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WITNESSES FOR DEFENDANT.

TESTIMONY IN REBUTTAL.

Return from Supreme Court.

Indictment.

State of New Jersey, }
County of Essex, } ss.:

Be it Remembered, that a Court of Oyer and Terminer, holden at Newark, in and for the County of Essex on the first Tuesday of April, in the year of our Lord, one thousand nine hundred and twenty-eight, by the Honorable William S. Gummere, Chief Justice of the Supreme Court of Judicature, of the State of New Jersey, and holding the said Court of Oyer and Terminer, in and for the County of Essex, New Jersey, by the oath of J. Herbert Reid, William Wepner, John Friend, William Patrick, Jr., Arthur A. Richmond, Theodore R. Plume, Carl C. Lehmann, George G. Neill, Morris J. Schutzman, Charles Reynolds, Stephen J. Weir, Louis F. Bucher, Paul Keller, Rudolph A. Koether, James McLaughlin, Frank L. Smith, Francis J. Kerns, John J. Kreitler, August Streuning, Leo M. McEvoy, Wilson H. Kierstead, William S. Parkhouse, Charles J. Rich, good and lawful men of the said County of Essex duly commissioned and then and there duly sworn and charged to enquire in behalf of the State of New Jersey, in and for the said County of Essex it is presented in manner and form following, to wit: Essex County, to wit:

The Grand Jurors of the State of New Jersey, for the County of Essex, upon their oath present that Isadore Lerman on the Twenty-first day of May, in the year of our Lord one thousand nine hundred and twenty-seven, at the City of Newark in the County of Essex aforesaid did make and assault upon Sallie Bigans, and then and there beat, wound, and ill-treat the said Sallie Bigans, contrary to the form of the statute in such case made

and provided, and against the peace of this State, the government and dignity of the same.

And the Grand Jurors aforesaid, upon their oath do further present that the said Isadore Lerman on the twenty-first day of May, in the year of our Lord one thousand nine hundred and twenty-seven, at the City of Newark, in the County of Essex aforesaid, being over the age of sixteen years, did then and there make an assault upon Sallie Bigans and then and there did unlawfully and carnally abuse the said Sallie Bigans the said Sallie Bigans being then a woman child over the age of twelve years and under the age of sixteen years, contrary to the form of the statute in such case made and provided, and against the peace of this State, the government and dignity of the same.

JOSEPH L. SMITH,
Prosecutor of Pleas.

On the twenty-ninth day of May, A. D. Nineteen hundred and twenty-eight, on which day the said Indictment was presented by the Grand Jury aforesaid, to the said Court of Oyer and Terminer, and the said Justice did then and there order the indictment to be handed down to the Court of Quarter Sessions, and to be delivered to the Clerk of the Court of Quarter Sessions, in and for said County of Essex, and then and there the said indictment was duly delivered and duly filed by the Clerk of said Court and an entry of such order and delivery and filing was then and there made in the minutes of said Court at the same time pursuant to the statute in such case made and provided.

And afterwards, that is to say, on the fourth day of June A. D. Nineteen hundred and twenty-eight, at a Court of Quarter Sessions, holden at Newark, in the for the County of Essex, before the Honor-

able Dallas Flannagan, Presiding Judge of the Court of Common Pleas, Isadore Lerman, in the custody of Conrad Deuchler, Sheriff of the County of Essex aforesaid, and the said Isadore Lerman being brought before the bar in his own proper person and forthwith being demanded of and concerning the premises in the above indictment specified and charged upon him, how he would acquit himself thereof, says that he is Not Guilty thereof, and therefore for good and evil he puts himself upon the country, &c. and Joseph L. Smith, Prosecutor of the Pleas of said State, for said County of Essex in this behalf doth the like.

Therefore, let a Jury thereupon come before the Court of Quarter Sessions to be holden at Newark, in and for the County of Essex, on the eleventh day of June A. D. Nineteen hundred and twenty-eight, then next ensuing twelve free and lawful men, each of whom shall be a citizen of this State and resident within the County of Essex aforesaid, above the age of twenty-one years and under the age of sixty-five years, by whom the truth of the matter may be better known and who are not of kin to the said Isadore Lerman to recognize upon their oath whether the said Isadore Lerman is Guilty of the premises in the said indictment specified or Not Guilty because the said Joseph L. Smith, Esquire, Prosecutor &c. as the said Isadore Lerman puts himself upon the jury and the same time is given to the parties aforesaid at the same place.

And afterwards, that is to say on the twentieth day of February A. D. Nineteen hundred and twenty-nine, to which day the trial of aforesaid indictment was posponed, the said trial was moved be-

fore the Honorable Dallas Flannagan, Judge of the Court of Common Pleas and the trial progressed, and at the same Court of Quarter Sessions comes the said Joseph L. Smith, who prosecutes as aforesaid, and the said Isadore Lerman, and the jury of whom mention is before made, and Conrad Deuchler, Sheriff of the County of Essex, for the purpose empanelled and returned, to wit: after the following challenges were made by the State 1, and Defendant 10, Ralph C. Wetsten, Ellsworth Mac N. Wilson, Harry W. Russell, Charles L. Hulmes, Christian Roehrich, Jr., Robert L. Taylor, Charles Fleig, John Dear, R. Leslie Van Riper, Carlos C. Boom, George Schueler, Charles Hoffman being called were sworn upon the jury who to speak the truth of and concerning the premises and thereupon the trial of said issue was commenced and continued until the twenty-first day of February A. D. Nineteen hundred and twenty-nine, when the jury returned into Court in charge of the officer sworn to attend them, and then and there in the presence of the Prosecutor, defendant and Court do say upon their oath, "We find the defendant, Isadore Lerman Guilty in the manner and form as is set forth in the indictment" and so they say all.

Judgment Signed
March 19th, 1929
Dallas Flannagan,
Judge.

Whereupon afterwards to wit, on the 19th day of March A. D. Nineteen Hundred and twenty nine all and singular, the premises being seen and by the Court now here fully understood, the Court (Hon. Dallas Flannagan, Judge) do order and adjudge that the above named defendant, Isadore Lerman be imprisoned in the Penitentiary of this county for a term of thirteen months at hard labor upon this conviction;

that he pay the costs of this prosecution and that he stand committed until the said costs be paid, which said costs are taxed by the Clerk of the court at the sum of One hundred and twenty-four dollars and twenty-nine cents and the defendant be in Mercy etc.

Writ of Error.

New Jersey: ss.

(Seal) The State of New Jersey to our Essex County Court of Quarter Sessions and Dallas Flannagan, Judge of our Essex County Court of Quarter Sessions

Because in the record and proceedings and also in giving of judgment upon a certain indictment against Isadore Lerman, late of the City of Newark, in the said County of Essex:

"That Isadore Lerman on the twenty-first day of May, in the year of our Lord one thousand nine hundred and twenty-seven, at the City of Newark in the County of Essex aforesaid did make an assault upon Sallie Bigans, and did then and there beat, wound and ill-treat the said Sallie Bigans, contrary to the form of the statute in such case made and provided, and against the peace of this State, the government and dignity of the same.

And the Grand Jurors aforesaid, upon their oath do further present that the said Isadore Lerman on the twenty-first day of May, in the year of our Lord one thousand nine hundred and twenty- seven, at the City of Newark, in the County of Essex aforesaid, being over the age of sixteen years, did then and there make an assault upon Sallie Bigans

and then and there did unlawfully and carnally abuse the said Sallie Bigans the said Sallie Bigans being then a woman child over the age of twelve years and under the age of sixteen years, contrary to the form of the statute in such case made and provided, and against the peace of this State, the government and dignity of the same."

10 *Pro ut,* the said indictment and the several counts therein, whereof, before you, he the said Isadore Lerman, hath been indicted, and is thereof convicted by a certain jury of the county, taken between the State of New Jersey and the said Isadore Lerman, as it is said, manifest error hath intervened to the great damage of the said Isadore Lerman, as from his complaint we have received information we being willing in his behalf, to correct the 20 error in due manner, if any there shall be, and that speedy justice be done to him, the said Isadore Lerman, command you that if judgment be thereon given, then that you distinctly and openly send, under your seal, the record and proceedings aforesaid, with all things touching the same to our Justices of our Supreme Court, to be held at Trenton, on the 8th day of April, next, and this writ, that the record and proceedings aforesaid being inspected, we may further cause to be done thereupon for 30 correcting that error, what of right and according to the laws and customs of New Jersey ought to be done.

Witness, WILLIAM S. GUMMERE, Chief Justice of our Supreme Court at Trenton, this 19th day of March A. D. One thousand nine hundred and twenty-nine.

FRED L. BLOODGOOD,
Clerk.

40 HAROLD SIMANDL,
Attorney.

Return to Writ.

State of New Jersey, }
County of Essex, } ss.:

I, Dallas Flannagan, Judge of the Court of Quarter Sessions in and for the County of Essex, New Jersey, Do Hereby Certify and Return to the Supreme Court of Judicature of the State of New Jersey the Indictment, Judgment Record and Proceedings together with the entire record of the Proceedings had at the trial and together with all things touching and concerning the same as by the within Writ to me directed, I am commanded.

In Witness Whereof, I have hereunto set my hand and affixed the official seal of said Court at Newark, N. J., this 7th day of April A. D. 1929.

(Seal)

DALLAS FLANNAGAN,
Judge of the Court of Quarter Sessions, Essex County, New Jersey.

Received in open Court, March 19, 1929.

DALLAS FLANNAGAN,
Judge.

Bail fixed at $2,000.

Certificate of Reasonable Doubt.

ESSEX COUNTY COURT OF QUARTER SESSIONS.

STATE OF NEW JERSEY vs. ISADORE LERMAN.	Certificate of Reasonable Doubt.

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It appearing that a writ of error has issued out of the New Jersey Supreme Court to review the conviction of Isadore Lerman upon an indictment charging him with the issue of carnal abuse upon the body of Sally Biggans;

And application having been made to the Court in which said conviction was had, for a certificate setting forth that there is reasonable doubt as to the validity of the conviction.

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And Court having heard the argument of Harold Simandl in behalf of the said Isadore Lerman and Joseph E. Conlon, assistant prosecutor of pleas in behalf of the State, and having considered the said application and being of the opinion that said certificate should issue.

This is to therefore certify that there is reasonable doubt as to the validity of the said conviction.

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DALLAS FLANNAGAN,
Presiding Judge of the Essex County
Court of Quarter Sessions.

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Testimony.

ESSEX COUNTY COURT OF GENERAL QUARTER SESSIONS.

Wednesday, February 20, 1929.

STATE OF NEW JERSEY vs. ISADORE LERMAN.	On Indictment No. 21, Dec.T. 1928 for Carnal Abuse.

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Before—HON. DALLAS FLANNAGAN, Judge, and a Jury.

APPEARANCES:

JOSEPH E. CONLON, Second Assistant Prosecutor of the Pleas, for the State.
HAROLD SIMANDL, for the Defendant.

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(A jury is called and sworn).
Mr. Conlon opens in behalf of the State.

SALLY BIGAMS, sworn in behalf of the State.

Direct-examination by Mr. Conlon:

30

Q. Where are you living? A. 81 Waverly Avenue.

Q. Where were you living in April, 1927? A. 189 West Kinney Street.

Q. How long did you live in Newark? A. This December it is going to be seven years.

Q. How old are you? A. Sixteen.

Q. When were you sixteen? A. March 8, 1928.

Q. March 8, 1928, you were sixteen? A. Yes.

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Q. Now, in May, 1927, where were you living? A. 189 West Kinney Street.

Q. Who were you living there with? A. My mother and sisters.

Q. What floor did you live on? A. Third floor.

Q. What floor did your sister live on? A. Second floor.

10

Q. You were going to school at that time? A. Yes.

Q. What school? A. Montgomery.

Q. What class were you in? A. 6-A.

Q. Do you know Isidore Lerman? A. I do.

Q. Will you come down from the box where you are and go to the courtroom and point him out? A. This is Isidore Lerman.

20

Mr. Conlon: Is it admitted for the purpose of the record that the witness indicated Isidore Lerman?

Mr. Simandl: Certainly.

Q. When did you first meet Mr. Lerman? A. I knew Mr. Lerman since I was in Newark. A sister-in-law of mine worked for him before we came here.

Q. Did you work for him? A. Yes.

30

Q. When did you work for him? A. I worked for him a portion of 1926 and 1927.

Q. What part of 1926, do you remember? A. I do not remember.

Q. Do you remember whether or not it was before Christmas? A. It was.

Q. When did you stop working for him? A. May.

Q. What year? A. 1927.

Q. Where did Mr. Lerman live at that time? A. 106 West Street.

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Q. What was on the first floor of that building? A. Saloon.

Q. Do you know whose saloon it was? A. Isidore Lerman's.

Q. And what floor of the house did he live on? A. He lived on the third floor.

Q. Who lived on the second floor? A. His children. 10

Q. Well, you mean the family occupied— A. The family occupied the second and third floor.

Q. Now, what did his family consist of? A. His family consisted of eight people altogether.

Q. Who are they? A. Mr. and Mrs. Lerman, Joseph, David, Willie, Anna, Clara and Philip.

Q. And Mr. and Mrs. Lerman and six children? A. Yes.

Q. How old was the oldest child? A. The oldest child would be twenty-two years old in my idea. 20

Q. About how old was the youngest child? A. About eleven.

Q. Now, you say they occupied the second and third floors of this house? A. Yes.

Q. What rooms were on the second floor? A. Two bedrooms and kitchen.

Q. Who occupies the two bedrooms on the second floor? A. Clara and Anna, Willie and Philip. 30

Q. You mean Clara and Anna occupied one room? A. And Willie and Philip occupied the other one.

Q. Where on the second floor were those rooms? A. They were one right alongside of each other. The girls occupied this room and the boys occupied this one.

Q. The kitchen was in the back of the house? A. Yes.

Q. And the room next to that? A. Clara and Anna. 40

Q. And next to that? A. Willie and Philip.

Q. And the rest of the family? A. Slept upstairs.

Q. During the time you were working for the Lermans did you go to school? A. I did.

Q. What time did you go to work for them? A. Six to eight in the afternoon.

10 Q. What did you do there? A. I was occupied as dish-washer.

Q. Did you do anything else besides wash dishes? A. I fixed the supper.

Q. How much did you receive? A. I received $3 a week.

Q. Do you remember the 21st of May? A. I do.

Q. 1927? A. Yes.

Q. Was Mrs. Lerman living there on that day? A. No. She was living there, but she was not home.

20 Q. How long before that had she left home?

Mr. Simandl: If she knows.

Mr. Conlon: I will withdraw the question.

Q. How long before the 21st of May was it that you saw Mrs. Lerman there in the house? A. About two weeks.

Q. You mean that during the two weeks before the 21st of May you did not see her there? A. No.

Q. Is that what you mean? A. Yes.

30 Q. Now, on the 21st of May do you remember that day? A. I do.

Q. What time did you get to the Lerman house? A. My usual time was there six to eight and I never went there any later or earlier.

Mr. Simandl: I move that be stricken out as a conclusion. She is not testifying to what happened.

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The Court: Well, I think that is a fair answer.

Q. Now, when you got there on that day, who was in the house? A. The smaller children. I do not just remember how many it was now.

Q. The older children were not there? A. No, they were not in that part of the house. 10

Q. Did the older children have supper there that night? A. No.

Q. Did you prepare any supper? A. I did.

Q. For whom? A. For four small children and Mr. Lerman.

Q. Did they all eat at the same time? A. No.

Q. Who ate first? A. I don't know.

Q. Well, did the children eat together? A. Yes.

Q. And did Mr. Lerman eat at the same time the children did? A. No. 20

Q. Well, who ate first, the children or Mr. Lerman? A. The children.

Q. Was Mr. Lerman there when the children ate? A. He was downstairs.

Q. I mean, was he in the apartment upstairs where you could see him? A. No.

Q. After the children had finished eating, what did they do? A. They went outside. 30

Q. Do you remember what kind of weather it was that day? A. It was warm weather, because I did not wear any coat.

Q. And after the children went out what happened? A. Mr. Lerman came up for his supper.

Q. Was there anybody besides you in the apartment when he came up? A. No.

Q. Who prepared his supper? I did.

Q. And did he eat his supper? A. Yes. 40

Q. Where did he eat his supper? A. In the kitchen, on the table.

Q. What happened then? A. When he finished his supper he came to the sink where I was washing the dishes and grabbed me by my arm.

Q. Yes. A. And through a tussel he overpowered me.

10

Q. What did he say to you? A. He didn't say anything.

Q. What happened then? A. He took me into the girl's bedroom and he threw me on the bed.

Q. Which bedroom was that? A. Right adjoining the kitchen.

Q. And he threw you on the bed? A. Yes.

Q. And then what did he do? A. And then he got on top of me.

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Q. And then what did he do? A. He had intercourse with me.

Q. And how were you dressed that day A. I had on a dress, brassier, step-ins and a slip.

Q. What did you do? A. I hollered.

Q. How many times did you holler? A. I hollered three times.

Q. Now, did you have your step-ins on while this happened? A. Yes.

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Q. What, if anything, did you see on the bed or your step-ins after he had intercourse with you? A. I didn't know whether I seen anything on the bed or not, but I saw blood on my step-ins.

Q. Well, after Lerman had had intercourse with you, what did he do? A. He said to me there is nothing to me, I lost my power.

Q. He said what? A. He said there is not anything to me, because I lost my power, and I was going to tell my mother and he said, "Don't tell

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your mother, I will give you a couple of dollars."

Q. And then what did he do. A. He went downstairs.

Q. Then what did you do? A. I finished the dishes. I was almost through and I went home and I could not get upstairs where my mother was and I stopped at my sister's on the second floor.

Q. When you got there who was there? A. My sister was there alone.

Q. Did you speak to your sister? A. Yes.

Q. What did you say to her?

Mr. Simandl: I object.

The Court: Well, I will allow the question, but I will caution the witness not to give the details of anything she said occurred, but just in a general way what happened to her. What did you tell her, if you told her anything.

Defendant's Counsel prays an exception to this ruling of the Court.

Exception allowed; let it be sealed and it is signed and sealed accordingly.

DALLAS FLANNAGAN,
Judge.

The Court: What is the objection?

Mr. Simandl: The only fact is that she talked to her, nothing more than that.

The Court: Proceed.

Defendant's Counsel prays an exception to this ruling of the Court.

Exception allowed; let it be sealed and it is signed and sealed accordingly.

DALLAS FLANNAGAN,
Judge.

The Court: Now, tell us what you said to your sister.

Witness: I told my sister that I was hurting.

Mr. Simandl: I object to the question on the same ground that the only fact that may be made known is that there was a complaint. Was Mr. Lerman there at that time?

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Mr. Conlon: No, it is admitted that he was not.

The Court: I will strike out the answer. Now, then, did you say anything else to your sister?

Witness: Yes. My sister asked me.

Mr. Simandl: I object.

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The Court: No. Go ahead. Do not give us the details. What did you tell your sister, if anything, that night?

Witness: I told my sister that Mr. Lerman had attacked me and she asked—

Mr. Conlon: All right.

The Court: That is all.

Q. And when you told her that, you and your sister were in her flat together? A. Yes.

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Q. After you had that talk with your sister, what happened? A. My sister went upstairs to my mother.

Q. Did you see your mother? A. Yes, my mother came downstairs.

Q. Then she came down to your sister's flat? A. Yes.

Q. Did you talk to your mother? A. Yes.

Q. What did you say to your mother?

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Mr. Simandl: Objected to on the same ground.

The Court: I will allow it, but the same caution to you, not the details.

Q. What did you tell your mother? A. I told my mother that Mr. Lerman had attacked me.

Q. Do you know Dr. Bruington? A. Yes. 10

Q. Have you seen Dr. Bruington? A. Yes.

Q. When was the first time you saw him? A. I saw Dr. Bruington before he became my doctor. He was the family doctor.

Q. After this 21st of May—what day of the week was that? A. Saturday.

Q. When did you see him next after that? A. Dr. Bruington?

Q. Yes. A. Sunday morning. 20

Q. What time? A. Nine o'clock.

Q. Where? A. At his office, 115 Spruce Street.

Q. Now, after that time did you work for the Lerman's any more? A. No.

The Court: How long was it after this occurred before you say you saw Dr. Bruington?

Witness: The night following, Sunday morning. 30

The Court: That was the next day?

Witness: Yes.

Q. Now, you saw Dr. Bruington after that? A. I did.

Q. How many times? A. Oh, I cannot place the times.

Q. Did you have a baby? A. Yes.

Q. When? A. February 10, 1928. 40

Q. Where? A. 81 Waverly Avenue.

Q. What is that, your home? A. Yes.

Q. Who attended you there? A. Dr. Bruington.

Q. Is the baby still alive? A. Yes.

10 The Court: Will you give me the date the baby was born again?

Witness: February 10, 1928.

Cross-examination by Mr. Simandl:

Q. Where are the step-ins? A. The step-ins, I burned them up.

Q. When? A. That same night, Saturday night.

20 Q. You burned them? A. I did.

Q. Uh? A. I did.

Q. Are you sure about that? A. Positively.

Q. Do you remember testifying in the First Precinct before his Honor, Judge Boettner, do you remember testifying down there? A. Yes, I do.

Q. Do you remember testifying there on the 7th day of May, 1928? A. Yes.

Q. Do you remember being asked and you answered the following question: "What happened to
30 the step-in? They had blood on them. What did you do with them? I burned them up. Who burned them up? My mother. Did your mother see them? Answer: Yes. And did she burn them up? Answer: Yes." A. My mother saw the step-ins, that is the truth, but I burned them up.

Q. What time of night did you burn them up? A. I cannot get exactly that time now, but it was after I left the Lerman home.

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Q. About what time did you burn them up? A. Between nine and ten.

Q. How long did you remain at your sister's? A. Until I could go upstairs.

Q. How long was that? A. About an hour.

Q. Why couldn't you get upstairs? A. Because I was sore.

Q. How far away is your sister's home from the home of Mr. Lerman? A. One and a half blocks.

Q. You walked that? A. I did.

Q. You washed the dishes? A. I did not wash the dishes. I finished the dishes.

Q. You could not go up that flight of stairs and you waited an hour before you could get up, because you were sore is that it? A. Yes.

Q. Your mother was upstairs? A. My mother's apartment she was.

Q. Did your mother come downstairs? A. She did.

Q. How long after to your sisters? A. About fifteen minutes, I would say.

Q. Fifteen minutes? A. Yes.

Q. Where were you, in your sister's house? A. In my sister's house. I was in her bedroom adjoining the kitchen.

Q. Did you call in the doctor that night? A. No, I didn't.

Q. Where were these step-ins burned? A. In the stove.

Q. Did you have a fire that night? A. Can't you make a fire if you want to do something.

Q. Just a minute, please. I didn't ask you that. I asked you did you have a fire that night. A. I made one then.

Q. Oh, you made a fire? A. Purposely for that.

Q. Purposely for that. A. Yes.

Q. You were unable to get upstairs because you were so sore? A. Yes.

Q. And you waited an hour in your sister's house and yet you made a fire to burn your step-ins?

10 Mr. Conlon: I object to that question. The witness did not testify that she was unable to. She said she did not go up before, she was sore.

The Court: She said the reason she didn't go up because she was sore. I will allow the question in the form it was put so that the witness can answer it.

Q. (Question read.) Is that so? A. I did not
20 really stay at my sister's house just because I was sore. If a person was able to get upstairs they were able to make a fire right in the kitchen.

Mr. Simandl: I ask that that be stricken out as not responsive. It is argumentative.

The Court: No. I will allow it to stand.

Mr. Simandl: May I ask the witness to be instructed to answer my question.

30 The Court: Yes. Just make your answer responsive.

Q. Why did you burn the step-ins? A. Because they were not very much good anyway and they had the blood on them and I burned them up.

