered by the doctor.

Q. You only took it when the doctor administered it to you? A. I only took it when the doctor told me to.

Q. How many times did he tell you? A. He told me when I was in Westfield, when I had indigestion and my heart was weak, that I should take it every night before I went to bed, but I didn't take it every night.

30

Q. You were a witness in the alienation suit brought by you against Mabel Northcott? A. I was.

Q. In that suit you were asked if you did not use intoxicating liquors? A. I said by the doctor's orders just as I tell you now. That is what I call administering it.

40

DR. ALFRED SHEPHARD, sworn.

Direct examination by Mr. Able.

Q. You are a practicing physician in this county?

A. Yes.

Q. Do you know Emory J. Snyder and Mrs. Snyder? A. Yes.

Q. Has Mrs. Snyder lived in your home? A.
10 Yes, about two and a half or three years ago.

Q. Did she live with you in the year 1914? A.
I think so.

Q. What part of the year, if you recollect? A.
In the Fall and early Winter.

Q. Was her husband, Emory J. Snyder at your
place while she was there? A. Yes.

Q. Do you know how long he stayed when he
came there? A. No.

Q. Did you see him there? A. Yes.

Q. Did you see him in the day time or night time?
20 A. In the night.

Q. How late did you see him at your place? A.
About eleven, I imagine.

Q. Where was he then? A. The last I saw of
him at night he was going up the stairs to Mrs. Snyder's room.

Q. Who was with him? A. His wife, Mrs. Snyder.

Q. Anyone else? A. No.

Q. Has he been there on any other occasion or in
30 the Fall of 1914? A. He was there once afterwards,
that I remember.

Q. Day or night? A. At night.

Q. Do you remember how long he stayed that
time? A. No.

No cross examination.

MRS. LUCY B. SHEPHARD, sworn.

Direct examination by Mr. Able.

Q. Mrs. Shephard, are you the wife of Dr. Shephard who has just left the stand? A. I am.

Q. Do you remember when Mrs. Sarah Jane Snyder lived in your home? A. Yes.

Q. When was it, please? A. Around the 1st of September, 1914. 10

Q. How long did she remain there? A. Until after Christmas

Q. Was she visited by her husband during that time? A. Yes.

Q. How often? A. Twice.

Q. How long would he stay? A. The first time he stayed all night.

Q. How do you know he stayed all night? A. He spent the evening in the sitting room with Mrs. Snyder, and we had company, and we were there until about eleven o'clock, when he went upstairs with Mrs. Snyder. 20

Q. Do you know whether he went to the room with her? A. Yes, he went in the room with her?

Q. Was the boy with her? A. The boy was in the room.

Q. Did he stay in the room? A. They asked my permission to let Arthur sleep with my boy.

Q. When did Mr. Snyder leave? A. Mr. Snyder went away in the morning. I saw him somewhere between the bedroom and going down stairs. 30

Q. What time? A. About seven o'clock.

Q. On his next visit how long did he stay?

Mr. Pope: I object. The State can't contradict the defendant on that matter; it is collateral, immaterial, not cross examination, and they are bound by it.

By the Court: You may answer it. 40

We pray an exception. ,

Exception allowed and sealed. G. K. L. (L. S.)

A. I could not say positive.

Q. Was it day or night? A. At night.

Q. Do you know about what time? A. About
nine o'clock.

Q. Do you know whether Mrs. Snyder is a drink-
10 ing woman?

Mr. Pope: I object.

By Court: Objection sustained.

Q. How long have you known her? A. During
the time she was at our house.

Q. Did she drink any while at your place? A.
She drank nothing in our house and she was always
20 around with me.

Cross examination by Mr. Pope.

Q. Did the doctor ever prescribe liquor for her
while at your house? A. I never knew him to.

Q. What you mean is that so far as you were
able to see and while you could observe while she was
in your house she did not drink liquor? A. I never
knew her to drink liquor in any shape or form.

30 Q. You never saw any evidence of it? A. I never
saw any evidence of it.

Q. Did she take any narcotics while at your
house? A. I do not remember of any.

Q. On the occasion when Mr. Snyder came there
you saw him going up the stairs to the room that was
usually occupied by Mrs. Snyder? A. I saw him go
upstairs.

Q. Did you see him go into the bedroom? A. No.

Q. What time did you retire that night? A.
40 Between 11 and 12 o'clock.

Q. Where was Mr. Snyder when you retired? A. I heard him in the little room.

Q. Still awake and still talking? A. I heard them in there.

Q. They must have been talking, weren't they? A. Some.

Q. You went on to your bedroom and you retired, you were not up again during the night and did not see Mr. Snyder again until the next morning? A. No.

Q. When you saw him the next morning it was about what time? A. Between six and seven. 10

Q. Between six and seven o'clock in the morning when you saw him? A. Somewhere about that time.

Q. Then where did you see him? A. Between the bedroom and going down the stairway.

Q. You were a witness in the other case, were you not, last week? A. Yes.

Q. And also in the alienation suit? A. Yes.

Q. In the alienation suit you testified you saw Mr. Snyder the next morning about nine o'clock, didn't you? A. I do not remember saying that. I don't think I could have said it because he left for the early train. 20

Q. Your memory is quite good? A. I thought so.

Q. You do not remember that you testified in the alienation suit that you saw him about nine o'clock? A. I feel positive that I did not.

Q. You testified in the Wilson case? A. Yes.

Q. At that time you testified it was about eight o'clock, didn't you? A. Well, I do not remember saying that. It was between six and seven. 30

Q. Wasn't it a little later as a matter of fact? Now, just think? A. It was about seven o'clock.

Q. That is your present recollection? A. It was about seven o'clock. It might have been a little earlier or later.

Q. Don't you recall testifying only last week in this court room, in the case against Charles A. Wilson, that it was about eight o'clock the next morning 40

when you saw him? A. I think I said about seven o'clock.

Q. Did you not testify last week that it was eight o'clock when you saw him the next morning? A. Maybe I did, but I don't think so.

Q. Now if you testified in the alienation suit it was nine o'clock and in the Wilson suit it was eight o'clock, and now testify that it was seven o'clock, which is correct? A. I do not think I said nine o'clock.

10 Q. Well, if you did, which is correct? A. Somewhere between seven and eight. I won't say positive what time.

Q. You had no interest in Mr. and Mrs. Snyder's affairs? A. No.

Q. You would rather not be drawn in them at all? A. Much rather.

Q. There is nothing to fasten this in your mind. is there? A. Nothing in particular.

20 Q. So that after three years it would be quite easy for you to be mistaken about the time? A. It surely would be.

Q. It might have been eight o'clock? A. I beg your pardon, I do know that my children went with them to the station, and it was between seven and eight o'clock.

JUDGE'S CHARGE

GENTLEMEN OF THE JURY:

This defendant is charged with committing a crime of perjury in the December term of Court, 1916, in a trial or suit before Judge Nelson Y. Dungan, in which Mrs. Sarah J. Snyder was the plaintiff and Mabel Northcott, the defendant. There are two counts in the indictment, and the only difference in the counts is a difference as to the manner of the oath. The fact that an oath was administered is not contradicted. Therefore, a finding on one count would be the same as on both counts, there being no distinction between the counts in the charges in the indictment. The law on perjury is as follows: Any person who shall wilfully and corruptly commit perjury or shall by any means procure any person to commit corrupt or wilful perjury on his or her oath or affirmation in any action, plea, suit, bill, complaint, indictment, controversy, matter or cause depending or which may depend in any of the courts of this State, shall be guilty of a high misdemeanor and punished accordingly, and be thereafter rendered incapable of giving testimony in any court of this State until such time as the judgment so given shall be reversed. Perjury at the common law is defined to be committed when a lawful oath was administered in some judicial proceeding to a person who swore absolutely and wilfully false in a matter material to the issue or point in question.

In this case there is evidence which has not been contradicted, that a lawful oath was administered in an action, suit or trial in the Hunterdon Circuit Court of the December term, 1916, wherein Sarah Jane Snyder was plaintiff and Mabel Northcott was defendant, and that the defendant testified on his oath as a witness in said suit or judicial proceeding. The indictment charges that the defendant testified as follows:

"During the first or second week of June, 1914,

Wilson and I came over together and as we approached the house I heard a whispering noise and as we were coming up the street I noticed something white laying off under the apple tree on the west side of the house. We walked up close by and I said, "What are you doing here" and as I said that this man raised up and Mrs. Snyder got up and hollered, "Oh, my God, Frank Smith." She repeated that a dozen times. If the defendant so testified in an action for damages for the alienation of the defendant's affections, such testimony indicating that the plaintiff had been improperly intimate with a man not her husband, such testimony would be material to the issue in that action. This I charge as a matter of law. It therefore becomes your duty to determine whether or not the defendant testified as charged in the indictment, and you have the testimony of the stenographer who transcribed the testimony at the trial before referred to and the admission of the defendant. If you find the defendant did so testify, and I do not understand that this is disputed, then it becomes your duty to determine whether or not this testimony was true or false. If true, the defendant should be acquitted as the crime of perjury does not arise out of truthful testimony. If you find that the defendant did testify falsely, as charged in the indictment, then you should determine whether or not the defendant wilfully and corruptly swore falsely. If you find beyond a reasonable doubt, that the defendant wilfully and corruptly swore falsely as charged in the indictment, then your verdict should be guilty. But if you do not find, beyond a reasonable doubt that the defendant did wilfully and corruptly swear falsely then the defendant should be acquitted. Of course, if this defendant was not with Wilson and did not see Mrs. Snyder under the apple tree with Smith, as he testified, it is difficult to imagine how he could so have testified unless it were done wilfully and corruptly.

If, as contended by the State, this defendant had spent the evening with Mrs. Northcott and was met upon leaving her home, by his wife and Smith, he may have

thought it a way to cover his own act by charging his wife with improper conduct. Mrs. Snyder, her son and Frank Smith testify that the boy was standing in the front door when or about the time Smith arrived and the boy says that he only left when he saw his father coming home. You have a right to consider the probability of a man and woman doing what the defendant says he saw Mrs. Snyder and Smith doing under the circumstances that existed that evening and what the true facts were. In reaching your conclusions you have a right to consider the circumstances and the relations of the defendant with Mabel Northcott at the time he gave his testimony, as shown by the evidence, and what effect, if any, that relationship may have had on the truth or falsity of that testimony. You are to determine the facts and you are limited to the matter charged in the indictment. The defendant is presumed to be innocent until proven guilty by legal evidence. The burden of proof is on the State to show beyond a reasonable doubt the guilt of the defendant. A reasonable doubt is not any possible doubt, but such a doubt as reasoning men entertain after consideration of all the testimony in the case. You are not called upon to judge or determine the controversy between any of the parties to the former action and the finding of the jury in that case should not be considered by you in reaching your verdict in this case, nor should you consider in this case anything that you may have heard in any other case or at any other time. You are only to determine whether or not the testimony of the defendant in the former trial constituted perjury, as defined, as charged in the indictment.

EXCEPTIONS TO THE CHARGE

(1) To the language used by the Court in which he said in substance, "If the defendant so testified this would be material to the issue and I so charge you as a matter of law."

10 (2) To the remarks of the Court in which he said in substance "If, as contended by the State, he did spend the evening with Mrs. Northcott, he may have considered this a way to avoid the situation," or whatever the statement of the court was in that respect.

(3) To the remarks of the Court in which he said in substance, "In determining this you have a right to take into consideration the relations existing between the defendant and Mabel Northcott."

(4) A general exception to the whole charge.

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CERTIFICATE

I, George K. Large, Judge of the Hunterdon County Quarter Sessions, do hereby certify that the foregoing is the entire record of the proceedings had upon this cause.

GEORGE K. LARGE,

Judge.

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SPECIFICATION OF CAUSES

And now comes the Emory J. Snyder, by Frederick A Pope, his attorney, and says that in the record and proceedings aforesaid, and also in the giving of judgment aforesaid, there is manifest error; and said Emory J. Snyder says that said judgment should be reversed, and specifies the following causes in said record relied upon by said plaintiff in error for relief and for reversal
40 of the judgment aforesaid.

(1) Because the said Court at and upon the trial of said cause between the State of New Jersey and said Emory J. Snyder, admitted in evidence the book called, "The Blotter."

(2) That the said Court at the said trial, admitted in evidence the minutes in Circuit Court, volume 16, of the case of Sarah Jane Snyder, plaintiff, against Mabel Northcott, defendant.

(3) That the said Court at the said trial, permitted Sarah Jane Snyder to be called and examined, and to testify as witness against the defendant, Emory J. Snyder, who was then and there the husband of the said Sarah Jane Snyder, and permitted her to testify against her said husband to matters and fact other than the fact of marriage, when she, the said Sarah Jane Snyder, was under the law of the State of New Jersey an incompetent witness against her husband, the defendant, Emory J. Snyder. 10

(4) That the said Court at the said trial, permitted the said Sarah J. Snyder to be sworn and examined and testify as a witness against her husband, Emory J. Snyder, and then and there to give evidence against him, the said Emory J. Snyder, the defendant, charging him with and endeavoring to prove that her said husband was guilty of the crime of perjury, she, the said Sarah J. Snyder, not then and there being the complainant and offering herself as a witness. 20

(5) That upon direct examination Sarah Jane Snyder, the wife of the defendant, Emory J. Snyder, being then and there an incompetent witness was permitted to be asked and answer the following question: 30

"Did you answer my inquiry as to the period that you had lived in Hampton?"

(6) That upon direct examination, Sarah Jane Snyder, the wife of the defendant, Emory J. Snyder, being then and there an incompetent witness was permitted to be asked and answer the following question:

"Did you bring a suit at law against any person, and if so, whom did you bring it against?"

(7) That upon direct examination, Sarah Jane 40

Snyder, the wife of the defendant, Emory J. Snyder, being then and there an incompetent witness, was permitted to be asked and answer the following question:

"Did you bring a suit in the Hunterdon County Circuit Court against Mabel Northcott for the alienation of the affections of your husband?"

10 (8) That upon direct examination, Sarah Jane Snyder, the wife of the defendant, Emory J. Snyder, being then and there an incompetent witness, was permitted to be asked and answer the following question:

"Can you give the language or the substance of the language which your husband testified to a happening in which you were involved?"

(9) That upon direct examination, Sarah Jane Snyder, the wife of the defendant, Emory J. Snyder, being then and there an incompetent witness, was permitted to be asked and answer the following question:

"What did he say became of you?"

20 (10) That upon direct examination, Sarah Jane Snyder, the wife of the defendant, Emory J. Snyder, being then and there an incompetent witness, was permitted to be asked and answer the following question:

"You have stated that your husband testified that there were two forms, one was a man and one one a woman, and when he came up to where they were and said something that the woman says, 'Oh, my God, Frank Smith, see what you have done now.' Then did he say what the man did or what the woman did?"

30 (11) That upon direct examination, Sarah Jane Snyder, the wife of the defendant, Emory J. Snyder, being then and there an incompetent witness, was permitted to be asked and answer the following question:

"Have you been present in the company with Frank Smith at any time near the first or second week of June, 1914, when your husband was present also?"

(12) That upon direct examination, Sarah Jane Snyder, wife of the defendant, Emory J. Snyder, being then and there an incompetent witness, was permitted to be asked and answer the following question:

"State what was said and done at that time, if you please?"

(13) That upon direct examination, said Court, at the said trial, refused to permit said last mentioned witness to answer this question:

"And your divorce case was dismissed, wasn't it?"

