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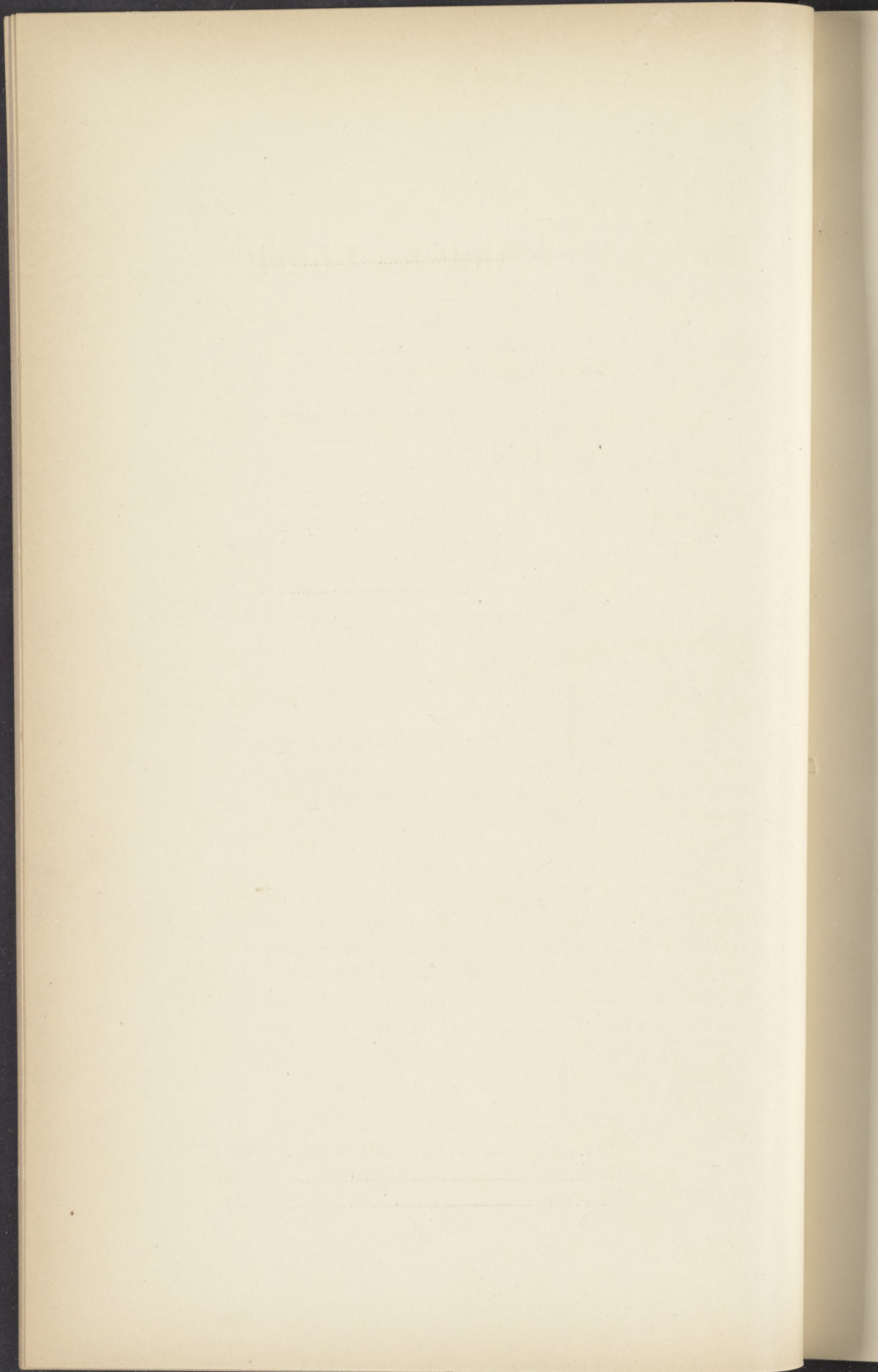
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WRIT OF ERROR.

New Jersey, ss:

(Seal) The State of New Jersey to Alfred A. Stein, Esquire, Judge of the Court of Quarter Sessions of the County of Union:

10

Because in the record and proceedings, and also in the giving of judgment upon a certain indictment against D. Ralph Starry late of the City of Plainfield in the County of Union, for unlawfully committing in private divers acts of lewdness and carnal indecency grossly scandalous and tending to debauch the morals and manners of the people (*Pro ut* the said indictment) whereof, before you, he has been indicted, and is thereof convicted by a certain jury of the county, taken between the State of New Jersey and the said D. Ralph Starry, as it is said, manifest error hath intervened, to the great damage of the said D. Ralph Starry, as from his complaint we have received information, we being willing, in this behalf, to correct the error in due manner, if any there shall be, and that speedy justice be done to him, the said D. Ralph Starry, 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 of the State of New Jersey, on the First day of May next, and this writ, that the record and proceedings aforesaid being inspected, we may further cause to be done thereupon for correcting that error, what of right and according to the law ought to be done.

20

30

40

Writ of Error

Witness, WILLIAM S. GUMMERE, Esquire, our Chief Justice, at Trenton, New Jersey, this 11th day of April, in the year of Our Lord, One Thousand Nine Hundred and Twenty-eight.

FRED L. BLOODGOOD, 10
Clerk.

MCCARTER & ENGLISH,
Attorneys.

In obedience to the command of the Writ to me, Alfred A. Stein, Judge of the Court of Quarter Sessions of the County of Union, directed, I do hereby under my seal and hereunto annexed send the Indictment against D. Ralph Starry and the record and proceedings of the plaint whereof mention is made within, with all things touching and concerning the same, to our Supreme Court of Judicature at Trenton, within specified at the time and place within mentioned, as within I am commanded as appears by the schedule hereto annexed.

ALFRED A. STEIN, 30
Judge of the Court of Quarter
Sessions of the County of Union.

(Seal)

Indictment

The execution of this Writ appears by the schedule hereto annexed.

IN WITNESS WHEREOF, I, WILLIAM B. MARTIN,
Clerk of the Court of Quarter Sessions in and
for said County, have hereunto subscribed my
10 name and affixed the seal of said Court, this 13th
day of April, A. D. Nineteen Hundred and twenty-eight.

W. B. MARTIN,
Clerk.

(Seal)

INDICTMENT.

(Filed May 26, 1927)

UNION OYER AND TERMINER

MAY TERM A. D. NINETEEN HUNDRED AND
TWENTY-SEVEN

Union County, to Wit:

30 The Grand Inquest for the State of New Jersey, and for the body of the County of Union upon their oath

Present, that D. Ralph Starry late of the City of Plainfield in the said County of Union, on the first day of March in the year of our Lord one thousand nine hundred and twenty-seven at the
40 City of Plainfield in the said County of Union,

Caption

and within the jurisdiction of this Court with force and arms did, then and there, in private, unlawfully commit divers acts of lewdness and carnal indecency, grossly scandalous and tending to debauch the morals and manners of the people, by then and there unlawfully exposing and using his private parts in an indecent and lewd posture, situation and practice with one Nathan Perry and touch, expose and use the private parts of Nathan Perry in an indecent and lewd posture, 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

ABE J. DAVID, 20
Prosecutor of the Pleas.

Witnesses:

CAPTION.

(Filed May 26, 1927)

State of New Jersey, { ss: 30
County of Union.

Be It Remembered, That at the Court of Oyer and Terminer, holden at the City of Elizabeth, in and for the County of Union, on the second Tuesday of May in the year of our Lord one thousand nine hundred and twenty-seven, before the Honorable Samuel Kalisch, one of the Justices of the Supreme Court of Judicature of the State of New Jersey, and the Honorable Alfred A. 40

Caption

Stein, Judge of the Court of Common Pleas in
and for the County of Union, upon the oaths of

	James E. Desmond	Arthur J. Halladay
	George M. Seaton	C. H. Griffiths
10	Frank W. Bird	Edward A. Albright
	John P. Weber	Howard G. Lapsley
	Henry Wilhelms	John C. Elliott
	Peter J. McGurk	Frederick W. Veghte
	Oscar T. Peck	Moses M. Crane
	Conrad H. Keim	Joseph H. Epstein
	Bert C. Hallenbeck	Moses Fletcher
	Daniel F. Randolph	George P. Matthews
	Albert C. Stein	Lyttleton E. Hubbard
20	John C. Tull	

good and lawful men of said County of Union,
then and there sworn and charged to inquire on
behalf of the State of New Jersey, in and for
said County of Union, it is presented by at least
twelve of said Jurors in the manner and form
following, to wit:

30 The bills herewith presented are true bills.

JAMES E. DESMOND,
Foreman.

Abe J. David,
Prosecutor of the Pleas.

RECORD OF CONVICTION.

And afterwards, that is to say, at a Court of Quarter Sessions, holden at Elizabeth, in said County of Union, on Thursday, May twenty-sixth, in the year of our Lord, One thousand nine hundred and twenty-seven before Honorable Alfred A. Stein, Judge of the Court of Common Pleas, constituting the Court of Quarter Sessions in and for said County of Union, according to the form of the statute in such case made and provided, the Grand Jury presented the Indictment aforesaid, which said Indictment was thereupon ordered by the Court of Oyer and Terminer of said County to be delivered to the Clerk of the Court of Quarter Sessions of said County who is directed to affile the same in the Court of Quarter Sessions according to the form of the statute in such case made and provided, and thereupon the said Indictment is delivered to the Clerk of said Court of Quarter Sessions and by said Clerk affiled and entered in said Court of Quarter Sessions of said County. 10 20

And afterwards, that is to say, at the same term of the said Court of Quarter Sessions, holden at Elizabeth aforesaid, on Wednesday, the twenty-second day of June, in the year last aforesaid, comes the said D. Ralph Starry in his own person and now here touching the premises in the said Indictment above specified and charged upon him, being asked in what manner he would acquit himself thereof, says that he is Not Guilty thereof, and of this he puts himself upon the Country, etc., and Abe J. David, who prosecutes for the State in this behalf doth likewise the same. 30 40

Record of Conviction

And afterwards, that is to say, at the same term of the said Court of Quarter Sessions, holden at Elizabeth aforesaid, on Thursday, the twenty-ninth day of March, in the year One Thousand Nine Hundred and Twenty-eight, before Honorable Alfred A. Stein, the Judge aforesaid, the said D. Ralph Starry being set to the Bar, Abe J. David, who prosecutes for the State moves the trial of the Indictment aforesaid, Wherefore let a jury thereupon come on this day last aforesaid, before this Court of Quarter Sessions, aforesaid, of good and lawful men of the County of Union aforesaid, by whom the truth of the matter may be better known and who are not of kin to the said D. Ralph Starry to recognize upon their oaths whether the said D. Ralph Starry be guilty of lewdness in Private as in the Indictment aforesaid specified or not guilty, because as well as the said Abe J. David, who prosecutes for the State in this behalf as the said D. Ralph Starry has put himself upon the said Jury and the Jurors of the said Jury by Samuel H. Tool, Sheriff of said County of Union for this purpose impanelled and returned agreeable to the statute in such case made and provided, to wit.

- | | |
|------------------------|------------------------|
| 1. Joseph B. Hunter | 7. Walter W. Bertram |
| 2. John W. Reindel | 8. Lee P. Fiero |
| 3. George Aspden, Jr. | 9. Arthur J. Harris |
| 4. Charles Schramm | 10. Geo. A. Schilling |
| 5. John J. B. Mason | 11. Frederick W. Adams |
| 6. William H. Lawrence | 12. Oscar B. Beers |

who being chosen, tried and sworn to speak the truth of and concerning the premises, on the day

Record of Conviction

and year last aforesaid, returned into Court, in charge of the officer sworn to attend them and then and there upon their oaths say they find the said D. Ralph Starry "Guilty in manner and form" as charged in the Indictment and so say they all. 10

And afterwards, that is to say, at the same term of the Court of Quarter Sessions holden at Elizabeth aforesaid, in the County aforesaid, on Wednesday, the eleventh day of April, in the year of our Lord, One Thousand Nine Hundred and Twenty-eight, before Honorable Alfred A. Stein, Judge of the Court of Common Pleas, constituting the Court of Quarter Sessions in and for said County of Union, according to the form of the Statute in such case made and provided, the said D. Ralph Starry being set to the Bar, Abe J. David, who prosecutes for the State in this behalf moves for judgment on the said D. Ralph Starry. 20

Whereupon all and singular the premises being seen and by the Court now Judgment here fully understood. It is ordered signed and adjudged that the said D. Ralph Starry having been convicted of the crime of Lewdness in Private, pay a fine of One Thousand (\$1,000.00) Dollars and stand committed until the fine is paid. 30

April 13th, 1928.
Alfred A. Stein,
Judge.

And the said defendant in mercy, etc.

TESTIMONY.UNION COUNTY COURT OF QUARTER
SESSIONS

JANUARY TERM, 1928

10	THE STATE OF NEW JERSEY VS. D. RALPH STARRY.	}	Indictment #50. May Term, 1927. Lewdness in Private.
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Transcript of stenographer's notes of evidence taken in the above entitled matter before the Hon. Alfred A. Stein, Common Pleas Judge, and a jury, at the Union County Court House, Elizabeth, New Jersey, on the 29th day of March, A. D. 1928, at nine-thirty A. M. o'clock.

APPEARANCES:

John B. Walsh, Esq., Assistant Prosecutor of the Pleas, for the State.

Augustus Studer, Esq., (McCarter & English) for the defendant.

30

Mr. Walsh: I move for the trial, if your Honor please, that Indictment #50, May Term, 1927, the State against D. Ralph Starry.

Mr. Studer: Mr. Starry is here.

The Court: The Sheriff will empanel the jury. (The jury having been empanelled and found satisfactory, they were sworn.)

Mr. Walsh opens to the jury on behalf of the State.

40

Nathan Perry—Direct

NATHAN PERRY, the complaining witness,
sworn:

Direct-examination by Mr. Walsh:

Q. You say your name is Nathan Perry? A. Yes. 10

Q. What is your father's name? A. Porinassnick.

Q. Porinassnick? A. Porinassnick.

Q. How do you spell it? A. P-o-r-i-n-a-s-s-n-i-c-k.

Q. How long have you been known by the name of Perry? A. For about seven or ten years.

Q. And are other members of your family know by the name of Perry? 20

A. Yes, they are.

Mr. Studer: I object.

The Court: Why?

Mr. Studer: It is immaterial what about his other members of his family.

The Court: I suppose it is done for the purpose of introducing the witness to the jury.

Mr. Studer: I don't press it, sir. 30

The Court: Go on.

Q. Is that right? A. Yes, sir.

Q. Who was known by that name? A. My older brother and my youngest brother and sisters.

Q. And you attended the Plainfield school under the name of Perry? A. Yes, I did.

Q. Are you still a student at the Plainfield school? A. I was up until Monday. 40

The Court: Are you still a student?

A. No.

Nathan Perry—Direct

Q. You left last Monday? A. Yes.

Q. And what school did you attend up until last Monday? A. High school, Plainfield High School.

10 Q. During the month of March last year, 1927, what school were you attending? A. Jefferson school and Evergreen school.

Q. Which is known as Jefferson school? A. I went to Jefferson and then I went to Evergreen.

Q. In the month of March, what school were you attending? A. Evergreen school.

Q. And who was the principal of that school? A. Ralph D. Starry.

20 The Court: Month of March of what year?

Mr. Walsh: 1927.

Q. When you mentioned March, you mean in what year? A. 1927.

Q. And you have said that the principal of that school was Mr. Ralph D. Starry? A. Yes, sir.

Q. Is he in the court room now? A. Yes.

Q. Where is he in the court room? A. Right over there (indicating the defendant).

30 Q. Sitting next to his counsel? A. Yes.

Q. So he was principal of the school that you attended? A. Yes.

Q. Now, on March 1st, did you have a conversation with Mr. Starry? Did you? A. Yes.

Q. At about what time of the day? A. About two o'clock in the afternoon.

Q. And what did Mr. Starry say to you and what did you say to him? A. He wanted me to
40 come up—

Nathan Perry—Direct

Mr. Studer: No. I object. What did he say?

The Court: Yes. You see what you are starting in to say is your conclusion, from what he said. Give us, as nearly as possible, what he said. 10

A. He invited me up to his house.

Q. What words did he use, the Judge and jury want to know.

The Court: As nearly as you remember the words.

A. No, I don't remember the words.

The Court: As nearly as you remember them. You said he invited you up to his house. 20

A. "Will you come up and talk some school matters over?"

The Court: Well, what did you say?

A. I said yes, I would.

Q. Did he say what time he wanted you to come to the house? A. About half-past seven or eight o'clock. 30

Q. And was anything further said about it?

A. No, there wasn't.

Q. Well, at half-past seven or eight o'clock, what did you do? A. I called him up.

Q. And did you talk with him? A. Yes, I did.

The Court: Across the fence?

A. Over the telephone.

The Court: Why didn't you say so? 40

Nathan Perry—Direct

Q. What did you say to him at that conversation? A. I asked him if it was all right for me to come up.

Q. What did he say to that? A. He said it was all right.

10 Q. How did you find out his telephone number?

A. He gave me the telephone number.

Q. When? A. In school, in the class room.

Q. When did he give you that? A. About two o'clock in the afternoon.

Q. Was there anything said at that conversation about a telephone message? A. Yes.

20 Q. What was it and who said it? A. He said, "I am not sure that you can come up to-night, because my wife is going out, but you can call me up around half-past seven and I will let you know."

Q. And was it before or after that he gave you the telephone number? A. Before.

Q. Now, then, you called him up at that time and talked with him, and then what did you do? A. He told me the way to get to the house.

Q. That was over the telephone he told you that? A. Yes.

30 Q. Then after that, what did you do? A. Took the bus up to his house.

Q. And where was his house? A. On Denmark road.

Q. In what city? A. Plainfield, New Jersey.

Q. Do you remember the number? A. No, I don't.

Q. When you got to the house, who was there?

40 A. Mr. Weimer, the principal of Washington school.

Nathan Perry—Direct

Q. Who else?

The Court: Mr. who?

A. Weimer.

Q. Who else? A. And Mr. Starry.

Q. Anybody else? A. No.

10

The Court: When was this?

Q. How long—

The Court: When was this? When was this?

A. This was the same night.

The Court: Oh.

(Last part of the testimony repeated by 20 the stenographer.)

Q. How long did Mr. Weimer remain after you arrived there? A. He had his hat and coat on when I came to the door.

The Court: How long did he remain?

A. About one minute.

Q. Did he go out the same door that you entered? A. Yes, he did.

Q. After Mr. Weimer went away, what did you and Mr. Starry do? A. I sat down on the couch and he sat in the chair near the fireplace.

30

Q. And how long did you stay there in that room? A. We talked for about an hour and a half.

Q. And at what time did Mr. Starry and you leave the room? About what time? A. He left the room about half-past ten.

Q. Who left the room? A. Mr. Starry.

40

Nathan Perry—Direct

Q. Where did he go? A. He went down to fix the furnace and came up with some apples.

Q. Now, after partaking—did you eat the apples, you and he? A. Yes, we did.

Q. In that same room? A. Yes.

10 Q. What was talked about in this hour and a half? A. Talked about my school work and talked about the different fellows in school, and about golf.

Mr. Studer: About what?

A. Golf.

Q. Golf. Anything else? A. No, that was all.

20 Q. Well, after he came up with the apples, what did Mr. Starry say to you then? A. He handed me the apple and walked over and put the latch on the door and came down and sat beside me.

Q. I see. Now, then, what? Did he say anything when he sat down beside you? A. Then we went right—then we continued with the conversation.

Q. What was the conversation? A. Well, golf; that was the last conversation.

30 Q. Golf. What next did he say to you? A. That was about all that he did say.

Q. Well, did you leave the room? A. No, I didn't.

Q. Well, you slept there sometimes? A. Yes, I went upstairs when he told me to.

Q. Oh, did he tell you to go upstairs? A. Yes.

Q. When was that? A. Well, after we were through eating the apples.

40 Q. Well, what was said about going upstairs

Nathan Perry—Direct

then? A. He said, "My wife is visiting some friend in Asbury Park. Will your folks mind if you spend the evening with me?" And I answered no; they wouldn't mind.

The Court: Well, then, what did he do? What did you do? This is a long-winded answer. What did you do? Did you stay over night? 10

A. Yes.

The Court: Where?

A. Up in the bedroom.

The Court: What bedroom?

A. His bedroom. 20

The Court: With whom?

A. Mr. Starry.

The Court: Go on.

Q. After you got upstairs to the bedroom, did you undress? A. Yes, I did.

Q. Did he undress? A. Yes.

Q. And how much of his clothes did he take off? A. All of them. 30

Q. And how much of yours did you take off?

A. Everything but the B. V. D's.

Q. And did you then go to bed in those? A. He asked me to take them off and I told him I couldn't sleep without my B. V. D's, and he told me put on a pair of pajamas, pants.

Q. Did you put them on? A. Yes, I did.

Q. And did you go to bed then? A. Yes.

Q. Before you went to bed, did anything hap- 40

Nathan Perry—Direct

pen? A. Yes; he lifted me up and asked me how much I weighed.

Q. And you told him? A. Yes, 118 pounds.

Q. Well, after you got in bed, then what happened? A. He said, "I will show you the way
10 men put on fat and take off fat in a Turkish bath," and he started rubbing his hands over my back and over my chest.

Q. And for how long did that continue? A. Until I pushed him away.

Q. Well, then, after that did you go to sleep? A. I suggested we go to sleep, but I didn't sleep.

Q. Well, what next did you—did he sleep? A. No, he didn't.

20 Q. Well, what happened next? A. During the night he put his hand on my chest and ran it down over my stomach and put it on my private.

Q. And then what happened? A. Then I turned over and he let go.

Q. Did you speak to Mr. Starry? A. Yes, I did; next morning.

Mr. Studer: Turned over, and he let go, is that what you said?

30 A. Yes.

Q. Well, when he put his hands on your private parts, did anything happen to your private parts? A. I had a discharge.

Q. You had a discharge. You spoke to Mr. Starry about that afterwards, you say? A. Yes, I did.

Q. Where was that? A. In the library in Evergreen school.

40 Q. You went to school from Mr. Starry's house that morning? A. Yes.

Nathan Perry—Direct

Q. When you got to school, where did you go?

A. I went to my class room and got permission to go down to see Mr. Starry.

Q. And where did you see him? A. I saw him in the library.

Q. And did you have any conversation with him, talk with him? A. Yes. 10

Q. What did you say to him? A. I told him what I thought of him.

Mr. Studer: I object.

Q. What did you tell him? A. I told him he corrupted my morals.

Q. You told him that? A. Yes.

Q. What did he say to that? A. He said he was awful sorry and he didn't have any intention of doing a thing like that, and he had a high position, and I would oblige him very much by not saying anything to him. 20

Q. Is that all was said about it? A. He went on telling how good his father and mother and sisters were out in Pennsylvania, where they grew apples.

Q. Anything else? A. And he said he thought I was a manly boy for coming to see him first about it. 30

Q. Anything further said? A. Then I told him I wanted to go to the druggist and he asked me if there was anything wrong, and I said no. That was my excuse to get out and see some one I wanted to see.

Q. And did you see the party you wanted to see? A. Yes, I did.

Q. And did you continue with school that day? A. Yes, I did. 40

Nathan Perry—Cross

Q. Go back to school what time? A. About eleven o'clock.

Q. And after that did you, later on, make a complaint against Mr. Starry? A. Yes.

Q. When did you make that complaint? A. I
10 guess it was that week or the next week.

Mr. Walsh: Cross-examine.