Q. That is the only reason you had? A. Yes.

Q. And they were burned when you got upstairs? A. I burned them when I got upstairs.

Q. I say, when you got upstairs? A. Yes.

40 Q. Was there any blood on your dress? A. Yes.

Q. Did you burn that? A. No.

Q. Have you the dress here? A. I have.

Q. You have the dress? A. Yes.

Q. Has it blood on it? A. No. It was washed. The blood was washed out of it.

Q. When? A. The following week, when my mother did the laundry. 10

Q. When did you find that dress? A. When did I find it? I bought it.

Q. Do you remember me asking you in the police court where the dress was and you said you did not know? A. No, I don't.

Q. You remember me questioning you? A. Yes, but I do not remember giving you that answer.

Q. How long had you been working for Mr. Lerman? A. I would say about six months or more.

Q. During this time had he treated you like a gentleman? 20

Mr. Conlon: I object to that. This child's idea of a gentleman and ours might be different.

The Court: I will sustain the objection, but I will allow you to ask her if he tried to do anything like this before.

Defendant's Counsel prays an exception to this ruling of the Court. 30

Exception allowed; let it be sealed and it is signed and sealed accordingly.

DALLAS FLANNAGAN,
Judge.

Q. On a Saturday night—strike it out. Is West Street a busy street? A. I cannot tell whether it is any busier than any of the rest.

Q. Are there people on the street on a Saturday 40

night on West Street? A. Yes.

Q. Were there people in the establishment of Mr. Lerman?

Mr. Conlon: If you know.

A. I don't know. I don't be in the saloon. I be in the house.

10 Q. Were any people that you saw at all on the street when you went upstairs? A. Sure. Don't you pass people when you go on the street?

The Court: Do not argue.

Witness: Yes. I saw people when I was going to his house.

Q. Do you remember anybody that you saw? A. No.

20 Q. Do you remember anybody that you saw after you come down to the street other than your sister and mother? A. No. I saw people, that is true, but who they were I do not know.

Q. Did you talk to anybody? A. Outside of my mother and sister I did not.

Q. Did you recognize anybody on the street at all? A. I did not try to.

Q. You walked all the way home? A. I did. It is not long.

30 Q. Were you crying? A. No, I was not crying.

Q. When you got to Lerman's house that night, where did you go? A. I went to the driveway into his home into the kitchen.

Q. You went up a flight of stairs? A. A small flight, yes.

Q. When you got into the kitchen who did you see there? A. No one was in the kitchen. The children were in the bedroom.

40 Q. What children? A. Anna, Clara and Philip.

I do not know whether Willie was there or not.

Q. Had they eaten? A. No.

Q. This was at what hour? A. Six o'clock in the afternoon.

Q. Was it light? A. Yes, it was light.

Q. What was Anna doing? A. I do not know. I do not watch that to see what they were doing at that time. 10

Q. What was Clara doing? A. I don't know.

Q. What was Philip doing? A. I don't know. They were in the house.

Q. What was Willie doing? A. I said I don't know whether Willie was there or not.

Q. What was the first thing you did? A. I asked the children what they wanted for supper.

Q. Did they tell you? A. Yes.

Q. What did you prepare for them? A. I prepared eggs. 20

Q. Did you set the table? A. I only had to give them what they asked for on a plate.

Q. Did you set the table? A. There was not any setting of the table to be done.

Q. How were the eggs prepared? A. Poached eggs.

Q. Was there anything else to their repast? A. Saltine crackers. 30

Q. Anything else? A. And if they wanted milk they had it. If not, they didn't.

Q. Did you put it on the table? A. If they wanted it I did.

Q. They sat down to eat? A. Yes.

Q. How long did it take you to poach the eggs and prepare them? A. I have not any idea about that.

Q. Well, approximately how long? A. To get finished with three of them, supper, I took about 40

fifteen minutes to finish the eggs.

Q. Was there anybody else there but the four children or three children? A. No. If there were I did not see them.

Q. Why, were you unable to see them? A. No, there was other parts of the house you cannot see into if you be in one room.

10

Q. For instance— A. I didn't see anyone.

Q. I mean what room could they be in without your seeing them? A. No room except that one room where the children were at that present time.

Q. Perhaps you misunderstand me. What room could they have been in without your seeing them? A. Upstairs. Upstairs they have a third floor apartment and also the boy's bedroom.

Q. After they had finished with their repast, what did you do? A. I took their dishes and washed them.

20

Q. Where was Mr. Lerman? A. I suppose he must have been in the saloon. That is where he came from.

Q. When? A. When I had fixed his supper.

Q. Whose supper? A. Mr. Lerman's supper.

Q. What were you doing when Mr. Lerman came in? A. I was washing dishes from the children, what the children had left.

30

Q. Did you know what he was going to eat? A. As usual I knew what he did have every night.

Q. Every night? A. Every night when I was there he had the same thing.

Q. What was that? A. It was two eggs, saltine crackers, cream cheese and a cup of coffee.

Q. Every night? A. Every night.

Q. Didn't Mrs. Lerman ever prepare his supper? A. I wouldn't say that she didn't.

40

Q. So that without asking you prepared his supper? A. Yes.

Q. Before the children's dishes were washed or after? A. Whose supper did I prepare?

Q. Mr. Lerman's? A. I was preparing his supper while they were eating. Coffee has to boil and you have to turn an egg to keep it from burning. 10

Q. When did you prepare it? A. When the children were eating.

Q. After the children were finished his supper was ready? A. Yes.

Q. Who called him? A. I told one of the children to tell their father to come up.

Q. And did he come right up? A. He did.

Q. Did he sit down and eat? A. Yes.

Q. And while he was eating, what were you doing? A. I was washing dishes. 20

Q. Now, how many dishes did you have to wash? A. I had the remainder of the dishes from the three children to wash and after his coffee was made I cleaned out the coffee pot so it would be clean the next day.

Q. Well, as I understand it, you did not have to set the table. A. What do you mean?

Q. Well, you had how many plates to clean? A. I had three plates to clean, forks. 30

Q. Yes. A. And I do not know whether any one of them had a glass of milk that night, and there is usually dishes left from lunch time.

Q. How long did it take you to clean the three plates? A. I have not any idea about that.

Q. Well, how long had you been washing dishes? A. I could not give no definite answer.

Q. How long did it take you to clean the forks and knives? A. I have not any idea about that. 40

Q. Well, how long did it take you altogether to wash the dishes that night? A. I cannot give you no definite answer about that.

Q. Well, while he was eating these two eggs, his crackers, his milk, or was it coffee? A. I said coffee.

10 Q. Coffee. I beg your pardon. While he was eating his repast, you were there washing the dishes? A. Cleaning the sink.

Q. Now, which was it, washing the dishes? A. Yes. It was washing the dishes and I said cleaning the sink of the dish water.

Q. How long did it take him to eat his supper? A. I cannot tell you.

Q. Well, can you give us any idea at all? A. No.

20 Q. Well, did he finish his eating before he came there to the sink? A. He did.

Q. He had finished eating? A. Yes.

Q. And then he came over to the sink? A. Yes.

Q. Now, after that you went back again to wash the dishes? A. I had his to wash and to hang the dish towels away.

Q. And how long did that take? A. About five or ten minutes, I will say.

30

SARAH B. COLEMAN, sworn in behalf of the State.

Direct-examination by Mr. Conlon:

Q. You are the mother of Sally Bigams? A. Yes.

Q. Where was she born? A. She was born in

40 Alabama.

Q. When? A. In 1912; March 8th.

Q. And she came to Newark with you? A. Sure.

Q. Where were you living in May, 1927? A. I was living 189 West Kinney Street.

Q. What floor? A. Top floor.

Q. Who lived on the second floor? A. My daughter. 10

Q. That is, your oldest daughter? A. Yes, my oldest daughter.

Q. Where was Sally; what was Sally doing at that time? A. Sally was going to school at that time, but in the afternoon she washed dishes for Mr. Lerman.

Q. How long had she been working for Mr. Lerman? A. Well, I could not just say exactly how long, but I went there twice myself and both times Sally was there and she washed dishes. 20

Q. Do you remember when she stopped working for the Lermans? A. She stopped working the 22nd of May.

Q. Do you know what day of the week that was? A. Saturday.

Q. And did you see her that day? A. Sure.

Q. What time did you see her, in the evening? A. Between eight and nine o'clock; when she came home. 30

Q. And where did you see her? A. Down in my daughter's house.

Q. And who was there when you saw Sally? A. My daughter and Sally.

Q. Nobody else? A. No.

Q. And did you have a conversation with Sally? A. Yes.

Q. Did she mention anybody's name? A. Sure. She told me what had happened. 40

Q. Whose name did she mention to you?

Mr. Simandl: I object.

The Court: I will allow that.

Defendant's Counsel prays an exception to this ruling of the Court.

Exception allowed; let it be sealed and it is signed and sealed accordingly.

DALLAS FLANNAGAN,
Judge.

Q. Whose name did she mention? A. Mr. Lerman's.

Q. What did she say?

Mr. Simandl: Objected to.

Q. What did she say with reference to Mr. Lerman; what generally was the subject of her conversation? A. She told me what he had did.

Q. What did she tell you that he had done? A. That he attacked her.

Q. Did you see any of her clothing that night? A. I seen her step-ins and her dress.

Q. What was the condition of them? A. There was blood stains on them.

Q. Do you know Dr. Bruington? A. Sure I know him.

Q. When did you see him after this night? A. On Sunday morning after, following Saturday night.

Q. You mean the following day? A. Yes.

Q. What time? A. Between nine and ten o'clock.

Q. Where? A. At his office.

Q. Who was with you? A. Sally.

Q. What Sally? A. My daughter.

Q. And did Dr. Bruington see Sally to your knowledge after that? A. Sure, he seen her with me.

Q. She subsequently had a baby, didn't she? A. Sally had a baby, yes.

Q. When? A. She had a baby February 10th.

Q. And who took care of her at the time she had the baby? A. Me, I did myself, the doctor, Dr. Bruington. 10

Q. Do you know what was done with the step-ins that Sally had on that night? A. Sally threw them in the fire.

Q. Whereabouts? A. In my house upstairs.

Q. Do you know what was done with the dress she had on? A. She had the dress.

Q. Do you know whether or not it was washed and laundered after that? A. It was washed after, because I washed it myself. 20

Cross-examination by Mr. Simandl:

Q. In what fire was it placed? A. We had a fire in the stove.

Q. You had a fire in the stove? A. Yes.

Q. When had that fire been kindled? A. I had a fire in the stove when she came home. 30

Q. You had that fire in there when she came home? A. Yes.

Q. Now, do you remember the time, do you, when Sally came home? A. No, I told you I just did not remember, but it was between eight and nine o'clock.

Q. She came upstairs to your house? A. No, she didn't come right upstairs to me. She claimed she was sick.

40

Q. You came downstairs? A. Yes, my daughter comes up after me.

Q. Who called you down? A. My oldest daughter.

Q. And then you spoke to Sally there? A. Yes, and I asked her what was the matter, and she began to tell me.

10 Q. Where were the blood stains? A. It was in her step-ins. It was there more than anywhere else and a little bit on her dress.

Q. And how large a stain was it? A. Well, it was not such a large stain; about like that (illustrating).

Q. About half the size of your hand? A. Yes.

Q. Did you see Sally get undressed? A. Sure she undressed.

20 Q. And what clothes did she take off? A. She took off her step-ins and dress and underdress.

Q. Did she wear a slip? A. Well, she did sometimes, but she did not have one on then.

Q. She did not have one on? A. I do not think she did.

Q. She did not burn any slip, did she? A. No, she did not burn any slip. I know that.

Q. Did she wear any? A. Yes, she usually wore

30 one, but whether she had it on that night, I cannot exactly tell.

ROSE MATTHEWS, sworn in behalf of the state.

Direct-examination by Mr. Conlon:

Q. You are the sister of Sally? A. I am.

40 Q. Where did you live in May, 1927? A. 1927?

Q. Yes. A. I am living where I have been about five years.

Q. Where is that? A. 189 West Kinney Street.

Q. What floor did you live on? A. The second floor.

Q. Who lived on the third floor? A. My mother.

Q. Do you know what your sister Sally was doing during the month of May, 1927? A. I do. 10

Q. What was she doing? A. She went to school the first part of the day and afternoons she went to Mr. Lerman's house and helped my mother and washed the dishes.

Q. Do you remember when she stopped working for Mr. Lerman? A. I do not remember what date it was.

Q. Do you remember when she did stop? A. Yes. 20

Q. Do you remember what day of the week it was? A. It was a Saturday night.

Q. Did you see her that Saturday night? A. I did.

Q. Where? A. In my house.

Q. About what time? A. It was around eight o'clock.

Q. Who was there when you saw her? A. I was myself. 30

Q. And did you speak to her? A. She came in to my house.

Q. You lived on the second floor and she lived on the third floor with her mother? A. Yes.

Q. When she came in did she mention anybody's name to you? A. She came in and complained of her stomach, a pain in it, and I said to her, I said, "What is the matter,"—

Mr. Simandl: I object. 40

Q. I do not want to know what you said to her, did she mention anybody's name to you? A. Yes.

Q. Whose name did she mention?

Mr. Simandl: I object.

The Court: I will allow it.

A. Mr. Lerman.

10 Q. And what did she tell you about Mr. Lerman?

Mr. Simandl: Objected to.

The Court: Just briefly, not the details.

A. That he had attacked her.

Q. Now, after you had your conversation with Sally, did anybody else come to your room? A. My mother come in.

20 Q. Who called your mother? A. I went for her.

Q. Your mother came down? A. Yes.

Q. And then what happened? A. Well, we got her some camphor.

Mr. Simandl: I object to what was done.

The Court: I do not think it is material. It does not make any difference one way or the other.

30 Q. Well, they went upstairs then? A. Yes. They went upstairs, yes.

Cross-examination by Mr. Simandl:

Q. Have you ever been convicted of crime? A. No.

Q. Did you plead guilty? A. No.

Q. Sure about that? A. No.

40

Q. You are positive now? A. Yes, I am positive.

Q. What time was this now? A. On Saturday night.

Q. What time? A. May 21st.

Q. What time? A. Oh, the time of night? Around seven or eight o'clock. I do not just know the minute. 10

Q. Well, now, which was it, seven or eight? A. Around seven or eight o'clock.

Q. Well, now, how do you fix the time? A. I didn't fix it.

Q. Well, how do you fix it was between seven and eight? A. Well, I know that was just around the time it was, but the minute I don't know.

Q. No. How do you fix it was around seven or eight? A. Because I know it was. 20

Q. Well, what were you doing that makes you think it was between seven and eight? A. I was not doing anything excepting sitting in the house.

The Court: What day of the week was it?

Witness: Saturday night.

Q. You were not doing anything? A. No.

Q. Had you eaten supper? A. Sure, long ago. 30

Q. What time did you usually eat supper? A. Around six o'clock.

Q. And you are certain that it was between seven and eight? A. Yes.

Adjourned until tomorrow, Thursday, February 21, 1929, at 11 o'clock A. M.

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ESSEX COUNTY COURT OF GENERAL QUARTER SESSIONS.

SECOND DAY.

Thursday, February 21, 1929.

10

STATE OF NEW JERSEY vs. ISADORE LERMAN.	On Indictment No. 21, Dec. T. 1928 for Carnal Abuse.

Continued pursuant to adjournment.

20 Present, counsel as before stated.

HELEN D. ARMSTRONG, sworn in behalf of the State.

Direct-examination by Mr. Fisch:

Q. Where do you live? A. 58 South Clinton Street, East Orange.

30 Q. What is your occupation now? A. I am not doing anything at present.

Q. What was formerly your occupation? A. Agent of the Children's Aid Society here in Newark for six years.

Q. When did you discontinue your connection with that institution? A. I resigned the first of January.

Q. Do you know Isidore Lerman? A. Yes.

Q. When did you see him the first time? A.

40

Some time in February, toward the end of February; I cannot give you the exact date.

Q. What year? A. 1928.

Q. Do you know Sally Bigams? A. I do.

Q. When did you see her the first time? A. Just about that time; shortly before that time; after the birth of the baby. 10

Q. Where did you see her? A. At her home.

Q. How did you come to see her there? A. The case was referred to us by the Church Mission of Health in Newark.

Q. That is, it was referred to your organization? A. Yes.

Q. And in the course of your duties you went up and saw the girl? A. Yes.

Q. Where did you see Lerman for the first time? A. At our office. 20

Q. How did he come to be there? A. He was advised by his lodge to come.

Q. You do not know that. A. He told us so.

Q. And you talked to him? A. Yes.

Q. Did you talk to him about Sally Bigams and the baby? A. Yes.

Q. What did he say to you? A. I could not give you the exact conversation, but he simply said that he would agree to pay the doctor's expense, and a certain amount of money toward the care of the child. 30

Q. Did he say anything as to whether or not he was the father of the child? A. He said that he was not the father of the child.

Q. What did you do then? A. Why, in the ordinary course of our work—

Mr. Simandl: I object to that, it is immaterial. 40

The Court: You mean there and then.

Mr. Conlon: No, afterwards. I think it is material to show the manner in which the complaint was made in this case.

The Court: Well, it might possibly be.

Mr. Conlon: It may be anticipating.

10 The Court: Of course. I don't know what the defense will be, but it might become material as to how the complaint was made. Perhaps you better reserve that.

Q. Did you see him subsequently to that time? A. At another time.

Q. Where? A. When he came to the office.

Q. And subsequent to that did you see him? A. I think only twice. Those two times at the office

20 by appointment.

Q. Do you know whether or not any complaint was made in this case up to that time?

Mr. Simandl: Objected to.

The Court: I will sustain it for the time being.

Cross-examination by Mr. Simandl:

30 Q. He never admitted that he was the father of this child? A. No, not to me.

Q. He denied it? A. Yes.

Q. Was Mrs. Lerman present? A. Both times, yes.

Q. She engaged in the conference as well as he? A. Yes.

Q. And the purport of what they said was this, was it not, that to avoid publicity and saving the family from disgrace they would be willing to pay

40 something? A. Yes.

Q. That was the understanding? A. That was the understanding, yes.

SAMUEL S. BRUINGTON, sworn in behalf of the State. 10

Direct-examination by Mr. Conlon:

Q. Doctor, you are a practicing physician in this state? A. Yes.

Q. Where is your office? A. 115 Spruce Street, corner Monmouth.

Q. How long have you been practicing medicine? A. Since I resigned from the Government service. I was assistant United States surgeon in 1919. 20

Q. Where was your office in May, 1927? A. 115 Spruce Street.

Q. The same place? A. Yes.

Q. Do you know Sally Bigams? A. Yes.

Q. How long have you known her? A. Why, since May, 1927.

Q. Did you ever see her professionally? A. I made an examination of her on the 22nd of May, 1927. 30

Q. Where? A. At the office, 115 Spruce Street.

Q. Do you remember what day of the week it was? A. It was a Sunday morning, as well as I remember.

Q. Have you any recollection of when you made the examination? A. It was between eight and ten o'clock. That is my office hours.

at the instigation of her mother I examined her.

Q. Who was with her? A. Her mother. It was 40

Q. Was her mother present at the examination? A. Yes.

Q. What did you find the condition of her to be as a result of the examination? A. I found her to be suffering from a ruptured hymen and there were multiple other spots she was bruised inside. The orifice of her vagina was bruised.

10 Q. What did that indicate to you?

Mr. Simandl: I object. He can state a certain opinion but not as a fact.

The Court: He is only asked for his opinion.

Mr. Simandl: Well, if that is what he is asked for—

The Court: You mean in his opinion.

20 Mr. Conlon: Yes, sir.

A. Why, it indicated to me that she had been entered forcibly by some instrument.

Q. And were you able to tell within what period of time she had been entered? A. Why, yes, within the past twenty-four hours.

Q. And how was that apparent—was it apparent? A. Yes.

30 Q. How? A. By the small blood clots and the fresh wounds that were there.

Q. Now, did you see her subsequently? A. Yes, on the 2nd of June.

Q. When? A. The same year, 1927.

Q. Where? A. She was brought to the office again by her mother.

Q. Did you examine her on that occasion? A. I did examine her.

Q. What did you find her condition to be? A.

40 her there because the flow of blood had ceased and

every indication pointed to pregnancy.

Q. Were there any indications of pregnancy? A. Yes.

Q. What was it? A. The sensory system women have at the beginning of pregnancy, and her case seemed to be an aggravated one in that she had nausea in the morning and her nipples were protuberant, they were pressed up; her vagina was enlarged; the labia majora exaggerated and there was an exudate at the mouth of the vagina, which indicated pregnancy. 10

Q. What did that indicate? A. A kind of terse fluid that comes out.

Q. When did you see her next? A. It was some time in June again. I do not remember the exact date; I saw her several times.

Q. You treated her during confinement? A. Yes. 20

Q. She gave birth to a baby? A. She gave birth to a child the 10th of February, 1928.

Q. Where? A. 81 Waverly Avenue.

Q. You attended here there? A. I did.

Q. Doctor, do you know Isidore Lerman? A. I do know him.

Q. When did you first see him? A. I first saw him about the third of June, 1927. 30

Q. That was subsequent to this girl's second visit? A. Just after the second visit.

Q. Where did you see him? A. At his place of business on West Street.

Q. How did you come to be there? A. The girl's mother told me he was going to pay the bill for the girl and wanted to see me, or wanted me to stop up there.

Q. How far was his place of business from your 40

office? A. About four blocks.

Q. And you saw him there about the third of June? A. About the third of June.

Q. Where abouts? A. Well, in the saloon. He was in the saloon, but he took me in the next room, or second room. It is a sub-basement effect.

10 Q. Was there anybody else present? A. No. There was nobody present when I spoke to him. There were people in the saloon when I went in.

Q. Will you repeat the conversation you had with Lerman on that occasion? A. I told him that Mrs. Bigams told me he was to pay for Sally's treatment, and he told me yes; he told her to tell me to come around that he would pay, and I must do my best to keep it quiet for him. I said, "Quiet, what do you mean?" I told him the condition of

20 the girl, what I first saw. Of course, they did not tell me when they first brought the girl to me she was attacked, and he told me he was a poor man and he lost about $40,000 and he said he wanted me to treat the girl and he would pay, and I asked him if he wanted me to treat the girl during the entire pregnancy, and he said yes.

Q. Did he say anything else? A. Not at that time that I remember.

30 Q. Did you have any conversation with him as to the cause of the girl's pregnancy?

Mr. Simandl: I object to that as leading.

A. No, afterwards, a subsequent visit.

Q. What you have stated thus far is what you remember of your conversation on the first visit? A. Yes.

Q. Did you see him again? A. Yes.

Q. When? A. He came to the office. After

40

the social worker from the Urban League went to see him he came to my office to see me.

Mr. Simandl: I object and move that that be stricken out.

The Court: It may show she had been there. 10

Witness: Yes.

The Court: We will let it stand.

Witness: He come to the office and told me.

Q. When was that? A. That was some time the latter part of June or the first of July, as well as I remember.

Q. Of the same year? A. Yes, the same year.

Q. Was anybody present at your office? A. Nobody is ever in my office—oh, the patients are 20 there.

Q. I mean in the room. A. No.

Q. You and he were alone? A. Yes.

Q. Tell us, as near as you can, the conversation you had with him at that time. A. He told me some people were down from some society, some colored organization, the Urban League—it is not a colored organization, but he said that they were 30 there to see him and he wanted me to go to Sally and see her and tell her he would pay something to her for her support, and I told him it was terrible, and he said he thought he would go to jail. I said, "Well, all you have to do is what you know is fair," and I said, "Why did you do such a thing?" "Well," he said, "My wife is the cause of it," and he said she was running with colored men, she was away from home, and "I had to get a warrant for her," and I said, "You should not try to drag your 40

wife into such a dirty thing as this," and he said he could prove it.

Q. What else was said? A. I told him I would see the girl and see what they would say, but I did not go around and see him, I didn't do it until after the baby was born.

10 Q. And did you see him then? A. He paid me $97. He called me up at the office and asked me to go and see her to see if the girl would take $3 or $4 a week for the support of the child, and I went and saw the mother.

Q. And after you saw them, what happened? A. Well, I think his wife came the next night.

Mr. Simandl: I object to anything the wife said.