(14) That the said Court, at the said trial, permitted a witness, Frank Smith, called on behalf of the State, to be asked and answer, upon direct examination the following question:

10

"Were you there at a time, in the night time when Mr. and Mrs. Snyder were present? If so, when was it as near as you can recollect?"

The alleged occurrence was the last week in May.

(15) That the said Court, at the said trial, permitted a witness, Arthur Snyder, called on behalf of the State, to be asked and answer upon direct examination the following question:

"What did you see and what did you hear when they were all there together?"

20

"My mother went down for Frank Smith and she went down to get him to come up and watch my father. He was over to Mrs. Northcott's," and then Court refused to strike out said answer, although duly moved so to do.

(16) That the said Court, at the said trial, permitted the said last mentioned witness called on behalf of the State, to be asked on direct examination, the following question, and to volunteer the following answer:

30

"Do you remember any conversation he had with your mother at that time?"

"No, but I remember what he told me." (This was objected to. By the Court: You may answer it.)

"He helped us pack and he gave me his trunk and told us we had to get out, because he couldn't afford to keep my mother, myself and Mrs. Northcott. He gave me \$5.00 to go to Lebanon and told us we had to get out, and we did so."

(17) That the said Court, at the said trial, per-

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mitted the said last mentioned witness called on behalf of the State, to be asked on direct examination the following question:

"Come back and got his supper?"

"Yes, and also went back and didn't come home again nights"; and refused to strike out said answer although duly moved so to do.

10 (18) That said Court, at the said trial, permitted the State on the second day, to recall Mrs. Cora Smith, and permitted said witness to be asked and answer upon direct examination the following question:

20 "You were on the stand yesterday and it was inquired of you whether Emory J. Snyder had been at your house after the month of May and the month of June, 1914, and you stated that he had and conversations were asked of you that were had between yourself and he or in your presence, which related to his wife and matter pertaining to the difference between him and his wife, now I desire to ask you this morning whether or not there were any matters of conversation which you had with him relative to his relationship with his wife which you did not relate yesterday?"

(19) That the said Court, at the said trial, permitted said last mentioned witness called on behalf of the State to be asked and answer upon direct examination the following question:

"By the Court: When was this?"

30 "After June, 1914, and all the Summer." (Objected to. By the Court: I think that is material.) (Continued.) "He said he could not get it on anything else but desertion and he found it would take two years to get a divorce on the grounds of desertion. At one time he come in and said his wife had left her position at Lebanon and gone to work for some widower. He said he didn't think she would fall in love with that fellow because there couldn't be any such good luck."

40 (20) That the said Court, at the said trial, permitted the said last mentioned witness to be re-called on behalf of the State, to be asked upon re-direct examination the following question:

"In the matter of going to Ohio, did he say anything about the time it would take to get a divorce?"

(21) That the said Court, at the said trial, permitted the said last mentioned witness, re-called on behalf of the State, to answer the last aforesaid question as follows:

"He didn't tell why he did not go only in regard to what Mrs. Northcott said. The reason he did not go was on account of Mrs. Northcott did not want him to go;" and the said Court refused to strike out said answer although duly moved so to do. 10

(22) That the said Court, at the said trial, at the conclusion of the State's case, refused to direct a verdict in favor of the defendant, although duly hereunto moved by counsel for defendant.

(23) That the said Court, at said trial, required the defendant to answer on cross examination the following question:

"Where did you see her?"

(24) That the said Court, at said trial, required the defendant to answer on cross examination the following question: 20

"Where did you see her in Westfield?"

(25) That the said Court, at said trial, required the defendant to answer on cross examination the following question:

"Did you call on your wife after———Did you call on your wife after she had left your domicile?"

(26) That the said Court, at said trial, required the defendant to answer on cross examination the following question: 30

"Did you stay over night?"

(27) That the said Court, at said trial, required the defendant to answer on cross examination the following question:

"How long did you stay?"

(28) That the said Court, at said trial, required the defendant to answer on cross examination the following question:

"Do you recollect that on one of these visits to Dr. 40

Shephard's that you remained over night and remained in the room with your wife?"

(29) That the said Court, at said trial, required the defendant to answer on cross examination the following question:

"Now after this occurrence, as alleged by you, and after your wife had had you arrested and was living apart from you did you still visit the house of Frank Smith?"

10 (30) That the said Court, at said trial, required the defendant to answer on cross examination the following question:

"Did you hold any conversation with them, in the presence of Frank Smith and his wife, wherein your wife was mentioned?"

(31) That the said Court, at said trial, permitted the State to call a witness, Lucy B. Shephard, in rebuttal, and to contradict the testimony of Emory J. Snyder, the defendant, given on cross examination, 20 respecting immaterial and illegal matters, as to which matters, the State was bound by the answer of Emory J. Snyder.

(32) That the said Court, at the said trial, permitted a witness, Lucy B. Shephard, called on behalf of the State in rebuttal, to be asked and answer the following question:

"On his next visit how long did he stay?"

(33) That the said Court at the said trial, at the conclusion of the defendant's case, refused to direct 30 a verdict in favor of the defendant, although duly thereunto moved by counsel for defendant.

(34) That the said Court at said trial, charged the Jury as follows:

The indictment charges that the defendant testified as follows:

"During the first or second week of June, 1914, Wilson and I came over together and as we approached the house I heard a whispering noise and as we were coming up the street I noticed something white laying 40 off under the apple tree on the west side of the house.

We walked up close by and I said, 'What are you doing here?' And as I said that this man raised up and Mrs. Snyder got up and hollered, 'Oh, my God, Frank Smith.' She repeated that a dozen times. If the defendant so testified in an action for damages for the alienation of the defendant's affections, such testimony indicating that the plaintiff had been improperly intimate with a man, such testimony would be material to the issue in that action. This I charge as a matter of law.

10

(35) That the said Court at said trial, charged the Jury as follows:

"If, as contended by the State, this defendant had spent the evening with Mrs. Northcott and was met upon leaving her home, by his wife and Smith, he may have thought it a way to cover his own act by charging his wife with improper conduct."

(36) That the said Court, at said trial, charged the Jury as follows:

"In reaching your conclusions you have a right to consider the circumstances and the relations of the defendant with Mabel Northcott at the time he gave his testimony, as shown by the evidence, and what effect, if any, that relationship may have had on the truth or falsity of that testimony.

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FREDERICK A. POPE,

Attorney of Defendant.

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ASSIGNMENT OF ERRORS

Afterwards, that is to say, on the — day of January, nineteen hundred and eighteen, before the Supreme Court of the State of New Jersey, comes the said Emory J. Snyder, by Frederick A. Pope, his attorney, and says that in the record and proceedings aforesaid, and also in the matters recited and contained in said bill of exceptions, and also in the giving of judgment
10 aforesaid, there is manifest error in this, to wit:

(1) That the said Court before whom the said cause was tried at, and upon the trial of the issue joined between the State of New Jersey and said Emory J. Snyder, admitted in evidence the book called, "The Blotter."

(2) There is also error in this, that the said Court at the said trial, admitted in evidence the minutes in Circuit Court, volume 16, of the case of Sarah Jane Snyder, plaintiff, against Mabel Northcott, defendant.

20 (3) There is also error in this, that the said Court at the said trial, permitted Sarah Jane Snyder to be called and examined, and to testify as witness against the defendant Emory J. Snyder, who was then and there the husband of the said Sarah Jane Snyder, and permitted her to testify against her said husband to matters and facts other than the fact of marriage, when she, the said Sarah Jane Snyder, was under the Law of the State of New Jersey, an incompetent witness against her husband the defendant, Emory J. Snyder.

30 (4) There is also error in this, that the said Court at the said trial, permitted the said Sarah J. Snyder to be sworn and examined and testify as a witness against her said husband, Emory J. Snyder, and then and there to give evidence against him, the said Emory J. Snyder, the defendant, charging him with and endeavoring to prove that, her said husband was guilty of the crime of perjury, she, the said Sarah Jane Snyder, not then and there being the complainant and offering herself as a witness.

40 (5) There is also error in this, that upon direct

examination, Sarah Jane Snyder, the wife of the defendant, Emory J. Snyder, being then and there an incompetent witness, was permitted to be asked and answer the following question:

"Did you answer my inquiry as to the period that you had lived in Hampton?"

(6) There is also error in this, that upon direct examination, Sarah Jane Snyder, the wife of the defendant, Emory J. Snyder, being then and there an incompetent witness, was permitted to be asked and answer the following question: 10

"Did you bring a suit at law against any person, and if so, whom did you bring it against?"

(7) There is also error in this, that upon direct examination Sarah Jane Snyder, the wife of the defendant, Emory J. Snyder, being then and there an incompetent witness, was permitted to be asked and answer the following question:

"Did you bring a suit in the Hunterdon County Circuit Court against Mabel Northcott for the alienation of the affections of your husband?" 20

(8) There is also error in this, that upon direct examination, Sarah Jane Snyder, the wife of the defendant, Emory J. Snyder, being then and there an incompetent witness, was permitted to be asked and answer the following question:

"Can you give the language or the substance of the language which your husband testified to a happening in which you were involved?"

(9) There is also error in this, that upon direct examination, Sarah Jane Snyder, the wife of the defendant, Emory J. Snyder, being then and there an incompetent witness, was permitted to be asked and answer the following question: 30

"What did he say became of you?"

(10) There is also error in this, that upon direct examination, Sarah Jane Snyder, the wife of the defendant, Emory J. Snyder, being then and there an incompetent witness, was permitted to be asked and answer the following question: 40

"You have stated that your husband testified that there were two forms, one was a man and one was a woman and when he came up to where they were and said something that the woman says, 'Oh, my God, Frank Smith, see what you have done.' Then did he say what the man did or what the woman did?"

10 (11) There is also error in this, that upon direct examination, Sarah Jane Snyder, the wife of the defendant, Emory J. Snyder, being then and there an incompetent witness, was permitted to be asked and answer the following question:

"Have you been present in the company with Frank Smith at any time near the first or second week of June, 1914, when your husband was present also?"

(12) There is also error in this, that upon direct examination, Sarah Jane Snyder, the wife of the defendant, Emory J. Snyder, being then and there an incompetent witness, was permitted to be asked and answer the following question:

20 "State what was said and done at that time, if you please?"

(13) There is also error in this, that upon cross examination the said Court, at said trial, refused to permit said last mentioned witness to answer this question:

"And your divorce case was dismissed, wasn't it?"

30 (14) There is also error in this, that the said Court, at the said trial, permitted a witness, Frank Smith, called on behalf of the State, to be asked and answer, upon direct examination, the following question:

"Were you there at a time, in the night time, when Mr. and Mrs. Snyder were present? If so, when was it, as near as you can recollect?"

The alleged occurrence was the last week in May.

(15) There is also error in this, that the said Court, at the said trial, permitted a witness, Arthur Snyder, called on behalf of the State, to be asked and

answer upon direct examination the following question:

"What did you see and what did you hear when they were all there together?"

"My mother went down for Frank Smith and she went down to get him to come up and watch my father. He was over to Mrs. Northcott's;" and then Court refused to strike out said answer although duly moved so to do.

(16) There is also error in this, that the said Court, at the said trial, permitted the said last mentioned witness, called on behalf of the State, to be asked on direct examination the following question, and to volunteer the following answer: 10

"Do you remember any conversation he had with your mother at that time?"

"No, but I remember what he told me." (This was objected to. By the Court: You may answer it.)

"He helped us pack and he gave me his trunk and told us we had to get out because he couldn't afford to keep my mother, myself and Mrs. Northcott. He gave me \$5.00 to go to Lebanon and told us we had to get out, and we did so." 20

(17) There is also error in this, that the said Court, at the said trial, permitted the said last mentioned witness, called on behalf of the State, to be asked on direct examination the following question:

"Come back and got his supper?"

"Yes, and also went back and didn't come home again nights;" and refused to strike out said answer although duly moved so to do. 30

(18) There is also error in this, that the said Court, at the said trial, permitted the State, on the second day, to recall Mrs. Cora Smith, and permitted said witness to be asked and answer upon direct examination the following question:

"You were on the stand yesterday, and it was inquired of you whether Emory J. Snyder had been at your house after the month of May and the month of June, 1914, and you stated that he had and conversa- 40

tions were asked of you that were had between yourself and he or in your presence, which related to his wife and matters pertaining to the difference between him and his wife. Now, I desire to ask you this morning whether or not there were any matters of conversation which you had with him relative to his relationship with his wife which you did not relate yesterday?"

- 10 (19) There is also error in this, that the said Court, at the said trial, permitted said last mentioned witness called on behalf of the State to be asked and answer upon examination the following question:

"By the Court: When was this?"

- 20 "After June, 1914, and all that Summer. (Objected to. By the Court. I think that is material.) (Continued.) He said he could not get it on anything else but desertion, and he found it would take two years to get a divorce on the grounds of desertion. At one time he come in and said his wife had left her position at Lebanon and gone to work for some widower. He said he didn't think she would fall in love with that fellow, because there couldn't be any such good luck.

(20) There is also error in this, that the said Court, at the said trial, permitted the said last mentioned witness to be recalled on behalf of the State, to be asked upon re-direct re-examination the following question:

"In the matter of going to Ohio did he say anything about the time it would take to get a divorce?"

- 30 (21) There is also error in this, that the said Court, at the said trial, permitted the said last mentioned witness, recalled on behalf of the State, to answer the last aforesaid question as follows:

"He ddn't tell why he did not go only in regard to what Mrs. Northcott said. The reason he did not go was on account of Mrs. Northcott did not want him to go," and the said Court refused to strike out said answer although duly moved so to do.

- 40 (22) There is also error in this, that the said Court at the said trial, at the conclusion of the State's case,

refused to direct a verdict in favor of the defendant although duly thereunto moved by counsel for defendant.

(23) There is also error in this, that the said Court, at said trial, required the defendant to answer, on cross examination the following question:

"Where did you see her?"

(24) There is also error in this, that the said Court, at said trial, required the defendant to answer, on cross examination the following question:

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"Where did you see her in Westfield?"

(25) There is also error in this, that the said Court, at said trial, required the defendant to answer, on cross examination, the following question:

"Did you call on your wife after—Did you call on your wife after she had left your domicile?"

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"How long did you stay?"

(28) There is also error in this, that the said Court, at said trial, required the defendant to answer, on cross examination, the following question:

"Do you recollect that on one of these visits to Dr. Shephard's that you remained over night and remained in the room with your wife?"

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(29) There is also error in this, that the said Court, at said trial, required the defendant to answer, on cross examination, the following question:

"Now, after this occurrence, as alleged by you, and after your wife had had you arrested and was living apart from you, did you still visit the house of Frank Smith?"

(30) There is also error in this, that the said Court, at said trial, required the defendant to answer, on cross examination, the following question:

40

"Did you hold any conversation with them, in the presence of Frank Smith and his wife, wherein your wife was mentioned?" ,

(31) There is also error in this, that the said Court, at said trial, permitted the State to call a witness, Lucy B. Shephard, in rebuttal, and to contradict the testimony of Emory J. Snyder, the defendant, given on cross examination, respecting immaterial and illegal matters, as to which matters the State was
10 bound by the answers of Emory J. Snyder.

(32) There is also error in this, that the said Court, at the said trial, permitted a witness, Lucy B. Shephard, called on behalf of the State, in rebuttal, to be asked and answer the following question:

"On his next visit how long did he stay?"