CROSS-EXAMINATION by Mr. Studer:

Q. With whom did you talk before you made the complaint? A. Yes, I did.

Q. With whom did you talk before you made the complaint? A. I talked with the physical director of the Y. M. C. A.

20 Q. What is his name? A. Mr. Bonk.

Q. Bonk? A. Mr. Bonk.

Q. Mr. Bonk. When did you talk to Mr. Bonk? A. That same morning I spoke to Mr. Starry in the library.

Q. In his library? A. In his school library.

Q. How long after you had that talk with Mr. Bonk did you make the complaint? A. I don't remember.

30 Q. What? A. I don't remember when I made the complaint.

Q. Had no idea? A. I guess it was a week later.

Q. At least a week? A. Yes.

Q. How often did you talk with Mr. Bonk before you made the complaint? A. Quite a few times; about four or five times.

Q. You did not talk to Mr. Starry again, did you? A. No; I didn't see him again.

40 Q. Did not see him? A. No.

Nathan Perry—Cross

Q. Where did you live on March 1, 1927? A.
213 Spooner Avenue, Plainfield, New Jersey.

Q. With whom? A. With my folks.

Q. Your father? A. Yes.

Q. Your father's name was not Perry, was it?
A. No; it wasn't. 10

Q. And it is not now, is it? A. No, it is not.

Q. How old are you? A. About seventeen.

Q. About? A. Yes.

Q. When is your birthday? A. I haven't the
slightest idea.

Q. No idea whatever? A. No.

Q. What makes you think you are seventeen?

A. Well, a boy about my size is generally about
seventeen. 20

Q. You are only judging yourself by your size
as to your age, is that it? A. Yes.

Q. Have you any idea how old you are? A.
No.

Q. How long have you been living away from
home? A. Now about a year.

Q. Now about a year? This is March, 1928,
isn't it? A. Yes.

Q. When did you leave home? A. End of
school, last year. 30

Q. June? A. Yes.

Q. And where did you go? A. I went—I lived
on East 7th Street, Plainfield, New Jersey.

Q. With whom? A. A boarding-house.

Q. Who ran the boarding-house? A. Miss
Palmer, Mrs. Palmer.

Q. What is the address of Mrs. Palmer's board-
ing-house? A. 303 East 7th Street.

Q. 303 East 7th Street? When did you go 40

Nathan Perry—Cross

there? A. After I came back from South America.

Q. I understood you to say a minute ago you went to Mrs. Palmer's boarding-house— A. Yes.

Q. —one minute. When school closed? A. I
10 got a room there until I got on a ship and went off, and when I came back I had the same room.

Q. Did you pay for this room? A. Yes, I did.

Q. Before you went away? A. Yes.

Q. Out of what? A. Out of money I made up at the golf links Saturdays and Sundays.

Q. Are you a caddy? A. Yes, I was a caddy.

Q. You were a caddy? A. Yes.

Q. How much did you pay Mrs. Palmer? A.
20 \$3 a week.

Q. And you paid Mrs. Palmer for the room which you were to occupy upon your return from South America? A. I didn't give her any money for the time I was away; she only reserved it for me.

Q. Did you pay her anything? A. For the time I was in the room when I was in town.

Q. How long were you in the room while you were in town? A. About two weeks.

Q. How much did you pay Mrs. Palmer? A.
30 \$6.

Q. And then you went to South America? A. Yes.

Q. What as? A. A bellboy on a steamship.

Q. A bellhop—a bellboy on a steamship? A. Yes.

Q. You did not tell your family where you were going, did you? A. No, I didn't.

Q. How long were you in South America? A.
40 Six weeks.

Nathan Perry—Cross

Q. When did you get back? A. I guess it was August 29th.

The Court: 1927?

A. Yes.

The Court: Yes.

10

Q. When did you go, do you know? A. About July 13th.

Q. July 13th or August 27th, you were a bell-boy on a boat going to South America? A. Yes.

Q. Then when you got back August 27th, where did you go then to live? A. Came right to Plainfield and took the same room before I left.

Q. With Mrs. Palmer? A. Yes.

20

Q. What grade were you in when you were in the Evergreen school? A. Eighth grade.

Q. As a pupil? A. Eighth grade.

Q. In March, 1927? A. Eighth grade.

Q. Who was your teacher? A. Miss McKee.

Q. Miss McKee; and you do not know how old you are in the eighth grade? A. No, I don't.

Q. Don't know now? A. No.

Q. Had you previously been a student in any other Plainfield school or Evergreen school? A. 30
Yes.

Q. The Washington School? A. The Washington.

Q. You left the Washington school, didn't you? A. Yes.

Q. Ran away? A. No; I didn't run away.

Q. Were you discharged? A. Yes.

Q. What for? A. For not behaving right.

Q. Did not behave. You did not behave with 40
girls, did you? A. No; it was the boys.

Nathan Perry—Cross

Q. What was? Boys. A. It was boys and the teacher.

Q. It was the boys and the teacher and you were discharged from school? A. Yes.

Q. And then you came back to what school after you were discharged? A. Jefferson school.

Q. When were you discharged from the Washington school for misbehaving with boys and the teacher? A. About five years ago.

Q. Five. When, after you were discharged from school, did you return to any school in Plainfield? A. Yes, Jefferson school.

Q. When? A. In the sixth grade.

Q. When? A. I don't know.

20 Q. Five years ago you say you were discharged from the Washington school? A. Yes.

Q. That would be in 1923? A. Yes.

Q. In what month of the year 1923 were you discharged from the Washington school? A. I don't remember what month.

Q. You do not know whether it was September or June? A. No, I don't.

Q. No idea? A. No.

Q. Not the slightest? A. No.

30 Q. But you do know you were discharged for misbehaving? A. Yes.

Q. With boys and the teacher? A. Yes.

The Court: What was the misbehavior you were charged with?

A. Showing off in the class room, that was the reason I was discharged.

Q. Showing what off in the class room? A.
40 Poking a boy, and acting funny and pulling the shades down.

Nathan Perry—Cross

Q. What do you mean "acting funny"? A. Disturbing class, when the teacher was trying to teach something.

Q. You would not permit the teacher to go ahead and teach?

10

The Court: He did not say that.

Mr. Studer: He disturbed the class?

The Court: He explained how he disturbed, is that what you mean?

A. Yes.

The Court: Was there anything else?

A. No, sir.

Q. Are you sure of that? A. Yes.

20

Q. That was in 1923? A. Yes.

Q. And you haven't any idea of what month?

A. No.

Q. When did you return to any school in Plainfield after you were discharged from Washington school? A. I guess it was that same year.

Q. When that same year?

The Court: He doesn't know.

Mr. Studer: Pardon.

The Court: He does not know, he says.

30

Was it summer or winter, or how?

A. I guess it was the summer.

Q. After June? A. No, before June; about two months before June.

The Court: Well, if that is important the record will show it, the school record will show it.

Q. What school did you go back to? A. Jefferson Street school.

40

Nathan Perry—Cross

Q. Jefferson school? That is another school?

A. Yes.

Q. Also in the sixth grade? A. In the sixth grade.

10 Q. And from 1923 when you were in the sixth grade in Jefferson school in June— A. Yes.

Q. —you advanced to the eighth grade in the Evergreen school in March, 1927? Is that so? A. I advanced to the Jefferson school and then got a transfer to the Evergreen school.

Q. From '23 to '27 you advanced from the sixth to the eighth grades, is that right? A. I don't believe it took me four years to advance two months.

20 Q. I do not know anything about that. I am asking you.

The Court: Well, he is telling you. You say it took him that long and he said he didn't believe that.

Mr. Studer: He said in March, 1927, he was in the eighth grade.

The Court: That is what he said.

30 Q. That is a fact you were in the eighth grade in the Evergreen Street school in 1927? A. Yes.

The Court: That, too, is a matter of record. It is important if we can get it.

Q. Who was your supervisor in the Washington school when you were discharged; Mr. Weimer? A. Yes, sir.

40 Q. Mr. Weimer was the man who was present that evening at Mr. Starry's house when you arrived? A. Yes, sir.

Nathan Perry—Cross

The Court: Did he see you?

A. Yes, he did.

The Court: And you saw him, of course?

A. Yes, I did. 10

Q. Had you spoken to Mr. Weimer or to Mr. Starry? A. I greeted Mr. Weimer, goor morning, that was all.

Q. Just a minute, Nathan. Had you spoken to Mr. Starry before March 1st, at which time either he had asked you to come to his house or had you asked him to go to his house? A. He had asked me to go to his house.

Q. When? A. Well, the day he asked him. 20

Q. Had you had any talk with him before that? A. Yes.

Q. About going to his house? A. No, not about going to his house.

Q. Not any? A. No.

Q. Where were you and he when he asked you to go to his house on March 1st? A. I was in the class room doing my lesson.

Q. What time of day did he get in? Two o'clock, you say? A. Yes, two o'clock. 30

Q. And then he told you that Mrs. Starry might be away? A. She might be away, and more likely she would be home.

Q. So that you were to 'phone? A. Yes.

Q. He did not tell you that Mr. Weimer would be present? A. No, he did not.

Q. Are you sure of that? A. Yes, sir.

The Court: When did you 'phone him that day? 40

Nathan Perry—Cross

A. I 'phoned from the Y. M. C. A. at Plainfield.

Q. Were you living there then? A. That is my general hangout.

Q. Were you living at the Y. M. C. A. then?

10 A. No, sir.

Q. You were living with your family? A. Yes.

Q. Your father? A. Yes.

Q. Mr. Porinassnick? A. Yes.

Q. What time did you 'phone to Mr. Starry that evening? A. Half-past seven.

Q. 7:30? A. Yes.

Q. What did you say to him and what did he say to you? A. I told him who it was and he said, "Come right along up."

20 Q. He said his wife— A. He didn't say a thing about his wife.

Q. Nothing about his wife? A. No.

Q. Nothing about Mr. Weimer? A. No.

Q. Just "Come right up"? A. Yes.

Q. When you arrived there, where was Mr. Weimer? A. He was at the door with his coat in his hand.

Q. Leaving? A. Yes.

30 Q. You say he was only there one minute? A. About one minute.

Q. Now, then, where did you and Mr. Starry sit? In what part of the house, when you arrived, after Mr. Weimer had gone? A. I suppose the living room.

Q. Downstairs? A. Yes.

Q. What kind of a night was this, do you recall? A. It was a very warm night.

40 Q. Was it a rainy night? A. No, it wasn't.

Nathan Perry—Cross

Q. What time did you arrive there? A. About ten minutes after eight.

Q. 8:10? A. Yes.

Q. What time did you go to bed? A. We left the room half-past ten; it takes about three minutes to go upstairs. 10

Q. So from eight-ten to ten-thirty— A. Yes, we were in the house.

Q. —for about an hour and forty minutes you talked— A. Yes, sir.

Q. Downstairs, is that right? A. Yes.

Q. And for an hour and forty minutes you just talked about other boys—

Mr. Walsh: I will object. 8:10 until 8:30 the calculation seems erroneous; it seems to be by counsel and not by the witness. 20

Mr. Studer: I thought he said he got there at 8:10 and they went upstairs to bed 8:30.

The Court: Will you gentlemen tell me what difference it makes? Besides that there is a jury here can calculate as good as any lawyer I know of. Does not make any difference. This matter of time I have never heard told exactly by any witness. I made a visit last night and I couldn't tell you what time I got there last night, and I couldn't tell you what time I left. 30

Mr. Studer: If your Honor please—

The Court: Go on.

Q. For quite an interval of time, you and he talked? A. Yes. 40

Nathan Perry—Cross

Q. Downstairs, about boys in school? A. And my school work and golf.

Q. Mr. Starry was not your school teacher?

A. He was the principal of the school.

Q. He was the principal of the school, but he
10 did not instruct you in any classes, did he? A.
He didn't instruct me in any class.

Q. And about golf you said you talked? A.
Yes.

Q. Did Mr. Starry tell you it was getting late?

A. No, he did not.

Q. And didn't he suggest that you 'phone to
your family? A. No, he did not.

Q. You are sure of that, are you? A. Yes.

20 Q. You are as sure of that as you are of every-
thing else you testified to? A. Yes.

Q. When you went upstairs, where did you un-
dress? A. In his bedroom.

Q. You are sure it wasn't in an ante chamber,
a room off the bedroom? A. I don't remember.

Q. You don't remember that? A. No, sir.

Q. You aren't sure? A. No, sir.

Q. Doesn't it refresh your recollection when
I suggest to you that there was a couch in an
30 ante chamber which Mr. Starry suggested you
might sleep on? A. He suggested that the next
morning.

Q. The next morning he suggested that the
night before you sleep somewhere else? A. The
next morning he said, "I wish I had put you in
here, if you wanted to."

Q. You are sure there was no talk about that
the night before? A. Yes, sir.

40 Q. Sure of that? A. Yes.

Nathan Perry—Cross

Q. Did you undress in the room, or did I ask you that? A. Yes, I undressed.

Q. Did Mr. Starry undress in the bedroom or in the ante room? A. I don't know where he undressed. I guess he undressed beside me. I guess that was the bedroom. 10

Q. You are just guessing? A. I know for a fact he undressed beside me.

Q. After you undressed, what happened? Put the light out? A. Yes, he put the light out.

Q. And you put on a pair of pajama trousers? A. No. I had my B. V. D's on.

Q. And put a pair of pajama trousers over the B. V. D's? A. No; I took the B. V. D's off and put on pajamas. 20

Q. Took your shirt off? A. I didn't have any shirt on; he didn't want me to keep the shirt on.

Q. Kept your shirt on or not? A. No.

Q. Did you have any shirt at all? A. No.

Q. Did you go there without a shirt?

The Court: Took your B. V. D's off, did you say?

A. Yes.

The Court: You had no shirt on after that, did you? 30

A. No, sir.

The Court: B. V. D. in one part or two?

A. One part.

The Court: What is the sense of this?

Q. You had your pajama trousers on? A. Yes. 40

Nathan Perry—Cross

Q. When did Mr. Starry ask you what you weighed? A. When I had my B. V. D's on.

Q. And then you got into bed? A. Yes.

Q. And then when you were in bed he told you that he would show you how a man puts on weight
10 and off weight in Turkish baths? A. Yes.

Q. What did he show you when he told you that? A. Well, he rubbed my back down, and then he said, "I will give you—" he said, "Give me a big bear hug." And I pushed him away as he squeezed me toward him.

Q. Had he hugged you before you got into bed? A. No, he didn't.

Q. Did he touch you before you got into bed?
20 A. Yes, he did.

Q. Where? A. When he lifted me up.

Q. He lifted you up? A. Yes.

Q. Did he hug you when he lifted you up? A. No; he just lifted me up and put me right down.

Q. You did not suspect anything at all when he lifted you up, did you? A. No, I didn't.

Q. Then you say you got into bed and he hugged you there? A. Yes.

Q. And said, "Give me a big bear hug"? A.
30 Yes.

Q. And you pushed him away? A. Yes, I did.

Q. You were suspicious then, weren't you? A. Yes, I was.

Q. Did not know what might happen? A. Then I had an idea of what he really was.

Q. You did not know what might happen? A. No, I didn't.

Q. When, after he hugged you, as you say, did
40 you have this discharge, as you say? A. When he hugged me, when I pushed him away.

Nathan Perry—Cross

Q. After he pushed you away? A. After I pushed him away.

Q. After you pushed him away? A. Yes.

Q. Were you lying down or sitting up or how were you? A. I was lying on my back.

Q. On your back? A. Yes. 10

Q. And after that you presently turned over and went to sleep? A. Yes.

Q. Right there in the bed? A. Yes.

Q. Had you ever had, previous to that, any discharge? A. Yes.

Q. At night? A. Yes.

Q. While asleep? A. Yes.

Q. And while awake? A. No.

Q. Are you sure of that? A. Yes. 20

Q. How long before had you had these night discharges?

The Court: How does that become material?

Mr. Studer: I think I can connect it up, if your Honor please.

The Court: Well, now—

Mr. Studer: I will be very frank and tell you in what way I think it can be connected up. 30

The Court: No. But I do not see, as the trial judge, how it can be material whether this boy had any discharges before and emissions while asleep, on the trial of this indictment.

Mr. Studer: Well, if your Honor please, there is testimony here that he had an emission.

The Court: Yes. 40

Discussion

Mr. Studer: And I think that the proof will show that it was a natural and ordinary nocturnal emission that is a natural and ordinary biological and physical fact, and that that is what occurred to him.

10 The Court: The witness testifies to the emission in connection with certain things which happened that night. Whether he had the emission or not is not very material, to the trial of this issue, in the first place; in the second place, then, if that is so, I do not see what difference it makes whether he had emission before or after this happening.

20 Mr. Studer: Well, as I say, I think it can be presented back—

The Court: At the present time I do not see how.

Mr. Studer: Whatever happened to him—

30 The Court: At the present time I do not see how it is material, and using the discretion which is mine to keep the trial within the issues, I will not allow any further examination other than has already taken place on that point.

Mr. Studer: I did want to finish my offer before your Honor cut me off.

The Court: You have already shown by him, or you have asked whether he had emissions before, and he said at night. Yes. I think you did say at night.

40 A. Yes, I did.

Nathan Perry—Cross

The Court: Then I think it will stop.

Mr. Studer: I respectfully pray an exception if I be entitled to it.

The Court: If it becomes material to the defense in this case later, and you can show it to me, I will allow you to put that
10
into the case.

Exception allowed, and it is signed and sealed accordingly.

ALFRED A. STEIN,

Judge.

Q. How much of a time elapsed, as you recall, between the time you had this discharge, as you say, and the time you went to sleep? A. When
20
I went to sleep, you mean?

Q. Yes. A. Well, after the discharge I suggested we go to sleep and I pushed him away and then he said all right.

Q. And you went to sleep? A. Yes.

Q. Now, in the morning you awoke? A. Yes.

Q. And had breakfast with Mr. Starry? A. Yes.

Q. Mr. Starry got the breakfast? A. We both
30
made it.

Q. And then you left to go to get some book, didn't you, on Mr. Starry's bicycle? A. He said he had to see a principal over in the new—

The Court: Did you?

Q. I don't care what he said.

The Court: Did you go to school?

A. Yes.

40

Nathan Perry—Cross

Q. Did you have Mr. Starry's bicycle? A. He offered it to me.

Q. I do not care who gave it to you; you took his bicycle, didn't you? A. Yes.

Q. And you rode and got some books? A. Yes.

10 Q. And then brought the books back to the Evergreen school? A. Yes.

Q. And then you went to your class room? A. Yes.

Q. And you did not discuss this with anybody during that time, did you? A. No, I didn't.

Q. And then about 9:30 you, of your own volition, saw Mr. Starry out in the library of the school? A. It wasn't 9:30; it was 8:30.

20 Q. Had you gone to class at all? A. Yes.

Q. And you went down and found Mr. Starry there? A. In his office.

Q. Was his office in the library? A. He went in the library and got a conversation there.

Q. And you said to him what? That you thought he had corrupted your morals? A. Yes.

Q. And you thought that the night before, didn't you? A. After it all had happened.

30 Q. You thought before it happened that something was going to happen to you, didn't you, when you pushed him away? A. No, I didn't.

Q. Didn't you say a minute ago you pushed him away? A. Yes, I did.

Q. And you were afraid of what was going to happen? A. I didn't know what was going to happen.

40 Q. He was holding your upper body, you say, when you had this discharge? A. He was holding my upper body.

Nathan Perry—Cross

Q. He was? You said he hugged you? A. Yes.

Q. Now, then, when you told him, you used the word "corrupted"? A. Yes.

Q. You said, "I think you have corrupted my morals"? A. Yes, moral.

Q. Your moral? A. Yes. 10

Q. And he said he was sorry it had happened?
A. Yes; he apologized.

Q. He said he was sorry it happened? A. He was very sorry it happened.

Q. Didn't he tell you to go and talk with somebody? That that was a perfectly natural thing that had happened to you? A. No, he did not.

Q. Didn't he tell you to go and talk to some older man? A. No, he didn't. 20

Q. And it was nothing to be concerned with? Nothing to be frightened at all? A. He said there was nothing to be frightened about it.

Q. You said he told you how good his father and mother were? A. Yes.

Q. Then you said you went to a drug store?
A. I told him I wanted to go to a drug store, but I didn't go to a drug store.

Q. Told him you felt sick? A. Yes, I made excuse that I felt sick. 30

Q. Your school room teacher could excuse you, couldn't she? A. No, she couldn't.

Q. Not if you felt sick? A. I don't know.

Q. You mean to say you have to go to the principal of a grammar school to be excused when you feel sick?

The Court: He said he don't know.

Ever been excused before for sickness? 40

A. No, sir; I haven't.

Nathan Perry—Re-direct

Q. Never? A. No, sir.

Q. And although you went to Mr. Starry to talk to him because you thought, and said, that he had corrupted your moral, as you say, you then had to make up an excuse to get away from him in school? A. Yes.

10 Q. How long did you talk to him in this library?
A. At least half an hour.

Q. Half an hour. Then did you leave the school or go back to your class room, or what did you do? A. I went back to the class room and told the teacher I had permission from Mr. Starry to go to the drug store.

Q. You did not come back to school that day?
20 A. I came back to school at eleven o'clock.

Q. Eleven o'clock? A. Yes.

Q. Had you been to see Mr. Bonk in the meanwhile? A. Yes, I did.

Mr. Studer: That is all.

RE-DIRECT EXAMINATION by Mr. Walsh:

Q. Nathan, on direct-examination you said at the time that you had this emission, discharge,
30 Mr. Starry had his hand on your private parts?

Mr. Studer: I object to that.

Q. But on your cross-examination you said, in answer to Mr. Studer's question, that his suggestion, that at the time you had the discharge Mr. Starry had his hands on your chest. Which is so? A. I had the discharge when he had his hand on my chest.

40 Q. On your chest or on your penis? A. On my chest, hugging me.

Nathan Perry—Re-cross

Mr. Walsh: I see.

Mr. Studer: You are sure about that?

A. Yes, I am sure about it.

Q. Just prior to the time you had this discharge, where were his hands?

10

Mr. Studer: I object. It has all been gone into on direct.

The Court: I will allow it.

Mr. Walsh: I want to make it clear.

The Court: I will allow it.

Q. Where were his hands just prior to the time he was hugging you? A. On my back.

Q. Did he at any time have his hands at any other place besides your back and chest? A. On my stomach. 20

Q. Any other place? A. No.

Q. Did you tell me on direct-examination he had his hand on your penis? A. During the night he did.

The Court: Was that after this emission?

A. Yes.

30

Mr. Studer: When?

A. During the night.

The Court: After this emission, during the night.

RE-CROSS EXAMINATION by Mr. Studer:

Q. You went asleep shortly after you had this emission, didn't you? A. Yes, but I didn't sleep. 40

Nathan Perry—Re-cross

Q. Did not sleep? A. No.

Q. But some time after that had occurred, during the night, you say he had his hands on your private parts? A. Yes.

10 Q. How much after? A. 4:30 in the morning.
Q. 4:30 in the morning? A. Yes.

Q. How do you know it was 4:30? A. I heard the clock strike four times, and a little later on another half hour.

Q. You were lying awake from four to forty? A. Well, practically the whole night.

Q. The whole night long? All night long?

The Court: Why is that?

20 Q. Did you sleep at all? A. Well, probably did get a little sleep for about an hour, I guess. I don't know how long I did sleep.

By the Court:

Q. Tell me why? Give me your reason why you did not live home? A. Why I didn't live home?

30 Q. Yes. A. Well, I was supporting myself while my mother was living, paying for my clothes and paying to have my shoes fixed, and paying for everything, and my father expected me to give him money at the same time and support myself.

Mr. Studer: I object.

40 The Court: Well, now you brought out the fact this boy was not living home, and I want to know why he was not living home. I allowed you to show that because that was part of the evidence might go to the jury that may in some way affect his credibility; I don't know.

Nathan Perry—Re-cross

Mr. Studer: I only object to the way he said his father expected something.

The Court: If you have any objection, put it on the record.

Mr. Studer: I object to his concluding what his father expected. 10

Q. Why do you say your father "expected you"? A. Why he expected me?

Q. Why you use the word "expected"? A. He wanted me to.

Q. How do you know he wanted you to? A. He was always crabbing about it, asking me for it.

Q. When did your mother die? A. I guess it was three or four years ago. 20

Q. But you did not live home when this thing happened? When you say this thing happened? A. I was living at home when this thing happened.

Q. With your father? A. Yes.

Q. Why didn't you live home after that? Any reason for that? A. He wanted me to get out, so I obliged him by getting out.

Q. Your father wanted you to get out? Have you been making your own living since? A. Yes. 30

The Court: All right. Go on.

By Mr. Studer:

Q. You say your father wanted what you earned? A. Yes.

Q. While you were living home? A. Yes.

Q. And eating home? A. Yes. Well, half of the time.

Q. Whenever you went home you could eat 40

Nathan Perry—Re-cross

there and sleep there and live there? A. No, I couldn't.

Q. Did your father put you out? A. No, he didn't put me out.

Q. When did you change your name? A. After
10 I left home.

Q. Didn't you say on your direct-examination in answer to Mr. Walsh that you had been using the name Perry for ten years? A. For the last ten I have always been known by that name by the boys of the Y. M. C. A.

Q. Then you made it known that Perry was your name ten years ago?

The Court: He does not say that.
20

Q. When did you make it known that your name was Perry?

The Court: He does not say he made it known.