20 Q. You say you saw him at his place of business and he asked you to see the girl? A. Yes.

Q. When did you see him then? A. About three days after that.

Q. Where? A. He came to my office.

Q. And did you have a conversation with him? A. I did have a conversation there.

Q. Was anybody else present? A. No, there was not anybody else in the office then.

30 Q. What was the conversation? A. I told him he better see the lawyer, it was the best thing for him to get a lawyer and attend to the business and see the girl.

Q. What did you mean? A. I mean to make the arrangements for the payment of $3 or $4.

Q. Had he spoken to you again about seeing the girl? A. Yes, on the last occasion. He wanted to raise the amount.

Q. What did you say to him? A. I told him he

40

better get a lawyer and I did not have time and did not care to go, anyway.

Q. When did you see him next? A. Well, I saw him frequently for about a month. His lawyer came there about every other day and he would come, too.

Q. When was that, before or after the baby was born? A. That was after the birth of the baby. 10

Q. How long after? A. Well, it continued for, it seems to me, two months; maybe a month, anyway.

Q. Do you know when the complaint was made against him in this case?

Mr. Simandl: Objected to.
The Court: Sustained.

Q. Do you know if this last visit you spoke about was before or after the complaint was made? A. I do not remember exactly, but I think it was just before his lawyer withdrew from the case. 20

Q. Doctor, did you have anything to do with making the complaint in this case? A. No.

Q. What? A. No, sir.

Q. Did you know a complaint was going to be made before it was made?

Mr. Simandl: I object. 30
The Court: Sustained.

Cross-examination by Mr. Simandl:

Q. They came to you on June 2nd, because the girl had not menstruated, is that right? A. Yes.

Q. Doctor, don't you know, as a matter of fact, that the girl was not due to menstruate until June 8th? A. I do not know that.

40

Q. You did not know that? A. No, sir.

Q. Is that what she told you? A. What?

Q. That she was not due to menstruate until June 8th? A. No, sir; she didn't.

Q. She didn't? A. She didn't.

Q. Doctor, do you remember testifying in a case on December 27, 1928? A. I do.

Q. Do you remember being asked and answering the following question: "Did she tell you when she had her last menstruation? Yes. What did she tell you? She said the 7th of May? The 7th of May? Do you remember seeing this card before?" Do you remember that? A. No, I do not.

Q. You do not remember testifying that way? A. No.

Q. As a matter of fact, didn't she tell you that she had menstruated on the 8th day of the month and she always had been regular? A. No, she did not tell me that.

Q. And she did not tell you what I just read to you? A. No.

Q. How long have you been a resident of Newark? A. Since 1919.

Q. You received some publicity out of this case?

Mr. Conlon: I object.

The Court: Sustained.

Q. I show you a paper and I ask you whether—

Mr. Conlon: Just a moment. Counsel has asked a question which your Honor has ruled out. I object to the pursuance of this line of examination. The pursuance of that examination is going to be harmful to the state. If there is anything to show this witness is biased, that is one thing.

The Court: Yes.

Mr. Simandl: I am going to show his bias.

The Court: I must allow the question for the time being.

Mr. Simandl: I will withdraw the former question. 10

Q. I show you a paper and ask you whether your photograph appears thereupon? A. Yes, it does; that is my photograph.

(Paper marked Exhibit D-1 for identification.)

Q. Did you go to the newspaper and insert this article—did you go to the office of the newspaper and insert this article which appears in this paper? 20

Mr. Conlon: I object.

A. I never—

Mr. Conlon: Just a minute, doctor.

The Court: I do not see how that has a bearing.

Mr. Simandl: Well, if I can have the paper admitted, it will have a great bearing.

The Court: Well, if he said something in the article contrary, maybe you can show it, but I do not see as this publicity— 30

Mr. Simandl: How am I going to find out how this article got in the paper if I do not ask him the facts leading up to the publication?

The Court: Is it your contention there is something in the article contrary to what he is saying now? 40

Mr. Simandl: Yes, sir.

The Court: Well, all right. If you say that is true, I will allow the question.

Q. Did you go to the N. N. A. C. P. in the Urban League and make a complaint? A. I never made a complaint.

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Q. Did you interest the N. N. A. C. P. in this matter? A. I did not have to. They came to me and spoke to me about it.

Q. I asked you a direct question. A. I did not.

Q. Did you speak to the editor of the newspaper known as the Newark Herald? A. I never speak to editors of papers; never have to any editor.

Q. Did you speak to any reporter of that paper? A. I am an ethical doctor. I never spoke to any-

20

body for publicity.

Q. Do you know the publisher of the Newark Herald? A. I think I know everybody connected with it.

Q. Never had any conversation with reference to it? A. No.

Q. Did you see an article in this paper which is marked D-1, for identification? A. Yes.

Q. Did you read it through? A. I did not read

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it. Somebody might have told me about it.

Q. Did you read it? A. I did not.

Q. Did you find the menstruation suppressed? A. Obliterated.

Q. And you did not know when she was to menstruate? A. Yes. They said she menstruated about the 27th or 28th of the month.

Q. And you are sure about that? A. I am sure about that.

Q. So you were able to determine that between

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the 27th and 28th day of June when she was to menstruate, and the second day of June that she was pregnant?

Mr. Conlon: I object. The witness did not testify that he determined. He testified very clearly that on the second of June it was his opinion she was pregnant. 10

The Court: Well, he was of the opinion on that date. You can ask him what he based it on. Go ahead.

Q. Will you answer the question?

Mr. Conlon: I object to the question.

The Court: Well, we are sparring about words.

Mr. Simandl: Apparently. 20

The Court: You understand, doctor, he means by determined, your opinion.

Witness: Yes.

The Court: All right. Go ahead.

Q. You determined that? A. That was my opinion, sir.

Q. Doctor, what is the usual time in which morning sickness develops in an ordinary case of pregnancy? A. Well, that depends. 30

Q. What is the usual time? A. There is no usual time. It depends on the individual.

Q. What is the minimum? A. The next morning after coitus.

Q. Did you ever have a case where it developed the next morning? A. I have had cases where they stayed in bed three months after the first night, morning sickness and nausea.

Q. Are you connected with any hospitals? A. 40

I am not, but I have a very large practice.

Q. I didn't ask you that—

Mr. Simandl: I move that that be stricken out.

The Court: Strike it out.

Q. When do the breasts usually enlarge? A. The breasts become sore immediately after coitus, after pregancy takes place.

Q. Usually? A. Usually, if counsel will permit me to say—

Q. Just a minute.

Mr. Conlon: No. I think this witness is being cross-examined.

Q. When are the changes in the cervix noticeable? A. Why, immediately after coitus.

Q. Immediately after coitus? A. Yes.

Q. What change takes place? A. It becomes softened because of congestion. That is what causes the softening, the congestion.

Q. What change does there come in the size of the uterus in eleven days? A. In eleven days the uterus becomes rounded like a ball. It is pear shaped, but it becomes rounded.

Q. Is there any change in size? A. Why, naturally there is a change in size.

Q. Well, what change, what amount? A. Well, there is no such an amount of change. It becomes very enlarged not because of the size of the foetus but because of the blood vessels. That is what caused the enlargement.

Q. What is the size of the foetus at the end of one month? A. Why, it depends upon the person. It depends upon the size of the child, upon the characteristics of the parents.

Q. What is the normal size of the foetus? A. There is no normal size.

Q. According to statistics, Doctor—

Mr. Conlon: I object. It is immaterial what the normal size is. There is no evidence that this child was normal.

The Court: No, but the cross-examination is that he could not determine at this time that pregnancy existed. I will allow it.

Q. Where does conception take place on the first day? A. I beg your pardon?

Q. Where does conception take place on the first day according to the authorities? A. Why, conception might take place any place.

Q. I am asking you. A. It can take place anywhere in the uterus, the Fallopian tube, in the ovaries and the belly itself any place.

Q. On the second day? A. Oh, conception only takes place when the ova entered the spermatozoa.

Q. I am asking you on the second day. A. Conception does not take place two days. It only takes place once.

Mr. Simandl: I think I have a right to have a responsive answer to my question.

The Court: I disagree with you. I think the answer is responsive.

Q. On the third day where does conception take place? A. It only takes place once. Why, conception takes place immediately. What you mean is when the spermatozoa enters the female. It only takes place once.

Q. That could take place how long after inter-

course? A. It could take place up to eight days.

Q. So that evidently it does not take place within twenty-four hours. A. Oh, certainly. It could take place within a minute.

Mr. Conlon: I object.

The Court: The doctor has answered that.

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Q. If conception takes place on the 8th day. where does it take place? A. It takes place where the spermatoza finds the ovum. There is a suction in the female and that always takes place. Every twenty-eight days they have what is known as flowing. One of those ovum might come down. It might not descend when the spermatozoa enters the female. It goes up there. It might find it in the uterus itself. Wherever it finds it, that is where conception takes place.

20

Q. You do not know whether conception took place in this case on the first day or the eighth day? A. I cannot tell what day.

Q. So that if it took place on the 8th day, you have two days thereafter you were able to determine that the girl was pregnant? A. I do not know that it did. I found signs of pregnancy.

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Q. I ask you if it took place on the 8th day you have two days you were able to find pregnancy.

Mr. Conlon: I object.

The Court: Objection sustained.

Defendant's Counsel prays an exception to this ruling of the Court.

Exception allowed; let it be sealed and it is signed and sealed accordingly.

DALLAS FLANNAGAN,
Judge.

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Q. Do you know whether it took place on the eighth day? A. I do not know.

Q. Do you know whether it took place on the seventh day? A. I cannot tell. All I can tell—I can tell only by charts. The child was supposedly conceived at this particular time in May and it was born in February. 10

Q. You did not know when the child was going to be born. A. Why, certainly.

Q. You did not know that the child might be born in seven months. A. Well, as a matter of fact, I am speaking about a normal child when I say that.

Q. I asked you whether you knew it. A. I said a normal child.

Q. Now, doctor, when did you first testify in this case—when you first testified in this case of State vs. Lerman in June, 1928, did you say anything in your testimony with respect to the alleged conversation which you say took place with respect to Mrs. Lerman? 20

Mr. Conlon: I object.

The Court: I do not see that it makes any difference. He may not have been asked. Sustain the objection. 30

Defendant's Counsel prays an exception to this ruling of the Court.

Exception allowed; let it be sealed and it is signed and sealed accordingly.

DALLAS FLANNAGAN,
Judge.

Q. Were you asked and did you answer the following question on that day while you testified: "Just tell us what happened between you and Mr. 40

Lerman?" and your answer to that was: "After the baby was born I went to Mr. Lerman to tell him the baby was born and presented him the bill and he said he was willing to pay the bill and wanted me to go and see the family to see what amount they would take in settlement for the birth of the child; that he was a poor man and that he was willing to do everything for them, but he could not give them more than $3 or $4 a week. I agreed and went back and told Mr. Lerman after having seen the family I went back and told Mr. Lerman they were not satisfied with $3 or $4 a week. Mr. Lerman then stated to me that his boys had the girl, it was not him, it was his sons, that he caught the girl with his sons, and then he said he had some fellows watching the girl, that the girl had intercourse with some boys around the school house, and I told him it was better to settle. He said yes, he was going to pay. So I went back to Mr.Lerman and he sent a lawyer to see me and after the lawyer came he called me up." Do you remember testifying to that? A. No, not all, but some of those things I did say.

Q. You did? A. Yes.

Q. So that after the child was born he said then that he was responsible? A. No, he didn't say that. He sent two different lawyers over to make papers.

Q. Did you testify to the following: "Mr. Lerman then stated to me that his boys had the girl, it was not him, it was his sons, that he caught the girl with his sons, then he said he had some fellow watching the girl, that the girl had intercourse with some boys around the school house, and I told him it was better to settle. He said yes, he was going to pay." A. No, sir.

Q. You did not say that? A. No, I didn't say it in that way.

Q. When you went to Mr. Lerman, you understood he was to pay the bill? A. Yes.

Q. That was your understanding? A. When I sent the bill I said he was to pay; he said he would.

10

Q. When you went to see him? A. The first time.

Q. That was your understanding then? A. Yes.

Q. You had not spoken to him before that? A. Why, he told me he wanted to see me and he said he would pay the bill.

Q. Did you know him before you went down there? A. No, never saw him.

Q. Never saw him before? A. No, sir.

20

Q. On that day that you went down there, how much was due you? A. $97.

Q. The first time you went there? A. Oh, no, not the first time. The first time was $6.

Q. You went down to collect $6? A. No. I went down to see him so that he might pay me if he would. He said that he would pay.

Q. Now, doctor, you understood it was April 24 that she told you she menstruated last? A. No. I am not insisting it was April 24th.

30

Q. What date was it? A. She told me she menstruates around the 27th and 28th of the month.

Q. And you never testified otherwise? A. Not that I remember.

Redirect-examination by Mr. Conlon:

Q. How long is it since you testified in this case before? A. I cannot recall.

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Q. Well, a matter of weeks or months? A. Oh, it is months.

Q. How many months? A. I do not even remember, but it has been some time ago.

Q. Well, what would you say? A. I have not the least conception.

10 Q. Was it more than two or three months? A. I think it is more than three months.

Q. More than five months? A. Maybe it is five months.

Recross-examination by Mr. Simandl:

Q. As a matter of fact, it was on Thursday, December 27, 1928, was it not? A. Oh, you are asking about the first case.

20 Q. You were asked when you last testified in this case. A. I do not remember.

Q. Wasn't it December 27, 1928? A. I do not remember when I testified.

HERMAN H. HAGEMILLER, sworn in behalf of the State.

30 *Direct-examination by Mr. Conlon:*

Q. You are a police officer of the City of Newark? A. I am.

Q. And have you seen the defendant, Isidore Lerman, before? A. I have.

Q. Were you present at a hearing in the family court against him? A. I was.

Q. When was that? A. April 27th.

Q. What year? A. 1928.

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Q. Did you hear him on that occasion make any statement with reference to his age? A. I did.

Q. And what did he say his age was? A. Forty-eight.

Q. Forty-eight years old in April, 1928? A. Yes, 1928.

Cross-examination waived. 10

SALLY BIGAMS, recalled in behalf of the State.

Direct-examination by Mr. Conlon:

Mr. Conlon: Before the defendant continues with his cross-examination I would like to ask this witness one or two questions. 20

The Court: All right.

Q. Sally, before this occasion you spoke about yesterday that Isidore Lerman had intercourse with you at his home, had you had intercourse with any other person before that time? A. No.

Q. Have you ever had intercourse with any other person since that time? A. No. 30

Cross-examination by Mr. Simandl:

Q. When did you have your menstruation prior —I will withdraw that. When did you last menstruate? A. Since that.

Q. Prior to the birth of the child. A. April.

Q. What date? A. 27th or the 28th.

Q. And how long did it last? A. Three days.

Q. Did it come on the 7th and 8th of each 40

month? A. It usually do.

Q. Were you regular? A. Yes.

Q. Did you tell Dr. Bruington that it came on the 7th or 8th? A. I don't remember whether I did or not.

Q. Did he ask you? A. I don't know whether he did or not.

10 Q. Didn't he ask you when you menstruated? A. If I am not mistaken he asked me when I menstruated last.

Q. What date did you tell him? A. I told him I menstruated in April last.

Q. Did you tell him the date? A. I don't know whether I did or not.

Q. Did he ask you when you were due? A. Yes.

Q. And what date did you tell him? A. I tell

20 him it usually comes between the 7th and 8th of every month.

Q. Did you tell him at that time that you were not due yet? A. No. I told him that it was past time.

Q. Oh, it was past time? A. For my menstruation.

Q. Well, you were there on June 2, weren't you? A. I didn't know that you were talking

30 about June 2.

Q. Well, you were there the first time. When was it past time? A. The past time was when I went there on that Sunday morning, May 22nd.

Q. You were past due already? A. Yes.

Q. You had not menstruated in May yet? A. No.

Q. Did you ever wear a slip? A. What do you mean?

Q. Do you understand what I mean by a slip?

40 A. I do not.

Q. The night of the attack. A. Oh, you are talking about clothing. Yes, I did.

Q. When Lerman went over to you—where is the sink in the room? A. The sink is at the edge of the wash tubs by the table.

Q. You know where it is. A. It is in the corner of the house. 10

Q. How big is the room? A. The room is about as far as from those windows there to here.

Q. Now, with reference to the room where the little girl slept, how far is the sink away? A. The sink is in that corner there (indicating) so therefore the sink is far away from the bedroom.

Q. Can you tell us about how far? A. I would say about thirteen feet.

Q. Now, when he first seized ahold of you, where were you standing? A. By the sink, with my face to the sink. 20

Q. Did he grab you from behind? A. No. He grabbed me on this wrist (indicating).

Q. He got you by the wrist? A. Yes.

Q. With one hand? A. I don't know whether he had one or not, but he got ahold of both of my wrists.

Q. What did you do? A. I asked him what did he want. 30

Q. And then what did he say? A. He did not say anything.

Q. Did you struggle? A. Yes, I struggled; I tried to get away from him.

Q. Did you scream? A. I did.

Q. Loud? A. I don't know whether anyone heard me or not, but I hollered as loud as I could.

Q. And you can scream good and loud. A. I never tried to. 40

Q. No, but when you scream somebody can hear

you if they are in the room? A. Sure, if they are paying attention.

Q. And all this while were you fighting? A. Sure I was tussling with him.

Q. And what was he doing? A. He was still trying to get a better hold than he had.

10 Q. And he had both of his hands? A. Yes, with both of his—

Q. On your arms? A. Yes.

Q. Were you still by the sink? A. No.

Q. Where were you then? A. He was pulling and trying to get me to his girl's bedroom.

Q. And what were you doing? A. I was still trying to get away from him.

Q. You were tussling with him like that until you got into the bedroom? A. He had both of my

20 wrists into his one hand.

Q. You were struggling while he did that? A. I struggled all of the while.

Q. And he held on? A. Yes.

Q. And with the other hand what did he do? A. He threw me on the bed.

Q. And then what did he do? A. Then he put his hand across my chest up here, one hand.

Q. One hand? A. Yes.

30 Q. Where was the other hand when he put the hand on the chest? A. He was using his other hand.

Q. What was he doing? A. He was trying to get his privates out.

Q. What were you doing? A. I was still trying to get away.

Q. What were you doing in trying to get away? A. I was trying to pull his hand off my chest.

Q. Were you doing anything with your feet? A.

40 I don't know whether I was or not.

Q. Were you kicking? A. I don't know whether I was or not.

Q. Do you remember testifying in this case before? A. Yes, I remember.

Q. This last December? A. Yes.

Q. At the police court? Do you remember being asked this question: "Did you kick? Answer: I did." Do you remember that? A. No, I don't. 10

Q. You do not remember that? A. No.

Q. Where were your legs when he threw you on the bed? A. My legs were hanging off the bed, across the bed.

Q. Well, all your legs were hanging off the bed? A. I only have two.

Q. Well, I mean all of your legs? A. Yes, from my knees down.

Q. And he was standing in front, is that right? 20 A. Yes.

Q. With his hand over your chest? A. Yes.

Q. Which hand? A. I don't know.

Q. One of his hands? A. One of his hands.

Q. And while he was in that position he was—A. Using his other hand.

Q. Now, did he get his privates out? A. Yes.

Q. And then what did he do? A. Then he fell on me. 30

Q. He fell on you? A. Yes.

Q. And he immediately entered you? A. Yes, through a tussel he did.

Q. How were you tussling? A. Trying to get his hand from my chest.

Q. While he was lying on you he still had his hand on your chest? A. No, he had both of his hands around my shoulders then.

Q. And what were you doing with your legs? A. I don't know whether I was doing anything. 40

Q. Were you tussling at all? A. I don't know whether I was or not.

Q. When he first laid on you did he immediately penetrate you? Do you understand what I mean by the word penetrate? A. I suppose I do.

Q. Did he immediately penetrate you? A. I don't know whether he did or not.

10

Q. Well, were you struggling all during this time? A. After I saw I could not get up I let him do it, I did not try to get up.

Q. You did not try to get up? A. No, because it was not any use. He was stronger than I am.

Q. You just laid there? A. Yes.

Q. Do you remember being asked and answering this question on December 29th: "You were on the edge of the bed? Answer: No. All of my body was on the bed except my legs. You were kicking? I were. Did he penetrate you? I don't understand you. Did you feel it? Did you feel anything? Sure I felt something." Do you remember testifying that way?

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Mr. Conlon: I object to that. The witness has testified to nothing different than that.

Mr. Simandl: I object to the Prosecutor characterizing that.

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The Court: I do not see that he has. She testified that she understands what penetration means now. She says she was resisting nobody.

Mr. Simandl: Well, perhaps I misunderstood your Honor, but I was under the impression that she testified the opposite.

The Court: No. She said at the present

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time she did not resist him because there was no use.

Mr. Simandl: All right.

Q. "No more than he laid on you you felt something in your body? Answer: Well, he had to do what he wanted to do to get into my body. Question: And you were fighting him all of this while? Answer: I was kicking and could not do anything else." Do you remember answering that question? A. No, I did not answer that.

Q. You did not answer that? A. No.

Q. Now, who raised your clothes? A. He did.

Q. When? A. After he had took his privates from his pants.

Q. Well, he had one hand on your chest? A. Yes.

Q. And you were kicking? A. I didn't say I was kicking.

Q. You were not kicking? A. I was trying to remove his hand from my chest.

Q. Is that all you were doing? A. Well, that is where he was holding me by. I wanted to get up.

Q. Well, were you trying to get from underneath his hand? A. Sure.

Q. What were you trying to do to prevent him? A. I was trying with both of my hands to push him away.

Q. Is that all you were doing? A. Yes.

Q. Were you screaming? A. I only hollered a few times and that was during the tussel.

Q. He put your dresses up? A. I only had on one skirt.

Q. He pulled your dress up? A. Yes.

Q. And the slip? A. Yes.

Q. And that is when you laid down? A. He had to get the step-ins open. The step-ins isn't open.

Q. When you got up did you see if there was blood on the bed? A. I did not have time.

Q. You washed the dishes? A. I finished the dishes.

Q. And then you went home? A. Yes.

10 Q. Did you come back the following day? A. I did.

Q. Did you get your money? A. I did.

Q. Did he say anything to you? A. No.

Q. Did you say anything to him? A. No. I asked him for the money.

Q. Did you say anything to the people who were there? A. There was children in the house. I spoke to her. I went in and that was all.

20 *By the Court*:

Q. How long was it after this attack occurred, as you say, before you went to the doctor? A. The next Sunday.

Q. Now, do you know what date that was? A. May 22nd.

Q. That is the time you went to the doctor? A. Yes.

Q. Now, then, this attack, as you say, occurred

30 on May 21st? A. Saturday night.

Q. Now, when did you menstruate last before you went to the doctor that time? A. In April.

Q. And what date, can you say? A. Between the 7th and 8th.

Cross-examination (continued) by Mr. Simandl:

Q. Didn't you tell me when you went to the doctor the first time you told him you were past due?

40 Mr. Conlon: I object to that. That has

already testified to and answered.

The Court: No. I will let her answer.

Q. Didn't you tell me you were past due when you first went to the doctor? A. I told you what?

Q. Is that true? A. I have testified before that my menstruation was due between the 27th and 28th, but I testified again it was between the 7th and 8th, but it was a mistake, it was the 27th and 28th.

Q. When did you testify the 7th and 8th? A. The time before this. I do not know whether it was here.

Q. Did you testify it was the 7th or 8th? A. I did.

Q. Well, were you past due on the 22nd? A. What?

Q. Were you past due when you first went to Dr. Bruington? A. Yes. I was past due.

By the Court:

Q. When was your menstrual period due? A. Really due?

Q. Yes. When should you have menstruated? A. Between the 27th and 28th.

Q. Well, was your menstrual period past due on the 22nd? A. What?

Q. Was your menstrual period past due on the 22nd? A. I did not have any menstruation in May at all.

Q. You had it in April, but you should have had a menstruation what time in May? A. Between the 27th and 28th.

Q. Now, was it past due on the 22nd of May? A. It was.

State Rests.

Mr. Simandl opens for the Defendant.