(33) There is also error in this, that the said Court, at the said trial, at the conclusion of the defendant's case, refused to direct a verdict in favor of the defendant, although duly thereunto moved by counsel for defendant.
20

(34) There is also error in this, that the said Court, at said trial, charged the Jury as follows:

The indictment charges that the defendant testified as follows:

"During the first or second week of June, 1914, Wilson and I came over together and as we approached the house I heard a whispering noise, and as we were coming up the street I noticed something white laying off under the apple tree on the west side of the house.
30 We walked up close by and I said, 'What are you doing here?' And as I said that this man raised up and Mrs. Snyder got up and hollered, 'Oh, my God, Frank Smith.' She repeated that a dozen times. If the defendant so testified in an action for damages for the alienation of the defendant's affections, such testimony indicating that the plaintiff had been improperly intimate with a man, such testimony would be material to the issue in that action. This I charge as a matter of Law.

(35) There is also error in this, that the said Court, at said trial, charged the Jury as follows:

"If, as contended by the State, this defendant had spent the evening with Mrs. Northcott and was met upon leaving her home by his wife and Smith, he may have thought it a way to cover his own act by charging his wife with improper conduct."

FREDERICK A. POPE,

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Attorney of Defendant.

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EXHIBITS

Exhibit State 1.

JUDIAH HIGGINS, Clerk

COPY OF HUNTERDON CIRCUIT COURT MINUTES

FOR SEPTEMBER 12, 1916, IN

MATTER OF

10

SARAH JANE SNYDER,
Plaintiff

vs.

MABEL NORTHCOTT,
Defendant

ACTION AT LAW

On motion the Court ordered on the trial of the above cause and that the Sheriff return a panel whereupon the following named persons were empaneled and sworn to wit:

20

Charles B. Snyder,
Joseph Akers,
Oliver K. Fisher,
Raymond Allen,
Earle T. Connet,
Charles Snyder,

Russell Conover,
Frederick Keephart,
Walter Stover,
Albert Sylvester,
Orville Kerr,
Harry Higgins.

B. B. HERR,

Attorney of Plaintiff.

30

WM. C. GEBHARDT,

Attorney of Defendant.

WITNESSES

Rev. Louis J. Gordon,

Alvi Smith,

Christopher Smith.

Adjourned to the 13th.

40

DECEMBER 13th

10	Sarah Van Doren, Chas. Snyder, Cora Smith, Minnie A. Snyder, Sarah Werkheiser, Edith C. Thomas, Sarah J. Snyder, 1 Exhibit photo,	Dr. Theo. Fulper, Arthur Snyder, Albert Northcott, Maggie Snyder, Mabel Northcott, Jacob Smith, Emory J. Snyder.
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Adjourned to 14th.

 DECEMBER 14th

20	3 Photos exhibit, 1 Envelope, Ella G. Tath, Dr. Alfred G. Shephard, Lucy Shephard.	Euphemia E. Perrine, Baltus W. Pickel, Chas. A. Wilson, Lewis Walters, James McNeal.
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30 After hearing the evidence and the argument of Counsel and the Charge of the Court, the Jury retired in charge of Isaac Suydam, Constable, duly sworn to attend them, and after being out a long time they returned into court, and being called, all appear and say they have agreed upon their verdict and by their foreman further say that they find for the plaintiff the sum of twenty-two hundred and fifty dollars, and so say they all.

40 Whereupon it is ordered by the Court that Judgment final be and the same is hereby entered in favor of the said, Sarah Jane Snyder, plaintiff, and against the said defendant, Mabel Northcott, for the sum of Twenty-two hundred and fifty dollars damages, and the

sum of seventy-three dollars and fifty-one cents, costs of suit.

On motion of

H. B. HERR,
Attorney of Plaintiff.

Judgment December 14, 1916,
at 8.55 P. M.

Amt. Judgment\$2,250.00

Amt. Costs 73.51

10

\$2,323.51

Exhibit State 2.

THE STATE OF NEW JERSEY TO MABEL

NORTHCOTT

20

SEAL

You are summoned to answer
the annexed complaint of
Sarah Jane Snyder, in an ac-
tion at law in the Hunter-
don County Circuit Court.
And take notice that unless
you file your answer to said

complaint with the Clerk of the Circuit Court, at Flem-
ington, within twenty days after service upon you of
this writ, and the annexed complaint, the plaintiff may
proceed in the suit and judgment may be entered
against you.

30

WITNESS, Nelson Y. Dungan, Judge of the Circuit
Court, at Flemington, this 28th day of April, 1916.

H. B. HERR,
Attorney.

JUDIAH HIGGINS,
Clerk. 40

HUNTERDON COUNTY CIRCUIT COURT

SARAH JANE SNYDER,
Plaintiff

vs.

MABEL NORTHCOTT,
Defendant

10 Plaintiff, Sarah Jane Snyder, of Westfield, in the
State of New Jersey, says that:

(1) On the 11th day of November, 1901, she was lawfully married to her present husband, Emory J. Snyder.

(2) That a child, Arthur Bennet Snyder, was born of said marriage, on the 22nd day of August, 1902.

(3) From the time of said marriage she lived with and was supported by her said husband, Emory J. Snyder, until the first day of June, 1915.

20 (4) That the defendant, Mabel Northcott, wickedly and unjustly, intending to injure the said plaintiff and to deprive her of the comfort, fellowship, society and aid and assistance of Emory J. Snyder, the husband of said plaintiff, and to alienate and destroy his affection for the said plaintiff, on the first day of June, 1914, and on other days and times between that day and the commencement of this suit, and knowing that the said Emory J. Snyder was the husband of this plaintiff, persuaded the said Emory J. Snyder
30 to neglect and ill treat the plaintiff and so alienated his affection for her, that he deserted plaintiff on or about the first day of June, 1915, and went to live with, and still lives with the defendant, Mabel Northcott, and has neglected to live with and support the plaintiff. And plaintiff has been obliged to labor as a servant in order to support herself and her said son.

40 (5) And the said defendant contriving and wrongfully and unjustly and willingly intending to injure the said plaintiff, and to deprive her of her comfort, fellow-

ship, assistance and aid of the said, Emory J. Snyder, and to alienate his affection for the plaintiff heretofore, to wit, on the first day of June, 1914, and on other days and times between that day and the commencement of the suit, wrongfully, wickedly and unjustly debauched and carnally knew the said Emory J. Snyder, then and there and still being the husband of the said plaintiff, and thereby the affection of the said Emory J. Snyder for the said plaintiff was then and there alienated and destroyed. The plaintiff has been greatly worried and disturbed by reason of. 10

(6) Plaintiff claims as damages for the aforesaid wrongs and injuries the sum of \$10,000.

H. B. HERR,
Attorney of Plaintiff.

I served the within summons and complaint on the within named defendant, Mabel Northcott, personally at her place of abode, Hampton, Hunterdon County, New Jersey, on the 28th day of April, 1916, by giving her a true copy of said summons and complaint and informing her of the contents thereof. 20

JOHN W. SHARP,
Sheriff.

Dated April 28, 1916.

Sheriff fee, \$3.72. 30

HUNTERDON COUNTY CIRCUIT COURT

Exhibit State 3.

SARAH JANE SNYDER,	}	ACTION AT LAW	
Plaintiff			
vs.	{		ANSWER
MABEL NORTHCOTT,			
Defendant	—		

10

The above defendant, answering the complaint of the said plaintiff, says:

(1) Defendant does not admit or deny the allegations in Paragraphs one, two and three of the plaintiff's complaint, but states that she has no knowledge of the allegations therein stated.

20

(2) Defendant denies all the allegations of Paragraphs four, five and six of the plaintiff's complaint.

WM. C. GEBHARDT,
Attorney of Defendant.

STATE OF NEW JERSEY, }
HUNTERDON COUNTY. }

30

Mabel Northcott, being duly sworn, on her oath, says that the above answer is not filed for the purpose of delay, and that the said defendant believes she has a just and legal defense to the said action on the merits of the case.

MABEL NORTHCOTT.

Sworn and subscribed before me }
this sixth day of May, 1916. }

40

JOHN C. DALRYMPLE,
Notary Public for New Jersey.

Exhibit Defendant 1.

TO SARAH JANE SNYDER:

By virtue of a writ of subpoena herewith shown to you, you are required personally to be and appear before the Court of Quarter Sessions, to be holden at Flemington, in and for the County of Hunterdon, on the 31st day of May, at ten o'clock A. M., to give evidence in a certain indictment against Emory J. Snyder on the part of the State. 10

Hereof fail not at your peril.

JUDIAH HIGGINS,
Clerk.

Dated May 30, 1917.

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1. The first part of the paper is devoted to a general

discussion of the subject and to a statement of the

object of the paper.

2. The second part of the paper is devoted to a

discussion of the subject and to a statement of the

object of the paper.

3. The third part of the paper is devoted to a

discussion of the subject and to a statement of the

object of the paper.

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object of the paper.

7. The seventh part of the paper is devoted to a

discussion of the subject and to a statement of the

object of the paper.

8. The eighth part of the paper is devoted to a

discussion of the subject and to a statement of the

NEW JERSEY SUPREME COURT

JUNE TERM, 1918

THE STATE

vs.

10

EMORY J. SNYDER

Error to Hunterdon Quarter Sessions.

Argued before Gummere, Chief Justice,
and Justices Swayze and Trenchard.

For Plaintiff in Error, Frederick A. Pope.

20

For the State, Harry J. Able, Prosecutor of
the Pleas.

The opinion of the Court was delivered by
Gummere, C. J.

The defendant was convicted on an indictment for perjury, the charge being that in a suit brought by his wife against one Mable Northcott for the alienation of the affection of Mrs. Snyder's husband (the present plaintiff in error) he falsely testified that on a certain occasion prior to the institution of that suit he had found his wife and a man named Smith in a position which justified the conclusion that they were then engaged in adulterous intercourse. 30

The principal ground upon which we are asked to reverse this conviction is that the trial court, over the objection of the plaintiff in error, admitted his wife, Mrs. Snyder, to testify as a witness for the State to matters tending to show the truth of the charge 40

laid in the indictment. Whether Mrs. Snyder was a competent witness for this purpose depends upon the true construction of section 57 of our Criminal Procedure Act. The pertinent provision of that section is as follows: "Upon the trial of any indictment a married woman shall be admitted to testify against her husband when she is the complainant against him, if she shall offer herself as a witness." Comp. Stat. p. 1838. The uncontroverted testimony in the case
10 shows that no formal complaint against her husband was made by the witness before a committing magistrate; but it also appears that after the conclusion of the trial of the civil case Mrs. Snyder instructed her attorney to bring to the attention of the Prosecutor of the Pleas the alleged perjury of the plaintiff in error; that this was done, and, as a result, she was subpoenaed to testify before the Grand Jury; and that on the trial of the indictment, having been subpoenaed as a witness by the State, she was asked, before being called upon
20 to testify, whether she offered herself as a witness, and answered "I do offer myself."

Under our system of criminal procedure the person instituting the prosecution may, if she sees fit, make a formal complaint before a committing magistrate against the alleged wrongdoers, or she may, if she prefers, make such complaint in the first instance before the Grand Jury itself. Whether she pursues the one course, or the other, she is equally the complaining witness in the matter. It is argued
30 before us that although this may be so as a general rule, yet, when she appears before the Grand Inquest in response to a subpoena requiring her presence there, her appearance is not voluntary, and that she is not making any complaint before that body against the alleged wrongdoer, but is giving her testimony solely by reason of the compulsory process. We think this contention is unsound, so far as it has application to the present case. Mrs. Snyder was a voluntary agent in bringing to the attention of the Grand Jury her
40 husband's criminal act; she followed the proper course

in so doing; she had the matter brought to the attention of the prosecuting officer of the State, and it was because of this fact that the subpoena was issued requiring her presence before the Grand Jury. The subpoena did not compel her to testify before that body against her will, and the presumption is that in giving such testimony she was acting as a free agent in pressing her complaint against her husband. We conclude, therefore, that in the hearing before the Grand Inquest she was, within the meaning of the statute, the complainant against him. 10

We further think that the contention on the part of the plaintiff in error that his wife's testimony upon the trial was improperly admitted because she did not at that trial offer herself as a witness, is not supported by the fact. As has already been pointed out, before being called upon to testify she was asked if she offered herself as a witness, her answer was that she did. It was at that time a matter for her personal determination whether she would pursue her original complaint by testifying against her husband at the trial, or whether she would not; and the matter was put fairly and squarely before her for decision. If she had declined to offer herself as a witness she would have been under no compulsion to testify. If she desired to continue her prosecution of the charge against her husband by testifying against him at the trial, she was entitled to do so by voluntarily offering herself as a witness against him; and this she did. We conclude, therefore, that she came within the statutory description of a complainant against her husband who offered herself as a witness against him at the trial, and that the testimony was, therefore, properly admitted. 20 30

It is next assigned for error that, although the evidence of the plaintiff in error received on the trial of the civil action was knowingly untrue, that fact will not support an indictment for perjury, because his testimony was not material to the issue then being tried. But this assignment, as it seems to us, rests 40

upon a false assumption. The testimony was material, for it tended to show that the plaintiff in that litigation, that is, the wife of the plaintiff in error, had no longer any affection for her husband, and that for this reason the retention of his affection for her was of little, if any, pecuniary value.

10 It is further contended that the conviction before us should be reversed for the reason that the Court improperly permitted the son of the plaintiff in error to testify to a statement made by his father in a conversation with his mother, and in his presence. The testimony was as follows: "My father told us we had to get out, because he could not afford to keep my mother, myself and Mrs. Northcott." We think this testimony was competent, for it tended to show that the separation between the husband and the wife was because of the fact that he had taken up with the Northcott woman, and not because of any just ground of complaint which he had against his wife.
20 In other words, that it tended to negative the truth of the statement made by him that he had found his wife and Smith in a position which would justify a belief on his part that she had violated her marriage vows.

There are other assignments of error referred to in the brief of counsel, but not argued with any vigor. We do not consider them of sufficient importance to justify any discussion by us. It is enough to say that they neither rest upon an untenable legal theory, or
30 that they could not have prejudiced the defendant in maintaining his defense upon the merits.

The judgment under review will be affirmed.

NEW JERSEY COURT OF ERRORS AND APPEALS

NEW JERSEY, To Wit:—

THE STATE OF NEW JERSEY, 10
To the Chief Justice and other
Justices of our Supreme Court in
Judicature,

GREETING :

Because in the record and proceedings, and also
in the giving of judgment upon a certain indictment
against Emory J. Snyder, late of the Borough of
Hampton, in the County of Hunterdon, for that at 20
a Circuit Court, holden at Flemington within and for
said County of Hunterdon, on the fourteenth day of
December, nineteen hundred and sixteen, before Nel-
son Y. Dungan, Esquire, then being judge of said
Circuit Court, a certain issue duly joined in said Court,
between Sarah J. Snyder and Mabel Northcott, in an
action at law, came on to be in due form of law, and
that upon said trial, said Emory J. Snyder appeared as
a witness on behalf of said Mabel Northcott, and 30
was duly sworn and took his corporal oath upon the
Holy Gospel of God, administered in due form of law,
to speak the truth, the whole truth and nothing but
the truth, touching the matter in issue on the said
trial, and that upon the said trial certain questions
became and were material in substances as follows,
that is to say, whether the affections of the said
Emory J. Snyder, the husband of the plaintiff, Sarah
Jane Snyder, had been and were alienated by reason
of the sayings and doings of the defendant, Mabel
Northcott, as alleged in the issue framed in the trial 40

aforesaid; and whether any damages, and if so, how much, had been suffered thereby and therefrom; and the said Emory J. Snyder, being so sworn as aforesaid, then and there feloniously, falsely, knowingly, maliciously, voluntarily, wilfully and corruptly in matters material to the subject matter thereunder adjudication, did commit perjury, and did depose and swear, among other things, in substance and to the effect following: "During the first or second week
10 in June, nineteen hundred and fourteen, Wilson and I came over together, and as we approached the house I heard a whispering noise, and as we were coming up the street I noticed something white laying off under the apple tree on west side of the house as we approached I noticed this white form laying there, we walked in close by and I noticed there a man and woman there. I said "what are you doing there?" and as I said that this man raised up and Mrs. Snyder got up and hollered "Oh! My God, Frank Smith, now see
20 what you have done," she repeated that a dozen times. I have not been in the Birmingham house since six o'clock, then it was about eleven o'clock."