Q. Did you go by the name of Perry? A. Yes.

Q. For how long have you gone by the name of Perry? A. Ever since I can remember.

The Court: Is that what the boys called
30 you in school?

A. Yes.

The Court: Why did they call you Perry, that is what counsel wants to know?

A. When my brother was home the fellows he used to go around with called him Perry and then in turn called me Perry, and the fellows heard that, and they called me that, too.
40

J. Wade Wimer—Direct

The Court: Why did they call you Perry, real name?

A. Por-ar-sen-ic.

Q. As long as you can remember, they called you Perry? A. Yes. 10

The Court: They called his brother Perry and they called him that, too.

Q. They called him Perry? A. Yes.

The Court: All this is allowed only on the question of how far it affects the credibility of the witness. It does not go anywhere further than that on this crime to prove or disprove anything. Anything 20 further from this witness?

Mr. Studer: I think that is all.

Mr. Walsh: That is all.

J. WADE WIMER, a witness on behalf of the State, sworn.

Direct-examination by Mr. Walsh: 30

Q. Mr. Wimer, where do you live? A. Plainfield, New Jersey.

Q. And do you occupy any official position there? A. Yes, sir.

Q. What are you? A. Principal of the Washington and Irving schools.

Q. And how long have you been principal of the Washington and Irving schools? A. This is the fifth year. 40

J. Wade Wimer—Cross

Q. Do you know Ralph Starry? A. I do.

Q. Did you see him on March 1, 1927? A. I am not certain of the date, but about that time.

Q. Where did you see him? A. At his home.

10 Q. At his home? What time in the evening did you get there? A. Possibly five-thirty.

Q. And how long did you remain? A. An hour and a half, perhaps. Maybe longer than that. Perhaps until around eight o'clock.

Q. Was anybody at the house besides you and Mr. Starry on that evening? A. No one but the maid.

Q. No one but the maid. Do you know this boy, Nathan Perry? A. I do.

20 Q. Did you see him there on that evening? A. I did.

Q. And in what part of the house were you when he came in? A. I was in the living room. I am not too sure but what I wasn't at the door when he came in, about that time.

Q. About how long after he came in did you leave? A. Well, I would say in the neighborhood of five or ten minutes. I think we stood around to the door and talked a little while.

30 Q. And then you left? A. Yes, sir.

Mr. Walsh: Cross-examine.

CROSS-EXAMINATION by Mr. Studer:

Q. When, Mr. Wimer, did Mr. Starry invite you to have dinner with him at his house that night?

40 Mr. Walsh: Well, I would object for the purpose of saving time. I can't see that as material.

The Court: I will allow it.

J. Wade Wimer—Cross

A. I don't recall. Some time in the afternoon, I think.

Q. Did he tell you that this boy was coming to the house? A. He did not.

Q. You say you were there five or ten minutes after the boy arrived? A. I was. 10

Q. You had supervision over this boy when he was in the Washington school, did you not? A. For a time; yes, sir.

Q. When was that, Mr. Wimer? A. Well, I don't recall exactly. I had him the first year I was in Plainfield.

Q. When was that? Do you recall that? A. 1923.

Q. 1923. Do you recall that he was discharged from the— 20

The Court: You may recall him as your witness later. It is not cross-examination.

Q. Well, some time in November, 1927, Mr. Starry asked you to have a talk with his lawyer, saying that he wanted to find out something about the boy's history, did he not?

Mr. Walsh: I object, if your Honor please, as being improper cross-examination. 30

The Court: No. Not proper cross-examination.

Mr. Studer: I am laying a foundation.

The Court: It is not cross-examination.

Mr. Studer: I want to lay a foundation for my next question, if your Honor please. I want to show that Mr. Starry wanted to find out something about this boy from this man, and what he did. 40

Discussion

The Court: What has that to do with this?

Mr. Studer: We want to get this boy's history.

10 The Court: You can produce him later.

Mr. Studer: No; we cannot, because the records are not extant.

The Court: What do you mean? You cannot have him as a witness later?

Mr. Studer: I am not calling him as my witness. I am asking him if he did not make a certain statement.

The Court: How can you do that on cross-examination?

20 Mr. Studer: Why, I can't call it as my own to contradict him, or show his bias or unwillingness.

The Court: Contradict him as far as the testimony is concerned that he is now giving on direct, you mean?

30 Mr. Studer: I want to show a state of mind of this man with reference to this matter. And I want to show that Mr. Starry did endeavor to seek some information from him and what happened, and what he said happened. It is going to show, I think, this man's state of mind, a certain bias or whatever you please.

The Court: Bias? Let us see. Can there be any question but what he was at the house—

Mr. Studer: It has nothing to do—

40 The Court: —of the defendant for dinner that night?

Discussion

Mr. Studer: Not a bit. All I want to show is a general state of mind and his attitude toward Starry, when he tried to seek information from him.

The Court: I cannot see how it is material. 10

Mr. Studer: It shows his bias.

The Court: All this man has testified to is he was invited to dinner at the defendant's house on March 1st; that he went there; that before he left, this boy came; and that's all he testified to.

Mr. Studer: Very good. I ask him further, then, for the purpose of showing—

The Court: There cannot be any question about that, can there? 20

Mr. Studer: I am not questioning that; no, sir.

The Court: What is the bias? If that is the truth you are not biased, I mean.

Mr. Studer: I want to find out further about what happened between Mr. Wimer and Mr. Starry when Mr. Starry sought to get information about this boy from him.

The Court: I will instruct the witness 30 to remain here so he may testify, if you have not subpoenaed him. You may recall him. If that becomes material on the defense you may recall him for that purpose.

Mr. Studer: And cross-examine him?

The Court: Not cross-examine him on anything except what he has testified to.

Mr. Studer: I may lay a foundation for later inquiry as to his state of mind about 40 testifying now.

J. Wade Wimer—Cross

10 The Court: Suppose he has the worst state of mind in the world? As I understand it, it is not disputed he was at the home of the defendant for dinner that night, and before he left this boy came there.

Mr. Studer: I am not arguing, your Honor, with regard to this witness, regarding so much as this witness has testified to; I ask this witness whether in November last Mr. Starry did not ask him to afford an opportunity for his lawyers to talk with him and find out something about this boy, and what happened that night. Just a
20 minute, if your Honor please. And what Mr. Wimer did in return, and replied. That is the purpose.

The Court: I cannot see at all where that is material or proper now at this stage of the examination.

Mr. Studer: I make the offer, and respectfully pray an exception to your Honor's ruling.

30 The Court: Exception allowed.

Exception allowed; it is signed and sealed accordingly.

ALFRED A. STEIN,
Judge.

Q. I show you a letter, Mr. Wimer, dated November 23, 1927, addressed to R. D. Starry, addressed by J. Wade Weimer, and ask you whether
40 you signed it? A. I did.

J. Wade Wimer—Cross

Q. That was after you had had some talk with Mr. Starry in November?

Mr. Walsh: I object, if your Honor please.

The Court: About what? 10

Mr. Studer: About his—

The Court: About this case?

Q. About his asking you to confer with his attorney?

The Court: About this case?

Mr. Studer: About this case and this boy on this night.

The Court: What does this man know about this night? 20

Mr. Studer: Does your Honor want to read the letter?

The Court: I think you ought to show it to me if you are going to ask any questions about it. I shouldn't be kept in the dark.

Mr. Studer: I think there is an unanswered question.

The Court: No. I think you said you wrote that letter, didn't you? 30

A. Yes, sir.

Mr. Studer: And then there was a subsequent question in which I asked him if it wasn't after Mr. Starry had made inquiry for information.

The Court: Let me see the letter. Do you see any objection to that letter going in evidence, for that matter, if you want 40

J. Wade Wimer—Cross

to put it in on your side of the case, with the consent of counsel? Well, whether the Prosecutor does or if he does not?

Mr. Walsh: I will offer this at the proper time.

10 The Court: But ask any questions you want and that the Prosecutor does not object to, and if he does object I will overrule it.

Mr. Studer: I believe there is a question.

(Last answer repeated by the stenographer.)

20 The Court: It was after you had some talk, wasn't it?

A. This letter, you mean?

The Court: Yes.

A. It was.

Q. When he had asked you to talk with his lawyer with reference to that evening and the boy and what you knew about the boy, isn't that so? A. I don't understand the question.

30 (Question repeated by the stenographer.)

A. It is.

Q. It is.

Mr. Walsh: Are you going to offer this letter?

Mr. Studer: I have to mark the letter for identification.

40 (Letter marked D-1 for identification.)

Frederick William Cook—Direct

Q. And you replied in part to Mr. Starry—

The Court: Well, when that gets—

Mr. Walsh: Read the whole letter. You either put the whole letter in or you don't put any in.

10

Q. You replied as follows, didn't you: After several—

The Court: Of course, this is all wrong to put this in now. You know that perfectly well.

Mr. Studer: I wanted to give the witness a chance to explain.

The Court: The letter will speak for itself after you put it in on the defense.

20

Mr. Studer: Very good. That is all.

The Court: And the Prosecutor can keep the witness here after the letter is introduced, and if there is any explanation necessary, you can show it.

Mr. Walsh: That is all, Mr. Weimer.

FREDERICK WILLIAM COOK, a witness on behalf of the State, sworn.

30

Direct-examination by Mr. Walsh:

Q. Mr. Cook, where do you live? A. Plainfield, New Jersey.

Q. Do you occupy any official position there?

A. Superintendent of schools.

Q. And do you know Ralph Starry, the defendant at the bar? A. I do.

40

Frederick William Cook—Direct

Q. How long have you known him? A. Since 1915.

Q. Do you know Nathan Perry? A. I do.

Q. In the month of March, 1927, was your attention called to Mr. Starry? A. It was.

10 Q. And did you see him? A. I did.

Q. Where did you see him? A. In my office.

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

Q. Concerning Nathan Perry? A. I did.

Q. And himself? A. I did.

Q. And what did Mr. Starry say in regard to —was the matter of March 1st touched upon at your conversation? A. It was.

20 Q. And what did you say to Mr. Starry and what did he say to you?

Mr. Studer: With reference to this boy?

Mr. Walsh: No. With reference to Mr. Starry's conduct toward the boy on March 1st.

The Court: Referring to the subject-matter of this trial?

30 Mr. Walsh: Referring to the subject-matter of this trial.

The Court: Go on. What did you say to him and what did he say to you?

A. Starry came to my office. I repeated to him the story, in effect, which had been given by Nathan Perry this morning as nearly as I can remember. That is the story that came to me from interested parties in Plainfield. Mr. Starry
40 then told me this story which is, as near as I can

Frederick William Cook—Direct

remember it, in effect: That Nathan Perry was in his home, that he did sleep in bed with him, and that during the period of conversation before going to sleep, that he had told—he told Nathan Perry that he had at one time contemplated taking up the study of chiropractic, and he demonstrated on Nathan Perry's back the way a chiropractor works, and during this demonstration that Nathan Perry had an emission. 10

Q. That was about all that was said by you or—was that all that was said? A. Following that I advised Mr. Starry to present his resignation to the Board of Education. I may state, if it is allowable, that I had been in conversation—

Mr. Studer: I object. 20

A. —with members of the Board of—

The Court: He may state he has been in conversation, but not what the conversation was.

A. May I state I was in conversation with members of the Board of Education previous to my conference with Mr. Starry; that would be natural in the line of duty. 30

Q. Did Mr. Starry act upon that advice? A. He did.

The Court: He did.

Q. In what way? A. By presenting his resignation addressed to the Board of Education.

Q. As principal? A. As a principal or as an employee of the Board of Education of the City of Plainfield. 40

Frederick William Cook—Cross

Q. And that was presented to you in your official capacity? A. It was.

Mr. Walsh: Cross-examine.

10 CROSS-EXAMINATION by Mr. Studer:

Q. Mr. Starry for some years prior to this trouble had had summer camp for boys, had he not? A. Yes.

Q. To your knowledge? A. To my knowledge.

Q. You sent for Mr. Starry for this interview, did you not? A. I did.

Q. And didn't he ask you who it was was seeking his resignation? A. He did.

20 Q. And didn't he say that he wanted an investigation?

Witness: May I correct counsel's question?

Mr. Studer: No.

The Court: Well, no. You may not do that very well. But you may require a correction in your own mind, too.

Mr. Studer: Is that question clear?

30 A. That previous question is not clear. The interested party did not request his resignation; they merely reported to me. The interested parties in this, were the members of the Board of Education.

The Court: When you spoke of interested parties before, you meant the Board of Education?

A. Yes.

40

The Court: You did not mean anybody else?

Frederick William Cook—Cross

A. Interested parties or citizens who came to me, who reported this story who had heard the previous story of this boy.

The Court: That is the way I got the impression; interested parties were citizens. 10

A. They did not request this party resign.

The Court: No. Board of Education requested.

Mr. Studer: I move to strike out what the Board of Education requested, whether they did or they didn't.

The Court: It came about this way: he related, the witness did, in his testimony, that he had told the principal of the school, that is the defendant, that the Board of Education requested his resignation. Isn't that what you testified to? 20

A. No.

The Court: Then I am in error.

A. I had been in communication with members of the Board of Education previous to this time and I was authorized to advise— 30

Mr. Studer: I object to his authorization and move to strike it out.

The Court: That is objectionable. As the result of that conversation, what did you do?

A. I advised Mr. Starry to resign.

Q. You advised Mr. Starry to resign? A. Yes. 40

Frederick William Cook—Cross

Q. And he wanted an investigation, didn't he?

A. Yes.

Q. And wanted a hearing, didn't he? A. Not a hearing; he wanted to meet these men.

Q. And state his version of what happened, to
10 these people? A. To these men; yes. I advised
him against it.

Q. You advised him against it? A. On account of the story he had told me.

Q. You advised him against it? A. I did; yes, sir.

Q. And didn't he say to you that there was no truth in it; that he had done nothing wrong, and asked for your advice as a friend? A. Which I
20 gave him.

Q. Yes. A. I advised him to resign.

Q. He asked for your advice as his friend? A. And that was one of the results of that question.

Q. Won't you answer the question? A. Yes.

Q. As his friend? A. Yes.

Q. Did he tell you that the resignation itself did not make any difference to him because he had already made partial plans to resign and devote his entire time to his camp work? A. He did.

30 Q. He did? A. Yes.

Q. And that he was in a quandry and asked you for your frank, friendly advice? A. He did.

Mr. Studer: That is all, thank you.

Mr. Walsh: That is all.

State rests.

David Ralph Starry—Direct

(Mr. Studer opens to the jury on behalf of the defendant.)

DEFENDANT'S CASE

Mr. Studer: I would like to offer, on the record, if your Honor please, this letter. 10

Mr. Walsh: No objection.

The Court: Allowed in evidence. Read it to the jury.

(Letter heretofore marked D-1 for identification entered in evidence and marked Ex. D-1.)

(Mr. Studer reads D-1 to the jury.) 20

DAVID RALPH STARRY, the defendant, sworn.

Direct-examination by Mr. Studer:

Q. Mr. Starry, I want you to keep your voice up so these gentlemen and the Court and Mr. Walsh can hear you. How old are you? A. Forty-one. 30

Q. Where did you go to school? A. I went to school in York Springs, Pennsylvania, then to Teacher's College, Shipmansberg, Pennsylvania, and then to New York University.

Q. Did you graduate from New York University? A. I did.

Q. When? A. June, 1915.

Q. When did you graduate from Shipmansberg Normal School? A. June, 1906. 40

David Ralph Starry—Direct

Q. Had you taught school at all while you were going through that? A. I taught one year before I finished. I took the first year, and then I stayed out a year to teach, and completed it in two more.

10 Q. Are you married? A. I am.

Q. How long have you been married? A. Seven years.

Q. When did you come to Union County as a school teacher? A. September, 1907.

Q. When did you and where did you go then? A. To Westfield, New Jersey.

Q. 1907? A. Yes.

Q. How long did you continue in Westfield?

20 A. Eight years.

Q. Then where did you go? A. To Plainfield, New Jersey.

Q. In what capacity? A. As principal of the grammar school.

Q. What grammar school? A. The Plainfield Grammar School.

Q. When you went to the University of New York, were you then teaching school? A. I was.

30 Q. When did you go to the University? What time of the day? A. I went evenings and Saturdays.

Q. And you continued in Plainfield after going there, I think you said—when, 1915? A. I graduated in 1915.

Q. When did you go to Plainfield? In what year? A. In the fall of 1915.

Q. Did you continue there from Plainfield in 1915 on? A. I did.

40 Q. Until when? A. March 4th.

David Ralph Starry—Direct

Q. In what capacity? A. As supervisor of the grammar grades, sixth, seventh and eighth grades, and principal of the Evergreen school.

Q. As principal of the Evergreen school, how many pupils, about, were under your supervision?

A. About a thousand.

10

Q. And about how many teachers? A. Twenty-seven.

Q. Did your work bring you in contact with pupils or teachers? A. Somewhat with pupils; mostly with teachers.

Q. Now, then, during the summer months, what did you do? A. I conducted a boy's summer camp.

Q. For how long a period of time have you been conducting a boy's summer camp? 20

Mr. Walsh: If your Honor please, I would object at this time. I can't see where that is material. I have borne with counsel for a long time for the purpose of identification, but the question of this man's career and business is not material to the issue involved in this case.

The Court: I will allow it so as to have him properly introduced to the jury, who and what he is and what he did. I will allow it. 30

Q. Will you be good enough to answer the question? A. Will you be good enough to give it to me again?

Q. For how long a period had you been doing this summer camp work? A. For twenty years.

Q. Where was your camp for the last five years? A. South Fairlie, Vermont. 40

David Ralph Starry—Direct

Q. How many campers did you have at that camp during the last five years? A. Different numbers each year.

Q. Approximately? A. One hundred boys.

10 Q. Coming down now to Tuesday, March 1st, where did you live? A. 1309 Denmark road, Plainfield.

Q. Was Mrs. Starry at home on the night of March 1st? A. She was not.

Q. Did you invite anybody to your house for dinner that night? A. I did.

Q. Who? A. Mr. Weimer.

Q. When? A. About four o'clock in the afternoon.

20 Q. How long prior to that time had you known this boy, Nathan? A. I knew him only from the time he entered my school in September.

Q. Of what year? A. That is September, 1926.

Q. 1926. That was the beginning of the term which ended June, 1927? A. Yes.

Q. Did your knowledge of him bring you in personal contact with him? A. No, except as his principal.

30 The Court: Well?

Q. To what extent? A. I recall one interview when the teacher, his teacher, had sent him down for me to talk to him about his conduct.

Q. Had you had any talk with him prior to March 1, 1927, at which you had asked him to come to your house or he had asked you for permission to come to your house? A. Yes.

40 Q. What was the fact and when were the talks?
A. In this school yard on the noon hour I spend

David Ralph Starry—Direct

the noon hour on the school yard as supervisor. Often I would talk with the various boys.

The Court: Well, this boy.

A. This boy. He was nearly always about; I would just make a pleasantry in passing. 10

The Court: Well, now, suppose you read that question.

(Answer repeated by the stenographer.)

The Court: Answer that.

A. Some time during the December previous.

Q. Did you ask him to come or did he ask you to come? A. He asked me if he might come to my house. 20

Q. Did he say why? A. No.

Q. Was that the only time he asked you? A. Yes.

Q. When on March 1, 1927, did you speak to him about his coming to your house that night, if at all? A. Just at the close of school.

Q. What did you say to him? A. I said I will probably be home to-night, if you would like to come up, it would be all right.

The Court: Let me understand this. 30
Did I understand you to say that he asked you some time in December for permission to come to your house?

A. Yes, your Honor.

By the Court:

Q. Did you say anything to him then about that? A. He said—

Q. Did you say anything in reply to that? A. 40
No.

David Ralph Starry—Direct

Q. You said nothing? A. No, your Honor.

Q. Now, the next thing that happened, as I understand you, is in March or on March 1st you told them your wife would not be home and that he might come to the house? A. No. I didn't
10 tell him my wife would not be home.

Q. Just what did you say? A. I said I will be home probably to-night, if you would like to come up.

Q. In between December and March 1st there was never any more talk about this? A. No, your Honor.

Q. And you carried that in your mind from December to March 1st and then told him he could
20 come up? A. Yes, your Honor.

The Court: That is what I wanted to know.

By Mr. Studer:

Q. Then what did you say about whether or not you would be alone, if anything? A. I said nothing about that.

Q. Did you say anything about Mr. Weimer's being there? A. I said I was having a guest for
30 dinner.

Q. Had you previously invited Mr. Weimer to come? A. No.

Q. What do you mean by that, then? A. I was going to invite somebody for dinner, and Mr. Weimer was in my mind. I was going to invite him first and if he could not come I had two others I was going to invite.

Q. Did you say anything to the boy about
40 "phoning to you? A. Yes.

David Ralph Starry—Direct

Q. Did he 'phone to you? A. Yes.

Q. What time did he arrive? A. He arrived at about ten minutes past eight.

Q. How long after he arrived did Mr. Weimer remain? A. About ten to fifteen minutes.

Q. After Mr. Weimer left, where did you and the boy sit? A. In the living room. 10

Q. Generally, do you recall what was talked about? A. We talked about golf, about athletics, about the Hebrew religion.

Q. Anything else? A. I recall nothing else.

Q. Did you know where Nathan lived at that time? A. I did not.

Q. As the evening passed, was anything said by you regarding his leaving? A. Yes. 20

Q. What? A. When it drew near to eleven o'clock I suggested that his parents would be worried about him and asked him if he didn't think he had better be going.

Q. What did he say? A. He said they never worry about him; that he does not live at home all the time, and very often they don't know where he is.

Q. Was anything said about 'phoning? A. I suggested to him to 'phone. 30

Q. Well, then, what time did you start to go to bed? A. About half-past eleven.

Q. Where did you undress? A. Undressed in the den upstairs.

Q. Where did he undress? A. He undressed partly there.

Q. Did you indicate any bed to him in which he could sleep? A. I did.

Q. Other than the bed in which he did sleep? A. I did. 40

David Ralph Starry—Direct

Q. What did you do? A. The single bed was in the den; I told him that he might sleep there.

Q. What did he say to that? A. I said, "I will have to make it up first with linen. I will go to the closet and get the linen," and as I was
10 doing this he said, "Never mind. I had just as soon sleep in that bed."

Q. Now, then, before you got into bed did you lift him up and ask him how much he weighed?
A. I did not.

Q. After you got in bed with him did you say to him that you would show him how a man took off fat or put it on while in Turkish baths? A. I did not.

20 Q. Did you, after you got in bed, run your hands over his private parts and put your hands on his chest, and on his stomach, and hug him?
A. I did not.

Q. Did he push you off, away from him, at any time? A. He did not.

Q. After you got in bed, did you go to sleep?
A. I did.

Q. Do you know whether or not—how long was it you slept, do you know? A. About half an
30 hour.

Q. Did you discover anything upon wakening?
A. I did.

Q. What? A. I discovered that the bed to my right was damp.

Q. Where was that with reference to where the boy was? A. He was lying on my right.

Q. Did you say anything to him? A. I said, "What has happened?"

40 Q. Did he reply? A. He aroud slowly and said, "I had a discharge."

David Ralph Starry—Direct

Q. Did you say anything more about it? A. No.

Q. In the morning—

The Court: That was rather a delicate thing to talk to the boy about, wasn't it? 10

A. Yes, your Honor.

The Court: You knew what had happened, didn't you?

A. I only suspected.

Q. In the morning, what time did you arise?

A. About a quarter to seven.

Q. And the boy, too? A. No.

Q. What time did the boy get up? A. About ten or fifteen minutes later. 20

Q. Did you have breakfast together? A. We did.

Q. Was anything said by either of you with reference to what had occurred in the night? A. No.

Q. After you got in bed before you went to sleep, was anything said—was there any talk? A. No.

Q. Before you went to sleep? A. No. 30

Q. About careers or anything else? A. Oh, yes; just for a minute or two. As we were going to bed we were talking about what we were going to do, what we would do later in life. I told him about my change in plans and how we often change as we grow up.

Q. Yes. I told him that I had—when going to school, been preparing to take up an engineering course. Later I found this was impossible, and 40

David Ralph Starry—Direct

I thought seriously, for about two years, of osteopathy.

Q. Did he say anything about that? A. He said, "What is that?"

10 Q. And then what? A. I said, "I don't know much about it. I just know that it is a system of pressure on the nerves that control the blood.