MICHAEL WEINSTOCK, sworn in behalf of the Defendant.

Direct-examination by Mr. Simandl:

Q. You are physician licensed to practice in the
10 State of New Jersey? A. Yes.

Q. And have been for how long? A. Eleven years.

Q. Have you had any hospital connections? A. Yes.

Q. What? A. City Hospital, Beth Israel Hospital and Newark Maternity Hospital.

Q. Have you had experience in maternity cases, doctor? A. Yes.

20 Q. Doctor, what is the usual time in which morning sickness in a pregnancy case develops?

Mr. Conlon: I object.

The Court: I will allow that. There is no hard and fast rule.

A. No. I am just giving my statistics. The usual time is six weeks lasting to twelve weeks.

Q. Doctor, when do any changes in the cervix and vagina become noticeable? A. About the fifth
30 or sixth week; in a woman pregnant for the first time eight to ten weeks.

Q. What is the usual size of the foetus at the end of one month, doctor? A. About two and a half millimeters.

Q. And can you tell us in inches? A. Oh, that is probably—I would not say much more than a sixteenth of an inch; very small.

Q. In the early months are there any absolute
40 signs of pregnancy? A. There are absolutely no

signs of pregnancy in the first three months. There are only presumptive signs to make diagnosis of pregnanacy.

Q. When do the breasts usually enlarge? A. They will usually enlarge about the fourth week.

Cross-examination by Mr. Conlon: 10

Q. Doctor, are you here under subpoena? A. No, sir.

Q. You are engaged to testify in this case? A. Yes.

Q. And you are paid for your testimony? A. Yes.

Q. Now, you have testified, doctor, to the fact there are no absolute signs of pregnancy during the first few months. A. Yes. 20

Q. Assume that a young girl came to your office on the 22nd of May— A. Pardon me! Single or married.

Q. Single, and told you that she had been entered, that a man had had intercourse with her, and that you examined her and found that she had a ruptured hymen showing a recent rupture within twenty-four hours, and that you then saw her about twelve days later and that she told you that in the meantime she had missed her menstrual period— 30

Mr. Simandl: I object to that. That is not in the testimony.

The Court: Well, I am not clear about it. There was something in my mind as to that proposition and that is the reason I asked the girl what I did when she was on the stand.

Mr. Conlon: I understood that she made 40

a mistake and her menstrual period was the 27th. The doctor testified that she did not tell him on the first visit that she had missed her period, but she did on the second.

The Court: Now, as I remember, she was past due on the 22nd.

10 Mr. Conlon: Yes, but she said her menstrual period was the 27th, and the doctor on the first occasion said she did not miss a period, but she said it on the 2nd of June.

The Court: If that is the doctor's testimony I will allow the question.

Defendant's Counsel prays an exception to this ruling of the Court.

Exception allowed; let it be sealed and it is signed and sealed accordingly.

20 DALLAS FLANNAGAN,
Judge.

Q. Would you say, doctor, that those were presumptive evidences of pregnancy? A. What, the entering?

Q. Yes, and the fact that she had missed her period? A. No.

Q. Would they lead you to suspect that the girl
30 might be pregnant? A. I would never suspect it in a single girl.

Q. Why in a single girl?

The Court: He has told you that this girl has told you she was entered. What difference would it make?

Witness: We were told never to make a positive diagnosis of pregnancy until you feel the foetal parts.

40

Q. Would those two facts alone lead you to suspect that she might be pregnant? A. Oh, it may lead me to suspect it.

Q. And would you say there could be no other symptoms about that girl that might affect your opinion one way or the other? A. I don't understand you.

10

Q. (Question read). A. I do not. I cannot answer that intelligently unless you are clearer.

Q. I want to know assuming those facts as I have given them, that she was entered on the 21st of May and she missed her period on the 27th or 28th and you are examining her on the 2nd of June, now, is it not possible that on the 2nd of June she might have other eividence of pregnancy? I do not mean absolute evidence. I mean any evidence. A. It is very rare.

20

Q. I am asking you very clearly whether or not it is possible. A. Oh, it is possible.

Mr. Simandl: I object. The question is whether or not it is probable, not possible.

The Court: Objection overruled. This is cross-examination. This is not basing an opinion for the State's case.

Defendant's Counsel prays an exception to this ruling of the Court.

30

Exception allowed; let it be sealed and it is signed and sealed accordingly.

DALLAS FLANNAGAN,
Judge.

Q. Then, doctor, there might be other—possibly there might be other symptoms about the girl which would affect your judgment as to whether

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or not she was pregnant. A. There are possibilities.

Q. Now, you testified generally to what you considered the absolute signs of pregnancy. A. No, sir. I testified according to the well known statistics and authorities in this country and that we find in our general practice and also in the hospital work.

Q. And you are applying the test of absolute indications of pregnancy? A. No, sir; I said the first three months there were no absolute signs of pregnancy.

Q. But there are presumptive signs? A. There are presumptive signs.

Q. And among those presmptive signs there are, of course, most of all, intercourse if you have that knowledge. A. If you have that knowledge.

Q. And the next most important is the missing of the menstrual period. A. No.

Q. Isn't that important to a girl who never missed a period before? A. To a girl who never missed a period before.

Q. And those are the two most presumptive signs. A. Well, a girl who has been regular, not missed a month, is that what you mean, Mr. Prosecutor?

Q. Yes. You say you have been taught, and I mean you have followed the practice of not giving the diagnosis of pregnancy unless you are pretty sure about it; isn't that a fact? A. Yes. I am talking about a single girl.

Q. Well, in fact, almost any girl that is true of? A. Not of a married woman.

Q. Well, you do not usually give a diagnosis of pregnancy until the absolute symptoms develop? A. I never make a positive diagnosis until the absolute symptoms have developed.

ISIDORE LERMAN, defendant, sworn in his own behalf.

Direct-examination by Mr. Simandl:

Q. How old are you? A. Forty-eight.

Q. Are you married? A. Yes.

Q. And where have you lived? A. I live now 106 West Street. 10

Q. And prior to that time you lived where? A. 106, the same place.

Q. The same place? A. Yes.

Q. Now, how many years have you lived in that place? A. In that neighborhood twenty-four years.

Q. Do you know Sally Bigams? A. Yes.

Q. Did she work for you? A. Yes, one hour a day, every day.

Q. Did her mother work for you? A. Yes. 20

Q. Did you, on the 21st day of May, or at any other time, ever have intercourse with Sally? A. Never.

Q. Did you on Saturday night, May 21st, between six and eight o'clock, come from your saloon, grab her by the arm, struggle with her and drag her into the bedroom and put her on the bed and there have intercourse with her? A. No, sir. That is a busy day. 30

Q. Do you know Dr. Bruington? A. I know he come and demanded money of me.

Q. When did he come in? A. He come in some time in January.

Q. And what did he say? A. He said to come in, that he wants to get paid $97.

Q. And when was the first time you saw him? A. That was Saturday afternoon in January.

Q. What year? A. 1927. 40

Q. 1927? Are you sure it was 1927? A. Yes, that time when the child was born, he come in to collect money.

Q. 1927 or 1928? A. 1928.

Q. What did he say? A. He come in and he introduced himself to me as Dr. Bruington. He wanted $97 of me. So I said, "Doctor, I don't owe you, and I am not going to give any money," so he went out.

Q. And then what happened? A. He come in about fifteen times after he called me up every day three or four times.

Q. What did he say? A. He said he wanted the $97; I should pay him the money and everything will be all right; I should pay him the money. I said, "Doctor, I do not owe you; I am not going to pay any money."

Q. Did you go to his office and say that your wife was responsible for this act; that your wife had run around with negroes and that you, therefore, assaulted this child? A. No, sir. I never did say that to him.

Q. Did you say to him that he should treat this girl during the entire pregnancy and you would pay him? A. Never.

Q. Did you see Mrs. Armstrong? A. Yes. When she sent—at least, she called me up and she says she sent me a letter, I should come up.

Q. Did you go down there? A. I went with my wife.

Q. What happened down there? A. She told me if I didn't want publicity, she has several cases like this, every week I could come and pay Mrs. Armstrong and she would take care of the girl and there would not be any publicity in the court on account of my children.

Q. Was there anything said about that? A. I didn't say anything.

Q. Did your wife say anything? A. My wife, I don't know.

Q. Well, weren't you present? A. Well, she was present.

Q. Well, did she speak? A. Well, they were having some conversation. 10

Q. Up until that time had your children known anything about any accusation against you? A. No.

Q. And then were you taken to the police court? A. Yes.

Q. And a complaint made against you? A. Yes.

Q. Did you ever promise this child's mother or anybody else that you were going to pay? A. Never promised nobody. 20

Q. Did the child come back on—when was the last time she worked for you, do you remember? A. She worked on the 27th and 28th of May.

Q. And when was she paid off, by whom? A. She was paid off by me and my wife.

Q. Did she ever say anything to you? A. No, sir. My wife told her we do not need her any more, because we have a servant who will stay after seven o'clock. 30

Cross-examination by Mr. Conlon:

Q. Have you ever been convicted of crime? A. No, sir.

Q. What? A. I was convicted once.

Q. You were convicted once and you pleaded non vult another time? A. That time.

Q. You pleaded non vult once? A. That is all. 40

Q. And you were tried the other time and found guilty? A. No.

Q. What?

Mr. Simandl: I object to that.

The Court: I will allow it.

10 Q. Did you go on trial in 1922 and were found guilty? A. Yes. That time I pleaded non vult.

Q. Well, you did not plead non vult when you went on trial? A. I don't know.

Q. Well, one time you were tried? A. Yes. I plead that time non vult.

Mr. Simandl: I object. That question is clearly not permissible.

The Court: Well, only for one purpose. That is to try and get the witness' memory

20 refreshed and clear. The witness said non vult and he does not seem to be clear about it.

Q. Do you remember being tried on a charge of perjury and you were convicted; is that right? A. Yes.

Q. And then another charge of perjury you pleaded non vult?

30 Mr. Simandl: I object.

A. No, only one time.

The Court: I will allow it. He says no.

Q. On that charge of perjury you were convicted in this County? A. This County.

Mr. Simandl: I object. I think all of the facts have been stated.

40

The Court: The record would show what county. I will allow that.

Q. Now, you lived in May, 1927, 106 West Street? A. Yes.

Q. And you ran a saloon there, the first floor? A. Yes. 10

Q. And you occupied the second and third floors? A. Yes.

Q. And you had lived there with your wife and six children? A. Yes.

Q. And on the second floor you had a kitchen and two bedrooms? A. Yes.

Q. And in one of those bedrooms two of your daughters slept? A. Yes.

Q. And in the other bedroom two of your sons slept? A. Yes. 20

Q. And you and your wife occupied a bedroom on the third floor? A. Yes.

Q. And the two oldest children had a room? A. Yes.

Q. Did you have any servants from Christmas, 1926 and May, 1927, any servant except Sally Bigams? A. Yes. I always had servants.

Q. Between Christmas, 1926, and May, 1927, did you have any other servants besides Sally? A. Yes. 30

Q. Who? A. Her mother was working there, too.

Q. At the same time Sally was there? A. Yes.

Q. Every day? A. Yes.

Q. What time did the mother come? A. The mother come eight o'clock in the morning.

Q. What time did she leave? A. Five.

Q. And the mother would leave before Sally got there? A. Yes. 40

Q. And they both worked there at the same time? A. At the same time.

Q. For how long? A. Not very long.

Q. I asked you how long. A. Well, a couple of months. I discharged—my wife discharged the mother.

10 Q. Who discharged Sally? A. My wife.

Q. When did they go to work for you? A. Who? The mother come in at eight o'clock in the morning.

Q. When, what year, what month? A. 1927.

Q. 1927? A. Yes.

Q. Weren't they there at Christmas, 1926? A. I don't think so.

Q. Don't you remember giving Sally a Christmas present at Christmas, 1926? A. I do not re-
20 member. I remember her mother was working twice with me.

Q. When did the mother leave? A. Before Christmas, 1927.

Q. And when did Sally leave? A. In May.

Q. You say the mother worked there until Christmas? A. 1927, I believe.

Q. Until Christmas, 1927? A. Yes.

Q. And Sally worked there until May, 1927? A.
30 Yes.

Q. Are you sure about that? A. I am.

Q. Now, all during the year of 1927, was your wife living with you there? A. Yes.

Q. Did she leave you at any time? A. Only the summer time. The little girl was sick, so I went her to Bear Mountain and she went along with her awhile.

Q. When did she go? A. July 24, 1927.

Q. And that was for the summer vacation? A.
40 Yes.

Q. And before that had she lived with you continuously for the year 1927? A. Yes.

Q. Are you sure that she had not separated from you during that period? A. No.

Q. Did she ever separate from you? A. No.

Q. Are you sure about that? A. I am.

Q. Did you ever go to the police and make a complaint against her? 10

Mr. Simandl: I object to that. I think that is unfair and improper, and I ask that the Court declare a mistrial.

The Court: Oh, no.

Mr. Conlon: I propose to show, your Honor, that this man made statements to the police contrary to what he has just testified to here. 20

Mr. Simandl: If your Honor please, the Prosecutor could not, as a matter of fact, bring in statements contrary. This was not brought out on direct-examination. This is a matter inquired into—purely a collateral matter by the prosecutor on cross-examination and he is bound by the answer.

The Court: No. Whether the wife was separated from this man is rather an important matter in this case, because it is testified there was a separation and she was not there. Now, a witness testified, as I recall it, that this defendant said that the reason he did this thing was because his wife was away and she was going around with colored men and, therefore, he was excusing himself for having intercourse with this girl. 30

Mr. Simandl: And he denied that conversation. 40

The Court: Yes. And now the Prosecutor is attempting to show statements contrary to that allegation but, Mr. Prosecutor, I think the method is to be inquired into. I think it may be done by asking didn't he say at a certain time and place a certain thing.

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Q. Do you remember going to the Bureau of Missing Persons in the City of Newark in the year of 1927?

Mr. Simandl: Objected to. Absolutely immaterial whether he ever went there.

The Court: I will allow that.

Defendant's Counsel prays an exception to this ruling of the Court.

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Exception allowed; let it be sealed and it is signed and sealed accordingly.

DALLAS FLANNAGAN,
Judge.

Q. Do you remember that? A. What?

Q. Do you remember going to the Bureau of Missing Persons in the Newark Police Department in the year of 1927? A. I did. In July, when my wife went to Bear Mountain and she did not come home, I asked what shall I do to get her home.

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Q. When did she go to Bear Mountain? A. On July 24th.

Q. When did you go to the Missing Persons Bureau? A. Between July and August.

Q. When? A. The first or second of August.

Q. How long did you wife intend to stay at Bear Mountain?

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Mr. Simandl: I object. It is purely immaterial.

The Court: No. I think the Prosecutor may show that the wife was away at the time this is said to occur.

Mr. Simandl: Well, this is July we are talking about. 10

The Court: Yes. You must confine yourself to that time. Now, I think the statement that his wife had left him is collateral to the issue and I cannot go into that. The question whether his wife was away at or about this time when this alleged offense occurred, I am willing to go into.

Mr. Conlon: Yes, sir. I am trying to get this time definitely fixed so there would not be any question later on. 20

The Court: Yes, but you are talking about some time in July.

Mr. Conlon: I will withdraw the question.

Q. As I understand it, your wife went to Bear Mountain in July with your child? A. Yes.

Q. And it was while she was there, after the 24th of July that you went to the Missing Persons Bureau, is that right? A. Yes. 30

Mr. Conlon: Miss Fallon, will you stand up?

Q. Do you know Miss Fallon of the Police Department, the policewoman? A. Yes.

Q. Were you referred to her on that occasion? A. No.

Q. Do you know who Miss Fallon is? A. Yes, I do. 40

Q. And did you tell Miss Fallon when you went to her in the spring of 1927—

Mr. Simandl: I object to that. I think that I am entitled to a more definite date. The spring of 1927 is quite a long season.

The Court: Well, can you not make it more definite.

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Q. Do you remember seeing Miss Dugan, the policewoman? A. Yes.

Q. And isn't it a fact that in the spring of 1927

Mr. Simandl: I object.

Q. Before Sally left your employ you went to Miss Dugan, being referred to her by the Missing Persons Bureau, and you told Miss Dugan that your wife had left you, that she was going around with a colored man, and that you wanted to make a complaint against her? A. I didn't.

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Q. And isn't it a fact that she then told you that you would have to get evidence before the warrant should issue? A. That was in August.

Mr. Simandl: I object.

The Court: Sustained.

Witness: The 2nd or 3rd of August.

30

Q. Now, your children have supper usually up in the room there, in the kitchen? A. Yes, in the kitchen.

Q. And sometimes your older children would stay out to supper? A. No, sir, they never stayed out.

Q. How old is your oldest child? A. Twenty-two years.

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Q. And that is a boy? A. A boy.

Q. And your next oldest? A. Nineteen, a boy.

Q. You mean that they never stayed out? A. They always be home; they never be out.

Q. And while Sally worked for you she preparer the supper? A. No. I have my mother-in-law, an old lady; she only washed the dishes. 10

Q. Was your mother-in-law there at that time? A. Yes.

Q. Is she in court? A. Yes.

Q. How long did she live with you? A. Since I was married, twenty-four years.

Q. You say she did the cooking? A. My mother-in-law did the cooking.

Q. Did you have your meals with your children? A. Mostly we eat together.

Q. Sometimes you would eat alone? A. Very seldom. 20

Q. Sometimes you would eat alone? A. No, sir; very seldom. The only thing I eat alone was when the children were in school.

Q. Well, your children do not stay up in your rooms all of the time. A. I have one sick child. She stays most in the house. She takes books from the library and she reads and stays home. She cannot walk. 30

Q. How old is she? A. She is fourteen years.

Q. Does she ever go out? A. She cannot walk. She is crippled of both legs.

Q. Does she ever go out? A. Very seldom. She cannot walk much.

Q. She does sometimes go out? A. Maybe when it is very warm during the day.

Q. And if it is very warm and it is a nice day she goes out? A. But she don't stay long out. 40

Q. I didn't ask you that. If it is a nice day and warm she will go out sometimes? A. Yes; very seldom, though.

Q. And is your daughter's condition now better or worse than it was two years ago? A. Well, she is better now.

10 Q. Very much better? A. A little better.

Q. And when she went out, did she walk downstairs, or did somebody carry her down? A. She walked down.

Q. And when she is up in the house, does she walk around, or go around in a wheelchair? A. No, she sits and reads books from the library.

Q. She has no wheel chair? A. No.

Q. So that when it is necessary for her to walk around the house, she walks on her own feet? A.

20 Yes.

Q. And on the occasions when she does go out, she walks downstairs by herself and she walks upstairs by herself? A. Yes.

Redirect-examination by Mr. Simandl:

Q. She goes to school, doesn't she? A. Yes.

Q. When you said she goes out, would you mean out at day or night?

30

Mr. Conlon: I object.

The Court: Sustained.

A. Days.

Q. She goes to school and comes back from school? A. Yes.

Q. At night does she go out? A. No, sir; she did not.

Q. Does she play outside after she comes home from school? A. She plays mostly inside.

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Q. In other words, when she comes home from school she stays in the house as much as she can? A. Yes, as much as she can she stays in the house.

Recross-examination by Mr. Conlon:

Q. Where does she go to school? A. Morton Street school. 10

Q. How long has she been going to that school? A. Since she was five years old.

Q. Do you know what class she is in? A. Graduating class; 8-A.

Q. And she has been going there regularly since she was five years old? A. Yes, but she did not go regularly; she was sick; she was at the hospital.

Q. Does she walk to school? A. Yes.

Q. How far is the school from your house? A. Only a block and a half. 20

Q. Does she come home to lunch? A. Yes.

Q. She walks home to lunch every day? A. Yes.

Q. Walks back to school? A. Yes.

EMIL MATZNER, sworn in behalf of the defendant. 30

Direct-examination by Mr. Simandl:

Q. What is your business? A. Builder; general contractor.

Q. How long have you resided in Newark? A. Twenty-six years.

Q. Do you know Mr. Lerman? A. Yes.

Q. How long have you known him? A. I have

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known him ever since he has been here in Newark? Twenty-six years.

Q. And where do you live? A. I used to live on Baldwin Street, 101; I still have my property there.

Q. And Baldwin Street, 101, is in the same general neighborhood as West Street? A. Yes. It is on the same side.

Q. Do you know the reputation of Isidore Lerman in the neighborhood wherein he resides for honesty and morality? A. I have known him.

The Court: He wants to know do you know it.

Witness: Yes, I do know it.

Q. What is that reputation, good or bad? A. It is very good.

Cross-examination by Mr. Conlon:

Q. Did you know him in 1922? A. I didn't, no.

Q. What? A. 1922?

Q. Yes. A. The late part of 1922—1923, I believe I did know him.

Q. How long have you known him? A. Around twenty-six years, sir. Oh, absolutely I did. I understood 1903. I beg your pardon.

Q. And you knew him very well at that time? A. I did.

Q. Did you know at that time that he was convicted in Essex County?

Mr. Simandl: Objected to as immaterial.

Q. Did you know that in the latter part of 1922, he was convicted in this county on a charge of having committed perjury?

Mr. Simandl: I object.
The Court: Sustained.

Q. Did you ever hear anybody, any of his friends or your friends speak of the fact that Lerman was convicted in 1922 of having committed perjury?

Mr. Simandl: Objected to as not proper cross-examination and not material. 10

The Court: Mr. Prosecutor, the point is this: This man's reputation is only in issue for honesty and morality. It is not veracity. Now, we cannot go into veracity.

Mr. Conlon: I will withdraw that.

LAWRENCE BERRY, sworn in behalf of the defendant. 20

Direct-examination by Mr. Simandl:

Q. How long have you resided in Newark? A. Fifty-five years.

Q. Do you know Isidore Lerman? A. Yes.

Q. How long have you known him? A. About sixteen or seventeen years.

Q. Do you know his reputation for honesty and morality in the neighborhood wherein he resides? 30

Mr. Conlon: Please answer yes or no.

Q. Yes or no. A. Yes.

Q. Is his reputation good or bad?

Mr. Conlon: Just a minute. May I examine?

By Mr. Conlon:

Q. Where do you live? A. 58 West Street. 40

Q. That is quite near Mr. Lerman's house? A. Well, two blocks.

Q. Have you ever talked to anybody about his reputation for honesty and morality? A. Well, we have talked around the neighborhood since he is in trouble, different people.

10 Q. That is since he got in trouble. A. Well, I never knew him to do anything wrong.

Q. No. I am asking you if you ever talked to anybody in the neighborhood about his reputation before he got into trouble. A. No.

Mr. Conlon: I will withdraw my objection.

Direct-examination (continued) by Mr. Simandl:

20 Q. Is it good or bad? A. As far as I know, it is good.

JOHN FEE, sworn in behalf of the defendant.

Direct-examination by Mr. Simandl:

Q. How long have you lived in Newark? A. All of my life.

30 Q. Do you know Isidore Lerman? A. Yes.

Q. How long have you known him? A. About twenty to twenty-four years; twenty-two; something like that.

Q. You live in the same general neighborhood as he does? A. Yes.

Q. Do you know his reputation for honesty and morality in the neighborhood wherein he resides? Answer yes or no. A. Yes.

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Q. Is his reputation good or bad? A. It was good.

Cross-examination Waived.

HUGH McKAGUE, sworn in behalf of the defendant. 10

Direct-examination by Mr. Simandl:

Q. Do you know Isidore Lerman, Mr. McKague? A. Yes.

Q. How long have you known him? A. I have known him twenty-four years, and have known him to be a respectable man, as far as I know him.

Q. Do you know his reputation in the neighborhood wherein he resides for honesty and morality? A. Yes. 20

Q. Is it good or bad? A. Good.

Cross-examination by Mr. Conlon:

Q. You are a very good friend of his? A. Just a neighbor, sir.

Q. Well, you are friends also? A. Well, we speak to one another. That is all. 30

JAMES DAVENPORT, sworn in behalf of the defendant.