Pro-ut the indictment and the courts thereof, whereof he, the said Emory J. Snyder, hath been indicted, and is therefor convicted by a certain jury of the County of Hunterdon, taken between the State of New Jersey and the said Emory J. Snyder, as is said, manifest error hath intervened to the great damage of the said Emory J. Snyder as from his complaint we have received information, we being willing,
30 in his behalf, to correct the error in due manner, if any there shall be, and that speedy justice may be done unto him, the said Emory J. Snyder, command 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 Court of Errors and Appeals in the last resort in all causes of law, to be held at Trenton, on the tenth day of July, next, and
40 this writ, that the record and proceedings aforesaid

RETURN

3a

being inspected, we may further cause to be done thereupon for correction that error what of right and according to the law and customs of the State of New Jersey, ought to be done.

WITNESS, Edwin Robert Walker, our Chancellor, and President Judge of our said Court of Errors and Appeals, at Trenton, this twenty-fourth day of June, one thousand nine hundred and nineteen.

10

THOMAS F. MARTIN,

Clerk.

FREDERICK A. POPE,

Attorney.

RETURN

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"The answer of the Justices of the Supreme Court of the State of New Jersey within named. The record and proceedings whereof mentioned is within made, with all things touching and concerning the same, we do certify to the Court of Errors and Appeals of said State in a certain schedule this writ annexed, as within we are commanded.

30

W. S. GUMMERE,

C. J."

NEW JERSEY COURT OF ERRORS AND APPEALS

THE STATE

vs.

EMORY J. SNYDER

Assignment of Errors.

Afterwards, that is to say on the tenth day of July, nineteen hundred and nineteen, before the Court of Errors and Appeals of the State of New Jersey, comes the said Emory J. Snyder, by Frederick A. Pope, his attorney, and says that in the record and proceedings aforesaid, and also in the matters recited and contained in said bill of exceptions, and also in the giving of judgment aforesaid, there is manifest error in this, to wit:

(1) That the said Court before whom the said cause was tried at, and upon the trial of the issue joined between the State of New Jersey and said Emory J. Snyder, admitted in evidence the book called, "The Blotter."

(2) There is also error in this, that the said Court at the said trial, admitted in evidence the minutes in Circuit Court, volume 16, of the case of Sarah Jane Snyder, plaintiff, against Mabel Northcott, defendant.

(3) There is also error in this, that the said Court at the said trial, permitted Sarah Jane Snyder to be called and examined, and to testify as witness against the defendant, Emory J. Snyder, who was then and there the husband of the said Sarah Jane Snyder,

and permitted her to testify against her said husband to matters and facts other than the fact of marriage, when she, the said Sarah Jane Snyder, was under the Law of the State of New Jersey, an incompetent witness against her husband, the defendant, Emory J. Snyder.

(4) There is also error in this, that the said Court at the said trial, permitted the said Sarah J. Snyder to be sworn and examined and testify as a witness against her said husband, Emory J. Snyder, and then and there to give evidence against him, the said Emory J. Snyder, the defendant, charging him with and endeavoring to prove that her said husband was guilty of the crime of perjury, she, the said Sarah Jane Snyder, not then and there being the complainant and offering herself as a witness. 10

(5) There is also error in this, that upon direct examination, Sarah Jane Snyder, the wife of the defendant, Emory J. Snyder, being then and there an incompetent witness, was permitted to be asked and answer the following question: 20

"Did you answer my inquiry as to the period that you had lived in Hampton?"

(6) There is also error in this, that upon direct examination, Sarah Jane Snyder, the wife of the defendant, Emory J. Snyder, being then and there an incompetent witness, was permitted to be asked and answer the following question: 30

"Did you bring a suit at law against any person, and if so, whom did you bring it against?"

(7) There is also error in this, that upon direct examination, Sarah Jane Snyder, the wife of the defendant, Emory J. Snyder, being then and there 40

an incompetent witness, was permitted to be asked and answer the following question:

"Did you bring a suit in the Hunterdon County Circuit Court against Mabel Northcott for the alienation of the affections of your husband?"

10 (8) There is also error in this, that upon direct examination, Sarah Jane Snyder, the wife of the defendant, Emory J. Snyder, being then and there an incompetent witness, was permitted to be asked and answer the following question:

"Can you give the language or the substance of the language which your husband testified to a happening in which you were involved?"

20 (9) There is also error in this, that upon direct examination, Sarah Jane Snyder, the wife of the defendant, Emory J. Snyder, being then and there an incompetent witness, was permitted to be asked and answer the following question:

"What did he say became of you?"

30 (10) There is also error in this, that upon direct examination, Sarah Jane Snyder, the wife of the defendant, Emory J. Snyder, being then and there an incompetent witness, was permitted to be asked and answer the following question:

"You have stated that your husband testified that there were two forms, one was a man and one was a woman, and when he came up to where they were and said something that the woman says, 'Oh, my God, Frank Smith, see what you have done.' Then did he say what the man did or what the woman did?"

40 (11) There is also error in this, that upon direct examination, Sarah Jane Snyder, the wife of the de-

fendant, Emory J. Snyder, being then and there an incompetent witness, was permitted to be asked and answer the following question:

"Have you been present in the company with Frank Smith at any time near the first or second week of June, 1914. when your husband was present also?"

(12) There is also error in this, that upon direct examination, Sarah Jane Snyder, the wife of the defendant, Emory J. Snyder, being then and there an incompetent witness, was permitted to be asked and answer the following question: 10

"State what was said and done at that time, if you please?"

(13) There is also error in this, that upon cross examination the said Court, at said trial refused to permit said last mentioned witness to answer this question: 20

"And your divorce case was dismissed, wasn't it?"

(14) There is also error in this, that the said Court, at the said trial, permitted a witness, Frank Smith, called on behalf of the State, to be asked and answer, upon direct examination, the following question: 30

"Were you there at a time, in the night time, when Mr. and Mrs. Snyder were present? If so, when was it, as near as you can recollect?"

The alleged occurrence was the last week in May.

(15) There is also error in this, that the said Court, at the said trial, permitted a witness, Arthur Snyder, called on behalf of the State, to be asked 40

and answer upon direct examination the following question:

"What did you see and what did you hear when they were all there together?"

10 "My mother went down for Frank Smith and she went down to get him to come up and watch my father. He was over to Mrs. Northcott's," and then Court refused to strike out said answer although duly moved so to do.

(16) There is also error in this, that the said Court, at the said trial, permitted the said last mentioned witness, called on behalf of the State, to be asked on direct examination the following question, and volunteer the following answer:

20 "Do you remember any conversation he had with your mother at that time?"

"No, but I remember what he told me." (This was objected to. By the Court: You may answer it.)

30 "He helped us pack and he gave me his trunk and told us we had to get out because he couldn't afford to keep my mother, myself and Mrs. Northcott. He gave me \$5.00 to go to Lebanon and told us we had to get out, and we did so."

(17) There is also error in this, that the said Court, at the said trial, permitted the said last mentioned witness, called on behalf of the State, to be asked on direct examination the following question:

"Come back and got his supper?"

40 "Yes, and also went back and didn't come home again nights;" and refused to strike out said answer although duly moved so to do.

(18) There is also error in this, that the said Court, at the said trial, permitted the State, on the second day, to recall Mrs. Cora Smith, and permitted said witness to be asked and answer upon direct examination the following question:

"You were on the stand yesterday, and it was inquired of you whether Emory J. Snyder had been at your house after the month of May and the month of June, 1914, and you stated that he had and conversations were asked of you that were had between yourself and he or in your presence, which related to his wife and matters pertaining to the difference between him and his wife. Now, I desire to ask you this morning whether or not there were any matters of conversation which you had with him relative to his relationship with his wife which you did not relate yesterday?" 10

(19) There is also error in this, that the said Court, at the said trial, permitted the said last mentioned witness, called on behalf of the State, to be asked and answer on direct examination the following question: 20

"By the Court: When was this?"

"After June, 1914, and all that Summer. (Objected to. By the Court. I think that is material.) (Continued.) He said he could not get it on anything else but desertion, and he found it would take two years to get a divorce on the grounds of desertion. At one time he come in and said his wife had left her position at Lebanon and gone to work for some widower. He said he didn't think she would fall in love with that fellow, because there couldn't be any such good luck." 30

(20) There is also error in this, that the said Court, at the said trial, permitted the said last men- 40

tioned witness to be recalled on behalf of the State, to be asked upon re-direct re-examination the following question:

"In the matter of going to Ohio did he say anything about the time it would take to get a divorce?"

10 (21) There is also error in this, that the said Court, at the said trial, permitted the said last mentioned witness, recalled on behalf of the State, to answer the last aforesaid question as follows:

"He didn't tell why he did not go only in regard to what Mrs. Northcott said. The reason he did not go was on account of Mrs. Northcott did not want him to go," and the said Court refused to strike out said answer although duly moved so to do.

20 (22) There is also error in this, that the said Court at the said trial, at the conclusion of the State's case, refused to direct a verdict in favor of the defendant although duly thereunto moved by counsel for defendant.

(23) There is also error in this, that, the said Court, at said trial, required the defendant to answer, on cross examination the following:

30 "Where did you see her?"

(24) There is also error in this, that the said Court, at said trial, required the defendant to answer, on cross examination the following question:

"Where did you see her in Westfield?"

40 (25) There is also error in this, that the said Court, at said trial, required the defendant to answer, on cross examination the following question:

"Did you call your wife after—Did you call on your wife after she had left your domicile?"

(26) There is also error in this, that the said Court, at said trial, required the defendant to answer, on cross examination the following question:

"Did you stay over night?"

(27) There is also error in this, that the said Court, at said trial, required the defendant to answer, on cross examination the following question: 10

"How long did you stay?"

(28) There is also error in this, that the said Court, at said trial, required the defendant to answer, on cross examination the following question:

"Did you recollect that on one of these visits to Dr. Shephard's that you remained over night and remained in the room with your wife?" 20

(29) There is also error in this, that the said Court, at said trial, required the defendant to answer, on cross examination the following question:

"Now, after this occurrence, as alleged by you, and after your wife had had you arrested and was living apart from you, did you still visit the house of Frank Smith?" 30

(30) There is also error in this, that the said Court, at said trial, required the defendant to answer, on cross examination the following question:

"Did you hold any conversation with them in the presence of Frank Smith and his wife, wherein your wife was mentioned?" 40

(31) There is also error in this, that the said Court, at said trial, permitted the State to call a witness, Lucy B. Shephard, in rebuttal, and to contradict the testimony of Emory J. Snyder, the defendant, given on cross examination, respecting immaterial and illegal matters, as to which matters the State was bound by the answer of Emory J. Snyder.

10 (32) There is also error in this, that the said Court, at the said trial, permitted a witness, Lucy B. Shephard, called on behalf of the State, in rebuttal, to be asked and answer the following question:

“On his next visit how long did he stay.”

20 (33) There is also error in this, that the said Court, at the said trial, at the conclusion of the defendant's case, refused to direct a verdict in favor of the defendant, although duly thereupon moved by counsel for defendant.

(34) There is also error in this, that the said Court, at said trial, charged the Jury as follows:

The indictment charges that the defendant testified as follows:

30 “During the first or second week of June, 1914, Wilson and I came over together, and as we approached the house I heard a whispering noise, and as we were coming up the street I noticed something white laying off under the apple tree on the west side of the house. We walked up close by and I said, ‘What are you doing here?’ And as I said that this man raised up and Mrs. Snyder got up and hollered, ‘Oh, my God, Frank Smith.’ She repeated that a dozen times. If the defendant so testified in an action for damages for the alienation of the defendant's affections, such testimony indicating that the plaintiff had been improperly
40 ly intimate with a man, such testimony would be ma-

terial to the issue in that action.. This I charge as a matter of law."

(35) There is also error in this, that the said Court, at said trial, charged the Jury as follows:

"If, as contended by the State, this defendant had spent the evening with Mrs. Northcott and was met upon leaving her home by his wife and Smith, he may have thought it a way to cover his own act by charging his wife with improper conduct." 10

(36) There is also error in this, that the Supreme Court affirmed the judgment of the Court below, whereas said judgment should be reversed.

F. A. POPE,

Attorney of Defendant.

NEW JERSEY COURT OF ERRORS AND APPEALS

THE STATE
vs.
EMORY J. SNYDER

10

Specification of Causes.

And now comes the Emory J. Snyder, by Frederick A. Pope, his attorney, and says that in the record and proceedings aforesaid, and also in the giving of judgment aforesaid, there is manifest error; and said Emory J. Snyder says that said judgment should be reversed, and specifies the following causes in said record relied upon by said plaintiff in error for relief and for reversal of the judgment aforesaid.

20

(1) Because the said Court at and upon the trial of said cause between the State of New Jersey and said Emory J. Snyder, admitted in evidence the book called, "The Blotter."

(2) That the said Court at the said trial, admitted in evidence the minutes in Circuit Court, volume 16, of the case of Sarah Jane Snyder, plaintiff, against Mabel Northcott, defendant.

30

(3) That the said Court at the said trial, permitted Sarah Jane Snyder to be called and examined, and to testify as witness against the defendant, Emory J. Snyder, who was then and there the husband of the said Sarah Jane Snyder, and permitted her to testify against her said husband to matters and facts other than the facts of marriage, when she, the said Sarah Jane Snyder, was under the law of the State of New

40

Jersey an incompetent witness against her husband, the defendant, Emory J. Snyder.

(4) That the said Court at the said trial, permitted the the said Sarah J. Snyder to be sworn and examined and testify as a witness against her husband, Emory J. Snyder, and then and there to give evidence against him, the said Emory J. Snyder, the defendant, charging him with and endeavoring to prove that her said husband was guilty of the crime of perjury, she, the said Sarah J. Snyder, not then and there being the complainant and offering herself as a witness. 10

(5) That upon direct examination Sarah Jane Snyder, the wife of the defendant, Emory J. Snyder, being then and there an incompetent witness, was permitted to be asked and answer the following question:

"Did you answer my inquiry as to the period that you had lived in Hampton?" 20

(6) That upon direct examination, Sarah Jane Snyder, the wife of the defendant, Emory J. Snyder, being then and there an incompetent witness, was permitted to be asked and answer the following question:

"Did you bring a suit at law against any person, and if so, whom did you bring it against?" 30

(7) That upon direct examination, Sarah Jane Snyder, the wife of the defendant, Emory J. Snyder, being then and there an incompetent witness, was permitted to be asked and answer the following question:

"Did you bring a suit in Hunterdon County Circuit Court against Mabel Northcott for the alienation of the affections of your husband?"

(8) That upon direct examination, Sarah Jane 40

Snyder, the wife of the defendant, Emory J. Snyder, being then and there an incompetent witness, was permitted to be asked and answer the following question:

"Can you give the language or the substance of the language which your husband testified to a happening in which you were involved?"