Q. Was anything done? A. Yes.

Q. What? A. I said, "I have had several treatments for colds."

Q. Yes. A. And the osteopath can make your neck crack.

Q. Yes. A. So, with my hand, I held his head here and one this way, showed him how it was.

20 Q. With that exception did you touch any other part of his body? A. Not any.

Q. His private parts? A. No.

Q. His back? A. No.

Q. His stomach? A. No.

Q. Nothing? A. No.

Q. How long after that did you go to sleep, approximately? A. Almost immediately.

30 Q. Then in the morning, what time did you leave the house? A. About ten minutes past eight.

Q. And did Nathan leave with you? A. He left at the same time, rode off on his bicycle, while I was walking.

Q. On his bicycle? A. On my bicycle.

Q. Where was he to leave the bicycle? A. He was to leave it at the Evergreen school, at my main office.

Q. That was your school? A. Yes.

40 Q. When next did you see Nathan on that day? A. About half-past nine.

David Ralph Starry—Direct

Q. Where? A. In my office.

Q. In your office? A. Yes.

Q. Did he seek you out? A. He did.

Q. Or did you seek him out? A. He sought me.

Q. What did he say? A. When I looked up 10
from my desk I saw him standing there.

Q. 9:30, you say, about? A. Yes, sir.

Q. What time did school convene on that day?
A. 8:30.

Q. Go ahead. A. He said, "I would like to talk with you." I said, "Very well; wait until the office is freer and I will be glad to." He stood there, and when I was free I said, "Very well, just step over into the library and I will 20 talk with you."

Q. What did he say then? A. He looked at me, and said, "Mr. Starry, you have ruined my morals."

Q. What did you say to him? A. I said, "What do you mean?"

Q. What did he say? A. He repeated what he said before: "You have ruined my morals, I think you have ruined my morals."

Q. Did he indicate what made him think that? 30
A. No, not then.

Q. Did you ask him? A. No.

Q. Was there anything said about what had happened the night before to him? A. Later he said "From what happened last night."

Q. At this same talk in your library? A. Yes.

Q. During this general conversation? A. Yes.

Q. And what did you say to him? A. I said, "that is nothing to worry about. If you had an 40

David Ralph Starry—Direct

emission that is a natural thing for a person of your age.”

Q. Do you know whether or not the boy was asleep?

10

The Court: When?

Mr. Studer: Pardon.

The Court: When? You asked—

Mr. Studer: I am not done with the question yet.

Q. Do you know whether or not the boy was asleep when he had this emission? A. I was asleep; I don't know.

Q. Did you say to him anything about talking
20 to anybody? A. Yes, I told him if he was not satisfied with my explanation he should seek a friend; he must know somebody in whom he had confidence; he should talk it over with him.

Q. Then when again, during that day, did you see that boy, this boy, Nathan? A. I didn't see him after that interview.

Q. When did you next see him? A. I didn't see him until today.

Q. Did you on March 4th, I believe it was, go
30 to Mr. Cook's office in response to his request? A. I did.

Q. How long have you known Mr. Cook? A. He came to Plainfield the year I did, in the fall of 1915.

Q. In what capacity have you known him? As a co-worker? A. He was a grade principal and so was I.

Q. Now, did you have a conversation with him
40 at his office? A. I did.

David Ralph Starry—Direct

Q. Was anything said about your resigning?

A. Yes.

Q. What did you say to him? A. I said it was placing me in a very unfair position.

Q. Did you ask that you be heard? A. I did.

Q. And what was said about that? A. Mr. Cook said it was no use; it wasn't possible; it couldn't be done. 10

Q. Now, prior to then—

The Court: What could not be done?

A. I couldn't have a hearing.

The Court: You knew better than that, didn't you?

20

A. Yes, if it had been pressed.

The Court: You knew that you were bound to have a hearing, didn't you?

A. Yes, your Honor.

Q. Prior to then had you any idea of giving up your school work? A. Yes.

Q. For how long had you contemplated that?

A. For at least three years.

Q. Had you spoken about that to the people in the schools? A. Yes. 30

Q. And had you spoken about it to your wife?

A. Yes.

Q. Did your wife assist you in this camp work?

A. Very much.

Q. What was your reason for wanting to give up the school work?

Mr. Walsh: If your Honor please, I will object that this is not material to the issue here. 40

David Ralph Starry—Direct

The Court: I will allow it. It is not material, but this is the defendant, and there is a wide scope in the cross-examination allowed, almost unlimited, and I think I will allow that question on the direct.

10 Mr. Studer: The Court says you may answer.

Q. What was your reason? A. I had less and less interest in the school as time went on; was more interested in my camp.

Q. Which was the more profitable? A. The camp.

Q. Approximately to what extent? A. About
20 two or three to one.

Q. In favor of the— A. In favor of the camp.

Q. Did you say anything to Mr. Cook at that time seeking his advice as a friend? A. I did.

Q. And what did you say? A. I asked him as a friend "What would you advise me to do under the circumstances?"

Q. Did you deny or did you say anything with reference to what had happened between you and the boy, that is, whether you had hugged him or
30 manipulated him? A. I denied it.

Q. His private parts? A. I denied it.

Q. And you did resign? A. I did.

Q. Did you at any time on March 1st touch or expose or use the private parts of Nathan Perry in any indecent or lewd posture? A. I did not.

Q. Or in any other posture? A. I did not.

Q. Or in any other manner? A. I did not.

Q. Touch him at all? A. I did not.

40 Mr. Studer: Cross-examine.

David Ralph Starry—Cross

The Court: We will adjourn now until half-past one.

(The Court thereupon recessed for lunch, at the end of which time, at 1:30, P. M. the Court reconvened the same parties and counsel being present.) 10

D. RALPH STARRY, resumes the stand.

Cross-examination by Mr. Walsh:

Q. You said on your direct-examination that this boy spoke to you about visiting your home in December? A. Yes. 20

Q. How did that come about? What did he say at that time? A. In the ordinary course of the conversation on the school yard.

Q. Do you remember the conversation? A. He would like to stop at my house some time.

Q. Stop and see you? A. Yes.

Q. And you made him no answer to that at all? A. I said, "Very well, come some time." Then he said, "Will you tell me when I can come?" 30

Q. Yes. And from that time in December until the 1st of March you always remembered this?

A. Yes.

Q. About his wanting to stop there. And on the afternoon of the 1st of March you asked him to stop at your house that night? A. I told him he could come if he wanted to.

Q. If he wanted to. And that you would be home? A. That I probably would be home, but 40

David Ralph Starry—Cross

he should telephone before he came so as to save him a trip in case I were not home.

Q. At that time you gave him a slip with your telephone number on it? A. I don't recall doing that, but if he asked me I probably did give him
10 the telephone number.

The Court: But you knew you were going to be home, didn't you?

A. I knew I was going to be home for dinner.

The Court: Go on.

Q. You knew you were going to be home for dinner? And when was it he told you he may
20 come to your home? For dinner? A. No, after dinner.

Q. And you knew you were going to be home then? A. No, because that was the night of our gym class at the high school.

Q. I see. A. And sometimes I went and sometimes I didn't.

Q. And what time was that you saw this boy? A. At the close of school.

Q. What time was that? A. Three o'clock;
30 two-thirty o'clock. The children go at two-thirty; the teachers go at three.

Q. You say at that conversation you told him you were going to have a guest for dinner? A. Yes.

Q. And up to that time you had not invited any guest? A. No.

Q. And it was not until four o'clock that you invited Mr. Weimer? A. Yes.

40 Q. That is right? A. That is right.

David Ralph Starry—Cross

Q. The boy got there about eight o'clock? A. Shortly after eight.

Q. And Mr. Weimer left? A. He left about ten or fifteen minutes after the boy came.

Q. Then you spent the evening discussing golf and the Jewish religion with the boy, you say? 10

A. Yes.

Q. Until about what time? A. Until about eleven.

Q. Do you remember locking your door that night? A. I didn't lock the door.

Q. You did not spring a latch on the room where he was? A. No.

Q. You say that you suggested his telephoning?

A. Yes.

20

Q. Didn't you know his folks had no telephone?

A. I did not.

Q. Did you know whether they had one or not?

A. No, I didn't.

Q. Then, if you did not know whether they had a telephone or not how did you come to suggest him 'phoning to some one if you did not know they had a 'phone? A. Most people have 'phones, and I supposed he had.

Q. You knew this boy's home condition, didn't you? A. No. 30

Q. Did he say anything to you when you said 'phone to his folks? A. He said, "We have no 'phone."

Q. All right. Then when you found out he had no 'phone what other means did you suggest he might take to notify his folks he was out? A. I suggested that he might go home to tell them.

Q. I see. And was that in the nature of a di- 40

David Ralph Starry—Cross

rection to go home? A. No; I didn't want to be as direct as that with him; I didn't want to insult the boy.

Q. When you told this boy he might come to your home you had no idea he was to stay all night, did you? A. Absolutely, no.

Q. Did you think it unusual he would not go home when you suggested it to him? A. I did, yes.

Q. Tell him so? A. No, I didn't.

Q. How many bedrooms have you got in that house? A. Four.

Q. All furnished? A. Yes.

Q. Did you offer him the use of those bedrooms other than yours? A. I offered him the use of the bed in the den.

Q. Adjoining your bedroom? A. Across the hall.

Q. And that was the only one you spoke about his occupying? A. It was the only one that I supposed was made up.

Q. Well, it was not made up, was it? A. It wasn't—I discovered it wasn't later.

Q. So that when you left downstairs he was to go up to occupy that room? A. Yes.

Q. Now, when you found out that bed was not made up did you suggest his using another room where the bed was made up? A. There was no other room where the bed was made up.

Q. None at all? A. No.

Q. Except yours. You did undress that night? A. Yes.

Q. Took all of your clothes off? A. I did.

Q. And went to bed naked? A. No.

David Ralph Starry—Cross

Q. No? A. I put on the usual pajamas.

Q. Didn't you give him your pajamas? A. I gave him a pair of pajama pants.

Q. Well— A. Which he put on.

Q. You did not put any on, did you? A. I did.

Q. And you wore pajamas? A. I wore a full suit of pajamas. 10

Q. That night? A. That night.

Q. Now, what were you talking about in the room? Was that the Jewish religion? A. We talked about that downstairs in the living-room.

Q. No. But up in your room were you still talking about the Jewish religion? A. No.

Q. Do you remember putting your arm around him up in your room? A. No, not at all. 20

Q. Do you remember lifting him up by putting your arms around him? A. Not at all.

Q. You did not do that? A. I did not.

Q. You went to bed. Was there anything spoken about his weight? A. No.

Q. You went to bed with this boy then? A. Yes.

Q. Talked in bed? A. For a few minutes.

Q. About what? A. About careers.

Q. Careers. Hadn't spoken about careers during the evening? A. No; not that I recall. 30

Q. But after you got to bed you spoke about careers and then got to osteopathy? A. Yes.

Q. Is that right? A. That's right.

Q. And while in bed you gave him a demonstration of osteopathy. A. I showed him how the doctor made my neck crack when I was treated for a cold.

Q. And you put your hands on him? A. I put one hand back of his neck and the other here. 40

David Ralph Starry—Cross

Q. And that is all you did? A. That's all I did.

Q. Now, you say you went to sleep then? A. I did.

Q. And when did you wake up, do you know?
10 A. About a half an hour afterwards.

Q. And then you found the bed was moist? A. Yes.

Q. Called his attention to that? A. Yes.

Q. What did you say? A. I said, "What is this?"

Q. Was he asleep? A. He evidently was asleep. He drowsily said, "I have had a discharge."

20 Q. When was it you said to him "Give me a big bear hug?" A. I didn't say that.

Q. You did not? You did not say that at all? A. Not at all.

Q. And then after this half an hour after you went to bed you found this moisture in the bed; nothing was said by you to him during the night? A. No.

Q. Nothing at all? A. Nothing at all.

Q. You were his principal? A. Yes.

30 Q. And you had about a thousand pupils under you? A. Yes.

Q. Is that right? And according to you you had done nothing wrong that night? A. No.

Q. Is that right? Now, in the morning, when he came to your office and said he wanted to see you, why didn't you talk with him? A. I did.

Q. Didn't you say in your direct-examination that you said "Wait until so many people are not
40 around?" A. I did.

David Ralph Starry—Cross

Q. Why did you say that? A. I didn't feel I could talk to him before mothers who were there to see me on school business.

Q. Why? He might have called to talk to you on school business as far as you know? A. Yes, he was only a student. 10

Q. He was a student. Is there any objection to a principal talking to a student in the presence of mothers? A. No objection.

Q. No. Well, isn't it the practice that when a child comes to a principal's office, a pupil comes to a principal's office, and he being the only student there, wasn't he? A. No; there were other children in and out.

Q. In and out. But all of those children were promptly spoken to by you and dismissed to their respective classrooms, isn't that so? A. No. 20

Q. Why did they leave the room for their classrooms? A. They didn't all come to see me.

Q. The ones that came to see you. You had talked to them in the presence of mothers and others who were there, hadn't you? A. Yes.

Q. But knowing that you had done nothing wrong, will you tell us why it was when Nathan came to the office and said he wanted to see you you said he would have to wait until there were not so many people around? A. It was a thing I thought well could wait. He probably hadn't anything of any great importance, and he could wait. 30

Q. He was a student attending classes in that school, is that right? A. Yes.

Q. And his time was as precious as yours or as anybody else's, was it not? 40

David Ralph Starry—Cross

Mr. Studer: I object. That is purely argumentative, how precious his time was with the principal of the school, and it is immaterial also. The man has explained that several times.

10 The Court: Well, this is the defendant. The examination on the point has some importance, and there is a wider latitude where a man is a defendant than any other witness. I will allow it.

Mr. Studer: If I am entitled to an exception I respectfully pray it.

(Exception allowed, sealed accordingly.)

20

ALFRED A. STEIN,
Judge.

(Question repeated by the stenographer.)

A. Yes. I make it a habit of seeing—talking with the people who have come to see me first of all. Children can always wait until the second time, until there is time.

30 Q. And yet there were children that you saw there that morning without making them wait?

A. They were just incidental things. Perhaps a child came in—

The Court: Is the answer yes or no?

A. Will you ask the question again, please?

(Question repeated by the stenographer.)

40 A. Yes.

David Ralph Starry—Cross

Q. But Nathan you told to wait until everybody went out, is that right? A. Not until everybody went out. No.

Q. Well, until what? A. Until I felt I was free to give him a little time, then he wanted to see me about something private. He said, "May I see you privately?" 10

Q. He said that? A. Yes.

Q. And then you took him in the library? A. I told him to go in the library.

Q. And then you followed later on? A. Yes.

Q. Why didn't you see him in your office? A. It was my custom to see people in the library.

Q. Well, you were seeing other people in your office? A. Just about incidental things, very small things. 20

Q. You did not know but what he wanted to see you about was incidental? A. He asked me to see me privately.

The Court: Do you see pupils privately on their request?

A. I do, sometimes, your Honor.

Q. You went in the library with him, and what did he say to you? A. He said "Mr. Starry, I think you have ruined my morals." 30

Q. Did you ask him in what way? A. Yes, I said, "What do you mean?"

Q. And did he tell you? A. He said what happened last night.

Q. What had happened in your opinion then, last night? A. He said the discharge.

Q. What had happened? What do you think had happened? A. He had an emission. I should 40

David Ralph Starry—Cross

judge that he had an emission, and it was in reference to that.

Q. He didn't say anything about that that morning? A. He said, "What happened last night."

10 Q. And you knew immediately, as he said it, what had happened, didn't you? A. Well, I suspected from the night before when I found the wet spot in the bed.

Q. What did you say to that? A. I said, "Don't let that bother you. That is a normal thing for a boy of your age."

Q. Tell him that your folks lived in Pennsylvania? A. I didn't. I didn't tell him anything
20 about my folks.

Q. Had you ever told him that your folks had lived—had come from Pennsylvania, or lived in Pennsylvania? A. I don't recall that I did. I quite likely did in the course of some conversation.

Q. When? A. In the school yard. That is the only time I ever saw him.

Q. You mean to say that you, as a principal, go out there to your thousand pupils and tell them
30 where your father and mother lived? A. I make it a habit of being friendly with all the children in my school.

Q. And tell them where your father and mother lives? A. I have no recollection of saying anything about my father and mother; my father and mother are dead.

Q. Did you ask him to say something about it to anybody else? A. I did not.

40 Q. Now, then, after that you did not see Nathan any more, did you? A. No; I didn't.

David Ralph Starry—Cross

Q. After he left your office. He asked you to go to the drugstore, didn't he? A. He asked me to go downtown to get some medicine.

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

Q. And from that time on you did not see him?
A. No. 10

Q. Now, then, on March 4th, three days later you were called to the superintendent's office?
A. Yes.

Q. And the superintendent told you the same story that Nathan has told here, is that right?
A. Essentially the same.

Mr. Studer: Well, now, all right.

Q. And did you deny it? A. I did. 20

Q. In what way? A. I said it isn't true.

Q. And you let it rest at that? A. For the time being.

Q. You did tell Dr. Cook, or superintendent Cook that you had demonstrated osteopathic methods to Nathan at home, didn't you? A. I told Mr. Cook just what I have repeated here.

Q. About the putting of the head? A. Yes.

Q. And that's all? A. That's all.

Q. Didn't you say that you manipulated his 30
back, his chest and stomach? A. No, I didn't.

Q. Did not tell him that? A. I did not tell him that.

Q. You had been a teacher how long that time?
A. Twenty years.

Q. And you knew that you were entitled to a hearing? A. Yes.

Q. And that you could demand one? A. Yes.

Q. And yet in the face of that accusation you 40

David Ralph Starry—Cross

wrote out your written resignation as principal?

A. Yes.

Q. And left town?

Mr. Studer: I object.

10 A. No.

Q. When did you leave town? A. I didn't leave town until a week after.

Q. You remained in Plainfield a whole week?

A. I remained in Plainfield until the following Thursday.

Q. What day of the week was this 4th of March?

A. Friday.

Q. You left that school that day? A. Yes.

20 Q. And you have never been back to the school?

A. Yes, I have.

Q. To that school? A. Yes.

Q. As a visitor? A. Yes.

Q. You say you are in the boy's summer camp? That is one of your lines? A. Yes.

Q. Is that right? A. Yes.

Q. Mostly boys around Nathan's age, isn't that true? A. No.

30 Q. How old are they? A. From seven to fifteen.

Q. Do you know a boy named Charles Abbott?

A. Pardon?

Q. Do you know a boy named Charles Abbott?

A. Abbott? No, I don't.

Q. Hasn't he been a member of your camps?

Mr. Studer: I object as immaterial.

The Court: Well?

40 A. No.

David Ralph Starry—Cross

The Court: I will allow it for the present.

Mr. Studer: Just yes or no.

Q. Do you know Clausen Lind? A. Yes. I used to.

Q. He has been a member of your camp? 10

Mr. Studer: I object as immaterial.

A. No.

Mr. Studer: Do not answer when I object.

Mr. Walsh: Mr. Studer brought in the fact this man runs a boy's camp.

The Court: I have not sustained any objection as yet. 20

Mr. Studer: I did not understand your Honor had ruled.

The Court: I had not ruled.

Mr. Studer: Do not answer until the Court rules.

The Court: The answer is in. The answer is "No." Now, when your counsel objects, do not answer until the Court rules.

Q. Well, when I used the word "camp," did you on the 16th day of June, 1922, go in the camp with Charles Abbott and Clausen Lind? 30

Mr. Studer: I object to that as immaterial; too remote; it has nothing to do with this case.

The Court: I will allow that question. You asked him whether or not he did not run a camp, and whether the camp business was not more profitable than teaching 40

David Ralph Starry—Cross

school and things of that sort. It was not very material to the issue, but it is in the case.

(Question repeated by the stenographer.)

10 A. About eight years ago he was on a camping—

The Court: You can answer that yes or no.

Mr. Studer: Yes, or no.

A. No.

Q. Don't you remember going to Bound Brook with these boys on that date?

20 Mr. Studer: I object as immaterial.

The Court: That has no bearing even on what Mr. Studer brought out, going to Bound Brook with those boys.

Mr. Walsh: I will reframe my question.

Q. You say that you did not go into camp on June 16th, 1922, with these boys? A. No.

Q. Do you remember on June 16, 1922, going into camp on the bank of the canal at Bound Brook with these two boys?

30 Mr. Studer: I object to that as immaterial.

Q. Does that refresh your recollection?

The Court: I will allow that.

Mr. Studer: I pray an exception. Exception allowed, sealed accordingly.

ALFRED A. STEIN,

Judge.

David Ralph Starry—Cross

The Court: Answer yes or no.

A. No.

By the Court:

Q. You only knew this boy since September, 1926? A. Yes, your Honor. 10

Q. And the first time, as I understood you, he talked to you was in December, 1926? A. Yes, sir.

Q. Is that right? A. Yes, your Honor.

Q. When he asked you if he could come to your house? A. Yes, your Honor.

Q. Now, that was a strange sort of a request, wasn't it, for a boy to make of his principal? A. Perhaps unusual, yes, your Honor. 20

Q. Wasn't it unusual? Didn't you think so? A. No, I didn't.

Q. And then do I understand you right that you had no further talk with him about that until March, 1927? A. Yes, your Honor.

Q. And then you told him, without any statement on his part, that he could come that night? A. He probably could come.

Q. No. A. I didn't know.

Q. Then did you say to him, without any statement further on his part, that he could come that night? A. Yes, your Honor. 30

Q. Why did you allow that boy to stay in your house over night without notifying his folks first, and getting some consent to it? A. I tried to.

Q. He was practically a stranger to you? A. He was a student in the school.

Q. Outside of the fact he was a student in the school there was no friendship between you and 40

David Ralph Starry—Cross

him, and he was not a house guest or anything of that kind? A. No, nothing particular, your Honor.

Q. Why didn't you insist on him notifying his folks or you doing that thing so they would know where the boy was? A. I did, until he said his folks didn't know where he was; that he didn't go home often anyway.

Q. Even so, why did you allow that boy to stay in your house overnight? A. I thought it was a kind thing for him. I thought it was a courteous thing to do.

Q. Well, what do you mean by that? A. I mean—

Q. The boy did not mean anything to you except as the other boys in school meant to you, as scholars? A. Yes, your Honor.

Q. Did you keep him there because it was so late at night? A. It was very late at night, I thought and if he didn't go home anyway it would be a very kind thing to invite him to stay there.

Q. Why didn't you bring him home?

Mr. Studer: If your Honor please.

The Court: Do you want to make an objection? Make your objection.

Mr. Studer: I am obliged to make an objection, with the great deference to your Honor.

The Court: That is all right. If you think I am wrong, take your objection.

Mr. Studer: I think it is immaterial why he didn't take him home, or not.

The Court: You answer the question. Why didn't you take him home: you were

David Ralph Starry—Cross

his principal and he was one of your pupils.

Mr. Studer: May I have an exception?

The Court: Yes, you may have an exception.

Exception allowed; sealed accordingly. 10

ALFRED A. STEIN,
Judge.

A. I had no way of taking him. Mrs. Starry had the car.

Q. Walk? A. Yes; I might have walked.

Q. How far did he live from your place? A. I understand since, he lives out West Fourth Street somewhere. I didn't know. 20

Q. Where did he live then? A. I don't know.

Q. Did you ask him? A. Yes.

Q. What did he say? A. He said in the west end.

Q. Well, west end of Plainfield. How far is that from your house? A. The west end of Plainfield is at the opposite side of Plainfield from my house.

Q. In the first place you could have sent him home sooner. Why didn't you do that? A. I 30 didn't want to be discourteous with the boy.

Q. But he was a boy, after all? And the hour was getting late? Why didn't you send him home? A. I tried to as politely as I could.

Q. When that did not work, as the principal of the school why didn't you say "I will take you home?" Did that occur to you at all? A. No, not at all.

The Court: All right. 40

David Ralph Starry—Cross

By Mr. Walsh:

Q. Wasn't that something unusual about a pupil of yours remaining at your house all night?

A. Yes.

Q. Wasn't that an unusual thing? A. Yes.

10 Q. You had a thousand students under you, isn't that right? A. Yes.

Q. How many of those had ever stayed at your house? A. None of them.

Q. So that this is the only time this thing ever occurred? A. Yes.

Q. And that did not strike you as strange to ask that boy to stay there? A. No.

20 Q. How long after Mr. Cook brought to your attention these charges was it that you signed your resignation? A. It was in the same interview.

Q. I mean five, ten, fifteen minutes. A. Probably fifteen or twenty minutes.

Q. Probably fifteen or twenty minutes. And I believe I understood you to say that you had asked for a hearing? A. Yes.

Q. Well, you knew as a school principal that Mr. Cook was not the one to give you a hearing?

30

Mr. Studer: I object. That is the third time he has been asked that question.