Direct-examination by Mr. Simandl:

Q. You are a resident of this County for how long? A. All of my life. Sixty years past. 40

Q. Did you ever have any public office? A. I have.

Q. What? A. Ten years, State Prison, three years as a prison inspector. Seven years Board of Freeholders, Essex County, and six years sinking fund commissioner, and three years as treasurer.

10 Q. Do you know Isidore Lerman? A. I do.

Q. You have known him for how long? A. Over thirty years. Since he come here a green-horn.

Q. Do you know his reputation for honesty and morality in the neighborhood wherein he resides? A. I had a whole lot of dealings with him.

The Court: He asked you did you know his reputation.

Witness: Yes.

20 Q. Good or bad? A. Very good.

Cross-examination by Mr. Conlon:

Q. Where do you live? A. 101 Linden Avenue, Irvington, New Jersey.

Q. That is quite a distance from where Mr. Lerman lives. A. I lived down Neck for forty-one years.

Q. Did you ever live near him? A. No, I was 30 traveling around selling cigars.

Q. And at that time he was keeping a saloon and you were selling cigars to him? A. He was one of the customers and I sold cigars when he was tending bar.

Q. And that was your connection with him? A. Oh, I used to go to his place frequently.

Recess.

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After Recess.

Mr. Conlon: Before this witness is called, may I ask permission to have the baby presented before the jury.

Mr. Simandl: That is, I submit first of all, immaterial, and second we are not charged with a case where penetration is material. I submit the Prosecutor has had ample time to present his case and I do not think it is fair at this time. All it can do is to prejudice the minds of the jury.

The Court: Well, I do not see that it can prejudice the minds of the jury, because they could only be entitled to look at the baby to see if it resembles its alleged father. The only question is whether I should open the case for that purpose, and it has not been my custom to be strict on those matters in fact, I do not think I have ever done that and I do not think I will change my practice now.

Defendant's Counsel prays an exception to this ruling of the Court.

Exception allowed; let it be sealed and it is signed and sealed accordingly.

DALLAS FLANNAGAN,
Judge.

SALLY BIGAMS, recalled.

Direct-examination by Mr. Conlon:

Q. That baby in your arms was the baby born to you on February 10, 1928? A. Yes.

Q. As a result of the intercourse with the defendant?

Sally Bigams—Recalled.

Mr. Simandl: I object. Conclusion.
The Court: Strike it out.

Q. This is the baby born to you on February 10, 1928? A. Yes.

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10 SARAH LERMAN, sworn in behalf of the defendant.

Direct-examination by Mr. Conlon:

Q. Mrs. Lerman, you are the wife of Isidore Lerman, the defendant? A. Yes.

Q. Did Sally Bigams work in your household? A. Yes.

Q. Until what date? A. Until about the middle of May.

20 Q. What was her duty? A. Just to wash the supper dishes.

Q. Who cooked? A. My mother and myself.

Q. How did Sally terminate her employ, or did she finish working for you? A. About the middle of May.

Q. Did you pay her? A. Yes.

Q. Who paid her? A. I did.

Q. Mrs. Lerman, do you remember on what date 30 you paid her? A. I think it was the middle of May, on a Sunday night, about the 15th.

Q. Did she say anything to you when you paid her? A. She didn't say anything to me.

Q. Do you remember the Saturday previous to the night she quit? A. Yes.

Q. After she was through? A. Yes.

Q. Were you home that night? A. Yes.

Q. How many children have you? A. Six.

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Q. And what are their ages? A. From twenty-two to ten.

Q. Ten now? A. Yes.

Q. On the Saturday night previous what time did you serve supper? A. Oh, between half past six and seven o'clock.

Q. And when the supper was through, what, if anything, did you do with reference to the children? A. I waited around for them to finish their supper until they would digest their meal and then I would give them baths, the younger children. 10

Q. Did they go out? A. Some of them went out, but the little one with paralysis, I had to massage her leg after the bath.

Q. When were they all bathed and tucked in bed, what time were they in bed? A. About nine o'clock. 20

Q. During that time on any Saturday night during the month of May did you ever hear or see any assault upon—I will withdraw that. Did you hear any cries of Sally Bigams? A. No.

Q. Was there any assault committed in your flat between the hours of six and eight? A. No.

Q. If there had been such a thing, would you have been home? A. Yes.

30

Cross-examination by Mr. Conlon:

Q. What is the name of this daughter of yours that has paralysis? A. Anna Lerman. Treated by Dr. Holden.

Q. How old is she? A. At the present time she is fourteen.

Q. And you say you massaged her that night? A. Yes.

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Q. Did you massage her every night? A. A few times a week.

Q. How many times a week? A. About twice or three times.

Q. Do you remember this particular Saturday night, or are you just testifying from your general recollection of Saturday nights? A. As a rule I always do it on Saturday nights.

Q. No. I am asking you if you remember this particular Saturday night. A. Well, I do it as a rule Wednesday and Saturday.

Q. Will you listen to the question? A. Yes.

Q. Do you remember the particular night of May 21, 1927, or anything that happened that night that makes you remember particularly? A. As a rule—

Q. No. Listen to the question. Is there anything particular about Saturday night of May 21, 1927, that makes you recall it. A. What do you mean? I generally do it always on a Saturday, but the exact date I do it twice a week.

Q. Did anything particular happen on the night of May 21, 1927, that makes you recall it now to your memory? A. I do not recall anything happening that night.

Q. So that when you are testifying to what happened that night you are testifying to what in fact generally happened on Saturday nights during that period? A. Yes.

Q. Now, you say you tucked in your children at nine o'clock that night? A. Yes.

Q. You mean about that period of time you usually tucked them in bed at nine o'clock? A. Yes.

Q. How long have you been living at this place 106 West Street? A. About six years, I guess, six or seven years.

Q. Do you still live there? A. Yes.

Q. When was the first time you left—

Mr. Simandl: I object. It is wholly immaterial.

The Court: She said she was there that night.

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Q. Do you remember Christmas of 1926 and New Year's 1927? A. New Year's?

Q. Yes. Well, you remember that period of time—withdraw that. When is the first time in the year of 1927 that you left your home there?

Mr. Simandl: I object. There is no evidence that she did.

The Court: No. If you did.

Mr. Simandl: I submit it is not material and not cross-examination. 20

The Court: I will allow it.

Defendant's Counsel prays an exception to this ruling of the Court.

Exception allowed; let it be sealed and it is signed and sealed accordingly.

DALLAS FLANNAGAN,
Judge.

Mr. Simandl: When was the first time you left your home in the year of 1927? 30

Witness: In July.

Q. What date? A. I do not recollect the date.

Q. What part of July? A. I think it was the latter part of July.

Q. What makes you think it was the latter part of July? A. Well, I am not sure, but I think it was the latter part.

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Q. What makes you think it was the latter part?

Mr. Simandl: I object to that as not proper cross-examination, because the Prosecutor becomes bound by this. It is not proper cross-examination.

The Court: The question is whether the question should be allowed. Now, I am going to allow the question, testing the accuracy of the witness.

Defendant's Counsel prays an exception to this ruling of the Court.

Exception allowed; let it be sealed and it is signed and sealed accordingly.

DALLAS FLANNAGAN,
Judge.

Q. What makes you think it was the latter part of July? A. Well, I thought it was the latter part of July.

Q. It might have been earlier. A. I am not sure about the time; about the date.

Q. Well, it might have been earlier than the latter part of July? A. It may be, but I am not sure about that.

Q. Well, is there anything that fixes it in your mind as being the latter part of July? A. I do not know what you mean.

Q. (Question read.) A. It seems to me that it was.

Q. That is the best answer you can make? Whom did you go away with? A. My little girl.

Q. Which one? A. Anna.

Q. And when you went away did your mother stay there at the house? A. Yes.

Q. How long were you away? A. I was away

close to three weeks.

Q. Close to three weeks? A. Yes.

Q. Were you in Newark? A. No. I was in Bear Mountain.

Q. You went there on a vacation? A. Yes.

Q. And of course—

Mr. Simandl: All of this is wholly immaterial. Not only have we come to the point where we are testing accuracy; we are getting into a collateral matter. 10

The Court: Well, if her absence did not occur at the time we are interested in, of course this is of very little importance and I am allowing some latitude here to test her accuracy, but we are getting toward the end of it. 20

Mr. Conlon: I know, but I am going to produce testimony, and I think it is highly important and if this woman's story is true, this crime was not committed.

The Court: But she has testified that she was there at the date this alleged crime is alleged to have been committed. Now, you are trying to show that she was absent some other time.

Mr. Conlon: No, sir, I am trying to show that she was absent at that time. 30

The Court: Yes, but you are asking her about an absence in July.

Mr. Conlon: Yes, sir, and I want to get the circumstances concerning her absence.

The Court: To show that this absence that she speaks of was not in July, but it was at the time that this crime was committed? 40

Mr. Conlon: Yes, sir.

The Court: And you want to get the particulars of the time to show that?

Mr. Conlon: Yes, sir.

The Court: Go ahead.

Defendant's Counsel prays an exception to this ruling of the Court.

10 Exception allowed; let it be sealed and it is signed and sealed accordingly.

DALLAS FLANNAGAN,
Judge.

Q. You say you went to Bear Mountain with your little girl? A. Yes.

Q. And before you went, your husband knew where you were going? A. He knew at the time.

20 Q. And you stayed up there in a boarding house? A. Yes.

Q. And your husband knew where you were? A. Yes, but I changed my boarding house.

Q. How long were you at the first boarding house? A. About three days.

Mr. Simandl: My objection goes to this whole line.

Q. Where was that? A. Bear Mountain.

30 Q. What part? A. I do not know what part.

Q. And you were at the first boarding house two days? A. Yes.

Q. And then you changed to another? A. Yes.

Q. How far away was that? A. I do not know how far.

Q. What was the name of the first boarding house? A. Berkowitz.

Q. And what was the name of the second one?

40 A. Fried.

Q. And your husband gave you money to pay the expenses for yourself and your little girl while you were gone? A. Yes.

Q. And you were gone two weeks? A. Yes.

Q. And was that the time you arranged with your husband that you would be gone? A. No. The time was arranged for a few days.

Q. And instead of staying a few days, you stayed two weeks? A. Yes.

The Court: Were you ever at Bear Mountain before that?

Witness: No.

Q. And that is the only time you were away from your house? A. Yes.

Q. During the year 1927?

The Court: No. That is not what I asked her. I asked her if she was ever at Bear Mountain at any other time and she said no.

Q. Was that the only time you were away from your house between January and July, 1927?

Mr. Simandl: Objected to as immaterial.

The Court: I will allow that.

Defendant's Counsel prays an exception to this ruling of the Court.

Exception allowed; let it be sealed and it is signed and sealed accordingly.

DALLAS FLANNAGAN,
Judge.

Q. Was the occasion when you went to Bear Mountain the only time when you went away from your house, 106 West Street, between January,

1927, and July, 1927? A. Sometimes I go to New York.

Q. Was the time that you were in Bear Mountain for these two weeks the only time that you lived away from home between January, 1927, and July, 1927? A. Sometimes I go to New York and stay with my sister a few days.

10

Q. How many times did you do that? A. Well, a few times.

Q. How many times between January and July, 1927? A. About three or four different times.

Q. And how long did you stay on these occasions? A. A few days. Sometimes a week in the summer.

Q. And did you go there alone? A. Sometimes I would go there alone and sometimes I would take the child with me.

20

Q. How many times do you think you were over at your sister's house between January and July, 1927? A. Well, a few times.

Q. Well, how many would you say was a few times? A. Well, three or four times.

Q. And those occasions you stayed away two or three times or a week? A. Sometimes.

Q. When did you return from Bear Mountain? A. I will say two weeks.

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Q. Do you remember when you returned; did you go home when you returned? A. I did.

Q. And you saw your husband? A. I did.

Q. And did you continue to live there as before? A. Yes.

Q. Who tucked your children in bed when you were away, as far as you know? A. My mother was there most of the time. My mother was always with me.

40

Q. And there was some times when she was not there? A. My mother was always there.

Q. Did she ever live anywheres else besides there? A. No. My sister lives next door and she goes up there for a few minutes, but she is always around the place.

Q. Where did she sleep in your house? A. Sometimes she would sleep in my sisters house, and sometimes in my house. 10

Q. Now, when you were away did you not know whether your mother slept in your house or your sister's house? A. No. She always slept in my house because there is more room there than the other place.

Q. You had two sleeping rooms on the second floor? A. Yes.

Q. And your four children occupied those rooms? A. Yes. 20

Q. And you have two bedrooms on the upper floor? A. I have more than that. Three.

Q. And you and your husband occupied one? A. Yes.

Q. And the two oldest children occupied the other? A. Yes.

Q. And your sister lived next door? A. Yes.

Q. How long have they lived next door? A. Oh, quite a number of years. 30

Q. Have they any children? A. Yes, I have one sister has four children and another sister has one.

Q. Does she live next door to you, too? A. Yes.

Q. And your mother spent some time with them? A. She spends most of the time with me, because I have the largest family.

Q. And several of your children are grown up? 40

A. A few of them are grown up and there are four little ones. They are ten, twelve and fourteen.

Q. Your youngest child was ten at this time? A. Yes.

Q. How old were your sister's children? A. Sixteen, fourteen, twelve, and the other one is sixteen.

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Q. But you do remember that on some occasions your mother slept next door in your sister's house? A. Very seldom, unless a child was sick.

Q. You do remember on some occasions your mother slept next door with your sister? A. Yes.

Redirect-examination by Mr. Simandl:

Q. You went down to see a Mrs. Armstrong, did you not, in February of last year? A. Yes.

20

Q. Who was present there? A. Mrs. Armstrong and a couple of other ladies. I do not know their names.

Q. Was your husband there? A. Yes.

Q. Now, what, if anything, was said to you and what did you say? A. Mrs. Armstrong told me—

Mr. Conlon: I object.

The Court: Mrs. Armstrong testified to what the husband said. Why cannot she testify to her recollection of it.

30

Mr. Conlon: I did not understand her husband was there.

The Court: Oh, yes.

Q. (Question read.) A. Mrs. Armstrong told me, she said, "I understand you have a nice family," and she said, "Why don't you do what the rest of the people are doing;" she said, "Pay and keep

40

it out of the courts." She said, "Save the publicity and disgrace for the children," which I consented when she said that.

Q. Your husband denied in your presence and in the presence of Mrs. Armstrong that he had anything to do with it?

Mr. Conlon: I object to that as leading. 10

A. He did.

The Court: She has answered it. I will let it stand.

Recross-examination by Mr. Conlon:

Q. Did you know at any time in 1927, in the month of July, that your husband made a report to the Missing Persons Bureau of your absence from the city? 20

Mr. Simandl: I object.
The Court: Sustained.

ANNA LERMAN, sworn in behalf of the defendant.

Direct-examination by Mr. Conlon: 30

Q. How old are you? A. Fourteen.

Q. You are the daughter of Isidore Lerman? A. Yes.

Q. Do you know Sally Bigams? A. Yes, sir.

Q. Did she work in your mother's and father's home? A. Yes.

Q. What did she do? A. She did the supper dishes and cleaned up the house after supper. 40

Q. And do you remember when she quit working? A. Yes.

Q. In what year was it? A. It was in 1927.

Q. In what month? A. May.

Q. Do you remember what day of the week she quit working, Anna, if you know? A. No.

10 Q. Well, do you remember the Saturday before she quit? A. No.

Q. Do you remember the last day she quit there? A. Yes, it was around the middle of the month.

Q. Anna, on a Saturday night, what time did you retire in May, 1927? A. I went to bed around nine o'clock.

Q. Where was your bedroom? A. Next to the kitchen.

Q. What was done with reference to you before 20 you went to bed? A. Before I went to bed on Saturday nights, my mother, she massaged my leg.

Q. Did you take a bath, too? A. Yes. I took a bath.

Q. Now, what time did you generally eat supper? A. About between 6:30 and 7 o'clock.

Q. And after supper, what was your custom? A. I would lie down to read until it was time to take a bath and massage.

30 Q. And during the month of May, prior to the time that Sally Bigams started working for your parents, did you ever witness or see your father do anything to Sally Bigams? A. No.

Q. Did you ever hear Sally Bigams scream or cry out? A. No.

Cross-examination by Mr. Conlon:

Q. Anna, you have been going to school for sev- 40 eral years, haven't you? A. Yes.

Q. What class are you in now? A. 8-A.

Q. And you walk to school and back home every day? A. Yes.

Q. And you have been doing that for some time? A. Yes.

Q. And when you come home from school what do you do in the warm weather when it is clear; do you go out and play? A. If it was nice, I would play until about half past five or five o'clock and then go in the house. 10

Q. And then you would have your supper? A. A little bit later.

Q. About half past six? A. Yes.

Q. And in the springtime when it was light your brothers and sisters go out sometimes and play? A. Well, not all of the time.

Q. Well, sometimes? A. Sometimes. 20

Q. And sometimes you would go with them? A. Very few.

Q. And sometimes you would go with them? A. Sometimes.

Q. Now, you say that your mother massaged your leg every Saturday night? A. Yes.

Q. Was there ever a Saturday night that she did not do it? A. No.

Q. Are you sure about that? A. Yes. 30

Q. Do you remember any period of time about that time when your mother was away from home? A. In July she was away.

Q. No, I mean before July. A. She was not away from home.

Q. Have you an aunt living in New York? A. Yes.

Q. Did you ever know that your mother visited your aunt? A. Yes. She once took me with her. 40

Q. And did she ever visit your aunt without you? A. I do not remember.

Q. Well, now, would you say that she did not, or that you do not remember? A. I do not remember.

Q. You mean that she might have? A. I do not know. I do not think so. She might have taken one of the other children.

Q. And there might have been times then when she was away visiting? A. Yes.

Q. You have another aunt who lives next door to you? A. Yes.

Q. And your grandmother was in your house some of the time? A. Most of the time she was in our house.

Q. And some of the time she was next door with your aunt? A. Yes.

Q. And did Sally ever get supper for you? A. No.

Q. Never? A. No.

Q. Wasn't there any time when either your mother or grandmother was not there? A. No. My mother or grandmother was always there.

Q. Would you say that Sally never got supper for you? A. No.

Q. During all the time that she worked for you? A. Yes. She never got supper for us.

Q. You were able to get up and down the stairs all right, weren't you? Nobody had to carry you around at all? A. No.

Q. You were able to play out in the street? A. Yes.

DAVID LERMAN, sworn in behalf of the defendant.

Direct-examination by Mr. Simandl:

Q. What do you do? A. I am a clerk in the O. B. Garage, Orange.

Q. In May, 1927, what were you doing? A. I went to high school. 10

Q. In this city? A. Yes.

Q. Which high school? A. Central High School, Newark.

Q. What grade were you in then? A. I just entered my fourth year.

Q. Did your parents employ one Sally Bigams? A. Yes.

Q. And do you remember the date that she ceased her employment there? A. I cannot remember the exact date. 20

Q. Well, do you remember the time in May, I think it was? A. I think it was late in May.

Q. Did you have any duties to perform on Sunday? A. Well, I opened the store up every Sunday morning at six o'clock.

Q. And what time did you retire on Saturday night? A. Very early.

Q. Where was your room? A. On the third floor—the second floor. 30

Q. When did you eat? A. I ate in the dining room down stairs.

Q. I know, about what time on Saturday? A. Well, about seven o'clock.

Q. What did you do after dinner or after supper? A. Well, I stayed around the house and studied.

Q. And did you ever, during the time that you 40

were there, ever hear Sally Bigams cry out? A. No, sir.

Q. Did you ever see your father attack her? A. No, sir.

Q. When was the first time that you knew of your father's difficulty?

10 Mr. Conlon: I object.

The Court: Sustained.

Defendant's Counsel prays an exception to this ruling of the Court.

Exception allowed; let it be sealed and it is signed and sealed accordingly.

DALLAS FLANNAGAN,
Judge.

Cross-examination by Mr. Conlon:

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Q. You were going to High School? A. Yes, sir.

Q. And you were in school all day? A. Yes.

Q. You were taking a full course? A. Yes.

Q. And you studied every night? A. Practically every night.

Q. Every Sunday night? A. Not Sunday night. I went to a movie.

Q. Now, you remember the year of 1927? A.
30 Yes.

Q. When did you enter high school? A. I entered Central High School in 1925.

Q. You remember the year of 1927? A. Yes.

Q. You do not remember the exact night of the 21st of May? A. No.

Q. You know that was Saturday night? A. Yes.

Q. But there is nothing about it that made it

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any different than any other Saturday night in the week? A. No.

Q. Now, would you say there was no Saturday night in the spring of 1927, when you were out of your house in the neighborhood of seven o'clock? A. No, sir; I am very regular in my habits.

Q. Then, as I understand it, there was no Saturday night in the spring of 1927, when you were not home upstairs in the rooms of your parents' home in the neighborhood of seven o'clock. A. Well, yes, either that or I was in the store. I was in the house always.

Q. You might have been in the store? A. Yes.

Q. Well, do you mean to say there was no Saturday night in the Spring of 1927 when you were not either—by the store you mean the saloon? A. Yes.

Q. And you were not in the saloon or the house in the neighborhood of seven o'clock? A. Yes.

Q. Every Saturday night in the spring of 1927, you were in either one place or the other? A. Yes.

Q. You might have been in the saloon? A. Yes.

Q. And you relieved your father downstairs sometimes? A. Yes.

Q. And when he went up to have his supper sometimes you would relieve him? A. Either myself or my brother.

WILLIAM LERMAN, sworn in behalf of the defendant.

Direct-examination by Mr. Simandl:

Q. Your father's name is Isidore Lerman? A. Yes.

10 Q. Do you remember Sally Bigams working for your parents? A. Yes.

Q. And for what time did she work? A. Until May. I think the 21st.

Q. And do you remember the time that she stopped working? A. No.

Q. Well, do you remember the Saturday night of May 21st? A. Yes.

Q. What was your duty? A. At six o'clock my father and I ate supper together and then we both

20 went down together.

Q. What was your duty? A. I helped my father along behind the bar.

Q. You were working for your father? A. Yes.

Q. Who served you your supper? A. My mother.

Q. How long did it take you to prepare—how long did you spend at supper? A. About ten minutes.

Q. While you were there in the house did you

30 see your father attack anybody, particularly Sally Bigams? A. No, sir.

Q. Did you hear Sally Bigams scream or cry out? A. No, sir.

Cross-examination by Mr. Conlon:

Q. How do you come to remember Saturday night, May 21st? A. I am always helping my father along.

40 Q. Eh? A. Saturday nights I helped my father.

Q. Do you remember that particular Saturday night? A. Yes.

Q. How do you come to remember that? What happened that night to make it stick in your memory? A. Well, I was helping my father to attend bar every Saturday night.

Q. I am not talking about every Saturday night. I am talking about that particular Saturday night. Is there anything different about that Saturday night? A. Every Saturday night is the same thing. 10

Q. Is there anything particular about that Saturday night, May 21st, that you remember, or are you testifying from what happened on all Saturday nights? A. No, sir. Everything as usual Saturday night.

Q. So you do not remember particularly the Saturday night of May 21st? A. The 21st I remember everything. 20

Q. And you remember everything that happened on the night of May 14th? A. No, sir.

Q. Or May 7th? A. Everything Saturdays is the same way.

Q. Do you remember that night particularly, or are you telling us about that Saturday night because every Saturday night was the same? A. Every Saturday night was the same. 30

Q. But you do not distinctly and definitely remember the night of the 21st? A. No.

Q. You do not know whether you were in the living rooms upstairs at seven o'clock on the night of the 21st? A. No. Six o'clock I was eating supper with my father.

Q. You do not remember that night definitely. A. I was eating supper.

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Q. Would you say there was any Saturday night in the spring of 1927 when you were not in the apartment there at seven o'clock? A. Oh, once in a while I run up and downstairs for my father doing errands.

Q. Then there was some Saturday nights in the spring when you were not home in the house? A. I was upstairs in the house.

Q. Then there were some Saturday nights in the spring of 1927 that you were not in your home at or about seven o'clock? A. I was. I was going up in the house and getting things for my father.