- 10 (9) That upon direct examination, Sarah Jane Snyder, the wife of the defendant, Emory J. Snyder, being then and there an incompetent witness, was permitted to be asked and answer the following question:

"What did he say became of you?"

(10) That upon direct examination, Sarah Jane Snyder, the wife of the defendant, Emory J. Snyder, being then and there an incompetent witness, was permitted to be asked and answer the following question:

20

"You have stated that your husband testified that there two forms, one was a man and one was a woman, and when he came up to where they were and said something that the woman says, 'Oh, my God, Frank Smith, see what you have done now.' Then did he say that what the man did or what the woman did?"

- 30 (11) That upon direct examination, Sarah Jane Snyder, the wife of the defendant, Emory J. Snyder, being then and there an incompetent witness, was permitted to be asked and answer the following question:

"Have you been present in the company with Frank Smith at any time near the first or second week in June, 1914, when your husband was present also?"

- 40 (12) That upon direct examination, Sarah Jane Snyder, the wife of the defendant, Emory J. Snyder,

being then and there an incompetent witness, was permitted to be asked and answer the following question:

"State what was said and done at that time, if you please?"

(13) That upon direct examination, said Court, at the said trial, refused to permit said last mentioned witness to answer this question:

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"And your divorce case was dismissed, wasn't it?"

(14) That the said Court, at the said trial, permitted a witness, Frank Smith, called on behalf of the State, to be asked and answer, upon direct examination the following question:

"Were you there at a time, in the night time, when Mr. and Mrs. Snyder were present? If so, when was it as near as you can recollect?"

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The alleged occurrence was the last week in May.

(15) That the said Court, at the said trial, permitted a witness, Arthur Snyder, called on behalf of the State, to be asked and answer upon direct examination the following question:

"What did you see and what did you hear when they were all there together?"

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"My mother went down for Frank Smith and she went down to get him to come up and watch my father. He was over to Mrs. Northcott's," and then Court refused to strike out said answer, although duly moved so to do.

(16) That the said Court, at the said trial, permitted the said last mentioned witness called on behalf of the State, to be asked on direct examination,

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the following question, and to volunteer the following answer:

"Do you remember any conversation he had with your mother at that time?"

"No, but I remember what he told me." (This was objected to. By the Court: You may answer it.)

10

"He helped us pack and he gave me his trunk and told us we had to get out, because he couldn't afford to keep my mother, myself and Mrs. Northcott. He gave me \$5.00 to go to Lebanon, and told us we had to get out, and we did so."

(17) That the said Court, at the said trial, permitted the said last mentioned witness, called on behalf of the State, to be asked on direct examination the following question:

20

"Come back and got his supper?"

"Yes, and also went back and didn't come home again nights;" and refused to strike out said answer although duly moved so to do.

18. That said Court, at the said trial, permitted the State on the second day, to recall Mrs. Cora Smith, and permitted said witness to be asked and answer upon direct examination the following question:

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"You were on the stand yesterday and it was inquired of you whether Emory J. Snyder had been at your house after the month of May and the month of June, 1914, and you stated that he had and conversations were asked of you that were had between yourself and he or in your presence, which related to his wife and matter pertaining to the difference between him and his wife, now I desire to ask

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you this morning whether or not there were any matters of conversation which you had with him relative to his relationship with his wife which you did not relate yesterday?"

(19) That the said Court, at the said trial, permitted said last mentioned witness called on behalf of the State, to be asked and answer upon direct examination the following question:

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"By the Court: When was this?"

"After June, 1914, and all the Summer." (Objected to. By the Court; I think that is material.) (Continued.) "He said he could not get it on anything else but desertion and he found it would take two years to get a divorce on the grounds of desertion. At one time he come in and said his wife had left her position at Lebanon and gone to work for some widower. He said he didn't think she would fall in love with that fellow because there couldn't be any such good luck."

20

(20) That the said Court, at the said trial, permitted the said last mentioned witness re-called on behalf of the State, to be asked upon re-direct examination the following question:

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"In the matter of going to Ohio, did he say anything about the time it would take to get a divorce?"

(21) That the said Court, at the said trial, permitted the said last mentioned witness, recalled on behalf of the State, to answer the last aforesaid question as follows:

"He didn't tell why he did not go only in regard to what Mrs. Northcott said. The reason he did not go was on account of Mrs. Northcott did not want him

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to go;" and the said Court refused to strike out said answer although duly moved so to do.

(22) That the said Court, at the said trial, at the conclusion of the State's case, refused to direct a verdict in favor of the defendant, although duly hereunto moved by counsel for defendant.

10 (23) That the said Court, at said trial, required the defendant to answer on cross examination the following question:

"Where did you see her?"

(24) That the said Court, at said trial, required the defendant to answer on cross examination the following question:

20 "Where did you see her in Westfield?"

(25) That the said Court, at said trial required the defendant to answer on cross examination the following question:

"Did you call on your wife after—Did you call on your wife after she had left your domicile?"

30 (26) That the said Court, at said trial, required the defendant to answer on cross examination the following question:

"Did you stay over night?"

(27) That the said Court, at said trial, required the defendant to answer on cross examination the following question:

"How long did you stay?"

40 (28) That the said Court, at said trial, required

the defendant to answer on cross examination the following question:

"Did you recollect that on one of these visits to Dr. Shephard's that you remained over night and remained in the room with your wife?"

(29) That the said Court, at said trial, required the defendant to answer on cross examination the following question:

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"Now after this occurrence, as alleged by you, and after your wife had had you arrested and was living apart from you did you still visit the house of Frank Smith?"

(30) That the said Court, at said trial, required the defendant to answer on cross examination the following question:

20

"Did you hold any conversation with them, in the presence of Frank Smith and his wife, wherein your wife was mentioned?"

(31) That the said Court, at said trial, permitted the State to call a witness, Lucy B. Shephard, in rebuttal, to contradict the testimony of Emory J. Snyder, the defendant, given on cross examination, respecting immaterial and illegal matters, as to which matters, the State was bound by the answer of Emory J. Snyder.

30

(32) That the said Court, at the said trial, permitted a witness, Lucy B. Shephard, called on behalf of the State in rebuttal, to be asked and answer the following question:

"On his next visit how long did he stay?"

(33) That the said Court, at the said trial, at the

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conclusion of the defendant's case, refused to direct a verdict in favor of the defendant, although duly thereunto moved by counsel for defendant.

(34) That the said Court at said trial, charged the Jury as follows:

10 "During the first or second week of June, 1914, Wilson and I came over together and as we approached the house I heard a whispering noise and as we were coming up the street I noticed something white laying off under the apple tree on the west side of the house. We walked up close by and I said, 'What are you doing here?' And as I said that this man raised up and Mrs. Snyder got up and hollered, 'Oh, my God, Frank Smith.' She repeated that a dozen times. If the defendant so testified in an action for damages for the alienation of the defendant's affections, such testimony indicating that the plaintiff had been im-
20 properly intimate with a man, such testimony would be material to the issue in that action. This I charge as a matter of law."

(35) That the said Court, at the said trial, charged the jury as follows:

30 "If, as contended by the State, this defendant had spent the evening with Mrs. Northcott and was met upon leaving her home, by his wife and Smith, he may have thought it a way to cover his own act by charging his wife with improper conduct."

(36) That the said Court, at said trial, charged the Jury as follows:

40 "In reaching your conclusions you have a right to consider the circumstances and the relations of the defendant with Mabel Northcott at the time he gave his testimony, as shown by the evidence, and what

effect, if any, that relationship may have had on the truth or falsity of that testimony.”

(37) Because the Supreme Court affirmed the judgment of the Court below, whereas it should have been reversed.

F. A. POPE,

Attorney of Defendant. 10

NEW JERSEY COURT OF ERRORS AND APPEALS

10

THE STATE OF NEW JERSEY

Defendant in Error

vs.

EMORY J. SNYDER,

Plaintiff in Error

In Error to
Supreme Court.

Joinder in Error.

20

AND HEREUPON, afterwards, to-wit, on the
twenty-third day of July, A. D. nineteen hundred and
nineteen, the State of New Jersey, by Harry J. Able,
Prosecutor of the Pleas in and for the County of Hun-
terdon, comes into Court and says that there is no
error either in the record and proceedings aforesaid,
or in giving the judgment aforesaid, and it prays here
that the Court here may proceed to examine as well
the record and proceedings aforesaid, as the matters
.30 aforesaid assigned for error, and that the judgment
aforesaid, in manner aforesaid given, may in all things
be affirmed, etc.

HARRY J. ABLE,

Prosecutor of the Pleas for the
County of Hunterdon

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New Jersey Court of Errors and Appeals

THE STATE OF NEW JERSEY, Defendant in Error,	} On Error to the Supreme Court.
vs.	
EMORY J. SNYDER, Plaintiff in Error.	

Brief of the State

HISTORY.

The above defendant, Emory J. Snyder, was indicted at April, 1917, Term of the Hunterdon County Court of Oyer and Terminer (case p. 6) for perjury, wherein it is said that he swore falsely in matters material to the subject matter in an issue, tried at the Hunterdon Circuit Court on December 14, 1916, between Sarah Jane Snyder, plaintiff, and Mabel Northcott, defendant, on behalf of the defendant.

The questions therein stated to be material, were, whether the affections of the plaintiff in error, who was the husband of the then plaintiff, Sarah Jane Snyder, had been and were, alienated by reason of the sayings and doings of the then defendant, Mabel Northcott; and whether any damages, and if so, how much, had been suffered thereby and therefrom (case p. 6-7).

The testimony so alleged to be false is set forth in the said indictment (case p. 7, l. 20-40, p. 8, l. 1-8).

The defendant, Emory J. Snyder, plead "not guilty" to the indictment, and a trial was had thereon at said April, 1917, Term of Hunterdon County Court of Quarter Session before a jury on May 31 and June 1, 1917, and a verdict of guilty as charged in the indictment was rendered. Sentence was thereupon, on June 4, 1917, moved, and the Court pronounced sentence that the said Emory J. Snyder be confined to the State Prison of the State at hard labor for not less than one year nor more than seven years and to pay the costs of prosecution.

A Writ of Error to the Supreme Court was had thereon on June 8, 1917, and the matter was brought on for argument before that Court at June Term, 1918, and on or about June 17, 1919, the decision of the Court was rendered, affirming the judgment (case p. 133). On June 24, 1919, a writ of error was taken to this Court, returnable July 10, 1919 (case p. 1a-3a), that this Court might inspect the matter, and render justice therein. (Because the preliminary statement in brief of plaintiff in error omits facts deemed to be essential, the foregoing statement is inserted.)

POINTS.

I.

The plaintiff in error specifies as a cause for reversal, that the Hunterdon Court of Quarter Ses-

sions permitted Sarah Jane Snyder, who was the wife of said Emory J. Snyder, to be called and examined, and to testify as a witness against him to matters and facts other than the fact of marriage (case p. 14a, l. 33) and makes assignment of error for the same reason; (p. 4a, l. 36) and likewise specifies and assigns error because she, the said Sarah Jane Snyder, being the wife of the said Emory J. Snyder, was permitted to be sworn and examined, and to testify as a witness against her said husband, charging him with and endeavoring to prove that he, her said husband, was guilty of the crime of perjury, she not being the complainant and offering herself as a witness (case p. 15a, l. 4, and p. 5a, l. 8).

The testimony of said Sarah Jane Snyder appears at pp. 21 to 40, and p. 99 of State of Case.

~~AT COMMON LAW THE WIFE WAS GENERALLY EXCLUDED~~
~~An exception to this exclusionary rule occurred~~
from testifying in any suit or proceeding where the husband was a party. *Munyon v. State*, 62 N. J. L., l. 3-4. The reason for this exclusion it is said in the case of *Caleb H. Jackson v. Charles R. Johnson*, 51 N. J. L., 457, 458-459, to rest mainly upon a supposed public policy.

An exception to this exclusionary rule occurred when a criminal prosecution was for a personal injury to one married person by the other, and

“Some curious distinctions are found in the books in respect to what acts are or are not personal injuries.” *Munyon v. State*, *Supra*.

The common law exception was operative in this State under the legislation existing prior to the present statute. *Ibid*.

The competency of a wife or husband to testify as a witness in this State is now determined by Statute. Sec. P. L. 1900, p. 363, 2 Comp. Stat. p. 2222, Sec. 5.

The section cited reads as follows:

“5. In any trial or injury in any suit, action or proceeding in any court, or before any

person or committee having by law or consent of parties authority to examine witnesses or hear evidence, the husband or wife of any person interested therein as a party or otherwise shall be competent and compellable to give evidence the same as other witnesses, on behalf of any party to such suit, action or proceeding; Provided, that nothing herein shall render any husband or wife competent or compellable to give evidence for or against the other in any action for criminal conversation, except to prove the fact of marriage, or to render any husband or wife competent or compellable to give evidence against the other in any criminal action or proceeding, except to prove the fact of marriage, and *except as now otherwise provided by statute*, or compellable in any action or proceeding for divorce on account of adultery to give evidence for the other, except to prove the fact of marriage, nor shall any husband or wife be compelled to disclose any confidential communication made by one to the other during the marriage."

By this statute the disqualification of a husband and wife, when either was a party, was removed and they became competent and compellable to give evidence in any action or proceeding, provided that in actions for criminal conversation they were not competent or compellable to testify except to prove the fact of marriage, and in any criminal action or proceeding, except to prove the fact of marriage, and *except as now otherwise provided by statute*, nor can they be compelled in any action for divorce on account of adultery to give evidence for the other except to prove marriage, nor can they be compelled to disclose any confidential communication made one to the other during the marriage.

In every case of exclusion of the testimony of the

wife or husband, proof of the fact of marriage is permitted when such proof is necessary, and it must be particularly noted that while nothing in the statute mentioned renders any husband or wife competent or compellable to give evidence against the other in any criminal action or proceeding, nevertheless there is excepted from such exclusionary provision, besides proof of the fact of marriage, the competency of such wife, or husband, "as now otherwise provided by statute."

It appearing that the wife, or husband, may thus testify in cases

"now (March 23, 1900) otherwise provided by statute";

it will be found that at the time of the passage of said act it had been, and was, provided by Statute (P. L. 1898, p. 886, Sec. 57, 2 Comp. Stat. 1838, Sec. 57) that,

"Upon the trial of any indictment, the defendant shall be admitted to testify, if he shall offer himself as a witness, and upon any such trial, the wife or the husband of the defendant, as the case may be, shall be admitted to testify in behalf of the defendant, if he or she shall offer himself or herself as a witness; and upon any such trial, a married woman shall be admitted to testify against her husband when she is the complainant against him, if she shall offer herself as a witness" * * * (Omitting remainder of section as being inapplicable.)

That the exception in Sec. 5, P. L. 1900, p. 363, "as now otherwise provided by statute," relates to Sec. 57 of the Criminal Procedure Act above quoted, see *Schaab v. Schaab*, 66 N. J. Eq. 334, 337.

By reason of this last mentioned statute, Sarah Jane Snyder, a married woman, was competent to testify against her husband, Emory J. Snyder, the plaintiff in error, upon the trial of the indictment in this case, if she was the complainant against him

and if she offered herself as a witness therein.

It becomes necessary to determine (1) whether she was the complainant, and (2) whether she offered herself as a witness.