The Court: Yes, he answered that before.

Mr. Studer: By the Court and Prosecutor.

The Court: Yes; he answered that before.

40 Q. The hearing you asked Mr. Cook for, who was that to be before? A. Before anybody that made the charge.

David Ralph Starry—Re-direct

Q. Was it a hearing before the board? A. I had that in mind.

Q. Did you say so? A. I don't remember that I did say Board of Education.

Q. Wasn't it that you asked Mr. Cook that you would like to see who said that about you? A. I 10
did say that, too.

Q. Wasn't that all there was said about a hearing? A. No; I said I am entitled to a hearing. If there is an accusation of this kind I am entitled to a hearing.

Q. I see. And then within a few minutes after that you wrote out your resignation? A. Yes.

Q. And you had been a school principal for how many years? A. Twenty years. 20

Mr. Walsh: That is all.

RE-DIRECT-EXAMINATION by Mr. Studer:

Q. Before you wrote out your resignation you asked Mr. Cook his friendly advice, did you not? A. I did.

The Court: Yes. So he has testified to that.

Q. Did he say anything with reference to the 30
success or unsuccess of any hearing?

The Court: I think he has testified that he said it would not be any use to go to a hearing before the board, wasn't that it?

A. Yes.

The Court: You said Mr. Cook said.

A. Yes, your Honor. 40

Mary Powers Starry—Direct

Mr. Studer: I think Mr. Cook said that, too.

The Court: I do not know that Mr. Cook said that, too.

10 Mr. Studer: Yes. I think Mr. Cook—

The Court: No. It is not my recollection. Of course, that does not mean that I am right.

Mr. Studer: Does not mean you are wrong, either.

The Court: Well, in other words, it does not mean anything.

Mr. Studer: Well, yes and no.

20

MARY POWERS STARRY, a witness on behalf of the defense, sworn.

Direct-examination by Mr. Studer:

Q. Mrs. Starry, you are the wife of Mr. Starry who sits on my right, and who just left the stand before you took it? A. I am.

30 Q. How long have you been married to Mr. Starry? A. Seven and a half years.

Q. Since your marriage have you lived with him as his wife? A. I have.

Q. During your married life have you and he been associated in any work?

Mr. Walsh: I would object.

Q. In camp work?

40 Mr. Walsh: —to this as being immaterial and irrelevant. I can't see what his busi-

Mary Powers Starry—Direct

ness associations or his associations even with his wife on another enterprise entirely has to do with this.

The Court: Well, I might agree with you. I will allow the question. I think the jury know who the parties are. 10

Q. Have you the question? A. I think so. We have been engaged in business.

Q. What kind? A. The camp business.

Q. The camp business. Had your husband, on any occasion prior to March, 1927, told you that he contemplated resigning from school? A. Yes.

Mr. Walsh: I object.

The Court: Wait, please. 20

Q. On account of this camp work. Do not answer.

The Court: How do you make that material?

Mr. Studer: Mr. Starry has said one reason he was willing to resign was that he was desirous of applying his entire time to his camp work.

The Court: Well. 30

Mr. Studer: And if prior to then he had discussed this with his wife and had in mind to retire from the school, I think it is important to show his state of mind with reference to his resignation, rather than it was the result of a guilty act to resign immediately upon being confronted. Of course, that would be—

The Court: That would be a question for the jury. 40

Dr. Joseph M. Rector—Direct

Mr. Studer: That is why I asked the question.

The Court: Even though you put in this question which I do not think is competent, I will allow it.

10

A. Yes.

Q. For how long a period? A. At least three years.

Mr. Studer: Cross-examine.

The Court: Any questions?

Mr. Walsh: I just want to see, three years prior to the time he actually did resign?

20

The Court: That is what she said.

Mr. Walsh: No questions.

Mr. Studer: No, before. For three years before before.

The Court: For three years before. For three years before he actually did resign, he had been talking about it.

Mr. Walsh: No questions.

30 DR. JOSEPH M. RECTOR, sworn on behalf of defendant.

Direct-examination by Mr. Studer:

Q. You are a doctor? A. Yes, sir.

Q. And practice where?

Mr. Walsh: I will admit his qualifications.

40 A. Wherever I am called; my office is Jersey City.

Dr. Joseph M. Rector—Direct

Q. And you have practiced how many years?
A. Thirty-five years.

Q. During your practice have you had occasion to study and have experience with what is known as nocturnal emissions? A. Yes.

Q. Can nocturnal emissions occur to a boy of 10 the age of seventeen or thereabouts?

The Court: Don't you admit that?

Mr. Walsh: Of course, so.

The Court: That they can occur?

Mr. Walsh: That they can occur.

Mr. Studer: There is no proof of it.

The Court: The Prosecutor will admit on the record—see if you admit what I say: 20 that it is not only a thing that can occur, but it is a thing that does occur.

Mr. Walsh: I admit that.

Q. Doctor, assuming a boy of the age of seven- 30 teen or thereabouts, during the night time while awake, after being embraced by a man of forty years of age, he put his hand on the boy's chest and ran it down over his stomach and put it on his private parts, what do you say as to whether or not—as to what the probabilities are with reference to whether or not that boy would have a discharge? A. I would say he would not have a discharge under those conditions.

Q. Why do you say that? A. Because a dis- 40 charge from the genital organs is controlled entirely by the mind, and there must be an impulse from the local point, or the point of irritation, otherwise the penis, through the spinal cord to the brain. The brain is the primary avenue by which

Dr. Joseph M. Rector—Direct

the genital acts are concerned. The primary act—the primary circumstance is the cerebrum, that is the main part of the brain. It passes down to the centre of the spinal cord; it is in the enlargement of the spinal cord in the lumbar re-
 10 gion, that is the small of the back; that impulse which originated from the brain has now passed through the center of the spinal cord, has gone then from the center in the spinal cord, which we know as the erection center, that impulse dilates the vessels in the penis, and causes the penis to erect. The erection continues as long as an irritation or friction is made at the penis; and upon
 20 cessation of the friction at the penis, unless it has passed—unless the impulse has passed back to the erection center, the erection will stop and an ejaculation will not take place. If the irritation is continued you will have the erection center pass it to the spinal center, and then we have an ejaculation of semen.

Mr. Studer: Cross-examine.

By the Court:

Q. Let me ask you a question, Doctor. A. Yes,
 30 sir.

Q. Has the mind of a boy anything to do with that? A. Any one who has an ejaculation; yes, sir.

Q. Well, now, what about a feeble-minded boy? A. Feeble-minded boy has—a feeble-minded boy has an intensity in what we call feeble-minded but all men or boys—they have an intensity of what we call the seminal vesicles. The seminal vesicles
 40 are the storehouses for the seminal fluid.

Dr. Joseph M. Rector—Direct

Q. I did not ask you anything about that. A. You have to explain it—

Q. You can answer yes or no.

(Question repeated by the stenographer.)

A. No, with limitations.

Q. "No, with limitations?" What do you mean by that? A. I mean a feeble-minded boy has all kinds of conditions. A feeble-minded boy may be a degenerate and called a degenerate feeble-minded boy. 10

Q. How about the degenerate; a boy that has a tendency toward degeneracy, being embraced by a male? What do you say about the possibility of that boy having an emission? A. Without friction on the penis or without an overheating of the seminal vesicles he will not have an ejaculation, sir. 20

Q. You do not think then a boy could have an emission unless he had a friction of the penis? A. I didn't say that.

Q. What do you say? A. I said an intensity of the seminal vesicles. It takes one or the other.

Q. Well, I do not understand you. A. If I had a blackboard I would explain it to you.

Q. Well, without a blackboard. Take a boy who might have a tendency toward degeneracy, or maybe a degenerate, embraced by a man and reciting the facts as put to you by counsel, would he have an emission? A. No, sir, not without an erection. 30

Q. What do you— A. Feeble-minded. That function depends entirely on the location of the mind with which the degeneracy takes place.

Q. You mean all feeble-minded persons are degenerates? A. No, sir. 40

Dr. Joseph M. Rector—Cross

Q. What do you understand by degenerate?

A. There is a certain local focus, focal point in the brain or area in the brain that controls all of these different impulses or conditions.

10 Q. What about this boy? What do you know about his brain? A. I never saw the boy; never examined his brain. All I know is the circumstances of the hypothetical question. I don't know, because it is impossible—

Q. Depending on the condition of his brain, could you say as a positive fact that under the circumstances in the evidence as introduced here and quoted to you by counsel, the facts assumed, rather, in his question, the boy would not have
20 any emission? A. Yes, sir; I do.

Q. Without having seen the boy or known him? A. Yes, sir; according to the question. I am answering the hypothetical question.

Q. I am not asking you about the hypothetical question. I am calling attention to the fact you never have seen the boy nor known anything about his mentality or anything of the sort. You are assuming the boy is a healthy, normal boy in any way? A. I am not taking it into consideration
30 anyway. If I can examine the boy I can tell you what my idea is. This boy may masturbate.

Q. I did not ask you that. A. I don't understand your question, sir.

Q. It is very evident you do not. Go ahead.

CROSS-EXAMINATION by Mr. Walsh:

Q. The hypothetical was that this boy had been felt over by the man on his chest, on his
40 stomach, on his back, and the man had handled the

Dr. Joseph M. Rector—Cross

boy's penis. And you say yet that that boy would not have an emission? A. Not without friction on his penis, I said.

Q. Well, if there was friction on his penis. A. That wasn't in the question.

Q. By the handling of the penis he would have an emission? A. That wasn't in the question. You can handle a man's penis and he won't get an erection. You can handle a man's penis and he won't have an ejaculation. The simple fact of putting your hand on the penis of a boy or man won't give him an erection. The simple fact of putting your hand on the penis of a boy or man won't give him an ejaculation. You must have friction to have an impulse.

Q. All you said is true? A. That's what I think.

Q. You can handle him and he won't have an erection or emission, and you can handle him and he will have an erection or emission, isn't that true? A. No, sir, with explanation. Let me understand your idea of handling and my idea of handling. I am answering on my knowledge.

Q. How was this man handled?

Mr. Studer: I object to counsel's hypothetical question in the language that he states—

The Court: The hypothetical question is objectionable, if the counsel for the State had so moved.

Mr. Studer: Well, I object to this.

The Court: The objection would have been sustained because it did not include all the facts. It did not include the as-

Discussion

sumption that the penis had been handled.

Mr. Studer: I said in so many words he put his hands on his privates, which was the language. I respectfully object to your Honor's criticism of the question.

10

The Court: I do not care whether your object to it or not.

Mr. Studer: I understand that.

The Court: The Court has a right to call counsel's attention to what it understands was omitted from the hypothetical question and that is not a criticism.

Mr. Studer: And with the greatest efforts—

20

The Court: And it was not a criticism of you at all. It was called to your attention in order that counsel may extricate themselves, if they can, from the mire in which they got.

Mr. Studer: May the question be read?

The Court: So the jury might get an intelligent idea of what the Doctor is driving at.

30

Mr. Studer: May the hypothetical question be read?

The Court: No; it cannot. Later on you may take him back on re-direct and re-frame it, if you care to.

Mr. Studer: I think my question included the language—

The Court: There is nothing before the Court.

40

Mr. Studer: Your Honor has criticised the question as omitting part of the proof.

Dr. Joseph M. Rector—Cross

The Court: I have not criticized your question. You used that word. I tried to call to your attention something I believe to be true, that your question did not include all the facts you were bound to assume in order to get the record right. I allowed it to go by because there was no objection made to it. Go on, Mr. Prosecutor. 10

Q. Assuming, Doctor, this boy and a man were in bed together, and that the man put his hands on the back and the chest and the stomach and his hands upon the penis and handled the private parts of the boy seventeen years of age would you then say it was impossible for that boy to have an emission? 20

Mr. Studer: I object to that.

The Court: Not "impossible." Objection sustained. I suppose that is the objection.

Mr. Studer: Further testimony was not that he was handled. The testimony referring to what the stenographer has, page 65 in his notes, was that "He put his hand on my privates." 30

The Court: Well?

Mr. Studer: Which—

The Court: That is the exact testimony you say you are taking from the record?

Mr. Studer: I took it—that was given to me by—

The Court: By Mr. O'Brien. All right. Then it is right. Substitute for "handle" "putting the hands on the privates." And 40

John H. McLaughlin—Direct

omit "possibilities" probabilities, we are dealing with.

Q. Probabilities. A. No, sir.

Q. What do you mean by no, sir?

10 The Court: That is what he means. The question has just said putting hands on the private. And that seems to be the crux of the entire question. The question then is how long the hands were kept on the private.

A. No; the question, how much friction was made on the penis. If you pull the man off, and give him friction until it has telephoned its impulse to the brain, and come back to the spinal cord, and if the mind has continued constantly on that action and friction that is going on, you are going to have an ejaculation.

20

Mr. Walsh: All right, that is all.

Mr. Studer: That is all.

30 JOHN H. McLAUGHLIN, sworn on behalf of the defendant.

Direct-examination by Mr. Studer:

Q. Mr. McLaughlin, what is your business? A. I am president of Hiram L. Frink, Incorporated, at the present time, Westfield.

Q. Keep your voice up a little louder. A. I am president of Hiram L. Frink, Incorporated, at the present time, Westfield.

40

John H. McLaughlin—Direct

Q. What is your business? A. Automobile business, selling cars.

Q. Prior to that were you a school teacher? A. I was.

Q. For how long a period have you known Ralph Starry, the defendant in this case? A. 10
About twenty years.

Q. Where was he during that period? Westfield or Plainfield? A. At the normal school in Pennsylvania, and Westfield, and in Plainfield.

Q. Did you live with him during any of that period? A. I did.

Q. For how long? A. For about, let's see, about ten years. I suppose.

Q. Prior to May, 1927, when this indictment 20
was found against him, do you know what his general reputation was in the community in which he lived for—

Mr. Walsh: I object, if your Honor please. The witness has not stated that he knew him for—that these ten years that he speaks about he lived with him; I don't know that this witness knew where the defendant lived.

30

The Court: Well, the reputation is confined to the community in which he lived.

Mr. Studer: Of course. He said he knew him in Plainfield and Westfield during the entire period he knew him.

The Court: It must be in the community—

Q. This man lives in Westfield? A. In Westfield.

40

John H. McLaughlin—Cross

Mr. Studer: And he knew him for years, in Plainfield and Westfield.

A. Westfield.

10 Q. Do you know what, prior to May, 1927, in the community in which Mr. Starry lived, what his general reputation was for morality and decent living? A. It was of a very high—

Mr. Walsh: Yes, or no.

Q. Do you know what it was? A. Yes.

Mr. Walsh: I ask the right to cross-examine as to how he knew this, or what he knew about it, at this point.

20 The Court: What is the use?

Mr. Walsh: I won't press it. For the purpose of saving time I will withdraw it at this time.

Q. What was his general reputation? A. It was very fair, very fine.

Q. Fine? A. Very fine.

Mr. Studer: Cross-examine.

30 CROSS-EXAMINATION by Mr. Walsh:

Q. Where do you live? A. I live in Westfield.

Q. Have you ever live in Plainfield? A. No, sir; not in Plainfield.

Q. How do you know the reputation of Mr. Starry in Plainfield? A. Well, I know this, that he visited back and forth with some of the very best people in Westfield.

40 Q. That is his reputation in Westfield that you know? A. Yes.

Jules Weissman, Jr.—Direct

Q. Is that right? A. Well, I reckon if it was all right in Westfield it was all right in Plainfield.

The Court: All right, now.

Q. That is only your opinion of him? A. That's my opinion. 10

Q. As a matter of fact, on your oath, you do not know what his reputation was in the community in which he lives in Plainfield, do you?
A. No; not—

Mr. Walsh: No. That is all.

JULES WEISSMAN, Jr., sworn on behalf of the defendant. 20

Direct-examination by Mr. Studer:

Q. Mr. Weissman, what is your business? A. School teacher.

Q. School teacher where? A. Plainfield High School.

Q. How long have you been a school teacher in Plainfield High School? A. This is the tenth 30 year.

Q. How long have you known Ralph Starry?
A. Over nine years.

Q. Prior to May, 1927, in the community in which he lived, do you know what his general reputation was— A. Exceptionally good.

Q—for morality and decent living?

The Court: First you answer yes or no. 40

Jules Weissman, Jr.—Cross

Q. Whether you know or not, yes or no. A. First I would like to have the question repeated.

10 The Court: Do you know his general reputation for morality and decent living in the community in which he lived?

A. I do.

Q. What was it? A. Very fine.

CROSS-EXAMINATION by Mr. Walsh:

Q. Prior to May, 1927, is that right? A. Yes.

Q. Did you hear his general reputation discussed in March? A. Indirectly.

20 The Court: Well, directly. That is not proper. You mean—

Mr. Walsh: 1927.

The Court: That is the date alleged in this indictment.

Mr. Walsh: That is the date alleged in this indictment.

Mr. Studer: The question was prior to the 1st of March.

30 The Court: The reputation prior to this indictment is what the counsel has shown.

Q. You are a school teacher in the Plainfield schools, and have been? A. Yes.

Q. And he was? A. Yes, sir.

Q. And you knew what his reputation was? A. Yes, sir.

Q. Had you heard it discussed? A. At different times, yes.

40 Q. You mean to say that during your acquaintanceship of nine years you heard his reputation

Jules Weissman, Jr.—Cross

for morality discussed? A. I don't know as I do, but I know he had a very good reputation.

Q. No. I am asking you did you ever hear it discussed? A. People don't usually discuss those things.

The Court: That is not the answer. That is just what the Prosecutor is driving at, whether you had heard it discussed. 10

A. No.

The Court: Heard anybody talk about him, refer to his reputation for morality and decent living.

A. Never heard anybody talk against him. 20

Q. No. That is not the question. You, as a school teacher, and high school teacher, know what the word "reputation" means? A. Certainly.

Q. All right. What does it mean? A. Means good living.

Q. Means what? A. Repeat the question, please.

(Last part of the testimony of the witness repeated by the stenographer.) 30

A. Reputation is what a man is known as.

Q. All right. What evidence, prior to March, 1927—

Mr. Studer: I object.

Q. —was presented to you, or that you know of, that would justify you in saying that this man was known as a moral man?

Mr. Studer: I object. 40

The Court: Objection sustained. The question was what evidence.

Jules Weissman, Jr.—Cross

Q. Well, you never heard it discussed? A. I can't say that I ever have.

Q. His good reputation or his bad reputation?
A. No.

10 Q. No. So that now you are ready to say, are you not, that you do not know what his reputation was? A. No; I am not ready to say that.

Q. You are not ready to say that. What you have given us is more of your opinion of him, isn't it? A. I guess so.

Q. Yes. Well, isn't that true? A. My opinion?

Q. Yes. A. Yes, as far as I know.

20 Q. And not his reputation? A. Well, I know his reputation in Plainfield very good.

Q. How do you know that? A. Well, by coming in contact with—

The Court: The witness has already testified that he did not hear his reputation discussed.

Mr. Walsh: I will just ask one or two more questions.

30 Q. You were asked what his reputation was for morality and good living and you answered to me that you never heard that discussed, is that right? A. Yes.

Q. All right. And your next answer to me was that you had given us your opinion of him on the stand, isn't that right? A. Yes.

Q. As a matter of fact, you do not know what his reputation was, except with you? A. Well, as much as I know anybody else's reputation.

40 Q. I see. You don't bother much with people's reputation?

Myrtle Seidel—Direct, Cross

The Court: Whether he does or not—

A. Not usually.

The Court: —it is not how much he bothers with people's reputation, Mr. Walsh. Step down. 10

MYRTLE SEIDEL, sworn for the defendant.

Direct-examination by Mr. Studer:

Q. Mrs. Seidel, what is your profession? A. I teach in the public schools of Plainfield.

Q. And do you live there? A. I do. 20

Q. How long have you taught there? A. I have taught there a period of four years.

Q. During your period of teaching in Plainfield prior to the 1st of March, 1927, do you know what Mr. Starry's general reputation was there in Plainfield for morality and decent living? A. The time it would be discussed would be where a teacher would apply—

Q. Do you know, yes or no, is the question. Do you know? A. Yes. 30

Q. What was it? A. Very fine.

Mr. Studer: Cross-examine.

CROSS-EXAMINATION by Mr. Walsh:

Q. You have heard his reputation discussed several times, have you? A. Yes. When a teacher would apply for a teacher she would naturally find out what her principal was like. 40

Myrtle Seidel—Cross

Q. What his reputation was for morality was discussed? A. Yes, sir.

Q. By a teacher? A. Yes.

Q. Do you teach? A. Yes, I teach school.

10 Q. When a girl would apply for a position who would she ask? A. She would ask the other teaches who had taught for him.

Q. Where was it discussed with you? A. When I applied for a position.

Q. You asked somebody what his reputation was? A. I didn't ask; I heard it discussed that he was very fine.

20 Q. Did you hear the question of his morality discussed? A. Well, morality and good reputation would go with—

Q. Was his morality and good living discussed, yes or no? A. Yes.

Q. Well, by whom was it discussed with you? A. By all the teachers in Evergreen.

Q. By whom was it discussed with you when you applied for that job? A. By the teachers.

Q. By whom? Who did you talk to? A. To a teacher in Evergreen school.

30 Q. And you asked what his reputation for morality was? A. I didn't have to; she told me.

40 The Court: No. You see, let me explain this to you. There is, in law, evidence of good reputation which a defendant can introduce. However, that reputation is restricted to the offense with which he is charged. For instance, a person is charged with assault and battery, he may show his good reputation for peaceableness and quietness. In this instance, the repu-

Myrtle Seidel—Re-direct

tation which the defendant may show is his reputation for morality and good living. Now, you are confined in this examination to what you know of the general reputation of the defendant for morality. Not honesty; not integrity; nor peaceableness and quietness, but morality. That is the reason the Prosecutor is asking you these questions. It is confined to that thing, morality. 10

A. I can say nothing other than I never heard anything said against him.

Q. That is right. But as to his reputation, you know nothing about it, do you? A. I taught under him. 20

Q. You taught under him? A. Yes.

Q. And that is the reason you are here today?

A. His reputation was naturally fine.

Q. No. Not that. You do not know what it was? A. He was highly respected.

Q. He was highly respected by you? A. Every one.

Q. By you? A. Yes, by me.

Q. But the question of his morality had never been talked of— 30

The Court: That is very plain.

Mr. Walsh: All right.

RE-DIRECT-EXAMINATION by Mr. Studer:

Q. Had you heard his general reputation for morality discussed? A. Not other than it was very fine. I—

The Court: No, no.

40

Myrtle Seidel—Re-cross

Q. Had you heard it discussed?

The Court: People talk about it.

Q. People talk about it. What kind of a man was this man Starry, the defendant?

10

The Court: Somebody says he is a very fine moral living man.

A. Why, yes.

The Court: That is what is meant by repute.

A. That's what I said, I have heard that. I heard every one say he is a fine moral man.

20

Mr. Studer: That's all, thank you.

RE-CROSS-EXAMINATION by Mr. Walsh:

Q. You heard that? A. Of course, I heard it.

Q. Where? A. All through Plainfield.

Q. When was that? You mean to say that his morality was the talk of the City of Plainfield?

Mr. Studer: I object. That is not what the witness said.

30

Q. When did you hear it? A. Since I came to Plainfield. I have children in the Plainfield school and naturally—

Q. And you heard his morality discussed all through Plainfield? A. I heard every one that I have ever spoken to say that he has a high moral character.

The Court: Now, can that really be so, every one you really spoke to?

40

A. Every one I spoke to.

George W. Garthwaite—Direct

The Court: About him?

A. Yes.

The Court: Did you ask each one about his moral standing?

A. No; but every one that spoke about him. 10

The Court: Went on to tell you about his moral standing?

A. Said he was a fine moral man, I am just repeating what was said to me.

The Court: All right.

Q. So that from the time—

The Court: All right. Do not let us waste a lot of time repeating this thing over and over again. That is what this witness testifies to. 20

GEORGE W. GARTHWAITE, sworn on behalf of the defendant.

30

Direct-examination by Mr. Studer:

Q. Where do you live, Mr. Garthwaite? A. Plainfield, New Jersey.

Q. How long have you lived there? A. Ten years.

Q. During that period of time have you known D. Ralph Starry, the defendant? A. Yes.

Q. What is your work? A. Teacher.

Q. Teacher? A. Yes.

Q. In the Plainfield school? A. Plainfield High School. 40

George W. Garthwaite—Cross

Q. Prior to the 1st of March last, do you know what Mr. Starry's general reputation was there in the community in which he lived? A. I do.