Q. Yes, and then you were downstairs, so that there were Saturdays that you were not in your house at seven o'clock when you were upstairs or somewhere else, is that right? A. Yes.

Q. And you do not know whether this particular Saturday night you were downstairs or up or where you were? A. No.

Q. Would you say that there was no Saturday night in the spring of 1927 when you were outside of the house entirely, that is, away from your house entirely? A. No, sir.

Q. And every Saturday night in the spring of 1927, you were either in the saloon or the house? A. Yes.

Q. But you cannot say whether you were in the house definitely at any particular time? A. No.

Q. Excepting at supper time—

Mr. Simandl: I object.

Q. You do remember what time you ate supper. A. Oh, yes, I remember.

PAULINE ALTER, sworn on behalf of the Defendant.

Direct-examination by Mr. Simandl:

Q. Mrs. Alter, you are the mother of Mrs. Lerman? A. Yes.

Q. And in May, 1927, where were you living? A. I was home. 10

Q. No, where were you living, what street? A. West and Baldwin all of the time.

Q. With whom were you living? A. With my daughter, Mrs. Lerman. Twenty-four years I lived with Mrs. Lerman.

Q. What did you do in Mrs. Lerman's household? A. I helped cook and give the children to eat and help the children when they are sick all of the time. They have six children all the time 20 and I raised the children.

Q. Well, now, on a Saturday night in May, 1927, were you still assisting in the household and working around the household? A. All the time. I never go no place. I am too old. I am eighty-one years old. I never go no place.

Q. Do you remember Sally Bigams? A. Yes.

Q. Do you remember her being there, working there? A. She worked only three-quarters of an 30 hour, half an hour, and she go home and lock the door, and I sent the children home to wash only the dishes.

Q. Do you remember when she stopped working there? A. I do not remember the day.

Q. Well, do you remember the month? A. To tell you the truth, I do not know.

Q. Well, was it in the spring of 1927? Well, you remember she stopped working. A. She stop- 40

ped working, she worked a couple of months. I do not take note.

Q. At any time on Saturday night was Mrs. Lerman in the house? A. Yes. A couple of children and the mother and I. I do not go no place. I am a widow and I have four children and I give the children care. My daughter works and she lives next door, and I have the children.

Q. You fed the children? A. I gave them to eat in Lerman's place. She goes to work in Hahne's.

Q. You would feed those children in Lerman's place? A. Yes.

Q. Did you ever see Mr. Lerman do anything to Sally? A. No, never.

Q. Did you ever hear her scream and cry out that somebody was doing anything? A. No. She don't clean the house. A couple of my children and his daughter's children clean the house.

Cross-examination by Mr. Conlon:

Q. You had two other daughters living next door? A. Yes.

Q. And they had children? A. Four children.

Q. Did you ever go in there? A. I go in there sometimes.

Q. And did you sometimes sleep in there? A. No. I stay with my daughter.

(It is admitted that if Jochim Wichmann were called he would testify that he was the stenographer who took the testimony in question and that he took it accurately and that the transcript was entered as an accurate transcript of his notes, and the stipu-

lation is to have the same effect as if the stenographer were present and testified to that effect.)

Mr. Simandl: And that he testified that Dr. Bruington and Sally Bigams testified; he was asked if Sally Bigams was asked and answered the following questions, page 13: "Where? I felt something in my body; that is what I did. Immediately? Immediately. No trouble at all? No. No more than he laid on you you felt something in your body?"

Mr. Conlon: I object to the admissibility on the ground it attempts to prove nothing, unless Mr. Simandl will admit the specific instance in which the foundation was laid.

Mr. Simandl: I have it marked out.

The Court: All we are interested in is—

Mr. Simandl: The contradiction. "No more than he laid on you you felt something in your body? Well, he had to do what he wanted to do as to get into my body. And you were fighting him all of this while? I was kicking. I could not do anything else." And the testimony of the doctor.

Mr. Conlon: I ask that that be stricken out as not being a contradiction of what she testified to on the stand.

The Court: Well, she did testify, as I recall it, that she resisted up to a certain point and then stopped. Now, that seems to say I was kicking all the time.

Mr. Simandl: The testimony of Dr. Bruington; "Did she tell you when she had her last menstruation? Yes. What did she tell

you? She said the 7th of May. The 7th of May. Do you remember seeing this card before? Oh, yes." That was the whole testimony.

Defendant Rests.

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MARGARET T. DUGAN, sworn in behalf of the State in rebuttal.

Direct-examination by Mr. Conlon:

Q. What is your occupation? A. Policewoman, City of Newark.

Q. How long have you been such? A. Eleven years.

20 Q. Do you know the defendant, Isidore Lerman, in this case? A. I do.

Q. Where did you first see him?

Mr. Simandl: Objected to. This is not rebuttal.

The Court: Wasn't he asked if he said something to Mrs. Dugan. This is merely preliminary.

Defendant's Counsel prays an exception

30 to this ruling of the Court.

Exception allowed; let it be sealed and it is signed and sealed accordingly.

DALLAS FLANNAGAN,
Judge.

Q. Where did you first see him? A. At Police Headquarters in the Missing Persons Bureau on July 26, 1927.

Q. And who was present?

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Mr. Simandl: I object to that as absolutely immaterial.

The Court: I will allow that so far.

Defendant's Counsel prays an exception to this ruling of the Court.

Exception allowed; let it be sealed and it is signed and sealed accordingly. 10

DALLAS FLANNAGAN,
Judge.

A. Detectives Barthowick and Spitzer.

Q. Did you have a conversation with him? A. I did.

Mr. Simandl: I object on the ground I have already stated, any conversation in July, 1927, could have no bearing with relation to this matter. It is wholly a collateral matter. 20

The Court: Wait until we get to it and we will find out if it is collateral.

Q. Did Lerman tell you on that occasion the purpose of his visit? A. Yes.

Q. What did he tell you that he came there to have a warrant issued against his wife?

Mr. Simandl: I object. 30

Mr. Conlon: On the direct case of the State Dr. Bruington testified that this defendant told him certain facts concerning his wife. That was part of the main case of the State. The defendant, in his examination, his cross-examination, it was perfectly admissible, because he testified that his wife was present in the house all of the time. It therefore became germane in the 40

case as to whether or not she was there. He was then faced with the statement he made to Miss Dugan as to the whereabouts of his wife, which he denied.

The Court: Yes, but you did not ask that. You asked about a warrant. If you will re-
10 frame the question and say at what time and place did he say so and so and if he on his examination said he did not say that to Miss Dugan, then we will be in a position to go on.

Mr. Simandl: I object on the further ground that this is an attempt on the part of the Prosecutor to corroborate Dr. Bruington as to the conversation alleged to have been had with the defendant by bringing
20 collateral matters entirely unrelated—how this would corroborate Dr. Bruington is beyond me.

The Court: No. It is to contradict the defendant.

Mr. Simandl: On a matter that was for the first time brought out on cross-examination over my objection.

The Court: If it is collateral to the issue
30 that is the end of it, but that is the question here. Now, then, Mr. Prosecutor, if you will frame the question that way, you will get to it.

Defendant's Counsel prays an exception to this ruling of the Court.

Exception allowed; let it be sealed and it is signed and sealed accordingly.

DALLAS FLANNAGAN,
Judge.

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Q. Did Mr. Lerman on that occasion tell you in effect that his wife had been absent from the home for two months or more, that she had absented herself on frequent occasions, that she was running around with a negro and did he ask you if he could make a warrant out and have a warrant made for her arrest? 10

Mr. Simandl: I object. It is absolutely not germane to this subject and absolutely prejudicial and I submit there should be a mistrial, because the Prosecutor knew it was absolutely without any definite foundation and probably intended only to prejudice the minds of the jury.

The Court: Is it collateral or not. You may show it. 20

Defendant's Counsel prays an exception to this ruling of the Court.

Exception allowed; let it be sealed and it is signed and sealed accordingly.

DALLAS FLANNAGAN,
Judge.

Mr. Simandl: I object on the ground it is not proper or competent rebuttal.

The Court: I would not allow that part 30 about running around with negroes, because I do not see that that has anything to do with it. I will allow your question up to that point. Now, just read the question and we will leave out part of it.

(The stenographer reads as follows: "Did Mr. Lerman on that occasion tell you in effect that his wife had been absent from the home for two months or more, that she 40

had absented herself on frequent occasions.")

The Court: Stop there. Strike out the rest.

Q. Did he tell you that? A. He did.

10 Q. And did he ask you that a warrant be issued against her?

Mr. Simandl: I object.

The Court: Sustained.

Cross-examination by Mr. Simandl:

Q. This was in July? A. July 26th.

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20 HELEN D. ARMSTRONG, recalled in behalf of the State in rebuttal.

Direct-examination by Mr. Conlon:

Q. Will you tell me again what your occupation was in May, 1927? A. I was an agent of the Childrens' Aid Society of Essex County here in Newark.

Q. This case of Sally Bigams was brought to

30 your attention when?

Mr. Simandl: Objected to as not proper rebuttal.

The Court: I imagine it is preliminary. I will allow it.

Defendant's Counsel prays an exception to this ruling of the Court.

Exception allowed; let it be sealed and it is signed and sealed accordingly.

DALLAS FLANNAGAN,

40 Judge.

A. In about February. I cannot be sure of the exact date. After the birth of the baby.

Q. Through what channels was it brought to your attention?

Mr. Simandl: Objected to. It has all been gone into. This is not proper rebuttal.

Mr. Conlon: I may possibly not be rebutting testimony. I am rebutting a statement made by the defendant's counsel in his opening to the jury, and I think I have a right to do that. Defendant's counsel in his opening said in so many words that Dr. Bruington was the man who instigated this complaint, that he was trying to collect his bill and that he interested himself in it and was responsible for the complaint being made. It is true there has been no evidence of that.

The Court: But you claim that having made that statement in his opening he may argue it and you have a right to rebut it. As I recall it, there was some evidence bearing on that line, that is, to show the origin of this complaint, and I ruled it out, and counsel for the State said he was out of order and it might be proper on rebuttal. Am I right?

Mr. Conlon: Yes, sir.

The Court: Well, I am going to allow the evidence, even if it is not rebuttal. I am going to allow it and if there is any further evidence that the defendant wants to introduce by reason of this evidence being introduced, he may do so.

Defendant's Counsel prays an exception to this ruling of the Court.

Exception allowed; let it be sealed and it is signed and sealed accordingly.

DALLAS FLANNAGAN,
Judge.

Q. Through what channel was this brought to your attention? A. Through the Church Mission of Health. All cases are brought through mothers

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Mr. Simandl: I object.

The Court: That is sufficient.

Q. And you thereupon interviewed this girl, and did you interview anybody else? A. Sent for Mr. Lerman.

Q. And did you interview him? A. Eventually.

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Q. And who brought—where was the complaint made? A. The complaint was made—

Mr. Simandl: I object. The complaint is the best evidence.

The Court: No. Where was it made. I will allow it.

Defendant's Counsel prays an exception to this ruling of the Court.

Exception allowed; let it be sealed and it is signed and sealed accordingly.

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DALLAS FLANNAGAN,
Judge.

Witness: She was taken to the Overseer of the Poor and City Law Department to make her own complaint.

Q. Were you present? A. I was.

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Q. And was it there that the complaint was

made? A. Yes, then and there the complaint was made.

Q. Did Dr. Bruington have anything to do with the complaint which was made in this case?

Mr. Simandl: I object to that. It calls for a conclusion.

The Court: It does, but she can testify if he had anything to say to her or that she heard him say urging the complaint, or words to that effect. 10

Mr. Conlon: Perhaps I can frame the question differently.

Q. Who brought the girl to the City Hall? A. I did.

Mr. Simandl: Objected to as not material. 20

The Court: I will allow it.

Defendant's Counsel prays an exception to this ruling of the Court.

Exception allowed; let it be sealed and it is signed and sealed accordingly.

DALLAS FLANNAGAN,
Judge.

Q. Was there anybody with you and the girl? A. Yes. 30

Q. Who? A. Dr. Bruington.

Q. You interviewed him before the complaint was made? A. Yes.

Q. And did you interview Dr. Bruington before or after the case had been brought to your attention? A. Oh, after the case was brought to our attention.

Q. And where did you interview him? A. At his own office. 40

Q. Who went there? A. I.

Q. Alone? A. Alone.

Q. Did he send for you? A. No.

Q. Did you talk to him? A. Yes.

Q. At whose request, if anybody's, did he go to the City Hall?

10 Mr. Simandl: I object. Immaterial.

The Court: I will allow that.

A. I asked him to go myself.

Cross-examination by Mr. Simandl:

Q. And that was a complaint for bastardy to collect money?

Mr. Conlon: I object.

20 The Court: I will allow that.

Q. That was a complaint for bastardy to collect money, or payments for the child? A. Support of the child.

Testimony Closed.

Mr. Simandl sums up for the Defendant.

Mr. Conlon sums up for the State.

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CHARGE OF THE COURT.

The Court charges the jury as follows:

FLANNAGAN, *J.*:

Gentlemen of the Jury: The Court is the sole judge of the law and has the right to express to the jury his comments and opinions on the facts, but such opinions on the facts do not bind the jury, who are the sole judges of the facts and must follow their own recollection as to what the evidence is, or is not, where it fails to coincide with the expressions of the Court.

The defendant is presumed to be innocent and unless the crime charged and each of its elements is proved against him beyond a reasonable doubt, he is entitled to an acquittal. The burden of so proving defendant guilty rests upon the State and never shifts.

The defendant comes before you under an indictment which has been found by the Grand Inquest of our County and which you may take with you into the jury room. That indictment charges the defendant with carnal abuse.

Perhaps it may not be entirely clear to you what carnal abuse is, and in order to make it so, I will tell you what the law is upon that subject.

Carnal abuse is the act of debauchery of the female sexual organ by the genital organ of the male, which does not necssarily amount to penetration, committed by a male sixteen years or over upon a female under the age of sixteen.

The elements of that crime are these: First, unlawfully debauching the female sexual organ; two, by the sexual organ of the male; three, the age of the male must be sixteen years or over; four, the age of the female must be under sixteen.

Possibly during the progress of this trial you

have gotten the idea that the charge against this defendant was common law rape, but that is not the case. The charge against this defendant is what I have told you, to wit, carnal abuse, which is quite a different thing from common law rape.

There are several matters which have arisen during the trial upon which some statements as to the law, I think, are appropriate from the Court.

In the first place, you will recall that evidence was introduced as to reputation. I have been asked to charge you upon that subject as follows by defendant's counsel: "There has been evidence introduced tending to show the defendant has borne a good reputation for honesty and morality, and this evidence may be considered by you, together with all the other evidence in the case, and if you are not satisfied beyond a reasonable doubt of the guilt of the defendant, even though that reasonable doubt be raised solely by evidence of good character, the defendant is entitled to an acquittal. I so charge you.

Now, another subject. You will recall that the child was brought into court. The State claims that this child was the result of this alleged intercourse and the defendant denies it, and he denies any intercourse whatever with this girl. Hence, the issue of the paternity of the child is raised, and it was on that issue, secondary in character, that the child was brought into court and exhibited to you so as to allow you to judge whether there was any resemblance to the alleged father, the defendant.

Coming back, retracing my steps somewhat, the charge, as I said to you, was not rape, it was not sexual intercourse. The charge here is carnal abuse, and carnal abuse does not necessarily in-

clude sexual intercourse. It is the act of debauchery of the female sexual organ by the genital organ of the male, which does not necessarily amount to penetration, committed by a male sixteen years or over upon a female under the age of sixteen years.

Now, then, a further subject. The girl testified and her sister and her mother testified that she came to them and said that she had been attacked shortly after this crime is alleged to have been committed. Her declarations that she was attacked do not corroborate her testimony, but they are introduced and allowed as affecting her credibility only. The underlying basis of this rule under which this evidence is allowed is that a woman who asserts that her body was violently debauched in its private parts by the penetration of the male organ, would, if this assertion be true, have resented the outrage at the time at least to the extent of complaining of it to someone to whom she would naturally look for protection or sympathy or advice.

Another matter, gentlemen, evidence was introduced, in fact, the admission of the defendant was introduced that he had been previously convicted of crime, to wit, the crime of perjury. He stated, as I recall it, he pleaded non vult to the crime of perjury.

Now, the fact that he has been convicted of perjury is not introduced for the purpose of showing or tending to show that he is guilty of this crime. The fact that he was previously convicted of perjury, or any other crime, would not tend—would not prove and would not tend to prove that he is guilty of the crime here for which he is now being tried, the crime of which he is now accused. The

only purpose of admitting that testimony was as bearing upon the credibility of the defendant.

Q. You, of course, in your deliberation, must weigh all of the testimony, you being the judges of the facts, and in doing so the credibility of the defendant naturally will come before you for your consideration. In weighing the credibility of this defendant, you may consider the fact that he has been previously convicted of crime, to wit, the crime of perjury.

I think that briefly sets forth the law, at least, to such extent as it occurs to the court to mention, and in regard to the facts, you must be the judge of them. The burden of judging the facts—the responsibility of judging the facts rests upon your shoulders, as does the responsibility of judging and passing upon the law rest upon the judge. You will take into consideration all of the testimony.

You have heard the summing up on behalf of the several sides by counsel for the defendant on the one side and the Prosecutor of the Pleas by his Assistant on the other, and you will reach your conclusion upon all of the testimony, whether or not this defendant has been proven guilty beyond a reasonable doubt of the crime charged. In doing that you will take into consideration not only any considerations or any evidence which has been referred to by the Court, but all of the facts—all of the evidence—all of the considerations in the case. On the one hand the State produces the testimony of this girl. She says that she was employed by this man; that she was going about her occupation, her duty washing the dishes when he seized her by the arm. She says that he took her into an adjoining room or nearby place, put her on the bed and had intercourse with her, as she says, against

her will. As I have already pointed out to you, the question whether it was against her will is not an element of this crime. Nevertheless, of course, you must take into consideration the fact that she says it was against her will, because that is part of the testimony and must be considered by you in bearing upon her credibility and bearing upon the whole case, but whether or not she consented is not an element of this crime. This crime is the crime of carnal abuse, and carnal abuse may be committed with the consent of the female as well as against her consent. You will observe that the age of the female enters into this case in a carnal abuse case. The age of the female must be under sixteen, and if she is under sixteen years and the man is over sixteen years and he debauches her female organ with his genital organ it becomes carnal abuse, whether it is done with her consent or against her consent. Her age is of great importance, of course. Now, then, she says that when this was all over she was bleeding and she went home and told her sister and her mother. She says she cried out, and so forth, and thereupon a complaint was made. How the complaint was brought about you will determine from the evidence. The defendant argues that this complaint is the result of a frame-up, the result of, perhaps—I may have misunderstood, but I so understand—of a desire on the part of this doctor to collect his bill. It originated there, as I understand it, as I understand the claim, but, at any rate, a complaint was made and an indictment was found and the issue now lies between the State of New Jersey on the one hand and the defendant on the other. The defendant denies anything wrong at all. He says his wife was at home, his little girl was at home—he claims that, at

least, I should say, and that his son was home and that no such thing happened, it is all a fabrication out of the whole cloth. The case is not one as sometimes occurs, according to the defendant's view where an accusation is based partly upon circumstances which are partly true, but in this instance the defendant says and claims that these charges are pure fabrications outside of the one fact that the girl was working there at his place.

You will take the case as I said to you heretofore, upon all of the evidence and you will come to your conclusion. If you reach the conclusion that the defendant has been proven guilty beyond a reasonable doubt, it becomes your duty to find him guilty. Otherwise, it becomes your duty to find him not guilty. I leave the case with you.

(The jury retires).

Defendant's Counsel prays a general exception to the charge of the Court.

Exception allowed; let it be sealed and it is signed and sealed accordingly.

DALLAS FLANNAGAN,
Judge.

DEFENDANT'S REQUESTS TO CHARGE.

1. There has been evidence introduced tending to show the defendant has borne a good reputation for honesty and morality, and this evidence may be considered by you together with all other evidence in the case, and if you are not satisfied beyond a reasonable doubt of the guilt of the defendant, even though that reasonable doubt be raised solely by evidence of good character.

Certificate of Stenographer.

ESSEX COUNTY COURT OF GENERAL QUARTER SESSIONS.

STATE OF NEW JERSEY vs. ISIDORE LERMAN,	On Indictment No. 21, Dec. T. 1928 for Carnal Abuse.

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I, Harold T. Cook, an official stenographer of the Essex County Court of General Quarter Sessions, do hereby certify that the foregoing transcript contains the entire record of the proceedings and testimony taken by me at the trial of the above mentioned case which trial was held before the Honorable Dallas Flannagan, Presiding Judge of the Essex County General Quarter Sessions Court in and for the County of Essex, and a jury, on Wednesday, February 20, and Thursday, February 21, 1929, at Newark, New Jersey.

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HAROLD T. COOK.

Dated April 1, 1929.

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Certificate of Judge.

ESSEX COUNTY COURT OF GENERAL QUARTER SESSIONS.

STATE OF NEW JERSEY vs. ISIDORE LERMAN,	On Indictment No. 21, Dec. T. 1928 for Carnal Abuse.

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I, Dallas Flannagan, Presiding Judge of the Essex County Court of General Quarter Sessions and the Judge who presided over the aforesaid cause, certify that the above printed book contains the entire record of the proceedings had upon the trial of the said cause, and that the same is returned by the Plaintiff-in-Error therein with the writ of error bringing up the bill of exceptions signed and sealed in this cause.

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DALLAS FLANNAGAN,
Judge.

Dated April , 1929.

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Assignments of Error.

NEW JERSEY SUPREME COURT.

THE STATE OF NEW JERSEY, Defendant-in-Error. vs. ISADORE LERMAN. Plaintiff-in-Error.	On Indictment for Carnal Abuse. Assignments of Error.

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Afterwards, to wit, on the return day of the Writ of Error, before our Supreme Court of New Jersey, comes the said Isidore Lerman by Harold Simandl, his counsel and says that in the record and proceedings aforesaid and also in the matters recited and contained in said bill of exception and also in giving the judgment aforesaid, there is manifest error in this, to wit:

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1. That the said Court, before whom &c. at and upon the trial of the said issues so joined between the State of New Jersey and the said Isidore Lerman erroneously refused to permit the witness Sally Bigams, on behalf of the State, to be asked and answer the following:

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Q. During this time had he treated you like a gentleman?

Mr. Conlon: I object to that—

The Court: I will sustain the objection. *

(Exception sealed).

2. That the said Court before whom, &c., at and upon the trial of the said issues, so joined be-

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tween the State of New Jersey and the said Isidore Lerman, erroneously refused to permit the witness, Samuel S. Bruington, on behalf of the State, to be asked and answer the following:

> Q. Now, doctor, when did you first testify in this case—when you first testified in this case of State vs. Lerman in June, 1928, did you say anything in your testimony with respect to the alleged conversation which you say took place with respect to Mrs. Lerman?
>
> Mr. Conlon: I object.
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> Objection sustained.
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> (Exception sealed).

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3. That the said Court before whom, &c., at and upon the trial of the said issues so joined between the State of New Jersey and the said Isidore Lerman, erroneously permitted the defendant, Isidore Lerman to be asked and answer the following:

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> Q. Do you remember going to the Bureau of Missing Persons in the City of Newark, in the year of 1927?
>
> Mr. Simandl: Objected to. Absolutely immaterial whether he ever went there.
>
> The Court: I will allow that.
>
> (Exception sealed).

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4. That the said Court before whom, &c., at and upon the trial of the said issues so joined between the State of New Jersey and the said Isidore Lerman, erroneously refused to permit witness David Lerman to be asked and answer the following:

> Q. When was the first time that you knew of your father's difficulty?

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Mr. Conlon: I object.
The Court: Sustained.
(Exception sealed).

5. That the said Court, before whom, &c., at and upon the trial of the said issues so joined between the State of New Jersey and the said Isidore Lerman, erroneously permitted the witness, Margaret T. Dugan, on behalf of the State, to be asked and answer the following: 10

Q. Did Mr. Lerman, on that occasion, tell you in effect that his wife had been absent from the home for two months or more, that she had absented herself on frequent occasions, that she was running around with a negro and did he ask you if he could make a warrant out and have a warrant made for her arrest? 20

Mr. Simandl: I object.
(Argument)
The Court: I will not allow that part about running around with negroes because I do not see that that has anything to do with it. I will allow your question up to that point.