(1) Section 5 of the Evidence Act, as it stood prior to the Revision of 1900, contained no exception which would permit husband or wife to testify one against the other in criminal prosecutions, but as has been above stated (*Munyon v. State*, *Supra*) the common law exception to the exclusionary rule was nevertheless effective in cases of personal injury to one married person by the other. This exception to the general rule was enlarged by Sec. 57 of the Criminal Procedure Act, 1898, so that a married woman may testify against her husband when she is the complainant against him, if she offers herself as a witness. Her being complainant is the ground upon which she may offer to give evidence.

The word, complainant, is defined to be one who makes a complaint. *Bouv. Law Dict.*

Complaint, in criminal proceedings applies generally to the name of accusation before an inferior magistrate. 2 *Bish. New Crim. Proc.*, Sec. 717.

In the present case no formal complaint charging the plaintiff in error with a crime for the purpose of a preliminary examination, was made (p. 23, l. 40, p. 24, l. 1-2).

There is no question but what a complaint must be made, but it is failed to show that any complaint different from the recognized practice of making complaint by individuals, i. e., complaint before a magistrate or complaint direct to prosecuting attorney, whereby the witnesses can be ascertained and presented to the Grand Jury, is intended. There is no other method of becoming a complaining witness in New Jersey, and it can hardly be argued that a complaining witness does not also become "complainant" within the meaning of the Statute.

The act clearly covers any manner of crime, of which the wife complains it is not restricted to per-

sonal or bodily injury, nor can it by any possible interpretation of its language be so restricted. It says that "upon any such trial," that is, "upon the trial of any indictment," "a married woman shall be admitted to testify against her husband," etc.

There can be no question of the right to testify if the qualifying features of the act, viz., complainant, and offer to testify are present.

Therefore, unless it was absolutely necessary for a formal complaint to be made before a Justice of the Peace, prior to the finding of an indictment for crime, then the word complainant used in the Criminal Procedure Act, Sec. 57, has in this case no dependency upon the making of complaint when used in its technical sense, as descriptive of proceedings before a magistrate.

I apprehend that it requires no citation of authorities to support the assertion that preliminary proceedings before a magistrate are not always necessary before an indictment for crime may be found.

Indictment being one of the forms of accusation at common law, as well as by Statute in New Jersey, under which a person could be put on trial for crime, any information, or complaint, which may serve to put in motion the machinery of the law for the finding of such indictment, would, it is contended, be sufficient to designate the person giving, or causing to be given, such complaining information, a complainant within the true meaning of the statute under consideration.

"The common law looks upon a criminal prosecution as a contention, and not an inquisition, although the state itself is a party."

McClain Outlines of Crim. Law. & Proc., p. 155.

In the case of *Leeman v. Public Service Ry. Co.*, 77 N. J. L. 420, 424 (the question of duty of an injured person to prosecute for crime before bringing suit for damages, being involved) the Supreme Court lends approval to the language of Judge

Bigelow in *Boston & Worcester R. R. Co. vs. Dana*, 1 Gray 83, which in part is,

“The officers of the law whose province it is to prosecute criminals, require no assistance from persons injured, other than that which a sense of duty, unaided by private interest, would naturally prompt.”

The State being the actor in prosecuting matters criminal, it must follow that when any injured person complains to, or causes to be called to the attention of, any prosecuting official of the State, by the giving of information whereby such official acts, that such person thereby in contemplation of law becomes a complaining witness, and Sarah Jane Snyder having occupied such position, and being the wife of the accused, she became the complainant in this case, against her husband.

The Supreme Court in rendering its opinion in the present case (see case p. 134), recognizes that

“formal complaint may be made before a committing magistrate, or complaint may be made in the first instance before the Grand Jury itself, and that whether she pursues the one course or the other, she is equally the complaining witness in the matter.”

The examination of the wife on the part of the defendant to ascertain her competency to testify herein shows that she did not know who the prosecutor of the pleas for Hunterdon County was, that she directed her counsel to ask the State to take it up, and that she made complaint charging her husband with perjury through the medium of her counsel, and went to see the prosecutor before going to the grand jury room (case p. 23, l. 29-40, p. 24, p. 25 to l. 35).

After calling the prosecuting attorney's attention to the case by complaining through her counsel as stated in the testimony above cited, a subpoena was mailed her (p. 24, l. 34-38). She then took the mat-

ter up in person with the prosecutor (p. 25, l. 4-10).

It is contended that the sending of subpoena affected her position as complaining witness, or complainant, but, it is submitted that, had she made formal complaint under oath for the purpose of preliminary examination before a magistrate, and the papers had been forwarded by the magistrate, that in pursuance of the well-established practice in such cases, she would have received a subpoena, and it could not seriously be contended that such practice would have destroyed her status as complainant, and if not then, it could not when her complaint was direct to the prosecuting officer in manner well recognized in practice. Further, no process of subpoena either to attend before a Grand Jury or before the trial Court, could, under Sec. 57 of the Crim. Proc. Act, have been effective in requiring her to give evidence unless she offered herself as a witness against her husband (p. 135). Her position in this matter is shown in her testimony (p. 23-24-25).

(2) As to her offering herself as a witness before the trial Court see p. 23, l. 7-14, and opinion of Court, p. 135, l. 1-34.

It is to be noted that the criminal statutes or codes of several states contain sections similar in language to the Iowa Code, an interpretation of which is cited in Brief of plaintiff in error, and contended to be controlling in the case at bar, but a comparison of the language of such statutes with that of New Jersey, 2 Comp. Stat. p. 1838, Sec. 57, will be convincing that the meaning of Sec. 57 cannot be controlled by any such interpretation.

And again, it is to be noted, that in states other than those cited by plaintiff in error, the interpretation claimed by him as controlling, has been riddled, and an exactly opposite conclusion reached—

See *West v. State* 164 Pac. 327, an Oklahoma case, decided in April, 1919, wherein the Court recognizes, that the crime of perjury may be committed *against* the wife, and that under a statute almost identical

with the statutes upon which the cases cited by plaintiff in error are based, the wife is a competent witness against her husband.

See also, *Dill v. People*, 19 Colo. 469, where it is also held that the wife is a competent witness *against* the husband in a trial upon an indictment against her husband for perjury.

That personal violence is not necessary in order to afford competency to the wife to testify in all the States, having statutes which provide,

“that neither husband nor wife shall in any case be a witness against the other except in a criminal prosecution for a crime committed one against the other”

(Okla. Revised Laws 1910, Sec. 5882) has been shown—, but as stated above, even were there no divergence in opinion as to the correct interpretation of the statutes with verbiage as quoted, such interpretation would in no wise be controlling or particularly helpful in the interpretation of Sec. 57 of the Crim. Proc. Act of New Jersey, because the words used by the Legislature of New Jersey, are as it seems to me, so dissimilar from the Statutes mentioned as to leave but little room for argument, as to their meaning. The act under which the wife of the plaintiff in error testified, does not contain the words

“crime committed one against the other,” so as to leave open for argument what kind of crime was meant, but it clearly says,

“Upon the trial of any indictment,” which it is assumed must include every crime for which an indictment may be found,

“a married woman shall be admitted to testify against her husband,” etc., conditioned upon her qualifying by being the complainant against him, and offering herself as a witness.

It is submitted that the facts in this case are such that Sarah Jane Snyder, as the wife of Emory J.

Snyder, the plaintiff in error, was within the true meaning and intendment of Sec. 57 of the Crim. Proc. Act, the complainant, and offered herself as a witness herein.

II.

Was the testimony given by defendant (plaintiff in error) in the suit by his wife for alienation of her husband's affection material to the issue therein.

The trial judge charged the jury, among other things, as follows:

“The indictment charges that the defendant testified as follows:

“During the first or second week of June, 1914, Wilson and I came over together and as we approached the house I heard a whispering noise, and as we were coming up the street I noticed something white laying off under the apple tree on the west side of the house. We walked up close by and I said, ‘What are you doing here?’ And as I said that this man raised up and Mrs. Snyder got up and hollered, ‘Oh, my God, Frank Smith,’ she repeated that a dozen times. If the defendant so testified in an action for damages for the alienation of the defendant's affections, such testimony would be material to the issue in that action. This I charge as a matter of law,”

the defendant takes exception, and specifies the same as cause for reversal (34) p. 22a, and assigns error thereon, (34) p. 12a. See charge of Judge, p. 105, l. 37-40, and p. 106, l. 1-14.

The allegation in the indictment contains after the name Frank Smith, the words

“now see what you have done,”
p. 7, l. 20-40, and p. 8, l. 1-3.

As has been stated, the issue in the case between Sarah Jane Snyder, plaintiff, and Mabel Northcott,

defendant, wherein the alleged false testimony was given, were, whether the affections of the said Emory J. Snyder, the husband of the then plaintiff, had been alienated by the said Mabel Northcott, the then defendant, and if so, what damages had been suffered thereby and therefrom, by the plaintiff in that suit.

Whether the evidence given by the defendant in the civil suit between Sarah Jane Snyder and Mabel Northcott was upon a subject material to the issue in that suit, was a question entirely for the Court and not at all for the jury. *Gordon v. State*, 48 N. J. L. 611, 612.

Since the passing of "An Act for the protection and enforcement of the rights of married women," P. L. 1906, p. 525, the right of a married woman to bring suit for the alienation of the affections of her husband has been recognized in this State. *Sims v. Sims*, 79 N. J. L. 577.

Prior to the enactment of the above statute our Supreme Court had refused to entertain such action, but did not dispute the abstract right at common law, although incapable of enforcement. *Hodge v. Wetzler*, 69 N. J. L. 490, 492.

The gist of the action is the loss of consortium. 21 Cyc. 1619.

It is said in *Foot v. Card*, 18 Atl. 1027, 1028 (Conn.) that

"Each owes to the other the fullest possible measure of conjugal affection and society—the husband to the wife all that the wife owes to him. Upon principle this right in the wife is equally valuable to her, as property, as that of the husband to him."

The action lies in tort for recovery of damages. *Sims v. Sims*, *Supra* at p. 582.

There may be recovered

"as damages the value of her support and loss of consortium; and also for mental anguish and injury to her feelings, and for

injury to her character." 21 Cyc. 1622.

"The conduct of the parties, either of the spouses, or of the alleged guilty pair, may be shown as tending to establish or disprove the fact of alienated affection and defendant's enticement."

21 Cyc. 1625.

The testimony given by the plaintiff in error in the suit for alienation of affections tended to show misconduct in the wife from which adultery on her part might be inferred, and had such been the case it might easily have been said that the loss of the society and comfort of the husband were chargeable to her own acts, rather than the acts complained of by her in the suit against Mrs. Northcott. 21 Cyc. 1619. And further the question of damages, the elements of which are above quoted, would be affected to the utmost by such testimony, if true.

The alleged adulterous acts on the part of Mrs. Snyder were said to have happened during the first or second week in June, 1914 (case p. 7, l. 20, etc.; p. 41, l. 2; p. 67, l. 12).

The suit between Mrs. Snyder and Mrs. Northcott was started on or about April 28, 1916 (p. 129, l. 20), the complaint alleges the acts constituting alienation of affection, on June 1, 1914, and on other days and times between that date and the commencement of suit (p. 128, l. 25, etc.), and that because the defendant Northcott, alienated the affections of the said Emory J. Snyder he deserted his wife, the then plaintiff, on or about the first day of June, 1915.

The acts constituting the alienation of affection were continuous over a considerable period of time, no acts are alleged prior to June 1, 1914, and at the time of the happening about which the testimony, alleged to be false, was given, the conduct of the wife, Sarah J. Snyder, must have been very material in its effects upon the affection of the husband. As is said in the decision of the Supreme Court herein

“It tended to show, that the plaintiff in that litigation, that is, the wife, of the plaintiff in error had no longer any affection for her husband, and that for this reason the retention of his affection for her was of little, if any, pecuniary value.”

(p. 135, l. 35-40, p. 136, l. 1-6.)

The statement of counsel for plaintiff in error that the issue in the alienation suit between Mrs. Snyder and Mrs. Northcott was framed as of June 1, 1914 (case p. 128), would appear to be an error, which will be made patent by inspection of the complaint filed in that suit. The allegations in the pleading in paragraph (4) among other things, are that

“On the first day of June, 1914, and on other days and times between that day and the commencement of this suit,” etc.,

the then defendant, Mrs. Northcott,

“Persuaded the said Emory J. Snyder to neglect and ill treat the plaintiff, and so alienated his affection for her, that he deserted plaintiff on or about the first day of June, 1915,” etc.

The summons and complaint were served April 28, 1916, and legal testimony pertinent to the issue was admissable between June 1, 1914, and April 28, 1916.

In *Smith vs. Masten*, 15 Wend. 270, 272-3, a husband had recovered damages of defendant, for criminal conversation with plaintiff's wife. A new trial thereon was granted because of the discovery of evidence that plaintiff had lived in a state of adultery with another woman *after* his wife had eloped from him and previous to the trial. The Court says, at p. 273,

“It is true that the alleged misconduct of the plaintiff took place since the elopement of his wife, but as damages were recovered of him for his wounded feelings and destruction of domestic happiness, not only up to

the time of commencement of suit, but up to trial, it would have been proper for defendant to have shown that at any time during the same period he had been guilty of improprieties of the same character as those committed by defendant."

It is believed that the similarity between the character of the cited case and the case under consideration, is such as to indicate the propriety as to time of admitting the evidence, on which perjury is assigned in the Snyder vs. Northcott case, as well as to its materiality.

It is urged that the testimony of Emory J. Snyder in the suit of his wife against Mrs. Northcott was not evidence of bad character or adultery on the part of the wife. The testimony of Snyder (case p. 41, l. 37, p. 42, l. 1-17) would be the most potent argument in refutation of this assertion. The statements,

"As we approached, why I noticed this white form *laying* there. We walked up close by and I noticed there was a man and woman there."

and

"As I said that this man raised up and Mrs. Snyder got up and hollered," etc.,

could leave no other impression upon the mind of the jury than that the man and woman were at the time guilty of adulterous conduct. He says he saw the white form "laying there," and "this man raised up and Mrs. Snyder got up and hollered." If the man and Mrs. Snyder were laying there, she being the wife of the then witness, and if the man as is testified raised up and then Mrs. Snyder got up and "hollered," it is difficult to reach any other conclusion as to the meaning of the witness than that he had observed an adulterous act. It will also be noted that "this was at about eleven o'clock at night" (p 42, l. 16). This was not circumstantial evidence. It purported to be direct and positive evidence of the acts mentioned, and could lead to no

other possible impression on the human mind than that the wife was guilty of adultery.

As to the propriety of the admission of the evidence of unfaithfulness of Mrs. Snyder, in her suit against Mrs. Northcott, there can be no doubt? It was admissible upon two grounds (1) as a bar to the action for alienation of affections of the plaintiff's husband, if followed by proof that her husband left her by reason of her infidelity, and not by procurement of defendant; and (2) as to the quantity of the damages recoverable against defendant.

The unfaithfulness of the wife might not justify the defendant in alienating the affections of the husband, but it certainly would affect the pecuniary value of the husband's affections to the wife, as was considered by the Supreme Court (case p. 136).

A case deemed to be in point, is that of *Mary J. Wolf v. Amelia Frank*, 92 Md. 138, 145-146. The Court at page 145, says,

"It is impossible to fix any definite rule in cases of this character to guide the jury as to the quantum of damages to be allowed. The loss of the society, affection, etc., of a husband to a true wife is necessarily greater than to one who, herself, has not been faithful to her marriage vows. When a devoted wife, free from blame herself, has been deprived of the society, affections, etc., of her husband, by the intrigues and acts of another, she stands in a very different light before the law and before any intelligent jury from that of a woman who has been unfaithful herself."