Q. For morality and decent living? A. Yes.

Q. What was it? A. Excellent.

10

Mr. Studer: Cross-examine.

CROSS-EXAMINATION by Mr. Walsh:

Q. How do you know that? You understood the word "reputation." How do you know anything about his reputation? A. Never heard anything derogatory.

Q. The fact that you never heard anything derogatory, does that make reputation? A. I am not a criterion on that.

20

Q. Well, don't you know what the word reputation means? A. Perhaps.

Q. Well, do you? A. Yes.

Q. Well, what does that mean? A. It is what people think of you.

Q. You never heard his reputation for morality discussed prior to March, did you? A. No, sir.

Q. Then you could not say what his reputation was, could you?

30

The Court: Now, that is argument.

Mr. Walsh: No, but I mean—

The Court: That is argument. If he never heard it discussed is there anything further you want to ask him?

Mr. Walsh: Nothing.

Florence Cooper—Direct .

FLORENCE COOPER, sworn for the defendant.

Direct-examination by Mr. Studer:

Q. Miss Cooper, what is your business or profession? A. I am a teacher in the eighth grade, 10 and first year high school in Plainfield.

Q. And how long have you been there? A. I have been there since 1913.

Q. During that period have you known Mr. Starry? A. I have.

Q. During that period and in that community, do you know what his reputation was? What his reputation was for moral and decent living prior to March 1st? A. I should say beyond re- 20 reproach.

Q. Do you know it? Do you know what his reputation was? A. I do know.

Q. What was it? A. Beyond reproach.

The Court: Was it good or bad?

A. Fine, excellent.

The Court: You are asked what it was.

A. Excellent.

30

The Court: The answer should be yes, you do know what it was, and the next question would be asked you, what was it, good or bad?

Mr. Studer: She answered yes to the first question.

The Court: Yes.

Mr. Studer: Cross-examine.

40

Florence Cooper—Cross

CROSS-EXAMINATION by Mr. Walsh:

Q. You taught in the same school as he did?

A. I did.

Q. Belong to the same association as he did?

A. I did.

10 Q. And when you say you know his reputation, do you really know his reputation? A. I feel that I do.

Q. Is that rather your opinion of him? A. No; I think it is a result of his actions, his work.

Q. Then that is— A. Because I was there before he was.

Q. I see. What reputation means what others think about you. A. Think about him.

20 Q. Say about him? A. Yes, sir.

Q. When did you ever hear his reputation for morality discussed? A. I think when a person is—

The Court: No.

Q. No. Did you ever hear it discussed? A. I don't think morality, if it was not necessary—

The Court: Please answer the question.

30 Mr. Studer: Please answer the question. Did you ever hear it talked about?

The Court: You are a very intelligent woman and the question is very, very simple.

(Question repeated by stenographer.)

Q. Yes or no? A. Yes.

Q. All right. Where? A. Plainfield.

40 Q. Where was his morality discussed and when? A. It was discussed by the parents and citizens of Plainfield.

Florence Cooper—Cross

Q. When and where, time and place, did you hear it discussed, his morality? A. In the school and in the homes.

Q. No. Tell me where it occurred, when and where, and who was there, and who said it. A. Well, I discussed it with other teachers. 10

Q. Prior to March? A. Prior, yes.

Q. Before he resigned? A. Yes.

Q. All right. How did the question of his morality come up to be discussed? A. The same as it would—I don't know that I would say morality.

Q. That is what you have sworn to? A. Well, his actions, possibly that is my morality, what I do, and that is what was discussed. 20

Q. You were asked, Miss Cooper, if you knew what his reputation in the community in which he lived for morality and good living was, and on your oath you answered yes. A. And I do, the very finest.

Q. Now, I asked you if you ever heard his morality or his reputation for good living questioned or discussed? A. Discussed all the time.

Q. His reputation for morality? A. For his doings, his living. 30

The Court: No. No. Morality? You know what morality means. It would not mean, for instance, reputation for being a good singer, would it? Or being a fine teacher. It wouldn't mean that, would it?

A. There was no reason—

Florence Cooper—Cross

The Court: Would it?

A. No, not that, necessarily.

The Court: A person might be a good teacher and still not be moral.

10 A. There was no question—

The Court: Won't you listen to me, please? If you do not, you won't know anything I am saying. You know what morality means, don't you?

A. Yes, generally speaking.

The Court: What does it mean?

20 A. Pure morals, or morals or lack of morals.

The Court: Certainly, the way you live. Now, then, this question is directed to the reputation of this man for morality and good living, and whether any one ever discussed that with you?

A. Discussed—

30 The Court: If it was discussed in Plainfield, that makes reputation. People say he is a fine living man, he is a good moral man.

A. It was constantly discussed.

The Court: Those are the things make reputation, are they not?

40 A. Yes. It was constantly discussed, because people believed in him so much, had such faith in him—

Caroline S. Thawley—Direct

Q. You are asked, Miss Cooper—

The Court: Oh, stop. Call the next witness.

Mr. Walsh: That is all.

The Court: These questions are so simple. Take up a lot of time wrangling over nothing. The question is simple. 10

CAROLINE S. THAWLEY, sworn for the defendant.

Direct-examination by Mr. Studer:

Q. What is your profession? A. I teach in Plainfield, in the Evergreen school. 20

Q. How long have you lived there and taught there? A. I went to Plainfield in 1920, September.

Q. Since you have been there have you heard Mr. Starry's reputation being talked about with reference to his morals and decent living prior to March 1st last? Have you heard it? Yes or no. A. Yes.

Q. And do you know from what you have heard what his general reputation was? A. Yes. 30

Q. What was it? A. Zena Scott, who was assistant-commissioner of education—

Q. No. What was it? A. Zena Scott—

The Court: Was it good?

Q. Was it good? A. It was good. It was excellent. Beyond reproach.

The Court: Please don't. Please don't ask any questions. 40

Walter F. Austin—Direct, Cross

WALTER F. AUSTIN, sworn for the defendant.

Direct-examination by Mr. Studer:

Q. Mr. Austin, what is your business? Mr.
10 Austin, what is your business? A. I am a publisher.

Q. And you live in Plainfield? A. I do.

Q. How long have you lived in Plainfield? A.
Twenty years.

Q. Do you know Ralph Starry? A. I do.

Q. Did you know what his general reputation
was before the 1st of March last in Plainfield for
decent and moral living? Do you know? A. I
20 think I do.

Q. Well, what was it? A. Good.

Mr. Studer: Cross-examine.

CROSS-EXAMINATION by Mr. Walsh:

Q. You never heard it discussed, did you? A.
Yes.

Q. His morals? A. Yes.

Q. When? A. At his camp up in Vermont.

Q. Was there a question of his morality raised
30 there? A. No, but the question of his discipline.

Q. No. His morality. A. The boys brought up
the question of his conduct and his character.
And the young man very intimately connected
with him as one of his counsellors and his father
and his mother, and I, discussed the splendid
manner in which he handled those boys, and what
a fine character he was himself, and at that dis-
40 cussion I contributed what little I knew of his
reputation in Plainfield.

Walter F. Austin—Cross

Q. I see. Well, that is reputation up in Vermont. You say that you heard—and his morality was not discussed at that, was it? A. No.

Q. No. Had you ever— A. Wasn't questioned.

Q. Had you ever heard his morality discussed in Plainfield, yes or no? A. Before March, you mean, March? 10

Q. Yes, before March, I mean.

The Court: Before March.

A. No.

The Court: You see, it is confined to the community in which he lives, under the law. 20

Mr. Studer: I have some witnesses here who know Mr. Starry in that summer work.

The Court: Summer work.

Mr. Studer: Summer work, where he spends three months, that is a community in which he lives during the summer. And he has a reputation in that camping world during that summer, for this thing.

The Court: The rule of reputation is very old. 30

Mr. Studer: Yes.

The Court: And very well understood by lawyers, and ought to be fairly well understood by judges, and it is confined in this case, for instance, to the reputation for morality and decent living in the community which he lives; not some community which he may sojourn for the summer or 40

Eleanor Thompson Wilber—Direct

he may go to for a spell to conduct a camp, and so forth. I did not make the law.

Mr. Studer: No.

The Court: And you know that is the rule. Merely in which he lives.

10 Mr. Studer: And I—

The Court: I do not think you ought to do it. I shall say to the jury that the law says it must be confined to the community in which he lives.

Mr. Studer: My own thought is he does spend over three months every year.

The Court: I haven't any right to extend the rule.

20

ELEANOR THOMPSON WILBER, sworn for the defendant.

Direct-examination by Mr. Studer:

Q. You are a teacher, Miss Wilber? A. I am.

Q. In the Plainfield school? A. In the Plainfield schools, Evergreen school.

30 Q. How long have you been such teacher? A. For three years.

Q. Prior to March 1st last did you know Mr. Ralph Starry? A. I did.

Q. In Plainfield? A. In Plainfield.

Q. During the period that you have known him prior to the 1st of March last do you know what his general reputation was? A. I do.

Q. For decent and moral living? A. I do.

40 Q. Morality? A. I do.

Q. What was it? A. The very best.

Mr. Studer: Cross-examine.

Eleanor Thompson Wilber—Cross

CROSS-EXAMINATION by Mr. Walsh:

Q. The question of his morality was a matter of common gossip of Plainfield, was it? A. Oh, no, it didn't have to be.

Q. It never was, was it? A. Never.

Q. Never. And you never heard anything good or bad about his morality, did you? A. Yes, teachers talk everything over. 10

Q. That is not in the community in which he lives; that is in the vicinity of the school. That is all you know? A. No; I don't live in the school all the time.

Q. That is the only place you ever heard anything about him? A. Oh, no, it is not.

Q. You mean to say prior to March his reputation was discussed? A. Always discussed as being one of the finest of the finest. 20

Q. That was their opinion of him, is that right? A. It was their opinion; no one's else.

Q. Was that confined to his morality and good living? A. Yes.

Q. Was his morality mentioned? A. Yes; he has always been considered the finest man—

Q. Not what he was considered. A. Morally.

Q. Morally? A. Yes. 30

The Court: You were asked whether his morality was mentioned.

Q. His morality was mentioned? A. I don't know as the word morality itself was mentioned.

Q. What is that you answered? Was the word morality asked you when you answered on your oath you knew? A. I think so.

Q. You answered you knew. When was it you 40

Eleanor Thompson Wilber—Cross

had any—not your opinion—when was it you ever heard his reputation for morality discussed in Plainfield? A. Teachers have a way of talking, and they talk, a way of talking—

10 The Court: That is not the question. Listen to the question.

(Question repeated by the stenographer.)

A. You mean date by that?

The Court: As nearly as you can tell. If you say you cannot tell, you say you cannot tell.

20 A. No; I can't tell the exact time.

The Court: If you watch the questions of the lawyers very carefully you can save yourself a lot of time by answering correctly.

A. I will try.

Q. You can't say whether it was before or after the 1st of March, 1927? A. Yes.

30 Q. That you heard his morality discussed? A. I think I have heard before that. I think that we have sat talking among ourselves that morally and mentally that Mr. Starry was the finest kind of a man.

Q. Then his morality was questioned before that? A. I don't think—no, it has never been questioned.

Q. Why refer to it? A. Because you asked me.

40 Q. If it wasn't referred to by you there why did you mention it here? A. You asked me.

John C. Elliott—Direct, Cross

Q. I am asking you how it was that his morality come to be discussed? You know what morality means? A. I hope so.

Q. Then why was it his morality was discussed by you? A. Not specially by me.

Q. Well, by anybody. A. Because people have 10
a way of talking.

Q. That does not answer the question. A. And when we say good things about a person—

Mr. Walsh: That is all.

JOHN C. ELLIOTT, sworn for the defendant. 20

Direct-examination by Mr. Studer:

Q. Where do you live, Mr. Elliott? A. Westfield, New Jersey.

Q. Ever live in Plainfield? A. No, sir.

Q. Do you know the defendant? A. I do.

Q. Do you know his general reputation in the community in which he lived in Plainfield? A. Yes, sir.

Q. Before the 1st of March last for decent 30
moral living? A. Yes, sir.

Q. What was it? A. Excellent.

Mr. Studer: Cross-examine.

CROSS-EXAMINATION by Mr. Walsh:

Q. Where do you say you live? A. Westfield, New Jersey.

Q. And you know his reputation in Plainfield?
A. I didn't say so. 40

Harriet H. Humphrey—Direct

Q. That is the community in which he lived. That is what you have sworn to. A. I don't think so.

Q. No?

10 The Court: Yes. You were asked the question: Do you know the reputation of the defendant for morality and decent living in the community in which he lived.

A. I must have misunderstood the question.

Mr. Studer: All right. Then step down.

The Court: I think you did.

(Witness withdrawn.)

20

HARRIET H. HUMPHREY, sworn for the defendant.

Direct-examination by Mr. Studer:

Q. Just kindly listen to the questions and answer them if you can; if you cannot, say you cannot. Where do you live? A. Plainfield, New Jersey.

30 Q. How long have you lived there? A. Nineteen years.

Q. Do you know Mr. Starry? A. I do.

Q. Are you a teacher? A. I am.

Q. How long have you known him? A. Since 1915.

Q. Before the 1st of March last in Plainfield where have you lived, the community in which he lived, do you know, yes or no, do you know what
40 his general reputation was there? A. Yes.

Harriet H. Humphrey—Cross

Q. For morality and decent living? A. Yes.

Q. You do know it. What was it? A. Very finest.

Mr. Studer: Cross-examine.

CROSS-EXAMINATION by Mr. Walsh: 10

Q. You never heard it questioned, did you? A. Never.

Q. And that is the reason you say it was of the very finest? A. Yes.

Q. So that—

The Court: So that she said that is the reason.

By Mr. Studer: 20

Q. Had you heard it talked about? A. Why, yes.

Q. And when you say you had not heard it questioned, what do you mean, that you don't—well, what do you mean when you say you had not heard it questioned? You had heard it talked about? A. Yes.

Q. And as the result of what you heard you say what it was, is that right? A. Yes.

By Mr. Walsh: 30

Q. Where did you hear it talked about? His morality? A. In Plainfield.

Q. They talked about his morality? A. Yes.

Q. In Plainfield? A. Yes.

Q. Prior to March? A. Yes.

Q. Prior to his resignation they talked about his morality? A. Yes.

Q. Where was it they were talking about his morality? A. Among the schools and camps. 40

Harriet H. Humphrey—Cross

Q. They were then, even before that, questioning his morality?

10 Mr. Studer: I object to that, if your Honor please. There is no "questioning" of his morality.

Mr. Walsh: It was questioned if they were talking about him.

The Court: "Questioning the morality" putting the question in that way is not proper.

A. Misleading.

20 The Court: You need not help out. We have plenty of help outside.

Q. You heard his reputation for morality discussed? A. The very finest, yes.

Q. No. Did you ever hear it discussed? A. Yes.

Q. Talked about?

The Court: She said she did.

Q. How did you come to talk about his morality? A. They told what a fine man he was.

30 Q. Fine man? A. Yes.

Q. Did that apply to morality? A. Why, why not?

Q. Did it? A. Yes.

Q. Was morality included in it? A. Yes.

40 The Court: Don't you see that is the impression this witness has and that is her conception of morality. Can't you leave anything at all to the jury and to the judge as to what is meant in law by this question?

Charge

Why do we have to take up all this time with this?

Mr. Walsh: I won't take up any more time with this.

The Court: I am here to charge the law and I am here to charge it. I hope the jury will understand me when I charge them. Of course, they will remember what the witnesses swore to. You take up too much time with that. 10

Mr. Studer: We rest.

The Court: Any rebuttal?

Mr. Walsh: No.

Mr. Studer sums up for the jury on behalf of the defendant. 20

Mr. Walsh sums up to the jury on behalf of the State.

CHARGE.

The Court thereupon charged the jury as follows:

Gentlemen of the Jury: 30

The defendant, D. Ralph Starry, is charged by the Grand Jury of this county, with having on the 1st day of March, 1927, in private, unlawfully committed divers acts of lewdness and carnal indecency, grossly scandalous and tending to debauch the manners and morals of the people. And the details of what the State claims transpired in that private bed chamber in the home of this defendant you have heard. 40

Charge

The law presumes that the defendant is innocent, and that presumption continues until overcome by proof on the part of the State establishing his guilt beyond a reasonable doubt. By “reasonable doubt” in law is not meant any
10 doubt, because everything relating to human affairs and depending upon moral evidence is open to some real or imaginary doubt. And because it is a term very often used and not much understood, the Courts of this state have defined, for the benefit of jurors, what is meant in law by reasonable doubt. And it becomes the duty of the Court to charge you the definition laid down by the highest Courts of our state, and the definition
20 is this:

“It is that state of the case which after the entire comparison and consideration of all the evidence leaves the minds of jurors in that condition that they cannot say they feel an abiding conviction to a moral certainty of the truth of the charge.”

The burden of proof is upon the prosecution to satisfy you that the defendant is guilty beyond a
30 reasonable doubt, and if, upon such proof, there remain in the minds of the jurors a reasonable doubt, as I have defined reasonable doubt in law to you, the defendant is entitled to the benefit of that doubt by an acquittal. The evidence, in other words, must establish the truth of the fact to a reasonable and moral certainty, a certainty that convinces and directs the understanding and the judgment of you men who are to act conscientiously upon the evidence.
40

Charge

The crime in question is contained in the Grimes Act where the supreme law-making power of the state, the legislature, has enacted the following provision:

“Any person who shall be guilty of open
 lewdness, or any notorious act of public in-
 decency, grossly scandalous and tending to
 debauch the morals and manners of the
 people, or any person who shall in private
 be guilty of any act of lewdness and or
 carnal indecency with another, grossly
 scandalous and tending to debauch the
 morals and manners of the people shall be
 guilty of a misdemeanor.”

10

20

So that you will note the section I have just read to you deals with “lewdness in public and private.” The indictment which you are trying, however, is predicated upon a charge of lewdness in private; not in public. The reason for making the misconduct described in the statute punishable is that it presents itself in such a way that it becomes an affront to good morals, and tends to corrupt or offend morality. Of course, that you undoubtedly knew before I called it to your attention.

30

As has been indicated by counsel, in their summing up, there are certain things in this case which ought not to trouble you because they are admitted; they are not denied. The commission of the crime is absolutely denied by the defendant. He does admit that this boy, who was a pupil in the school over which he presided as principal was at his home on the night in question;

40

Charge

and that he was there at the invitation of the defendant, and that he occupied the same bed with the defendant. Now, I am not going to discuss with you the evidence in detail, because you will probably remember it; you should. And further, 10 because I do not know that I can help you very much by discussing the facts. And, after all, you are the judges of the facts. The law you must take from the Court. And so, if I refer to any of the evidence, and you disagree with me as to what I am saying on the question of what I believe to be the evidence, you will depend upon your recollection to decide this case according to your recollection of what was the evidence, and not that of 20 the Court.

As I recall it, speaking of the evidence, this defendant, as principal of the school, so to speak, scarcely knew this boy; he was one of many in his school. The first he had seen of him was in September, 1926; if I am not mistaken the first he talked with him was in December, 1926, when the defendant claims that the boy asked him whether he could come to his home. I recall no 30 testimony of any conversation between the defendant and the boy which led to this request. Just why the boy should make a request of that kind to the principal of his school does not appear, that I recall. So that you may ask yourself whether that was a strange sort of thing; that all that was said about it, so far as I remember, the simple request, and then there was nothing further between that boy and the principal so far as friendly conversation, or of any 40 conversation was concerned (at least not that I

Charge

recall) until March 1st when, without any talk on the part of the boy and the principal, the principal said that he told him he might come to his house that night; that his wife was not going to be at home; to 'phone. And he went there. I believe his testimony was that he had never allowed any other boy or invited any other boy in his home before. That may or may not be of any assistance to you in solving the truth of this whole situation. You may ask yourself why he invited this boy there. Then they talked. Now, there is nothing singular about a principal talking with his boy at home or one of the boys at his school at home. The subject matter of discussion, for the most part, does not seem strange at all, but the boy remained there until a late hour at night, and then was permitted to remain all night, and permitted to sleep in the bed with the principal. Now, of itself, there is nothing wrong about that; yet you have a right to consider it together with all of the other testimony in arriving at who was telling the truth. 10 20

This is a serious charge, and it is a charge that is hard to refute. You can understand, when you realize that the charge here is lewdness in private, that of course, it carries with privacy. There is such a thing in the statute as lewdness in public, but this is not that case. And so, during the night some time, the State claims that this boy had been offended against in such a way that it became a crime against the statute for lewdness in private. The boy says it happened. The defendant says it did not. 30 40

Charge

Of course, there are a number of rules that the jury might employ in determining where the truth lies. You have a right, in the first place, to observe the manner and the bearing and conduct of the various witnesses upon the stand; all of them.

10 You have a right to ask yourself whether or not, from their conduct and bearing, the credibility of the witness should at all be affected, and if so, to what extent. You have a right to regard interest, and ask yourselves the question what interest any of the witnesses may have in telling the stories which they tell. It does not follow that any witness has any particular interest, simply because he or she testified, but you may search your intel-

20 ligence, and so forth, and call upon your observation of the manner of the witnesses, the things they testified to, and the connection of the witness with the defendant or with the State's complaining witness and so say in the exercise of your best judgment whether there is an interest, and if so, what interest. And then you determine if there is an interest or there is no interest if the interest that you find or should find, whether that would at all effect, in your own good rich

30 judgment, the credibility of the witness. Now, that test you might apply to the State's complaining witness. You might ask yourselves what interest has this boy in telling the story he tells here on the stand. It is a story of shame. What is there in this case, that you can find, that would to your mind lead this boy to say these things if they were untrue? Is there any motive? Is there any ill-feeling? Is there any hatred? Is

40 there any ill-will? Is there anything in this case

Charge

that you heard, by way of evidence, that will cause you to stop or pause? And that same test you might apply to the defendant; what interest has he in telling you the story which he tells? Had he any except the purest and cleanest motives? These are things which you may ask yourselves. 10

Now, the boy says that the next morning he went into the principal's office, and there told him how the happening of the night before had affected him, and he was told to consult some older men among his friends and ask them about it. Then the principal was called before the superintendent of schools, and you heard the superintendent's testimony. I cannot see where, so far as the evidence in the case is concerned, the superintendent of schools had any interest except that of his official position. The defendant resigned his position as principal. He says to you that he did that because it didn't make much difference to him any way. He had been conducting camps in the summertime for boys and that, in so far as his remuneration was concerned, as the principal of the school, the camp for boys paid him very much better; he contemplated resigning any way. He discussed it with his wife; she says he did; for three years. 20 30

You might ask yourselves what bearing, if any, the fact that he resigned has upon this case. You may ask yourselves the question, very properly, what effect his resignation had in the face of this charge; what his conduct was at that time; what bearing that has in your estimation; how far it would affect, in your own good rich judgment, his 40

Charge

credibility with you, if at all. And then, he went away from Plainfield for some time.

Of course, this case is very, very important, both from the standpoint of the State and of this defendant. This Court and this jury are bound under their oaths to administer law and justice. This is not a suit between this boy and this defendant. This is an action instituted by the sovereign State of New Jersey against one of its subjects in which the state alleges that he committed a crime against the government and the dignity of the state. And hence it is that the rules of law which I have laid down to you are commanded to be charged over and over again in every one of these cases, because it is that sovereign state, the power and the dignity and the force of the sovereign State of New Jersey as against an individual. And I need not say to you that it is important to uphold the law and dignity of the state, but it is likewise important to consider seriously the effect which this sort of thing has upon the individual if it is not true. We must protect the boys, the children, youths of this county, but we must never do that carelessly or lightly at the expense of any individual; so you see the importance of this thing.

With regard to the matter of branding (I think counsel said something about branding the defendant as a criminal) you do not brand anybody. You sit here to decide the facts. Neither do you sentence anybody. That is not your function. As I have said to you before in other cases, unhappily that becomes the duty of the Court.

Charge

What you do, and what you must do under your oaths is to decide this case upon the evidence and apply the law as it has been charged to you by the Court. When you have done that, and done it conscientiously, as, I know you will, you will have discharged your full and complete duty. You may now retire. 10

(Jury retires to jury-room.)

The Court: I refuse to charge other than I have charged.

Mr. Studer: I respectfully pray a general exception to your Honor's charge.