6. That the said Court, before whom, &c. at and upon the trial of the said issues, so joined between the State of New Jersey and the said Isidore Lerman, erroneously permitted the witness, Helen D. Armstrong, in behalf of the State, to be asked and answer the following: 30

Q. This case of Sally Bigams was brought to your attention when?
Mr. Simandl: Objected to.
The Court: I will allow it. 40
(Exception sealed).

7. That the said Court, before whom, &c. at and upon the trial of the said issues, so joined between the State of New Jersey and the said Isidore Lerman, erroneously permitted the witness, Helen D. Armstrong, in behalf of the State, to be asked and answer the following:

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Q. Through what channels was it brought to your attention?

Mr. Simandl: Objected to.

(Argument)

The Court: Well, I am going to allow the evidence * * * *

(Exception sealed).

8. That the said Court, before whom, &c. at and upon the trial of the said issues, so joined between the State of New Jersey and the said Isidore Lerman, erroneously permitted the witness, Helen D. Armstrong, in behalf of the State, to be asked and answer the following:

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Q. And who brought—where was the complaint made.

A. The complaint was made—

Mr. Simandl: I object.

The Court: I will allow it.

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(Exception sealed).

Wherefore, the said Isidore Lerman prays that the judgment and sentence may be reversed and annulled and altogether for nothing holden, and that he may be restored to all which he has lost by occasion thereof.

HAROLD SIMANDL,
Of Counsel with Plaintiff-in-Error.

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Causes for Reversal.

NEW JERSEY SUPREME COURT.

STATE OF NEW JERSEY, Defendant-in-Error. vs. ISIDORE LERMAN, Plaintiff-in-Error.	On Indictment for Carnal Abuse. Causes for Reversal.

10

And now comes the said Isidore Lerman by Harold Simandl, his counsel, and says that in the record and proceedings aforesaid and also in the matters recited and contained in the said writ of exceptions and also in giving the verdict and judgment aforesaid there is manifest error and said Isidore Lerman says that said judgment should be reversed and assigns the following reasons or causes:

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1. Because the trial court erroneously refused to permit the witness Sally Bigams to be asked and answer the following:

> Q. During this time had he treated you like a gentleman?

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2. Because the trial court erroneously refused to permit the witness Samuel S. Bruington on behalf of the State to be asked and answer the following:

> Q. Now, Doctor, when did you first testify in this case—when you first testified in this case of State vs. Lerman in June, 1928, did

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you say anything in your testimony with respect to the alleged conversation which you say took place with respect to Mrs. Lerman?

3. Because the trial court erroneously permitted the defendant to be asked and answer the following:

10

Q. Do you remember going to the Bureau of Missing Persons in the City of Newark in the year 1927?

4. Because the trial court erroneously refused to permit the witness David Lerman to be asked and answer the following:

Q. When was the first time that you knew of your father's difficulty?

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5. Because the trial court erroneously permitted the witness Margaret T. Dugan to be asked and answer the following:

Q. Did Mr. Lerman on that occasion tell you in effect that his wife had been absent from the home for two months or more, that she had absented herself on frequent occasions, that she was running around with a negro and did he ask you if he could make out and have a warrant made for her arrest?

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Mr. Simandl: I object.

The Court: I will not allow that part about running around with negroes because I do not see that that has anything to do with it. I will allow your question to that point.

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6. Because the trial court erroneously permitted the witness Helen D. Armstrong in behalf of the State to testify as follows:

> Q. The case of Sally Bigams was brought to your attention when?

7. Because the trial court erroneously permitted the witness Helen D. Armstrong to testify to the following: 10

> Q. Through what channels was it brought to your attention?

8. Because the trial court erroneously permitted the witness Helen D. Armstrong to testify to the following:

> Q. And who brought—where was the complaint made? 20

9. Because the verdict is against the weight of the evidence.

Wherefore, because of the aforesaid reasons or some of them constitute error prejudicial to the said Isidore Lerman, he prays that the said judgment and sentence be reversed and annulled and altogether held for nothing, and that he may be restored to all things which he has lost by occasion thereof. 30

HAROLD SIMANDL,
Of Counsel with Plaintiff-in-Error.

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Opinion.

NEW JERSEY SUPREME COURT.

#2 May Term, 1929.

STATE OF NEW JERSEY,
Defendant-in-Error,

vs.

ISIDOR LERMAN,
Plaintiff-in-Error,

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Submitted May Term, 1929. Decided October, 1929.

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On error to the Essex County Quarter Sessions Court.

For Plaintiff-in-Error: HAROLD SIMANDL.
For Defendant-in-Error: JOSEPH L. SMITH.

Before Justices TRENCHARD, LLOYD *and* CASE.

Per Curiam:

Plaintiff-in-Error was convicted in the Essex Court of Quarter Sessions of assault and battery on and criminal abuse of one Sally Bigams—a child between the age of twelve and sixteen years. The case is here on both writ of error and specifications of causes for reversal under a certificate. Several rulings on evidence are presented, but the main point argued is that the verdict is against the weight of the evidence.

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There was abundant evidence to support the verdict. In addition to the testimony of the girl her-

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self it appeared that she made almost immediate complaint, was examined by a physician and found to be ruptured, and the defendant admitted to a physician his conduct, paid the doctor's bill and offered to pay for the support of the child that was later in due time born.

10 As to the points for reversal based on alleged rulings on evidence, we think there was no error. No one of these rulings is of sufficient importance to call for extended discussion and the judgment is affirmed.

Remittitur.

NEW JERSEY SUPREME COURT.

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THE STATE OF NEW JERSEY, Defendant-in-Error, vs. ISIDOR LERMAN, Plaintiff-in-Error,	On Writ of Error. Remittitur.

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This cause having been submitted at the May Term, nineteen hundred and twenty-nine, of this Court, by Joseph L. Smith, Esquire, Attorney for the defendant-in-error, and Harold Simandl, Esquire, Attorney for the plaintiff-in-error, and the Court having considered the same and finding no error in the record and proceedings in the Essex County Court of Quarter Sessions;

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It is thereupon ordered and adjudged that the judgment of the Essex County Court of Quarter Sessions, removed by the writ of error in this case, be affirmed with costs; and that the record be remitted to the Essex County Court of Quarter Sessions to be proceeded with in accordance with this judgment and the practice of said Court. 10

Entered November 13, 1929.

On motion of
JOSEPH L. SMITH,
Prosecutor of the Pleas,
Attorney of Defendant-in-Error.

Writ of Error. 20

New Jersey, ss.

The State of New Jersey to our Supreme Court:

(Seal)

GREETING:

Forasmuch as in the record and proceedings, and also in the giving of judgment, in a certain plaint, and which was in 30 our said Supreme Court of Judicature, before you, between the State of New Jersey, Defendant-in-Error, and Isidore Lerman, Plaintiff-in-error, manifest error, hath intervened to the great damage of the said plaintiff-in-error, Isidore Lerman, as it is said: We being willing that the error, if any there be, should in due manner be corrected, and full and speedy justice done to the parties aforesaid in this behalf; Do Command you, that if judgment be thereupon given and confirmed, then you distinct 40

ly and openly send, under your seal, the record and proceedings aforesaid, with all things touching the same, to our Judges of our Court of Errors and Appeals in the last resort in all cases, at Trenton on the 16th day of December, next, together with this writ, that the record and proceedings aforesaid, being inspected, we may cause to be further done thereupon, for correcting that error, what of right and according to the law and custom of the State of New Jersey, ought to be done.

Witness, our Chancellor and President of our said Court of Errors and Appeals at Trenton, aforesaid the 27th day of November, A. D. one thousand nine hundred and twenty-nine.

JOSEPH F. S. FITZPATRICK,
Clerk.

HAROLD SIMANDL,
Of Counsel.

Return.

NEW JERSEY SUPREME COURT,

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

vs.

ISIDOR LERMAN,
Plaintiff-in-Error,

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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 mention is within made, with all things touching and concerning the same, we do certify the Court of Errors and Appeals of said State, in a certain schedule to this Writ annexed, as within we are commanded.

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WM. S. GUMMERE,
C. J.

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Assignments of Error.

NEW JERSEY COURT OF ERRORS AND APPEALS.

THE STATE OF NEW JERSEY, Defendant-in-Error, vs. ISIDOR LERMAN, Plaintiff-in-Error,	On Writ of Error to New Jersey Supreme Court.

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Afterwards, to wit, on the return day of the said writ of error before the Court of Errors and Appeals, at Trenton, comes the said Isidore Lerman by Harold Simandl,, his attorney, and says, that in the record and proceedings aforesaid there is manifest error in this, to wit:

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1. Because the judgment of the Supreme Court in said cause was in favor of the State of New Jersey, whereas it should have been entered in favor of Isidore Lerman.

2. Because the Supreme Court affirmed the conviction of the said Isidore Lerman, whereas it should have reversed the same.

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And the said plaintiff-in-error, Isidore Lerman, prays that the judgment aforesaid be reversed and that the conviction of the said Isidore Lerman be in all things reversed, and that the record and proceedings be remitted to the Supreme Court to be proceeded with according to law and the rules and practice of said courts.

HAROLD SIMANDL,
Attorney for Plaintiff-in-Error.

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New Jersey Court of Errors and Appeals

STATE OF NEW JERSEY, Defendant-in-Error, vs. ISIDORE LERMAN, Plaintiff-in-Error,	On Error to New Jersey Su- preme Court.

BRIEF OF THE PLAINTIFF-IN-ERROR.

Statement.

The Plaintiff-in-error, by his writ, seeks to review the judgment of the Supreme Court which affirmed his conviction in the Essex County Court of Quarter Sessions, Hon. Dallas Flannagan presiding, upon an indictment in two counts, charging that on the 21st day of May, 1927, he did commit an assault and battery and did carnally abuse one Sally Bigams, a female child over the age of twelve years and under the age of sixteen.

He was sentenced to imprisonment in the Essex County penitentiary for a period of thirteen months. On his application for bail the court issued a certificate of reasonable doubt, in conformity with the statute, and he was bailed.

The error complained of deals with the erroneous admission of evidence by the trial court, and was laid under assignment and reason No. 5 in the court below.

The Facts.

The plaintiff-in-error is a married man, 48 years of age, who resided with his wife and family at No. 106 West Street, in the City of Newark, for a great many years. His family consisted of six children, ranging in age from eleven to twenty-two years, and his mother-in-law also resided with him.

The family lived in an apartment over a store wherein he conducted his business. The floor above the store consisted of a kitchen and two bed rooms. The third floor consisted of bed rooms. It appears that the smaller children occupied the two bed rooms on the floor above the store, and that these bed rooms adjoined the kitchen.

The offense is alleged to have been committed on the evening of Saturday, May 21, 1927, between the hours of six and eight, in the kitchen and bed room on the floor above the store.

The complaining witness, Sally Bigams, a colored girl, who, it was contended at the date of the commission of the offense, was fifteen years of age, worked in the household of the plaintiff-in-error for a period of about six months prior to the alleged offense. It was her custom to arrive there at about six o'clock in the evening, and wash the dishes, and then return to her home about eight o'clock. She testified that on the evening in question she prepared the evening repast for the children. After they ate, she stated the children went out-doors to play. She then cleared the table and went to the sink where she was employed in washing dishes, when the plaintiff-in-error seized her by the arm, overpowered her and took her into the childrens' bed room off the kitchen, and threw her upon the bed, and there had intercourse with her. She states that she made an outcry, and that

after the intercourse there was blood on her step-ins. She could not state whether or not there was any blood on the bed clothes. She arose from the bed and completed her duties, and then went home. When she arrived at her mother's home she met her sister, to whom she made complaint of the attack. Her sister informed her mother, and the prosecutrix also complained to her mother. She stated that the next day she went to Dr. Bruington, a colored physician, and she states that she again saw him on June 2nd, and that a child was born of the intercourse on February 10, 1928.

She stated that she returned the following day to Lerman's home and received her salary for the week, *but said nothing to Lerman with respect to the attack, nor did he say anything to her about it. It does not appear that any one in her behalf spoke to Lerman about the attack between May 21st and the visit of Dr. Bruington, which will be referred to later.*

Her mother and sister corroborated her testimony with respect to her having made complaint to them. On cross-examination, when asked what happened to her step-ins, she stated that she burned them. When she was reminded that she had previously testified that it was a warm night, she stated that she *kindled a fire in order to burn them.* Her mother, however, stated that she did not kindle a fire to burn the step-ins; her mother insisted that she had a fire in the stove all day. When questioned as to what happened to her dress, she stated that her dress had been washed. It was not produced.

Her story is highly improbable. It does not appear that the doors into the apartment were locked. It appears that the windows were open. She says she made an outcry, yet it does not appear

that any one heard her. It does not appear that she went to the bath room or any other place for the purpose of personally cleansing herself after the alleged attack, although she states that she was bleeding. She testified at the trial, *and also previously under oath, that she menstruated regularly, and that her previous menstruation fell on the 7th day of the month. She further testified that she had not as yet menstruated in May. That on the 21st day of May, she was overdue.*

The witness upon whom the State relied mainly to corroborate her story, was Dr. Bruington, who testified that he examined her on May 22nd, and found that her hymen had been recently ruptured, and that he examined her on the 2nd day of June, and found every indication of pregnancy. *This was eleven days after the alleged intercourse.* He admitted that conception could have taken place any time within eight days after the alleged intercourse. He admitted further that he was unable to state whether it took place on the 1st or the 8th day, yet, according to his testimony, assuming it took place on the 8th day after intercourse, he was willing *within three days thereafter to pronounce her pregnant.* He stated that he found nausea in the morning, protrudent nipples, and an enlarged vagina, and exudate of the mouth of the vagina, which he said indicated pregnancy.

Dr. Weinstock, on behalf of the defense, testified that the foetus, at the end of one month, is probably two and one-half millimeters in size, and that morning sickness usually takes place six weeks after conception, that changes in the cervix and vagina became noticeable at the eighth or tenth week, and that the breast usually enlarges about the end of the fourth week. He testified that there were no absolute signs of pregnancy during the first

three months. This testimony is important as bearing upon the truthfulness of Dr. Bruington, because it appears from the testimony that no one had told the girl or the mother to send Dr. Bruington to Mr. Lerman, nor does it appear that Mr. Lerman had informed them that he would defray the expenses of the girl. *Yet on the 3rd day of June Dr. Bruington called at Mr. Lerman's house for the purpose of collecting a bill for treatment of the girl, and demanded to know whether Mr. Lerman would pay for the "entire pregnancy."* This, in view of the fact THAT ON TWO OCCASIONS SHE TESTIFIED SHE HAD LAST MENSTRUATED ON THE SEVENTH DAY OF APRIL, AND WAS REGULAR, AND WOULD NOT BE DUE AGAIN UNTIL THE SEVENTH DAY OF JUNE. *The Doctor's examination was alleged to have taken place on the 2nd day of June.* The Doctor tried to explain this inconsistency by stating that he requested payment from Mr. Lerman because Mrs. Bigams had told him that Mr. Lerman would pay for Sally's treatment. *There was no testimony that Mrs. Bigams talked to Mr. Lerman, or that Sally ever talked to Mr. Lerman between the 21st day of May, when the act is alleged to have occurred, and the 2nd day of June, (the date of the alleged examination by Dr. Bruington) with respect to payment for Sally's medical treatment.*

Mr. Lerman stated that the doctor called to collect money, and demanded $97, and that he refused to pay it, and that Dr. Bruington came some fifteen times to collect the money. The defendant, on each occasion, refused to pay. Finally, after the child was born, a Social worker, Mrs. Armstrong, called at Mr. Lerman's home with reference to the care of the child that had been born, and called Mr. Lerman to her office, where, after

much conversation, it appears that Mrs. Lerman, who was present, stated that in order to avoid publicity and disgrace, they would be willing to pay something towards the support and expense of the child. Mrs. Armstrong made it clear, however, *that the defendant did not admit he was the father of the child, but denied that to be the fact.*

As against this testimony, the plaintiff-in-error, produced his wife, who stated that she was present on the evening of May 21st, and that it was her duty to bathe the children and cook the evening meal, and particularly care for a child who was crippled and required certain massages on Sunday and Saturday nights, which she was accustomed to administer to the child, and that she did not see any attack such as described by the prosecutrix.

The mother-in-law, an old woman who lived with Mr. Lerman, and who assisted them in caring for the children and the household, stated that she was present that evening, and she never heard of or saw any such attack.

The crippled child, who required medical attention each Wednesday and Saturday night, stated that she retired very early in view of the fact that her mother had to bathe the smaller children, and at the same time, attend to her leg, and she said that she laid in the *very bed where this attack was supposed to have occurred,* and did not see any such attack. The two other children further corroborated the defendant.

He absolutely denied that he had committed this offense. A review of this testimony discloses the close question of fact that confronted the jury for its decision. Any testimony, therefore, which was not legally admissible and which was permitted to be thrown into the balance, would be greatly

harmful to the plaintiff-in-error. This brings us to a discussion of the sole error complained of, the erroneous admission of the testimony of Margaret T. Dugan, called on behalf of the State in rebuttal. The testimony of Margaret T. Dugan is found on page 115 of the state of the case.

POINT I.

It was error to permit Margaret T. Dugan to testify in behalf of the State in rebuttal.

The plaintiff-in-error had testified in his own behalf. The crime was alleged to have occurred on the evening of May 21st, 1927. He denied the assault. *On his direct examination he was not asked, nor did he testify as to who was present in his aparatment on the night of May 21st.* The prosecutor, on cross-examination (Case, page 75), asked him whether or not during the year 1927, his wife was living with him, to which he replied that she was. He asked where she lived at that time, and he stated that in July, 1927, when his daughter was sick, he sent the child to Bear Mountain, and his wife accompanied her. Thereupon, the prosecutor, still on cross-examination, asked:

> "Q. Did you ever go to the police and make a complaint against her?" (Case, page 75).

An objection was made. Thereupon the prosecutor stated that he proposed to show,

> "That this man made statements to the police contrary to what he has just testified to here."

After a colloquy between Court and counsel, the question was not pressed, but in its place another question was substituted:

> "Q. Do you remember going to the Bureau of Missing Persons in the City of Newark in the year 1927?" (Case, page 76).

This question was objected to and the Court overruled the objection and compelled the witness to answer. He replied that his wife had gone to Bear Mountain in July and did not come home, and he had asked what he could do to get her home. He stated that his visit to the Missing Persons Bureau was between July and August. Objection was made to the further pursuance of this line of questioning, which the Court overruled, and finally the further question was asked:

> "Q. *Before Sally left your employ,* you went to Miss Dugan, being referred to her by the Missing Persons Bureau, and you told Miss Dugan that your wife had left you, that she was going around with a colored man, and that you wanted to make a complaint against her?
> A. I did not."

Thereupon, in rebuttal, the State called Miss Dugan, the person referred to in the question, and over objection, she was permitted to testify that she saw the plaintiff-in-error at police headquarters in the Missing Persons Bureau on July 26th. Thereupon, on the assumption that her testimony was contradictory of the plaintiff-in-error, the Court permitted the witness to testify in answer to the following question:

> "Q. Did Mr. Lerman on that occasion tell you in effect that his wife had been absent from the home for two months or more, that

> she had absented herself on frequent occasions?" (Case, page 115).

The balance of the question, i. e.:

> "That she was runing around with a negro and did he ask you if he could make a warrant out and have a warrant made for her arrest,"

was stricken out by the Court as not germane to the issues.

Two questions of law must be considered in order to determine whether or not this testimony was or was not admissible. The first question involves a determination of whether or not the Court should have limited the cross-examination of the defendant to matters previously opened in his direct examination. Upon this question there appears to be an inconsistency in our reported decisions. It is true that the case of *Disque* vs. *the State,* 49 N. J. L. 249, decided in the Supreme Court February 7, 1887, lays down the rule:

> "Since the passage of the statutes capacitating parties as witnesses, it has been the general practice, both with respect to civil and criminal proceedure, to permit such testifying party to be cross-examined as to the whole case; and such judicial action, being founded in discretion, is not a matter on which error can be assigned."

This decision was quoted with approval in the Supreme Court, December 1, 1927, in the case of *State* vs. *Grover,* 139 Atl. 417; 104 N. J. L. 10 wherein the Court said:

> "But the rule upon which the objection was based has no application where the cross-examination is of a person who is a defendant in a criminal trial. In such a

> situation, when the subject of interrogation is relevant, the extent of the cross-examination of the defendant into pertinent facts not touched upon by direct examination, is a matter resting entirely in the discretion of the trial court", citing *Disque* vs. *State,* 49 N. J. L. 250.

Since the decision in the Supreme Court in the case of *State* vs. *Disque,* in 1887, there have been decisions in our courts which are not in accord with this case, and seem to indicate that the rule is by no means settled.

In the case of *Roesel* vs. *the State,* 62 N. J. L. 216, decided in this court September 28, 1898, it appears that at the trial, the defendant, after being asked whether or not he struck Mr. Pitts with a club or any other weapon, on the evening of September 9th last, or any other time, to which he replied, "No, sir", was handed over to the prosecutor for cross-examination, and any inquiry by the prosecutor touching the connection of the prisoner with the preparation for and execution of this crime, was objected to by counsel of the prisoner, and *excluded by the Court on the ground that it was not cross-examination.*

There was nothing contained in the opinion of this Court which indicated that the action of the trial court in that regard was in anywise improper.

Subsequently, in the Supreme Court, February 26, 1900, in the case of *State* vs. *Sprague,* 64 N. J. L. 419, the question was again presented, and the Court held:

> "This was evidence that could not have been presented by him upon his direct examination. It is doubtful if it was legal upon cross-examination, but, conceding it to be

> so, he answered the questions and the rule of evidence is that, such facts being irrelevant and immaterial, his answers must be conclusively accepted. *He, like any other witness, is entitled to have his cross-examination limited to the subjects originally opened by his examination-in-chief.* He subjects himself to the same liabilities, and is entitled to the same privileges as any other witness. Citing Wharton's Criminal Evidence, (Ninth Edition) paragraph 430." (Italics mine).

Subsequently, in 1903, in this court, in the case of *State* vs. *Zdanowicz,* 69 N. J. L., 619, the Court said, after citing *State* vs. *Roesel,* and *State* vs. *Sprague,* supra:

> "I repeat that we do not deem it necessary, and do not intend to pronounce upon the propriety of this limitation upon cross-examination of a defendant who offers himself as a witness in his own behalf. If, when thus called, he should limit his testimony to a mere denial of the commission of the crime, it may be well made a question, whether, upon cross-examination, his mind and conscience may not be searched as to all pertinent facts relied on by the State for conviction. But the question does not arise in this case."

In the case of *State* vs. *Miller,* in this court, March 6, 1905, 71 N. J. L. 527, the Court held:

> "But when an accused waives the privileges afforded by this rule, and offers himself as a witness in his own behalf, *he may be cross-examined like other witnesses.*" Citing *State* vs. *Zdanowicz.* (Italics mine).

In the case of *Crosby* vs. *Wells,* decided in this court April 19, 1907, 73 N. J. L. 790, the Court said:

> "We are not constrained to justify the cross-questioning of the plaintiff by the principle of judicial discretion, although we might point to *Disque* vs. *State,* 49 N. J. L. 249-250, 8 Atl. 281, as an instance of the approved exercise of such discretion."

The Court decided that the matter had been brought out in direct, and therefore, was a subject of cross-examination.

But in this case, in the year 1907, the Court in dicated that the question was still an open one touching the questioning of a defendant charged with crime.

In the case of *Moebius* vs. *Williams,* Supreme Court of New Jersey, 84 N. J. L. 540, June 11, 1913, the Court said:

> "It may well be doubted whether the cross-examination was properly allowed. *The rule ordinarily followed by our trial courts is to limit the scope of cross-examination to matters fairly comprehended within the direct, except for purposes of impeachment, testing of memory, and so on."* (Italics mine).