Testimony of the character shown to have been given by the plaintiff in error and alleged to be false in the suit of *Snyder v. Northcott* being admissible in bar to the action if followed by proof as above stated, as well as in fixing the pecuniary loss to the plaintiff in such suit, it would follow that no pleading other than was made in that suit would be

necessary to permit the introduction of such testimony.

The charge of the Court as to the materiality of the testimony on which perjury was assigned, was correct as a matter of law.

III.

COMPETENCY OF TESTIMONY.

The sixteenth assignment and specification of error, p. 8a, and p. 17a, urged by plaintiff in error refers to the testimony of Arthur Snyder, p. 60, l. 24-39.

The inquiry related to a conversation at the time when the plaintiff in the Snyder v. Northcott case was separating from her husband, whose affection it was alleged had been alienated, and the answer of witness as given shows that Snyder, his wife and son were all three present, when the plaintiff in error told his wife and son he could not afford to keep them and Mrs. Northcott, and they should "get out." This testimony gives the reason for the desire to be rid of his family. He does not mention the adulterous acts of the wife, although he afterwards testified to having seen his wife "laying" on the ground, with a man at a time which ante-dated the separation, which he was then enforcing. The Supreme Court has well said that,

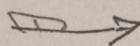
"It tended to negative the truth of the statement made by him that he had found his wife and Smith in a position which would justify a belief on his part that she had violated her marriage vows."

His preference thus expressed for Mrs. Northcott, also tended to show motive for giving the testimony alleged to be false and therefore was entirely competent.

It cannot be seriously contended that the testimony of the son, Arthur Smith, under discussion,

would not have been admissable and competent in the suit wherein the alleged false testimony of the plaintiff in error, was given, and if competent in that suit, it was also admissable on the trial for perjury. 30 Cyc. 1444.

It is to be observed that there was no ground stated for the objection made to this testimony, and further that the evidence had been first introduced into the case by the defendant on cross examination of the same witness (case p. 56, l. 2-5).

Point IV  Exception is taken to remarks made by the Court in his charge to the jury. Specification for reversal (35) p. 22a, and assignment of errors (35) p. 13a. The exception relates to the following language used in the charge:

“If as contended by the State, this defendant had spent the evening with Mrs. Northcott and was met upon leaving her home, by his wife and Smith, he may have thought it a way to cover his own act by charging his wife with improper conduct.” P. 106, l. 38-40.

It is shown by the evidence, p. 32, l. 32-38, and p. 33, l. 4-18; also at p. 44, l. 20-29; also at p. 50, l. 35-37, and p. 51, l. 10-20, that the defendant was at the home of Mrs. Northcott, on behalf of whom the alleged false testimony was given, and was met coming from thence by his wife, and the witness Frank Smith, who had come at the instance of the wife to watch the defendant, and that the defendant used some forceful language on the occasion. This incident is claimed as having been one of the inducements for the giving of the testimony alleged to be false. It having happened near the time given by the defendant in his testimony in the alienation suit.

The remarks of the Court alluding thereto were in comment thereon and related to the application of the testimony by inducement or motive for the alleged false swearing. That such comment may be made with propriety by the trial judge, see State v.

Schuyler, 75 N. J. L. 487, 489.

The trial judge may

“give the jury the benefit of his greater experience by telling them how the testimony strikes his mind, both as to its force and as to the inference he would draw from it.”

Idem.

State v. Hummer, 73 N. J. L. 714, 719-20.

State v. Pulley, 82 N. J. L. 579, 583.

State v. Overton, 85 N. J. L. 287, 294.

Chrisafides v. Brunswick Motor Co., 90 N. J. L. 313, 314.

The testimony above referred to appears to be sufficient for the Court to make the comment to which objection is made.

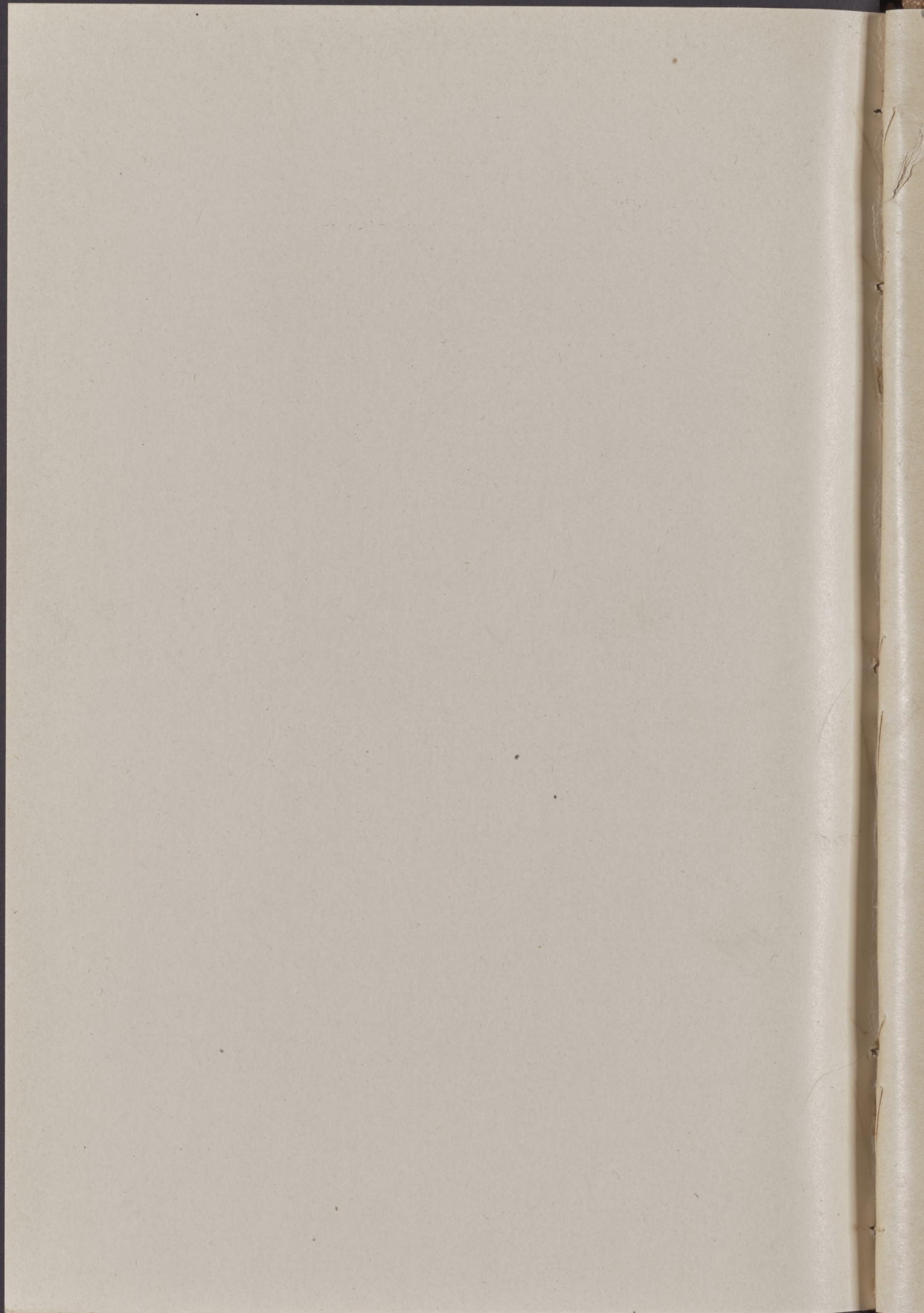
No attempt is made therein to control the ultimate decision by the jury on the facts, and the Court was well within the recognized rule pertaining to comments upon the testimony. ✓-

On the hearing of this case before the Supreme Court the Brief on the part of the State considered the whole number (thirty-five) of assignments and Specifications of Error made by plaintiff in error, but because Counsel for plaintiff in error urges no points before this Court other than those specifically set forth in his Brief, it is refrained from offering argument except upon the matters thus considered.

It is submitted on the part of the State that there is no error in the respective matters alleged to be erroneous by the plaintiff in error, and that the judgment of the Supreme Court in affirmance of the judgment of the Court of Quarter Sessions of Hunterdon County should be affirmed.

HARRY J. ABLE,

Prosecutor of the Pleas of Hunterdon County.



NOV 7, 1919

NEW JERSEY COURT OF ERRORS AND APPEALS

THE STATE

Defendant in Error

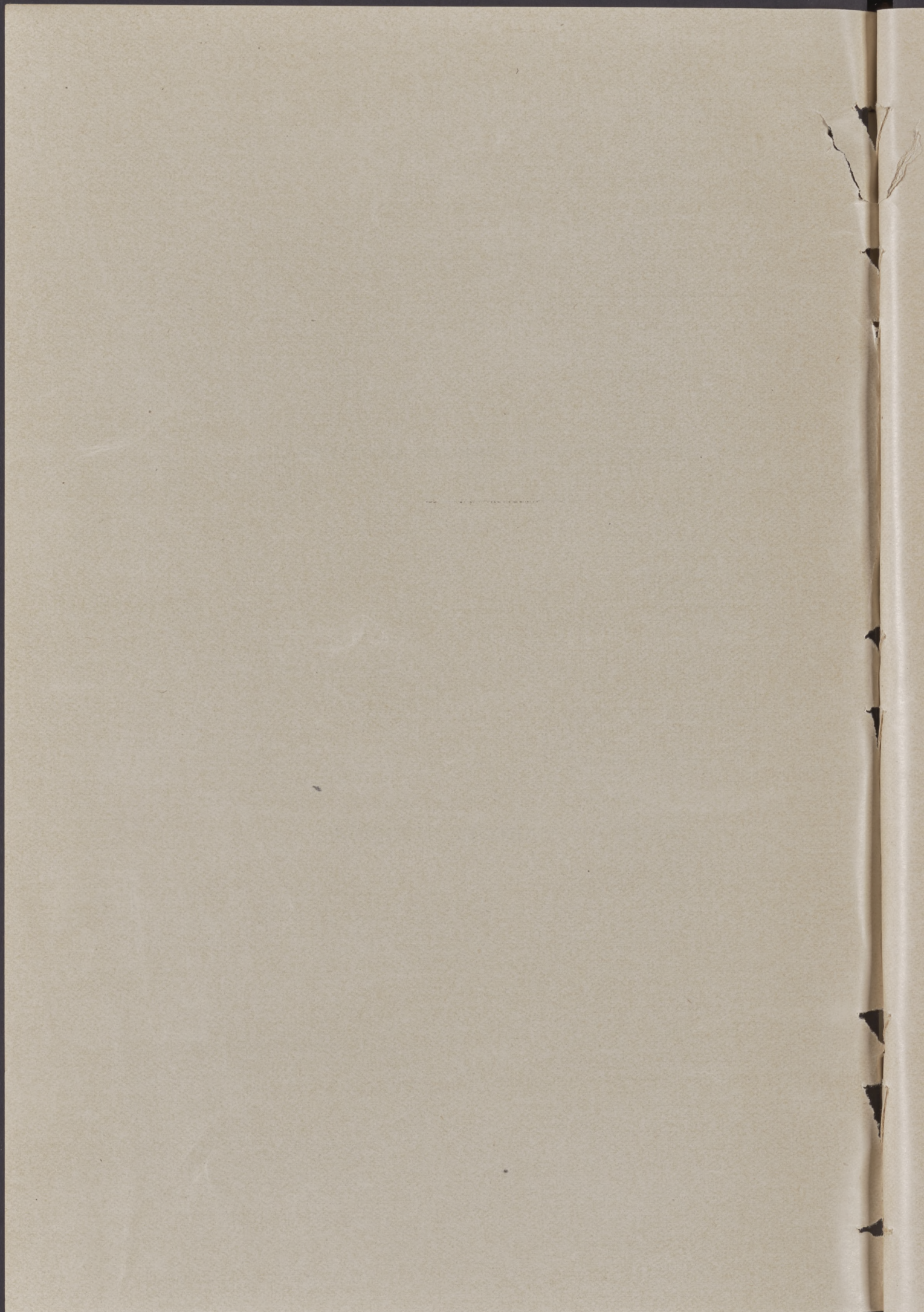
vs.

EMORY J. SNYDER

Plaintiff in Error

On Error to the Supreme Court

BRIEF OF PLAINTIFF IN ERROR



NEW JERSEY COURT OF ERRORS AND APPEALS

THE STATE

Defendant in Error

vs.

EMORY J. SNYDER

Plaintiff in Error

On Error to the Supreme Court 10

BRIEF OF PLAINTIFF IN ERROR

PRELIMINARY STATEMENT

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Plaintiff in error was convicted of perjury in the Court of Quarter Sessions of Hunterdon. He went up on error, the Supreme Court affirming the judgment below, and now he brings his cause to this tribunal for reversal because of thirty-five assignments of error and causes of reversal (the entire record being returned) he undertakes to show where committed and whereby his conviction was unlawful.

The Supreme Court (107 Atl. 167, Case P. 133) 30 considered but four of the assignments as material, ignoring the remainder, with the result just above set forth. Without insisting that each of the thirty-five assignments are necessarily material to a just determination of Plaintiff in Error's rights, it will have to be admitted that the various assignments group themselves into certain generic heads, the principles surrounding which measure accused's rights, and the violation of any of which principles by the State entitle to a reversal. 40

Accordingly, this brief concerns itself with the following principles evoked by the premises, to wit: Competency of witnesses; Materiality of the testimony offered against accused; Relevancy, and Competency of such Testimony, and Error in the Charge of the Court.

FIRST POINT:

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COMPETENCY OF WITNESSES

This is evoked by Assignments 3 and 4, p. 116 and p. 4a of the Case.

THE LAW

20 The sole authority for Mrs. Snyder's testimony against her husband, the accused, is Sec. 57 of the Criminal Proceedure Act, wherein she is made competent "when she is the complanant against him, if she shall offer herself as a witness." C. S. p. 1838.

30 It is obvious that the statute is designed to protect the female against the superior economic and physical prowess of the male, since, the common law being what it is on the subject of testimony by HUSBAND or WIFE where either is a party, there can be no logical reason why now the testimony of the latter should be made competent, while the former is still incompetent, save as that reason is commanded by cases
40 where the HUSBAND commits an economic or physical aggression against the WIFE, and wherein the authority of the State is necessarily invoked to PROTECT HER. That, and that alone, is what must be meant by Sec. 57, supra, omitting as it flagrantly does, permission to the HUSBAND to testify against the WIFE in such a prosecution as was conducted herein. A momentary, if careful reflection, will convince the most skeptical that if such a prosecution as that herein was intended to be covered by Sec. 57 of the C. P. Act, the HUSBAND'S testimony against the WIFE

must have been permitted by the statute, if that of the latter against the former was deemed essential to the right administration of justice. It may be successfully argued that the statute (Sec. 57) might well have eliminated the "married" immunity; but the very fact that it DOES NOT so proves beyond cavil that it WAS NOT INTENDED to apply in such cases or it MUST have applied indifferently to the HUSBAND and WIFE, and not to the latter alone. These premises considered, "COMPLAINANT" (Sec. 57) means solely, a complaint lodged by her because of some economic or physical aggression committed against or upon her, and which, the law being what it is, the State protects her against. In a case of Perjury, the State alone is the COMPLAINANT, however she may have initiated the proceedings or be the chief witness, and a voluntary one, to prove the offense, which is not committed AGAINST her, but always against the State. In other words, admitting for the sake of argument, defendant Snyder perjured himself in the testimony he gave in the alienation suit, it was ABOUT his wife and not AGAINST her that he testified, and arguendo perjured himself. The use of the word "AGAINST" in Sec. 57 becomes significant, even though it may be claimed that the author of the Act had not in mind the significant distinction between the terms AGAINST and ABOUT; the term AGAINST most certainly having been employed in its popular or ordinary meaning in the Section under discussion. And of course, the Section must be construed according to the rules for the construction of Criminal Statutes. It accordingly becomes quite clear that the eminent Justice who wrote the Supreme Court opinion failed to distinguish between one who complains ABOUT a person and one who is a "complainant AGAINST him," with the erroneous result reached therein.