Exception allowed, signed and sealed accordingly. 20

ALFRED A. STEIN,
Judge.

Mr. Studer: I respectfully pray an exception to that part of your Honor's charge where you comment upon the evidence to the effect that there had been no talk between Starry and the boy, I think it was between December and March.

The Court: As I said, so far as I recall the evidence. 30

Mr. Studer: Yes, sir.

Exception allowed, signed and sealed accordingly.

ALFRED A. STEIN,
Judge.

Mr. Studer: I respectfully pray an exception to that part of your Honor's charge in which you 40

Charge

spoke about there having been nothing in the case to the effect that any other boy may have been at the house overnight at any time.

The Court: No. I didn't say that.

Mr. Studer: I think you spoke about: "You
10 might consider the fact that no other boys had spent the night at the house overnight."

The Court: No; I didn't say that, either.

Mr. Studer: Whatever the language is.

The Court: Yes, whatever the language is.

Mr. Studer: Whatever that may be, because I have my note here.

The Court: That's all right.

Exception allowed, signed and sealed accord-
20 ingly.

ALFRED A. STEIN,
Judge.

Mr. Studer: Then (I except) to that part of your Honor's charge wherein you discussed the consideration of underlying motive, if any, on the part of the respective witnesses, whatever your Honor said about that.

Exception allowed, signed and sealed accord-
30 ingly.

ALFRED A. STEIN,
Judge.

Mr. Studer: And then I respectfully pray an exception to that part of the charge in which you spoke about his considering his resignation.

Exception allowed, signed and sealed accord-
ingly.

40 ALFRED A. STEIN,
Judge.

Charge

The Court: I forgot all about charging good repute. It is in the request.

Mr. Studer: I think you should bring them back.

The Court: Are you willing that I should bring them back?

Mr. Studer: Yes.

10

(The jury then returned to the courtroom four minutes after having left it, and the Judge charged them as follows:)

The Court: I had made for myself a notation so that I might not overlook the fact that I desired to charge you upon the evidence of good reputation introduced in this case, and after you retired I found that I had quite neglected to do that.

20

There was evidence introduced in the case on behalf of the defendant to establish his good reputation for morality and decent living in the community in which he lived, and that class of evidence is admissible and is good evidence and receivable in this kind of a charge. And when that sort of evidence is introduced, meaning now the evidence of the good character of the accused prior to the alleged offense, it is admissible in evidence as relevant to the question of guilt; and the weight and the effect of such evidence is a matter for the determination of the jury in connection with all other facts and circumstances of the case. In other words, you must take that evidence into consideration with all of the other evidence in the case. And it is the right of the defendant charged with crime to have all of the relevant testimony including that relating to his good character or reputation considered by the jury. And so you are to consider the evidence adduced

30

40

Defendant's Requests to Charge

in this case on the part of the defendant to prove his good character and reputation. And if, on consideration of this evidence, along with all the other evidence in the case, there exists a reasonable doubt of his guilt, even though that doubt be
 10 engendered merely by his previous good repute, the defendant is entitled to the benefit of it by an acquittal.

I found after you had retired I had neglected to charge this, and counsel for the defendant consented to my re-calling you for that purpose. You may now retire.

(The jury again retires to the jury room.)

20 Mr. Studer: I think the last was with reference to the language regarding the resignation. That is my last.

The Court: Yes.

Mr. Studer: What your Honor said about that.

DEFENDANT'S REQUESTS TO CHARGE

1. A reasonable doubt is that state of the case which, after a consideration of all the evidence,
 30 leaves your minds in such condition that you cannot feel an abiding conviction, to a moral certainty, of the truth of the charge. As has been said, the burden of proof is upon the prosecution, and, if, upon such proof, reasonable doubt remains in your minds regarding the defendant's guilt, you must acquit him.

2. You should consider all of the testimony in reaching your verdict, including that which
 40 relates to the defendant's good reputation, and if

Judge's Certificate

upon such consideration there exists reasonable doubt in your minds of his guilt, even though that doubt be engendered merely because of his previous good reputation, you must acquit him.

3. The defendant is presumed to be innocent, and that legal presumption of innocence continues in his favor until and unless the contrary has been shown by the State, and shown beyond a reasonable doubt. 10

JUDGE'S CERTIFICATE.

UNION COUNTY COURT 20
OF
QUARTER SESSIONS

THE STATE OF NEW JERSEY, Defendant-in-Error, vs. D. RALPH STARRY, Plaintiff-in-Error.	}	In Error.	30
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I, Alfred A. Stein, Judge of the Union County Court of Quarter Sessions, who held the Court of Quarter Sessions, at which the above stated cause was tried, do hereby certify that the foregoing is the entire record of the proceedings had upon the trial of said cause. 40

ALFRED A. STEIN.
 Judge of the Union County Court
 of Quarter Sessions.

Assignment of Errors

objection, the following question: "Do you remember on June 16th, 1922, going into camp on the bank of the canal at Bound Brook with these two boys?"

4. That the Court below erred to the prejudice and injury of the plaintiff-in-error by permitting the defendant, D. Ralph Starry to answer, over objection, the following questions: "Why didn't you bring him home?" "Why didn't you take him home: you were his principal and he was one of your pupils." 10

5. That the Court below erred to the prejudice and injury of the plaintiff-in-error by charging the jury as follows: "As I recall it, speaking of evidence, this defendant, as principal of the school, so to speak, scarcely knew this boy; he was one of many in his school. The first he had seen of him was in September, 1926; if I am not mistaken the first he talked with him was in December, 1926 when the defendant claims that the boy asked whether he could come to his home. I recall no testimony of any conversation between the defendant and the boy which lead to this request. Just why the boy should make a request of that kind to the principal of his school does not appear, that I recall. So that you may ask yourselves whether that was a strange sort of thing, that all that was said about it, so far as I remember, the simple request and then there was nothing further between that boy and the principal so far as friendly conversation, or of any conversation was concerned (at least not that I recall) until March 1st when, without any talk on 20 30 40

Assignment of Errors

the part of the boy and the principal, the boy said that he told him that he might come to his house that night; that his wife was not going to be at home; to phone. And he went there. I believe his testimony was that he had never allowed any
10 other boy or invited any other boy in his home before. That may or may not be of any assistance to you in solving the truth of this whole situation. You may ask yourselves why he invited this boy there."

6. That the Court below erred to the prejudice and injury of the plaintiff-in-error by charging the jury as follows: "You might ask yourselves
20 what bearing, if any, the fact that he resigned has upon this case, you may ask yourselves what affect his resignation had in the face of this charge; what his conduct was at that time; what bearing that has in your evidence; how far it would affect in your own good rich judgment, his credibility with you, if at all. And then, he went away from Plainfield for some time."

7. That the Court below erred to the prejudice and injury of the plaintiff-in-error by charging
30 the jury as follows: "The reason for making this misconduct punishable is that it presents itself in such a way that it becomes affront to good morals and tends to corrupt or offend morality."

8. That the Court below erred to the prejudice and injury of the plaintiff-in-error in that the said charge of the Court as a whole and in each and every part thereof, is illegal."

40 9. That in the entire proceedings had upon the trial of the said plaintiff-in-error, he suffered

Assignment of Errors

manifest wrong and injury in the admission and exclusion of evidence at the Charge of the Court, which prejudiced the said plaintiff-in-error in maintaining his defense upon the merits, and which are causes for reversal.

10. That the Court below erred to the prejudice and injury of the plaintiff-in-error by permitting the witness, Frederick W. Cook, to answer the question: "That was about all you said or—was that all that was said?" As follows: "Following that I advised Mr. Starry to present his resignation to the Board of Education." 10

11. That the Court below erred to the prejudice and injury of the plaintiff-in-error by permitting the witness, Frederick W. Cook, to answer the question: "Did Mr. Starry act upon that advice?" As follows: "He did." 20

12. That the Court below erred to the prejudice and injury of the plaintiff-in-error by permitting the witness, Frederick W. Cook, to answer the question "In what way?" as follows: "By presenting his resignation addressed to the Board of Education."

13. That the Court below erred to the prejudice and injury of the plaintiff-in-error by permitting the plaintiff-in-error, D. Ralph Starry to answer the question: "and you knew you were entitled to a hearing." 30

14. That the Court below erred to the prejudice and injury of the plaintiff-in-error by permitting the plaintiff-in-error, D. Ralph Starry to answer the question: "And yet in the face of that accusa-

Assignment of Errors

tion you wrote out your resignation as principal?" "And left town?"

10 15. That the entire evidence, as a whole, did not show beyond a reasonable doubt that the plaintiff-in-error was guilty of the crime charged and did not justify the verdict found against him. And that the verdict was against the weight of the evidence.

16. And the said plaintiff-in-error prays that the judgment aforesaid, for the errors aforesaid, and for the errors therein, be reversed, annuled and altogether holden for nothing, and that he may be restored in all things in which he has lost by reason of said judgment.

20

McCARTER & ENGLISH,
MARTIN P. O'CONNOR,
JOHN F. RYAN,
Attorneys for and of Counsel
with Plaintiff-in-Error.

Due and legal service of the within Assignment-of-Errors is hereby acknowledged this 20th day of April, 1928.

30

ABE J. DAVID,
Prosecutor of the Pleas.

40

REASONS FOR REVERSAL.

NEW JERSEY SUPREME COURT

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

vs.

D. RALPH STARRY,
Plaintiff-in-Error.

In Error.

10

And now comes the said D. Ralph Starry, by McCarter & English, his attorneys, and says that in the record and proceedings aforesaid, and also in giving the judgment aforesaid, there is manifest error, and said D. Ralph Starry says that the judgment should be reversed and assigns the following reasons:

20

1. That the said Court below erred to the prejudice and injury of the plaintiff-in-error by refusing to permit the witness Nathan Perry to answer the following question: "How long before had you had these night discharges?" which is cause for reversal.

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2. That the Court below erred to the prejudice and injury of the plaintiff-in-error by permitting defendant, D. Ralph Starry to answer, over objection, the following question: "And his time was as precious as yours or as anyone else's, was it not?" which is cause for reversal.

3. That the Court below erred to the prejudice and injury of the plaintiff-in-error by permitting

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Reasons for Reversals

the defendant, D. Ralph Starry to answer, over objection, the following question: "Do you remember on June 16th, 1922, going into camp on the bank of the canal at Bound Brook with these two boys?" which is cause for reversal.

10 4. That the Court below erred to the prejudice and injury of the plaintiff-in-error by permitting the defendant, D. Ralph Starry, to answer, over objection, the following questions: "Why didn't you bring him home?" "Why didn't you take him home: You were his principal and he was one of your pupils?" which is cause for reversal.

20 5. That the Court below erred to the prejudice and injury to the plaintiff-in-error by charging the jury as follows: "As I recall it, speaking of the evidence this defendant, as principal of the school, so to speak, scarcely knew this boy; he was one of many in his school. The first he had seen of him was in September, 1926; if I am not mistaken the first he talked with him was in December, 1926, when the defendant claims that the boy asked whether he could come to his home. I recall no testimony of any conversation between
30 the defendant and the boy which lead to this request. Just why the boy should make a request of that kind to the principal of his school does not appear, that I recall. So that you may ask yourselves whether that was a strange sort of thing, that all that was said about it, so far as I remember, the simple request and then there was nothing further between that boy and the principal so far as friendly conversation, or of any conversation
40 tion was concerned (at least not that I recall) un-

Reasons for Reversals

til March first when, without any talk on the part of the boy and the principal, the boy said that he told him that he might come to his house that night; that his wife was not going to be at home; to phone. And he went there. I believe his testimony was that he had never allowed any other boy or invited any other boy in his home before. That may or may not be of any assistance to you in solving the truth of this whole situation. You may ask yourselves why he invited this boy there," which is cause for reversal. 10

6. That the Court below erred to the prejudice and injury of the plaintiff-in-error by charging the jury as follows: "You might ask yourselves what bearing, if any, the fact that he resigned has upon this case, you may ask yourselves what affect his resignation had in the face of this charge; what his conduct was at that time; what bearing that has in your evidence; how far it would affect in your own good rich judgment, his credibility with you, if at all. And then, he went away from Plainfield for some time," which is cause for reversal. 20

7. That the Court below erred to the prejudice and injury of the plaintiff-in-error by charging the jury as follows: "The reason for making this misconduct punishable is that it presents itself in such a way that it becomes affront to good morals and tends to corrupt or offend morality," which is cause for reversal. 30

8. That the Court below erred to the prejudice and injury of the plaintiff-in-error in that the said Charge of the Court as a whole and in each and 40

Reasons for Reversals

every part thereof, is illegal," which is cause for reversal.

9. That in the entire proceedings had upon the trial of the said plaintiff-in-error, he suffered
10 manifest wrong and injury in the admission and exclusion of evidence at the Charge of the Court, which prejudiced the said plaintiff-in-error in maintaining his defense upon the merits, and which is cause for reversal.

10. That the entire evidence, as a whole, did not show beyond a reasonable doubt that the plaintiff-in-error was guilty of the crime charged and did not justify the verdict found against him, which is
20 cause for reversal.

11. That the Court below erred to the prejudice and injury of the plaintiff-in-error in permitting a witness, Jules Weissman, Jr., to answer the questions: "Did you hear his general reputation discussed in March?"; the question—"Had you heard it discussed?"; the question—"You mean to say that during your acquaintanceship of nine years you heard his reputation for morality discussed?"; the question—"No. I am asking you, did you ever hear it discussed?" which are causes
30 for reversal.

12. That the Court below erred to the prejudice and injury of the plaintiff-in-error in that while the questions last above set forth were being put, it commented as follows: "That is not the answer. That is just what the Prosecutor is driving at, whether you had heard it discussed."
40 "Heard anybody talk about him refer to his repu-

Reasons for Reversals

tation for morality and decent living?" "The witness has already testified that he did not hear his reputation discussed," which are causes for reversal.

13. That the Court below erred to the prejudice and injury of the plaintiff-in-error by permitting the witness, Myrtle Seidel, to answer the question—"Did you hear the question of his morality discussed?"; the question—"Was his morality and good living discussed, yes or no?" the question—"Well by whom was it discussed with you?" the question—"By whom? Who did you talk to?" the question—"That is right. But as to his reputation you know nothing about it, do you?" the question—"You mean to say his morality was the talk of the City of Plainfield?"; the question—"And you heard his morality discussed all through Plainfield?"; which are causes for reversal. 10 20

14. That the Court below erred to the prejudice and injury of the plaintiff-in-error by commenting while the questions last above set out were put to said witness, as follows: "No, no. People talk about it?"; "Somebody say he is a very fine moral living man?"; "Now can that really be of everyone you spoke to about him?"; "Did you ask one about his moral standing?"; "Everyone went on to tell you about his moral standing?"; which are causes for reversal. 30

15. That the Court below erred to the prejudice and injury of the plaintiff-in-error in that it allowed the witness, George W. Garthwaite to answer the questions: "You never heard his repu- 40

Reasons for Reversals

tation about 'his morality discussed, prior to March, did you?'; which is cause for reversal.

16. That the Court below erred to the prejudice and injury of the plaintiff-in-error in that, while
 10 the question last above set forth was being answered, the Court, commented as follows: "That is argument. If he never heard it discussed is there anything further you want to ask him?" which is cause for reversal.

17. That the Court below erred to the prejudice and injury of the plaintiff-in-error in that it allowed the witness, Florence Cooper, to answer the question: "When did you ever hear his repu-
 20 tation for morality discussed?"; the question—"No! Did you ever hear it discussed?"; the question—"Where was his morality discussed and when?"; the question—"When and where, time and place, did you hear it discussed, his morality?"; the question—"No. Tell me when and where it was discussed and who was there and who said it?"; the question—"Prior to March?"; the question—"All right. How did the question
 30 of his morality be discussed?"; the question—"Now, I ask you if you ever heard his morality or his reputation for good living questioned or discussed?"; which are causes for reversal.

18. That the Court below erred to the prejudice and injury of the plaintiff-in-error in that it commented during the presentation and answering of questions last above set out as follows: "Certainly the way you live—now then, this question
 40 is directed to the reputation of this man for morality and good living and whether anyone ever

Reasons for Reversals

discussed that with you?"; "if it was discussed in Plainfield, that makes reputation." People say he is a fine living man, he was a good moral man." "Those are the things that make reputation, are they not?"; which are causes for reversal. 10

19. That the Court below erred to the prejudice and injury of the plaintiff-in-error in allowing the witness, Walter F. Austin, to answer the question: "You never heard it discussed, did you?"; the question—"Was there a question of his morality raised there?"; the question—"Have you ever heard his morality discussed in Plainfield, yes or no, before March I mean?"; which are causes for reversal. 20

20. That the Court below erred to the prejudice and injury of the plaintiff-in-error by permitting the witness, Eleanor Thompson Wilbur, to answer the question—"You mean to say prior to March his reputation was discussed?"; the question—"Was his morality mentioned?"; the question—"When was it that you heard any, in your opinion, when was it you ever heard his reputation for morality discussed in Plainfield?"; the question—"You can't say whether it was before or after the first day of March, 1927"; which is cause for reversal. 30

21. That the Court below erred to the prejudice and injury of the plaintiff-in-error by allowing the witness, Harriet M. Humphrey to answer the question: "When did you hear it talked about?"; the question—"Where was it they talked about this morality?"; the question— 40

Reasons for Reversals

“How did you come to talk about his morality?”; which is cause for reversal.

10 22. That the Court below erred to the prejudice and injury of the plaintiff-in-error in that in allowing the question and making the comment specifically referred to in causes numbered 11-12-13-14-15-16-17-18-19-20 and 21, for that the same established an erroneous and illegal test of the propriety of reputation testimony and the credit to which it is entitled and was tantamount to an erroneous instruction of the jury on the propriety of and credit due reputation testimony, which is cause for reversal.

20 23. That the Court below erred to the prejudice and injury of the plaintiff-in-error in that in allowing the questions and making the comment specifically detailed in causes numbered 11-12-13-14-15-16-17-18-19-20 and 21, the jury was prevented from giving the reputation testimony any credit, the same was destroyed and nothing remained as the basis for the portion of the Court charge dealing with reputation testimony, which is cause for reversal.

30 24. That the Court below erred to the prejudice and injury of the plaintiff-in-error by permitting the witness, Frederick W. Cook, to answer the question: “That was about all you said or—was that all that was said?” As follows:—“Following that I advised Mr. Starry to present his resignation to the Board of Education,”; which is cause for reversal.

40 25. That the Court below erred to the prejudice and injury of the plaintiff-in-error by per-

Reasons for Reversals

mitting the witness, Frederick W. Cook, to answer the question: "Did Mr. Starry act upon that advice?" As follows:—"He did."; which was cause for reversal.

26. That the Court below erred to the prejudice and injury of the plaintiff-in-error by permitting the witness, Frederick W. Cook, to answer the question: "In what way?" as follows: "By presenting his resignation addressed to the Board of Education"; which is cause for reversal. 10

27. That the Court below erred to the prejudice and injury of the plaintiff-in-error by permitting the plaintiff-in-error, D. Ralph Starry, to answer the question: "And you knew you were entitled to a hearing"; which is cause for reversal. 20

28. That the Court below erred to the prejudice and injury of the plaintiff-in-error by permitting the plaintiff-in-error, D. Ralph Starry to answer, the question: "And yet in the face of that accusation you wrote out your resignation as principal?" "And left town?"; which is cause for reversal.

29. And the said plaintiff-in-error prays that the judgment aforesaid, for the errors aforesaid, and for the errors therein, be reversed, annulled and altogether holden for nothing, and that he may be restored in all things in which he has lost by reason of said judgment. 30

McCARTER & ENGLISH,
JOHN F. RYAN,
MARTIN P. O'CONNOR,
Attorneys for and of Counsel with
Plaintiff-in-Error. 40

Joinder in Error

Due and legal service of the within reasons for reversal is hereby acknowledged this 20th day of April, 1928.

ABE J. DAVID,
Prosecutor of the Pleas.

10

JOINDER IN ERROR.

NEW JERSEY SUPREME COURT

20	THE STATE OF NEW JERSEY, Defendant-in-Error, vs. D. RALPH STARRY, Plaintiff-in-Error.	}	In Error
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And thereupon, afterwards, to wit, on the 19th day of April, A. D., nineteen hundred and twenty-eight, the said State of New Jersey, by Abe J. David, Prosecutor of the Pleas of the County of Union, comes into Court and says that there is no error in the record and proceedings aforesaid, and he prays that the Court here may proceed to examine as well the record and proceedings as the matters aforesaid assigned for error, and that the judgment aforesaid, in manner aforesaid given, may in all things be affirmed, etc.

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ABE J. DAVID,
Prosecutor of the Pleas.

On Writ of Error.

(Filed December 6, 1928.)

NEW JERSEY SUPREME COURT.

<p>THE STATE OF NEW JERSEY, Defendant-in-Error,</p> <p style="text-align: center;"><i>vs.</i></p> <p>D. RALPH STARRY, Plaintiff-in-Error.</p>	}	<p>10</p> <p>On Writ of Error. No. 9, May Term, 1928.</p>
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This cause having been argued and having been
 duly submitted on briefs at the May Term, 1928,
 of this Court, by McCarter & English, Esqs., of
 counsel for the plaintiff-in-error, and Abe J.
 David, Esq., of counsel for the defendant-in-error,
 and the Court having heard counsel and having
 inspected the record and verdict below, and con-
 sidered the assignments of error and the specifica-
 tions of causes for reversal therein: 20

It is Thereupon, on this 6th day of December,
 1928, ORDERED that the judgment of the Union
 County Court of Quarter Sessions be and the same
 hereby is affirmed, and that the record and pro-
 ceedings be remitted to the said Union County
 Court of Quarter Sessions to be proceeded with
 in accordance with this judgment and the practice
 of the said Court, with costs. 30

Entered December 6th, 1928.

On motion of

ABE J. DAVID

By WALTER C. TENNEY, 40
 Assistant Prosecutor of
 the Pleas for Union County.

On Writ of Error.

A true copy.

FRED L. BLOODGOOD,
Clerk.

10 Endorsed:

REMITTITUR.

D. Ralph Starry.—12/6/1928. Conviction confirmed.

Opinion.

NEW JERSEY SUPREME COURT.

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#9 MAY TERM 1928.

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

vs.

D. RALPH STARRY,
Plaintiff-in-Error.

} Opinion.

30

Argued May 2, 1928. Decided November ,
1928.

On Writ of Error.

For Appellant (Plaintiff-in-Error) McCARTER
& ENGLISH.

For Respondent (Defendant-in-Error) ABE J.
DAVID.

40

Before Justices TRENCHARD, KALISCH AND
LLOYD.

Opinion.

PER CURIAM:

Plaintiff-in-error was a supervisor of schools and was indicted for lewdness in private with one of his scholars. He was convicted of the offense and sentenced to pay a fine of \$1,000. The case is here on both bills of exception and specifications of causes for reversal under the 136th section of the Criminal Procedure Act.

10

The assignments of error and reasons for reversal are directed to alleged trial errors in rulings on evidence and in the court's charge. It is also contended that the verdict was against the weight of the evidence.

A careful examination of the rulings and the charge leads us to the conclusion that they were free from error and that the plaintiff-in-error was not prejudiced in making his defense upon the merits. It would serve no useful purpose or tend to elucidate any legal principle to discuss in detail the alleged errors. The questions objected to were propounded on cross-examination of the defendant or of the defendant's witnesses for character, and all, we think, were within the province of cross-examining counsel to ask. The charge was an impartial submission of the case to the jury by the learned judge with some comments on the evidence calling attention of the jury to certain features of that evidence which seemed to be of importance in the cause, at the same time shielding the defendant by clear exposition of the law respecting the burden of proof and the proof of good character which the plaintiff-in-error had adduced. The verdict is not against the weight of the evidence.

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The judgment is affirmed.

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Copy of Return.

NEW JERSEY SUPREME COURT.

10	<p style="text-align: center;">THE STATE OF NEW JERSEY, Defendant-in-Error,</p> <p style="text-align: center;"><i>vs.</i></p> <p style="text-align: center;">D. RALPH STARRY, Plaintiff-in-Error.</p>	}	Copy of Return.
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20 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 to the Court of Errors and Appeals of said State, in a certain schedule of this Writ annexed, as within we are commanded.

WILLIAM J. GUMMERE,
Chief Justice.

30 A true copy,
FRED L. BLOODGOOD,
Clerk.

40

Writ of Error.