In the case of *State* vs. *Ward,* 128 Atl. 575, 101 N. J. L. 275, the Supreme Court, April 16, 1925, quoted with approval the excerpts herein quoted from *State* vs. *Sprague, supra,* and reversed the judgment on that ground, thus reiterating the rule:

> "He like any other witness is entitled to have his cross-examination limited to the subjects originally opened by his examination-in-chief." *State* vs. *Sprague,* supra.

These cases seem to indicate that the question is not at rest. If the defendant did not testify to

anything on direct-examination which would open this inquiry on his cross-examination, it was error to permit this cross-examination. The defendant, upon this cross-examination having denied, however, that he had seen Miss Dugan *before Sally left her employment* and made the statement attributed to him, the State could not put Miss Dugan on the stand to contradict him upon this point. *State* vs. *Ruttberg,* 87 N. J. L. page 5. In the Ruttberg case, the defendant contended that he was physically incapable of indulging in sexual intercourse. Apparently, in an attempt to show that he was able to so indulge, questions were put to him, over objection, with regard to alleged illicit relations between himself and one Mary V. He having denied them, Mary V. was called as a witness and allowed to contradict him. This was held to be error. As in that case, counsel had called the Court's attention to the impropriety of this cross-examination, and was for the purpose of trial bound by the Court's ruling. Further formal objection to this line of testimony was unnecessary, as the Court in the Ruttberg case observed, for it would have been futile in view of the ruling made.

Under the cases of *State* vs. *Mor,* 85 N. J. L. 558, *State* vs. *Ruttberg,* supra, *Maloney* vs. *Public Service Railway Company,* 92 N. J. L. 539, 106 Atl. 376, *State* vs. *Bullock,* 65 N. J. L. 557, *State* vs. *Mount,* 73 N. J. L. 582, *Materka* vs. *Erie Railroad Company,* 88 N. J. L. 372, it was error to permit Miss Dugan to testify in rebuttal in an attempt to contradict the defendant. It was injurious to the defendant in his defense on the merits. Assuming that the State had a right to cross-examine the defendant on this point, it is contended that the matter inquired into was purely collateral, and would have no legal efficacy in contradict-

ing him or impeaching his testimony. He had testified as to what occurred in a conversation with Miss Dugan in July, brought out for the first time on cross-examination. The State attempted to show a conversation alleged to have taken place in May. The matter inquired into was wholly collateral to the issues. Whether Lerman's wife was present or not was wholly collateral. It would not serve to prove the offense, nor any component part thereof. The cases hereinbefore cited are authority for the proposition that where a party has the right of impairing the credit of a witness as to collateral matters, then, having asked and obtained answers, they must abide by the answers given. Other witnesses could not be called to prove such answers untrue. The admission of this testimony was harmful error.

It is respectfully submitted, for the error herein argued, that the judgment under review should be reversed and a trial de novo awarded.

Respectfully submitted,

HAROLD SIMANDL,
Counsel for Plaintiff-in-Error.

NEW JERSEY COURT OF ERRORS
AND APPEALS

STATE OF NEW JERSEY Defendant-in-error *vs.* ISIDORE LERMAN Plaintiff-in-error	ON CONVICTION for CARNAL ABUSE

Brief For The State

STATEMENT

The defendant, plaintiff-in-error herein, was convicted on February 21, 1929, in the Essex County Court of Quarter Sessions, Honorable Dallas Flannagan presiding, upon an indictment in two counts, charging that on the 21st day of May, 1927, defendant committed assault and battery upon Sally Bigams; and carnally abused the said Sally Bigams, a female child over the age of twelve years and under the age of sixteen. On March 19, 1929, he was sentenced by the Honorable Dallas Flannagan to thirteen months in the Essex County penitentiary.

The entire record of the proceedings was taken up on a Writ of Error in accordance with the provisions of Section 135, 136 and 137 of the Criminal Procedure Act, to our Spureme Court, which affirmed the Plaintiff-in-Error's conviction in the Essex County Court of Quarter Sessions, and the Plaintiff-in-Error by this Writ seeks to review the judgment of the Supreme Court.

Statement Of The Facts

Although it is not argued by Plaintiff-in-Error that the verdict was against the weight of the evidence, we deem it proper to give a brief statement of the facts.

Defendant lived at 106 West street, Newark, a three story house, of which he and his family occupied the two top floors for residential purposes, and on the first floor he operated a saloon.

Sally Bigams, the victim of the attack, was a servant in defendant's household. At the time of the attack she was fifteen years of age. Her main duties, as such servant, were to prepare supper for defendant and his children, to wash the dishes and to do general housecleaning.

Sally Bigams testified that on May 21, 1927, the day of the attack, Mrs. Lerman, wife of the defendant, was not home. That she had not seen Mrs. Lerman in the house for about two weeks previous to that day. (Case p. 12, L. 19 etc.) On that day, which was Saturday, she came to work at about six P. M., her usual time; when she got to the Lerman house, the four smaller children were there, and that she prepared supper for them. The children ate their supper and went outside, no doubt to play, it being a warm day (p. 13, L. 30). After the children went out the defendant came up for supper. The kitchen was on the second floor, and when defendant came up for his supper, he and Sally Bigams were the only ones in the house (p. 13 L. 36). Counsel for defendant, on page 6 of his brief states that people were in the house. The statement is based on statements of generality, and conclusions made by the children, merely to the effect that usually they were home on Saturdays; whereas Bigams' testimony that she and defendant were alone on the second floor of the house

at the time, is positive and definite and not denied by the defendant. Sally further testified that she prepared defendant's supper, consisting of two eggs, saltine crackers, cream cheese and coffee, which the defendant ate. When he finished his supper he went to the sink where Sally was washing the dishes and grabbed her by the arm, overpowered her, took her to one of the children's bedrooms, threw her on the bed and forcibly had intercourse with her. She cried for help, resisted and struggled, but she was easily overpowered by the defendant, a man of forty-eight. Defendant warned Sally not to tell her mother, promising to give her money. Then Sally went home. Being hurt and sore she was unable to walk upstairs to her mother's apartment, which was on the third floor, and had to stop at her sister's apartment on the second floor, and told her sister that defendant had attacked her; her sister called their mother down and Sally told her mother the same thing—that Mr. Lerman had attacked her. The next morning, Sally, accompanied by her mother, went to Dr. Bruington. On the same day Sally quit working for Lerman. On February 10, 1928, Sally had a baby. (Case p. 17, L. 40). On cross examination Sally testified that she burned the step-ins on which there were blood marks.

Sarah B. Coleman, mother of Sally, testified that on Saturday, May 21, 1927, at about 8 P. M., she saw Sally at the home of her other daughter, who lived on the second floor of 189 West Kinney street. Mrs. Coleman and Sally lived on the third floor. There, Sally complained to her that Mr. Lerman had attacked her. She saw Sally's dress and step-ins; there was blood on them (Case p. 28, L. 25); She saw Sally burn the step-ins; she herself washed the dress, (p. 29, L. 20).

Rose Mather, sister of Sally corroborated Sally and Mrs. Coleman concerning the complaint made by Sally immediately upon reaching home.

Helen Armstrong testified that she was an agent of the Children's Aid Society. That she had a talk with Mr. Lerman concerning Sally and the baby, and Mr. Lerman agreed to pay for the medical expenses and a certain amount of money towards the care of the child. (Case p. 35, L. 28). Defendant came to Miss Armstrong's office a second and third time and made the same offer.

Dr. Bruington testified that he is a practicing physician in Newark. *That on May* 22, 1927, *the day after the attack he examined Sally and found her to be suffering from a ruptured hymen and there were multiple other spots.* She was bruised inside. The orifice of her vagina was bruised, which, in his opinion, indicated that she had been forcibly entered within the past twenty-four hours. He found fresh wounds and blood clots (Case p. 38, L. 5-30). He examined her again on June 2nd, and found indications pointing to pregnancy. Concerning this he said, (Case p. 39, L. 3-13);

"The sensory system women have at the beginning of pregnancy, and her case seemed to be an aggravated one in that she had nausea in the morning and her nipples were protuberant, they were pressed up; her vagina was enlarged; the lobia majora exaggerated and there was an exudate at the mouth of the vagina which indicated pregnancy."

At this point we wish to take up the testimony of Dr. Weinstock who testified on behalf of the defendant with an attempt to contradict the testimony of Dr. Bruington. All that Dr. Weinstock testified to was that during the first three months there are presumptive signs, (Case p. 65, L. 1) and

that the symptoms mentioned by Dr. Bruington usually appear four to eight weeks after pregnancy, *but that it is possible for a woman to be pregnant on May 21st and have evidence of pregnancy on June 2nd, other than the termination of menstruation.* (P. 67, L. 10-22). Dr. Weinstock further stated that his decision as to pregnancy would largely depend on whether or not the girl is married, and that if she is married, or if he has knowledge that she had been entered, he would be more apt to declare her pregnant. It is thus clear that his testimony fails to contradict that of Dr. Bruington as to his particular case. *The correctness of Dr. Bruington's diagnosis was evidenced conclusively by the birth of the child on February* 10, 1928.

Dr. Bruington further testified that on or about June 3rd, 1927, he saw Mr. Lerman and advised him of the condition of the girl and Lerman told him to keep the matter quiet, and that he would pay for the treatment of the girl, and wanted the Doctor to treat the girl during her pregnancy. (Case p. 40, L. 10-28). And that, sometime in July of that same year, Lerman said he would pay $3.00 to $4.00 a week for the support of the child; *that Lerman blamed his wife for what had happened in that she was living away from him and running around with colored men.* And on that visit Lerman paid the Doctor $97.00, his full bill for the treatment of the girl. (P. 41 and 42). This clearly refutes plaintiff-in-error's argument that the complaint was made at the instance of the Doctor to collect his bill, since he had already been paid. The Doctor denied that he had anything to do with the making of the complaint (p. 43, L. 23).

Isidore Lerman, testifying in his own behalf, denied the deed, and attempted to explain his offer to pay for the medical expenses and the girl's sup-

port as a move to prevent publicity and disgrace. He does not allege that there were any threats of false and libelous publicity. His concern was to prevent the publicity of what he had done, and this, in nowise disproves the State's case.

On cross examination, defendant first denied that he had ever been convicted of crime, and then upon repetition of the question, admitted that he had been convicted of perjury. This indicates the caliber of defendant's testimony. He denies that his wife was away in May, 1927, or that she ever separated from him, and denied that he went to the missing persons bureau to make a complaint against his wife. Miss Dugan of the Missing Persons Bureau, states that in July, 1927, Lerman went to her and stated that his wife had been absent from home for two months or more, and that she had absented herself on many occasions. (P. 115, L. 1-40.)

Other witnesses who testified for the defense were his wife, three children and mother-in-law. Although they all testified that they were in the house on that Saturday evening, none of them had any particular reason for the statement except that usually they are home on Saturdays.

Defendant was notified of the charge on June 3rd by Dr. Bruington. At that time it should have been clear and fresh in his mind as to what happened on the previous May 21st, and if his wife was home at the time, no doubt he would have advised her of the matter, if those charges were false, and she too would have a definite memory of what things took place on May 21st. It is remarkable, therefore, that neither the defendant nor any of the witnesses make any positive statements as to where they were or what took place on Saturday, May 21st. The defense could not contradict any material part of the State's case.

ARGUMENT

The only assignment argued by Plaintiff-in-Error is assignment 5 which brings for error the rebuttal testimony of Margaret T. Dugan on behalf of the State. This point was argued in the court below and we herewith give the opinion of the Supreme Court verbatim, (State case page 137) Reported Vol. 7, No. 48, p. 986, N. J. Mis. Rep.

Before Justices Trenchard, Lloyd and Case.

Per Curiam:

Plaintiff-in-Error was convicted in the Essex Court of Quarter Sessions of assault and battery on and criminal abuse of one Sally Bigams—a child between the age of twelve and sixteen years. The case is here on both writ of error and specifications of causes for reversal under a certificate. Several rulings on evidence are presented, but the main point argued is that the verdict is against the weight of the evidence.

There was abundant evidence to support the verdict. In addition to the testimony of the girl herself it appeared that she made almost immediate complaint, was examined by a physician and found to be ruptured, and the defendant admitted to a physician his conduct, paid the doctor's bill and offered to pay for the support of the child that was later in due time born.

As to the points for reversal based on alleged rulings on evidence, we think there was no error. No one of these rulings is of sufficient importance to call for extended discussion and the judgment is affirmed.

POINT I.

The only point argued by Plaintiff-in-Error is as above pointed out the rebuttal testimony of Mar-

garet T. Dugan, on behalf of the State, concerning a conversation she had with the Plaintiff-in-Error, Isadore Lerman, tending to show that Mrs. Lerman was not home on May 21, 1927.

The argument of counsel for Plaintiff-in-Error on this point is based on two grounds:

First: That it was error to allow the State to cross-examine the Plaintiff-in-Error on this point since Plaintiff-in-Error had not been examined on this point during his examination-in-chief.

Second: That being allowed such cross-examination the court should not have permitted the State to contradict Plaintiff-in-Error's answers by rebuttal evidence.

The question whether or not Mrs. Lerman was at home on the day of the attack by the Plaintiff-in-Error upon the prosecutrix was very important, and was rendered so by the evidence adduced originally by the defense.

Dr. Bruington, on behalf of the State, testified that in an interview he had with the defendant, he latter gave as his reason for having committed the act, the fact that his wife had left him (Case p. 41, L. 1-36).

One of the arguments urged by the defense was that it was improbable that Lerman committed the act on May 21st, because Mrs. Lerman and the children were home on that day. It was under this theory that the defense put Mrs. Lerman on the stand, who testified on direct examination, that Sally Bigams stopped working for her in the middle of May, 1927, and that she was home on the Saturday previous to the night she quit, and that on that Saturday she bathed her children; (Case p. 88, L. 33 to p. 89, L. 30) although Mrs. Lerman could not testify as to definite dates, and she based her testi-

mony merely on her usual course of conduct, it was, however, very material whether or not she was home on that day; and the defendant thought so. Again, it was under this theory that defense asked Anna Lerman, one of the defendant's children, testifying for the defense, whether or not her mother, (wife of defendant) was away at any period of time before July, 1927, and Anna answered that she was not. (Case p. 101, L. 30-34).

It is thus evident that under the theory urged by the defense, and according to his own case, the question whether or not Mrs. Lerman was away at the time, was material.

Therefore, the question asked the defendant upon his cross-examination, whether or not he had gone to Miss Dugan, being referred to her by the Missing Persons Bureau, and told Miss Dugan that his wife had left him, that she was going around with a colored man, and that he wanted to make a complaint against her—was a question as to a material point, under the theory of the defense, and not as to a point purely collateral; and his statement as to such an important point was subject to contradiction.

The defendant having based his case partly upon the argument that it was improbable for him to have committed the crime on the day in question because his wife was home on that day, it was proper for the State to prove by his own admissions, made to Miss Dugan, that Mrs. Lerman was not home on that day, and he was precluded from denying the relevancy of the point in issue.

> "A party having introduced certain testimony to sustain his side of the issue, is precluded from denying the materiality of such testimony for the purpose of its contradiction." Grimes vs. Hill, 15 Colo. 359.

This rule is also well established in New Jersey.

The purpose of limiting cross-examination to matters testified to on direct examination is to prevent undue expansion of the trial. *This rule, however, is not a mandatory rule of law, and its control is within the discretion of the Court,* and the Court was justified in allowing cross-examination of the defendant upon matters rendered relevant by his witnesses.

In Disque vs. State, 49 *N. J. L.* 249, at page 250, the Court says:

> "* * * and the extent of the cross-examination of a witness into pertinent facts not touched by the direct examination *is a matter resting entirely in the discretion of the trial court.* Since the passage of the statutes capacitating parties as witnesses, *it has been the general practice, both with respect to civil and criminal procedure, to permit such testifying party to be cross-examined to the whole case, and such judicial action, being founded in discretion, is not a matter on which error can be assigned."*

The final rule on the subject was given in the case of State vs. Grover, 104 N. J. L. 10 (1927).

> "It is next urged before us that the Court erred in permitting the State, over objection of defendant's counsel, to cross-examine the defendant Fennimore with relation *to matters which were not brought out on his direct examination.* The ground of objection stated was that a cross-examination must be limited to those matters. *But the rule upon which the objection was based has no application where the cross-examination is of a person who is a defendant in a criminal*

> *trial.* In such a situation, when the subject *of interrogation is relevant, the extent of the cross-examination of the defendant* into pertinent facts, not touched upon by direct examination, is a matter resting entirely in the discretion of the trial court. Disque v. State, 49 N. J. L. 249." (Italics ours.)

Counsel for Plaintiff-in-Error state that as late as 1907, the question was an open one in New Jersey. Assuming that to be so, the case of *State vs. Grover, Supra,* decided in 1927, closes the question as far as it is raised in the case at bar; and the rule, that,

> "When the subject of interrogation is *relevant,* the extent of the cross-examination of the defendant into *pertinent facts,* not touched upon by direct examination, is a matter resting *entirely* in the *discretion* of the trial court." (Italics ours) is not now a mooted one.

The case of State vs. Sprague, 64 N. J. L. 419, cited by Plaintiff-in-Error, does not apply, for in that case, the questions asked on cross-examination were concededly irrelevant and immaterial.

And again, in the case of *State vs. Ward,* 101 N. J. L. 275, cited by Plaintiff-in-Error, the subject of cross-examination which was subsequently attempted to be rebutted by rebuttal testimony, was not only beyond the scope of direct examination, but it was concededly irrelevant and of no probative value, whereas, in the case at Bar, the matter covered by the cross-examination was brought out by accused's own witnesses, as tending to prove the improbability of the crime.

If, as counsel contends, the law on the point is not finally settled, it is submitted that the weight

of authority and the opinion of the best text writers supports the rule that where a witness, including the defendant, takes the stand, he takes an oath to tell the *whole truth* and the opposing party may cross examine him on any matter relevant to the issue.

Wigmore, in his work on Evidence, after discussing the various rules on the subject, on page 49, Volume 4, Par. 1888, says:

> "The opportunities for successful unfair tactics are increased by enabling the calling party to suppress part of the facts, so as to oblige the cross-examiner to call the witness later as his own. The latter's right to do this is for him usually no just equivalent; first, because the proper time to extract the desired facts effectively is the time immediately after the direct examination; and, secondly, because with a hostile witness it is often dangerous, if not impossible, to attempt to obtain the facts fully at the later stage. The result is (as the calling party hopes) often to prevent the cross-examiner from obtaining the desired facts at all, because he does not feel justified in risking the exercise of his right to call the witness subsequently. This evil is the more emphasized where the witness is himself the party opposed to the cross-examiner; *especially in a criminal case, where the prosecution could not call the accused as its own witness, except under the restrictions of the privilege against self-crimination* (post, S 2276). (3) It hampers the cross-examiner subjectively in exercising the fundamental right of cross-examination; because, in many jurisdictions following this rule, the erratic cor-

> ollary is enforced that, by asking about his own case on cross-examination, the opposing party make the witness his own and therefore becomes unable to discredit him (ante, S 914); the consequence being that the cross-examiner feels himself in a constant danger of overstepping the line and losing his right to expose a false witness, and thus is obliged to leave a large margin for safety. That this produces an unnecessary labor and responsibility, and has inevitably a dulling effect upon what should be the sharp weapon of cross-examination, must be apparent. In this respect the rule has a vicious indirect effect in helping to disarm the opponent of his greatest protection against fraud and perjury. A perusal of some of the modern rulings enforcing this pedantic application discloses better than anything else the degenerate and pettifagging influence of the rule in question.

It is submitted, therefore, that the question asked of the accused upon his cross-examination, as to whether or not he had not told Miss Dugan that his wife was away, was properly admitted.

It is further contended by counsel for Plaintiff-in-Error, that the accused's answers to the question asked of him upon his cross-examination were conclusive and that it was not proper to allow the State to rebut them.

In the case at Bar, the testimony of Miss Dugan was admissible on two grounds, First; to prove, by the defendant's own admission, that his wife was not home on the day of the commission of the crime, this point being important under the defense theory. And, secondly, to impeach the defendant's credibility as a witness by showing contradictory statements as to a relevant point.

The testimony of Miss Dugan was made necessary by the defendant's case; it did not relate to an entirely new fact; it related to a fact put in issue by the defense, namely whether or not Mrs. Lerman was home on May 21st, the defendant arguing thereby, that it was improbable for him to have committed the crime. The State could not have logically put in, as a part of its case in chief, testimony showing that Mrs. Lerman was absent at the time, because on the State's case in chief, such evidence would have no logical relevancy; it was therefore admissible only as rebuttal.

The instant case does not come within the rule of *State vs. Ruttberg,* 87 *N. J. L.* 5, cited by Plaintiff-in-Error, for in that case the subject of the cross-examination whether or not the accused ever had relations with one Mary V. was not material to the proof of the alleged crime, and was purely collateral.

In State vs. Crivelli, 89 N. J. L. 259, defendant was on trial for murder of his wife: the State was allowed to show relations with another woman; and on cross examination the accused was asked if he had not expressed to one Giordana the pleasure he had had in his relations with this other woman; and upon his denial, the State was allowed to contradict it in rebuttal. The Court said:

> "Whether it should have been allowed in rebuttal, as it was, was a matter within the discretion of the trial judge, and that was not abused."

While the cross examiner is bound by the answer of a witness given on cross-examination with respect to a collateral matter, yet such rule does not apply if the collateral matter brought out on the cross-examination was proper in view of the na-

ture of the direct testimony given by the witness. *Levine v. Carroll,* 121 *Ill. App.* 105.

In the case of *State vs. Butler,* 7 *N. J. Misc. Rep.* 868, the defendant was charged with carnal abuse. The defense put in medical testimony tending to show that the crime could not have been committed by the defendant; under those facts, the Court held that the State was under a duty to offer evidence in rebuttal, and that such testimony is not collateral. Similarly, in the case at Bar, the defense put in testimony tending to show that it was improbable for the defendant to have committed the crime, and, therefore, it was the State's duty to rebut that, which it did.

The testimony of Miss Dugan was admissible not only to show the absence of Mrs. Lerman on the 21st of May, but to contradict the answers given by the accused upon his cross-examination, upon a material point, and thus impeach his credibility.

According to *Wharton's Criminal Evidence,* 10*th Ed. Vol.* 1 *p.* 909, the accused is open to impeachment as any other witness and he may be contradicted as to matters material to the issue, and *he may be contradicted by proof of prior inconsistent statements, and this without previously questioning him as to such statements.*

Plaintiff-in-Error further argues that the State's inquiry on Lerman's cross-examination was directed to an interview before Sally left; whereas the conversation testified to by Miss Dugan, on rebuttal took place in July. The question asked Miss Dugan was, did Mr. Lerman tell her in July, in effect, that his wife had been absent from home for two months or more. This would relate back to May and would squarely contradict the following testimony of the defendant.

"Q Now, during the year 1927, was your wife living with you there? A Yes.

"Q. Did she leave you at any time? A Only the summer time. The little girl was sick, so I sent her to Bear Mountain and she went along with her awhile.

"Q When did she go? A July 24, 1927

"Q And that was for the summer vacation? A Yes.

"Q And before that had she lived with you continuously for the year 1927? A Yes.

"Q Are you sure that she had not separated from you during that period? A No.

"Q Are you sure about that? A I am."

The question assigned for error was certainly admissible for the purpose of contradicting the above testimony of the defendant.

Assuming, for the moment, that the proper foundation was not laid for contradicting the above by defendant's statements made out of court, the rule is that:

> "Where a witness, who is also a party to the action, has made material statements out of court which are in conflict with his testimony, the opposing party may prove them without first laying a foundation for the reception of the evidence upon the cross examination of the witness. The fact that a party chooses to take the witness stand in his own behalf can in now way limit or restrict this rule." McBlain v. Edgar, 65 N. J. L. 634.

It is submitted, therefore, that there was no error in allowing the question assigned for error.

It is respectfully submitted that the decision of our Supreme Court, should be affirmed.

Respectfully submitted,

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