What the N. J. Section 57 means is found in the verbiage of the Iowa Statute on the same subject as interpreted by the Supreme Court of that State.

"A prosecution of a husband for personal violence committed against his wife is a prosecution for a crime "against her" within Code No. 4606, providing that neither the husband nor wife shall be a witness against the other, except in criminal prosecutions for a "crime committed one against the other." *Molyneux v. Wilcockson*, 137 N. W. 1016, 41 L. R. A. (N. S.) 1213.

10 It is for the crime against the wife and not against the State, that perjury is seen to be, that Sec. 57 permits the wife's testimony against the husband to be given. For

20 "In view of Code Nos. 4606, 4853, 4854, the forgery of a wife's name by her husband to an instrument purporting to impose on her a pecuniary obligation is NOT A CRIME AGAINST HER, so as to permit her to testify against her husband before the Grand Jury upon an investigation investigating a charge of forgery against him." *Molyneux v. Wilcockson*, supra.

And that even tho she offered herself as a witness, the reason for the raising of the privilege being what it is seen to be on pp. 1, 2 and 3 hereof. And when such reason does not obtain, as it does not at bar, then sequentially the privilege still adheres.

30 "Bigamy of a husband is a crime committed against the first wife under Rev. St. 1908 No. 7274, and she can testify against her husband without his consent." *Schell v. People*, 173 Pac. 1141.

40 No extended argument is necessary to justify the above conclusion, nor to prove its consistency with a refusal to permit the wife's testimony in the instant case. When the N. J., and all statutes on the same subject in other jurisdictions are considered it

is patent that they are intended only to codify the common law rule that where one spouse was charged by the other with personal injury, perhaps of a corporal violent nature, the aggrieved spouse was a competent witness against the aggressor.

Papas v. United States, 241 Fed. 665, 154 C. C. A. 423

Cohen v. United States 214 Fed. 23, 130 C. C. A. 417

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U. S. v. Rispoli, 189 Fed. 271.

U. S. v. Gynne, 208 Fed. 993

Johnson v. U. S. 221 Fed. 250. 137 C. C. A. 106

That the foregoing is true is seen from the following:

"Rev. Codes, No. 9483, etc., expressly excepts from the rule of non-competency of husband or wife to testify against the other in a criminal case cases of CRIMINAL VIOLENCE on one by the other." State v. Rains, 53 Mont. 424, 164 Pac. 540.

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That such is the only reason for our Sec. 57, is found in the fact that the wife alone is made competent, on the theory, one supposes, that the husband is able to take care of himself in any economic or physical struggle.

30

The following cases affirm the conclusion reached herein as to when the wife or husband may testify against the other, demonstrating anew the theory that the injury complained of must have been directed peculiarly against the person or property of the other.

Grantland v. State, 8 Ala. App. 319. 62 So. 470

Haller v. State, 158 S. W. 121. (Ark.)

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Miller v. Common, 154 Ky. 201. 57 S. W. 373

Hunter v. State, 134 Pac. 1134 (Oklo.) Failure to provide for family—the economic feature. See

Quallis v. State, 158 S. W. 539 (Tx. Cr. App.).

State v. Bert, 17 S.D. 7, 94. N.W. 409, 62 L.R.

A. 172. 106 Am. St. 759 for a clear statement of the principle on which such “privilege waiving” statutes are enacted.

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It only remains to be said that while the alleged perjury was intended to lessen the wife's chances of a pecuniary recovery from her adversary in the alienation suit, it did not and by no stretch of language can it be said to constitute an economic offense against the wife, in the sense that Abandonment, Non-Support and kindred offenses are such an offense against the wife permitting the wife to testify against the agresor. And, finally, the very definition of Perjury completely negatives the concept that its commission by the husband or whomsoever is anything but an offense against the State, and never against a particular person within the State much as one may have perjured himself ABOUT that person in his testimony. And in our Statutes it is classified under the heading of “Against Public Justice and the Administration of Government,” and not among “Crimes which involve Private Injury.”

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(2) Admitting that it is not necessary that a formal complaint be made before a Magistrate, as pointed out by the Supreme Court, nevertheless, we again urge for careful consideration, tho briefly, that Mrs. Snyder did not appear voluntarily before the Grand Jury and make her complaint, she appeared because of and under the compulsory process of the State (Case pp. 21 to 26). She had never seen or talked with the Prosecutor before she received her subpoena. We submit that a subpoena is not the way to procure the presence of a “complainant” before the Grand Jury

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who wishes to make "voluntary" complaint against her husband. She should "come and offer herself" not be "subpoenaed and called." Hence, she was not the "complainant" within the meaning of this criminal statute. The word "offer" means "not compelled prompted or suggested by another."

SECOND POINT:

MATERIALITY

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This principle is evoked by assignment No. 34 p. 12a and 122 of Case.

The gist of the Snyder-Northcott action was the loss of consortium suffered by the plaintiff in that action; as an incident of which only are the damages with which it is sought to be redressed. It mattered little that the plaintiff herself may have been undeserving of her husband's consortium, as was sought to be shown by the alleged perjured testimony of the accused, as far as defendant Northcott's liability for the alienation is concerned. For, even tho it could have been shown that the plaintiff Snyder was not all her husband thought a wife ought to be, that would not have excused defendant Northcott for her alleged offense of alienating the husband's affections. Briefly, Northcott's liability is measured by what she did towards the alienation, independently of what plaintiff Snyder did to lose her husband's affections. To put it concretely, assume that Mrs. Snyder was guilty of the act alleged to have been charged by her husband (or to put it more strongly—an act of adultery, which it was not), that fact is no justification for Mrs. Northcott or for Snyder himself cultivating the intimacy suggested by the Snyder-Northcott action. The charge made the basis of Assignment No. 34 (supra) assumes, that Mrs. Snyder, as a matter of law, would have been non-suited if it had been proved that she was unworthy her husband's affection, and which, of course, is not the law. It is submitted that, no matter what plain-

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tiff Snyder's offense, defendant Northcott could not in law therefore have sought the husband's affections and claimed immunity from the damage claimed by the wife for the alienation, whatever the latter's fault. Briefly, because one's wife is unfaithful, that is no reason in law for the husband seeking the consortium of another woman, or the latter excusing her efforts to win him because of the wife's infidelity. At bar, it is submitted, that had it been proved that plaintiff Snyder was guilty of the act suggested by her husband's alleged testimony, or even of adultery, the testimony otherwise tending to prove Mrs. Snyder's allegation of alienation by defendant, Northcott, the court, as a matter of law, must have charged that plaintiff's, Snyder's, conduct could not justify defendant, Northcott. Yet, the inferior and upper tribunals herein both adopted the complete reverse of the above doctrine in holding the husband's alleged testimony as to his wife's conduct to be MATERIAL to the Snyder-Northcott action, but which it is seen not to be. The Supreme Court (par. 3 of Opinion, p. 135, line 35, and p. 136, 107 Atl. p. 168) holds that because the husband's testimony tended to prove that plaintiff, Snyder, had no affection for the husband that, therefore, she could have placed but little pecuniary value on his affection for her. But that, it is respectfully submitted, is far fetched, if not violent assumption, and not warrented by common experience. It will have to be admitted that, where the defense PLEADS bad character of the plaintiff in mitigation of damages evidence is admissible in support of the plea, and probably material to that extent. Nevertheless, it nowhere appears herein, to justify the materiality of accused's testimony that, defendant Northcott, made such a plea (see answer p. 130).

In such a case, of course, the husband was improperly permitted to testify as to what he saw on the night of June 14, and which said testimony is made the basis of the perjury charge now being discussed. But because the testimony, alleged to be false, was improper-

ly admitted is just the reason it cannot lawfully be made the predicate of a perjury charge. That is the very reason the Perjury Statutes and the common law make MATERIALITY the basis of their operation.

On Materiality and Admissibility of such testimony see,

Hardwick v. Hardwick, 130 Ia. 230, 106 N. W. 639,

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wherein it is shown that the defense of bad character must be plead to permit testimony thereof in mitigation of damages claimed, otherwise, as shown just above, the testimony of character is inadmissible because NOT MATERIAL.

THUS—

“Where, in an action by a husband for enticing his wife away and alienation her affections, there was no evidence of misconduct on the part of the defendant, evidence of the state of the wife’s affections was immaterial.” White v. Rose, 47 Mich, 172, 10. N. W. 188.

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That is, as said above, it matters not how undeserving either husband or wife was of the other, that is no reason for justifying another for alienating either’s affections on that grounds.

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“The fact that a wife frequently quarreled with her husband is not a bar to the action by wife to recover for alienation of husband’s affections, although such quarrels were a subsidiary cause of alienation. Estrangement between husband and wife at time husband’s affections were alienated will not bar wife’s right of action therefore if marriage relations had not been dissolved, the wife having a right to rely on possibility of re-

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conciliation." *Moelleur v. Moelleur*, 173 Pac. 419.

The application to the case at bar is obvious. That is to say, it was immaterial that the wife was unfaithful, which was what it is claimed her husband testified to, since the fact could not justify defendant Northcott making her liable, nevertheless, the alienation by her being established. And the record shows that after the apple tree episode, Snyder and his wife consorted together (pp. 101 and 102), again proving its immateriality as far as the Snyder-Northcott action is concerned.

2. We urge that this was not evidence of bad character or adultery on the part of the wife. It will be observed that he was close enough to and it was light enough for them to see a "white dress," and when he walked "close by" he plainly saw "it was a man and woman;" they were simply there together. This testimony standing alone was an isolated circumstance and hence was not material for any purpose. An adulterous disposition and an opportunity to commit the offense are in combination important factors in proving adultery by circumstantial evidence. Cases on this subject seem to be very scarce, but in *Beadleston v. Beadleston*, 2 N. Y. Supp. 809, where there was not other evidence of adultery with a person who was discovered on one occasion in defendant's room while she was sick, using improper language and conducting himself in an improper manner, such circumstances was held inadmissible. Then, why not in the Snyder-Northcott action? The attitude of our own courts towards purely circumstantial evidence of this character, is shown in *Osborn v. Osborn*, 44 Eq. 257, Court of Errors, opinion at p. 261.

3. If evidence was admissible at all, it was only proper to show such conduct during the period of the criminal intimacy with Mrs. Northcott. The issue in the civil suit was framed as of June 1, 1914 (Case p. 128). It cannot well be argued that anything the wife did after June 1, 1914, influenced Snyder in his loss of affection for her on or before June 1, 1914.

THIRD POINT:

COMPETENCY OF TESTIMONY

This principle is evoked by Assignment and Specification No. 16, pp. 8a and 17a of the Case.

It is difficult to understand on what theory the testimony given by the son Arthur and received by the jury had any bearing on the charge of perjury against the accused. The indictment is for perjury whose predicate need not again be set out. The question submitted to the witness, Arthur, is by the Supreme Court justified on the ground that the answer to it tended "to show that the separation, etc., was because of the fact that he had taken up with the Northcott woman not because of any just ground of complaint he had against his wife." (Opinion, p. 136). 10

From that reason the Supreme Court deduces that accused's claim that he found his wife in this position with another man, and the testimony he gave in support thereof, is negatived and hence is false. If the separation of the Snyder's was at issue, the reasoning might perhaps be proper; but how the testimony objected to is competent to establish the charge of perjury as laid in the indictment it is impossible to discover. Let it be admitted that accused did say what his son Arthur testified to, it is still impossible to see how that fact, if true, tends to prove that the former lied when he testified to the apple tree episode. The utmost that can be claimed for the alleged lie is that, it was intended to exculpate defendant in the alienation suit by Mrs. Snyder. It did not excuse his associations with defendant, nor was it made the basis of his separation from his wife, for the very good reason that such separation was not at issue. 20 30

Again, any one of countless reasons may have prompted the statement his son declared his father made, viz: "told us we had to get out, because he could not afford to keep my mother, myself and Mrs. Northcott," completely disassociated from the conjugal re- 40

10 relationship between husband and wife. For, no where is it claimed by or for accused that he separated from his wife because she was unfaithful, a fortiori, that subject not being under investigation. Briefly, accused's relations with Mrs. Northcott were not at issue, so that any testimony thereupon unfavorable to him, as was that of the witness Arthur, must have a prejudicial effect upon accused, tantamount as the belief in the testimony was that, he was not only guilty of perjury but also of another offence for which he was not then on trial, the latter inevitably though unreasonably prejudicing the jury against him on the perjury charge.

FOURTH POINT:

ERROR IN CHARGE

20 There was absolutely no justification for the comment of the Court found on p. 106, beginning at line 38. "If, as contended by the State, this defendant had spent the evening with Mrs. Northcott, and was met upon leaving her home by his wife and Smith, he may have thought it a way to cover his own act by charging his wife with improper conduct."

30 There was no such contentions by the State, the relations of the defendant with Mrs. Northcott were not an issue in this case, where collateral and immaterial. So far as this case goes, Snyder had nothing to cover up, and it is difficult to see how charging his wife with improper conduct would cover up any relations he might have with someone else. The charge accentuated the insuations of illicit relations with Mable Northcott, whereas the evidence merely shows that Mrs. Northcott, was the employer of the defendant, and there is not a scintilla of evidence to be found anywhere in this case which would justify any other conclusion. This was very prejudicial to the defendant.

FIFTH POINT:

RELEVANCY OF TESTIMONY

The remainder of the Assignments concern themselves with the above principle, but many of which are posited on the reception of testimony that is scarcely material enough to have influenced the verdict. Counsel will accordingly not urge them, believing as we implicitly do that the other points herein urged are sufficient to necessitate a reversal of the judgment below. 10

We especially respectfully call attention to Point 1 herein on the wife's competency; and then to Point 11, on the subject of Materiality of the testimony of accused in the alienation suit that is made the predicate of the perjury indictment. The Court is respectfully asked to consider whether, the testimony being relevant only as to the question of plaintiff's damages, or, rather in mitigation thereof, such testimony, though relevant can be said to be MATERIAL in the scense of that term as employed in the law of perjury. That is to say, testimony may be "relevant" without necessarily being "Material"—"not to be dispensed with," Webster. So that while the testimony in question may have been "relevant" to the subject of "mitigation of damages" claimed by plaintiff, it was not necessarily "material" to the establishment or denial of the cause of action itself, which may have been sustained or defeated independently of the alleged false testimony. When it is remembered that the issue in the Snyder-Northcott action was the "alienation" by the latter of the former's husband's affections, which sounds in damages, nothing is MATERIAL that does not tend to prove or controvert the issue itself, however "relevant" any testimony may be that tends to enlarge or mitigate the damages arising from the alienation. 20 30

And once again, counsel emphatically and respectfully urge that the wife was an incompetent witness 40

against her husband to his extreme prejudice as evidenced by the verdict and ensuing judgment.

Wherefore, we pray that the judgment may be reversed.

FREDERICK A. POPE,

Counsel of Plaintiff in Error.