NEW JERSEY, SS.:

*The State of New Jersey to the Chief
Justice and other Justices of our
Supreme Court of Judicature:*

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FORASMUCH as in the record and proceedings and also in the giving of judgment in a certain plaint which was in our said Supreme Court of Judicature before you, between the State of New Jersey, defendant-in-error and D. Ralph Starry, plaintiff-in-error, upon the affirmance of the conviction of the said D. Ralph Starry, by the Court of Quarter Sessions of Union County, alleging that on the first day of March, Nineteen hundred and twenty-seven, the plaintiff-in-error, late of the City of Plainfield, in said County of Union and State of New Jersey, did then and there, in private, unlawfully commit divers acts of lewdness and carnal indecency, grossly scandalous and tending to debauch the morals and manner of the people, by then and there unlawfully exposing and using his private parts in an indecent and lewd posture, situation and practice with one Nathan Perry and touch, expose and use the private parts of Nathan Perry in an indecent and lewd posture, manifest error hath intervened, to the great damage of the said plaintiff-in-error, as is said, we being willing that error, if any there be, should, in due manner, be corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, that if judgment be thereupon given and affirmed, that you distinctly 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

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Writ of Error.

10 Appeals in the last resort in all causes, at Trenton, on the sixth day of December, Nineteen Hundred and twenty-nine, 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 Honorable EDWIN ROBERT WALKER, Chancellor and Presiding Judge of our said Court of Errors and Appeals at Trenton aforesaid, the sixteenth day of November, Nineteen hundred and twenty-nine.

20 JOSEPH F. S. FITZPATRICK,
Clerk.

JOHN F. RYAN,
Attorney.

A True Copy

JOSEPH F. S. FITZPATRICK,
Clerk.

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Assignment of Error.

(Filed December 31, 1929.)

NEW JERSEY COURT OF ERRORS
AND APPEALS.

 THE STATE OF NEW JERSEY,
 Defendant-in-Error,
vs.
 D. RALPH STARRY,
 Plaintiff-in-Error.

10

 Assignment of
 Error.

Afterwards, to wit, on the 20th day of December, 1929, before our said Court of Errors and Appeals in the last resort in all causes comes the said D. Ralph Starry by John F. Ryan, his attorney, and says that in the record and proceedings aforesaid and also in the matters recited and contained in said bill of exceptions and also in giving the judgment aforesaid, there is manifest error in this, to wit:

20

The Supreme Court erred in rendering a judgment affirming the judgment of the Union County Court of Quarter Sessions instead of reversing the same.

WHEREFORE, the said D. Ralph Starry prays that the said judgment and sentence may 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

JOHN F. RYAN,
 Of Counsel with Plaintiff-in-Error.

Service of a true copy of the within Assignment of Error is hereby acknowledged this 20 day of December, 1929.

40

ABE J. DAVID,
 Prosecutor of the Pleas.

Joinder in Error.

(Filed December 31, 1929.)

NEW JERSEY COURT OF ERRORS
AND APPEALS.

10

 THE STATE OF NEW JERSEY,
 Defendant-in-Error,
vs.
 D. RALPH STARRY,
 Plaintiff-in-Error.

 In Error.
 Joinder in Error.

20

And thereupon, afterwards, to wit, on the 30th day of December, A. D. nineteen hundred and twenty-nine, the said State of New Jersey, by Abe J. David, Prosecutor of the Pleas of the County of Union, comes into Court and says that there is no error in the record and proceedings aforesaid, and he prays that the Court here may proceed to examine as well the record and proceedings as the matters aforesaid assigned for error, and that the judgment aforesaid, in manner aforesaid given, may in all things be affirmed, etc.

30

ABE J. DAVID,
 Prosecutor of the Pleas.

Service of a true copy of the within Joinder in Error is hereby acknowledged this 30th day of December, 1929.

JOHN F. RYAN,
 Of Counsel with Plaintiff-in-Error.

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Notice of Argument.

(Filed January 3, 1930.)

NEW JERSEY COURT OF ERRORS AND
APPEALS.

<p style="text-align: center;">THE STATE OF NEW JERSEY, Defendant-in-Error,</p> <p style="text-align: center;"><i>vs.</i></p> <p style="text-align: center;">D. RALPH STARRY, Plaintiff-in-Error.</p>	}	<p style="text-align: right;">10</p> <p style="text-align: right;">In Error. Notice of Argument.</p>
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Sir:

PLEASE TO TAKE NOTICE, that the argument of the issue joined in this cause will be moved before said Court, in the presence of the Justices thereof, as shall then be holding said Court on the First Tuesday of February, A. D. 1930, at the State House, in Trenton, New Jersey, at ten o'clock in the forenoon, or as soon thereafter as the said Court can attend to the same.

Dated: January 2nd, 1930.

Your obedient servant,

JOHN F. RYAN,
Attorney of Plaintiff-in-Error.

To

ABE J. DAVID,
Prosecutor of the Pleas of
Union County.

New Jersey Court of Errors and Appeals

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

vs.

D. RALPH STARRY,
Plaintiff-in-Error.

On Writ of
Error.

BRIEF OF THE PLAINTIFF-IN-ERROR.

Statement.

The plaintiff-in-error was indicted by the Grand Inquest for the State of New Jersey and for the body of the County of Union at the May Term 1927 of the Union County Court of Oyer and Terminer, for the crime of Lewdness in Private, alleged to have been committed March 1st, 1927, in the City of Plainfield, in said County.

To this indictment defendant entered a plea of Not Guilty, whereupon the indictment was moved for trial in the Union County Court of Quarter Sessions before Stein, J., and a jury, on the 29th day of March, 1928. The cause was submitted to the jury, who thereafter returned their verdict of Guilty as charged in the indictment.

Thereafter, to wit, on the 11th day of April, 1928, the defendant was sentenced on the said conviction to pay a fine of one thousand (\$1,000.00) dollars.

On the said 11th day of April, 1928, plaintiff-in-error sued out of the New Jersey Supreme Court a writ-of-error directed to the Judge of the Union County Court of Quarter Sessions, in pursuance whereof the said Judge made his return to

the said New Jersey Supreme Court, as in the writ directed (Case, p. 3), and in addition thereto the said Judge certified under his hand (Case, p. 139) the entire record of the proceedings had upon the trial of said indictment, including the testimony taken thereat and all things touching and concerning the same.

The said case, on the said return, together with the entire record of the proceedings had upon the trial, certified as aforesaid, is now before this Court on the said writ-of-error for a review of the entire proceedings, including the proceedings had upon the trial, in accordance with Sections 136 and 137 of

“An Act Relating to Courts having Criminal Jurisdiction and Relating to Proceedings in Criminal Cases (Revision of 1898), and other acts amendatory thereof and supplementary thereto.” (C. S. 1910, p. 1820.)

Argument.

In the following “points” of plaintiff-in-error the word “Assignment” refers to the Assignments of Errors set out in the printed case (p. 140); and the word “Reason” refers to the Reasons for Reversal, printed in the State of the Case at page 145.

POINT I.

Assignment 2. Reason 2.

This assignment alleges error on the part of the Trial Court in requiring the plaintiff-in-error to answer over objection the following question: “And his time was as precious as yours or as anybody else’s, was it not” (Case, p. 77, l. 39)?

This question was designed to elicit testimony clearly irrelevant, immaterial and incompetent. Moreover it called for nothing more than a mere statement of opinion and a conclusion on the part of the defendant below. And it was prejudicial, in that no reason can be assigned for it, excepting the prosecutor's manifest purpose (and the natural result of the question), to lead the jury to the inference that plaintiff-in-error at the time to which the question relates, because of a consciousness of guilt, was shrinking from an encounter with the boy Perry, thereby confronting the plaintiff-in-error with illegal evidence of guilt and leaving him powerless to overcome it.

POINT II.

Assignment 3. Reason 3.

This assignment alleges that there was error on the part of the Court below in requiring the plaintiff-in-error to answer the question therein set out (Case, p. 84). The objection should have been sustained on the ground assigned, namely that it was designed to elicit an answer immaterial to the issue. Evidence is excluded on the ground of immateriality when according to the universal test it clearly appears to bear no relation whatever to the issue. Plaintiff-in-error insists that the evidence elicited by this question and those immediately preceding and following it, clearly bore no relation to the issue presented in the case at bar. This was a trial of an indictment for a specific act of lewdness and no evidence could have been offered by the State of any previous act of lewdness with another person, such as the prosecutor specifically referred to by naming certain other boys. As matter of fact no reference could have been made by way

of the introduction of evidence, calculated to show another and different act of lewdness even with the same boy. This rule is so broad in its application that even in a case of reputation testimony on behalf of the plaintiff-in-error the State could not offer in rebuttal, evidence of specific acts, similar to the act charged in the indictment, but it is confined to general reputation of bad character.

“Particular acts or specific acts are not admissible either as part of the general case or as evidence by way of rebuttal.”

Bullock v. State, 65 N. J. L. 557.

“On the trial of an accused for a crime, it is not competent to prove that he committed other crimes of a like nature for the purpose of showing that the accused would be likely to commit the crime charged in the indictment.”

Bullock v. State, *supra*, and cases therein cited.

In the *Bullock* case the crime charged was murder and the testimony which provoked the foregoing pronouncement was testimony showing an act of violence independent of and disconnected from the crime charged. No possible connection can be made between the specific act charged in the indictment in the case at bar and the acts which the State alluded to with reference to the two boys, specifically named by the prosecutor in his question, and which allusion was a mere suggestion of some possible relations with the said boys, calculated only to cause the jury to draw an inference of the plaintiff-in-error's likely propensity to commit the crime charged.

* “There is a class of cases in which the knowledge, good faith, motive or intent of a

party is material, on which evidence collateral to the main subject is sometimes admitted but the competency of such evidence is limited to facts which are so connected with the subject in controversy as to make it apparent that the party had a common purpose in both transactions. But on the trial of a criminal charge it is not relevant to show that the defendant has committed other similar crimes which are not connected in any way with the one in question."

Bullock v. State, supra, and cases therein cited.

Plaintiff-in-error contends that the case at bar, in the particular phase under discussion, presents an exact parallel with the *Bullock* case so far discussed. And that the question with reference to the plaintiff-in-error's conduct with other boys was calculated to suggest to the jury that the defendant had been guilty of previous acts or committed previous crimes, similar to, but not in any way connected with the act or crime charged.

The natural influence and effect upon the jurors' minds of these unwarranted references to relations with other boys, could not conceivably be any other than to prejudice the jury against the defendant. No possible reason can be assigned for the questions objected to, excepting that they were designed and well calculated to lead the jury to the certain conclusion that plaintiff-in-error's conduct, in his relations with all other boys was such that he in all his social relations was motivated by and lived under the spell or influence of a pronounced propensity to commit such a crime and because of that fact undoubtedly committed the crime charged. Assuming, but, of course, not admitting, such evidence to be material, these questions could have been asked only for the purpose of, and as preliminary to, laying the proper

foundation for evidence to follow, which would tend to establish, as matter of fact, the actual commission by the plaintiff-in-error of previous acts of lewdness with such boys. On such an assumption, if the prosecutor were subsequently to fail, as he did in this case, to show by further concrete and tangible evidence such misconduct with other boys, then the State is chargeable with such failure and for but one reason, namely, that the State had no such evidence. The plaintiff-in-error then found himself confronted with this insurmountable difficulty, that a distinct conviction of guilt had firmly lodged itself in the minds of the jurors. For in the very nature of things, particularly on a charge such as lewdness with a boy, suggestions or innuendo relating to previous acts of the same or similar nature (just as they do in everyday life), actually impel juries in court rooms to a conclusion of guilt in the specific instance charged (for which of course there is no warrant), and to a realization that the State must know as a matter of fact that the plaintiff-in-error had been guilty of such similar acts in the past.

Under such circumstances, assuming the materiality of such evidence, the preliminary questions are tantamount to a solemn pact between the State and the jurors to produce such evidence, and the failure of the State to do so, left the jurors' mind in a state prejudicial to the defendant below. If, then, on the basis of the assumption mentioned, the procedure referred to presents error, then the evidence, being incompetent, irrelevant and immaterial, *a fortiori* the result could be nothing less than manifest and prejudicial error to the defendant below on the presentation of his defense.

In the Bullock case, *supra*, the Trial Court having reconsidered the disputed testimony, after it was admitted instructed the jury as follows:

“I will digress to say a word about some testimony introduced in the case, tending to show violence on his (the prisoner’s) part on other occasions. I had some hesitation in admitting the testimony of the witness Campbell, but I judged it to be legal, because of the prisoner’s own statement that he had never had any trouble before this. On reflection, after considering the evidence of Campbell, I think it is my duty to tell you to disregard that, because it seems to me too uncertain on the question of identity to be of value. It would not be evidential to overcome proof of character.”

The Court of Errors and Appeals in reviewing the procedure had upon the trial stated:

“It will be observed from this language that in the charge the Judge did not instruct the jury to disregard the evidence because it was illegal, but because it was too uncertain on the question of identity to be of value. It is quite possible that in the minds of the jurors the question of identity may have been established. We think that, notwithstanding the charge of the Judge on this subject, the evidence of Campbell may have had, and probably did have, an influence on the minds of the jury in rendering its verdict. Nor was the testimony of Campbell competent or relevant on the issue of the character of the accused. If a prisoner on his trial gives evidence that his character is good, it is open for the prosecutor, by way of reply, to prove that the prisoner’s character is bad; but evidence of this character must be confined to general reputation and particular acts or specific facts are not admissible either as original evidence or as evidence by way of rebuttal. (*5 Am. & Eng. Enc. Law* (2d Ed.) 875 and cases cited in notes.) Where a person accused of a criminal offense produces evidence to show that his general reputation is good, it is not competent for the government, in reply, to put in evidence particular facts.”

In the instant case, the evidence or suggestions of questionable conduct with other boys is conceived by plaintiff-in-error to present an exact parallel with the Bullock case, and no effort whatever was made to dislodge from the jurors' minds the patent and naturally resultant conviction following such testimony.

POINT III.

Assignment 4. Reason 4.

This assignment alleges error in that the Court required the defendant below to answer over objection the question therein set out and which will be found in the printed case at page 86, line 28, and, on the same page at line 40.

Plaintiff-in-error contends that the Court was in error in requiring an answer, as the question was clearly incompetent, irrelevant and immaterial. That the Trial Court saw fit during the cross-examination of plaintiff-in-error to interpose and personally present this question to defendant below could have no other effect upon the jury than to cause them to believe that plaintiff-in-error's failure to take the boy home was a declaration on his part to be accounted for by no other thought except a design which plaintiff-in-error had in mind, that is, to keep the boy in his company so that he might commit the crime charged, and the only reasonable and proper reply to such a question—the reply made by the plaintiff-in-error—under the circumstances, and once the jury had arrived at the conviction mentioned, had no efficacy whatever in altering or destroying the conviction. Plaintiff-in-error was thereby manifestly prejudiced.

POINT IV.

Assignment 5. Reason 5.

The plaintiff-in-error contends that the court in charging as set forth in the above assignment and reason erred to the manifest and substantial injury of the defendant below, in charging the jury that

“* * * until March 1st, when * * * the boy said that he told him that he might come to his house that night; that his wife was not going to be at home * * *. I believe his testimony was that he had never allowed any other boy or invited any other boy in his home before. That may or may not be of assistance to you in solving the truth of this whole situation. You may ask yourselves why he invited this boy there” (Case, p. 131).

The Trial Court erred in stressing what, if in the record, would have constituted a wholly incompetent, irrelevant and immaterial phase of the testimony, viz: that plaintiff-in-error had not entertained other *boys* at his home. But such was not the evidence (Case, p. 88, l. 14). The Court erred further in instructing the jury that they might ask themselves why plaintiff-in-error invited the boy to his home. The invitation was charged as a fact whereas a sharply drawn issue regarding the invitation was presented in the record. Plaintiff-in-error's testimony (Case, p. 61, l. 18) shows that the boy was not invited or solicited by plaintiff-in-error to visit him, but came of his own choice and directly as a result of his own solicitation and desire. This together with the remark of the court “that his wife was not going to be at home” could have no effect but to con-

vince the jury that plaintiff-in-error was coolly and with great cunning, furthering, step by step, a well conceived plan to procure the boy's presence in circumstances favorable to his purpose to commit the crime alleged. Such a thought, is destroyed by a reading of the testimony relating to her absence (Case, p. 62, l. 2), and the jury certainly by this portion of the charge was led away from the evidence and plaintiff-in-error thereby deprived of its efficacy in his behalf.

POINT V.

Assignments 6-10-11-12-13-14. Reasons 6-24-25-26-27-28.

Plaintiff-in-error contends that the court below erred to his manifest prejudice and injury in charging the jury as stated.

The portion of the charge referred to in Reason 6 will be found at page 133, line 33 of the record. The extracts from the testimony of the witness Cook will be found at page 53, line 15; page 53, line 31; and page 53, line 34. The extracts from the testimony of defendant Starry will be found at page 81, line 36, and page 81, line 40.

The State inaugurated this phase of the case relative to plaintiff-in-error's resignation. An unwarranted burden was thereby imposed upon defendant below of dislodging from the minds of the jurors the unfavorable and prejudicial and naturally consequent view. Plaintiff-in-error attempted to do so (Case, p. 69, ll. 25 to 40; p. 70, ll. 12 to 26), by an explanation of the circumstances surrounding his resignation.

The resignation is irrelevant, immaterial and incompetent and is not even circumstantial proof of any pertinent fact. The result of the charge,

however, is nothing other than to emphasize its importance, and to charge the jury as matter of law that they might thereby find an admission of guilt, evidenced by a sudden departure under the influence of the stigma of the charge lodged against plaintiff-in-error and a consciousness of the truth thereof. The portion of the charge complained of constrains the jury to a conviction that plaintiff-in-error became a fugitive from justice. The record presents no warrant for such a view; in fact the contrary appears, viz: that plaintiff-in-error did not "go away" (Case, p. 82, ll. 1 to 24), until sometime after the resignation, but visited his school, in winding up his affairs, and, being no longer employed in Plainfield, in natural sequence removed from the City.

POINT VI.

Assignment 7.

This assignment alleges that there was error in that portion of the charge, wherein the court charged:

"The reason for making this conduct punishable is that it presents itself in such a way that it becomes an affront to good morals and tends to corrupt and offend morality."

It is the contention of the plaintiff-in-error that this language is a charge to the effect that if the jury found from the evidence that there was misconduct on the part of defendant below and that that misconduct was such as to become an affront to good morals and tend to corrupt or offend morality, then the jury would be justified in returning a verdict of guilty against the defendant. If there be error in the portion of

the charge just alluded to, it is not cured by anything appearing in the rest of the charge. It is submitted that the Trial Court, in using this language, was attempting to rephrase the language of the statute itself, which statute the court had previously quoted to the jury, and that this rephrasing was done for the purpose of assisting the jury to comprehend more readily the purpose of the statute in making punishable the crime in question. But a reading of the statute itself will disclose that the act is made punishable (whether committed in public or in private) only when it is "grossly scandalous and tending to debauch the morals and manners of the people." It is true that in *Schudel v. State*, 57 L. 209 (opinion by Beasley, C. J.) it was held that the essence of the offense is that it "presents itself in such a way that it becomes an affront to good morals and good manners," but this was coupled with the further pronouncement that it must "tend to corrupt or offend the public morality," and that unless it possessed such mischievous qualities the misbehavior is not penal.

By directing the attention of the jury to the view that it would be sufficient for them to find that the misconduct in question presented itself in such a way that it became an affront to good morals and tended to corrupt or offend morality, the Trial Court erroneously led the jury to believe that this in itself was sufficient, for in no place in the charge, with the exception of the mere formal reading of the statutory language itself, did the court impress upon the jury the necessity of them finding that the offense should tend to debauch the public morality. Having first read the statute itself, it became incumbent upon the Trial Court, if it saw fit to explain the meaning of the statute, to comment upon the whole of it, and not to sever a portion of it from the rest of

the context, and by thus stressing a portion of the statute leave the jury uninformed as to the true meaning of the statute as a whole.

POINT VII.

Reasons 11 to 23, inclusive.

The very nature of the charge in this indictment is such that plaintiff-in-error's chief and most effective, and, save for his bold denial, only means of refuting the charge is by reputation testimony.

As was charged, plaintiff-in-error is entitled to a consideration of such evidence, coupled with all the other evidence, and if reasonable doubt of guilt is engendered by that evidence alone, defendant is entitled to an acquittal.

“Negative Evidence. Negative facts relating to character, as that a witness well acquainted with the person whose character is the subject of inquiry, in the locality where he lived, never heard anything evil of him or his character even discussed or spoken of, are admissible as tending to establish circumstantially an excellent character.”

22 C. J. 484, Secs. 585-7 and cases cited.

Plaintiff-in-error conceives that by “character” here, reputation is meant and that the latter was omitted, perhaps inadvertently, the two at the moment having been considered to be synonymous.

Reputation Evidence.

~~Memorandum of defendant in the case of State vs. Ritter:~~

“A good repute for chastity is susceptible of proof *in the same way as good reputation*

for truth or honesty. Testimony of persons from the circle in which she moves that they had never heard her reputation called in question, would be competent evidence of the fact." *State vs. Zabriskie* (Court of Errors and Appeals), 43 N. J. L. 644. Opinion delivered by Justice Van Cycle, November term, 1881.

The Supreme Court in the case of the *State vs. Brown*, 64 N. J. L. held:

"Good repute for chastity is susceptible of proof in the same way as good reputation for truth or honesty. Testimony of persons from the circle in which she moves that they had never heard her reputation called in question, would be competent evidence of the fact." Citing *State vs. Zabriskie, Ibid.*

"An acquaintance extending over several years is certainly sufficient to qualify a witness to testify as to the good character of the accused. If having known the accused for several years he further testifies that he is a good character and that he never heard his character questioned and that the question of his character never was discussed outside of his own family, his evidence should be received. * * * Evidence that the character of the accused had never been denied or doubted *or even discussed or spoken of* among his acquaintance though negative in form was always admissible and often of the highest value."

Underhill on Criminal Evidence, Section 81, page 147. Citing a number of cases, amongst them *State vs. Lee*, 22 Minnd. 407, wherein the Court said:

"A very sensible and commendable relaxation of the old and strict rule is the reception of negative evidence of good character as the testimony of a witness that he has been acquainted with the defendant for a consider-

able time under such circumstances that he would be more or less likely to hear what was said about him and that he has never heard any remarks about his character—the fact that a person's character is not talked about at all being on grounds of common experience, excellent evidence that he gives no occasion for censure.”

See also

State vs. Goldberg, 130 Atl. Rep. 437.

Watson on Criminal Evidence, Vol. 1, 10th Edition, page 240, says:

“So at the best evidence of good reputation is where the witness testifies that he has never heard or discussed, questioned nor talked about. The more unsullied and exalted the character is, the less likely it is ever to be called into question.”

There can be no question that the net result of all that transpired with reference to the reputation testimony was destructive of its force and effect and, to plaintiff-in-error's prejudice and injury, it deprived him of the value thereof. Under the circumstances, the jury could hardly be expected to, and undoubtedly did not, pay any heed to this very valuable feature of reputation testimony, namely, that it might be, and, as matter of fact, in most cases is, purely negative. The witnesses were so constantly grilled with the ever recurring questions regarding “discussion” of plaintiff-in-error's reputation, and the observations, questions and explanations of the Court, notably, “the witness has already testified that he did not hear his reputation discussed” (Case, p. 106, l. 23); “somebody says he is a very fine moral man, that is what is meant by repute” (Case, p. 110, l. 10), “that is argument, if he never

heard it discussed is there anything further you want to ask him" (Case, p. 112, l. 33), "if it was discussed in Plainfield, that makes reputation. People say he is a fine living man, he is a good moral man. Those are the things that make reputation, are they not" (Case, p. 116, l. 28), "you were asked whether his morality was mentioned" (Case, p. 121, l. 31), "don't you see that is the impression this witness has and that is her conception of morality" (Case, p. 126, l. 35), very likely had but a single result, namely, to convince the jury that reputation testimony, when, by cross-examination disclosed to have no basis in actual "discussion" and conversation regarding defendant's reputation, was worthless and entitled to no credit—thus eliminating from the jury's consideration the vital element of negative evidence. It need only be added that silence speaks most eloquently of virtue, and, because slander, like death, loves a shining mark, discussion arises only when one's reputation is not what it should be.

POINT VIII.

Assignment 15.

It is respectfully submitted that under this assignment, which alleges that the verdict was against the weight of the evidence, this Court may consider this case under the Act of April 12, 1921, P. L. page 951, which provides that, whenever the entire record of the proceedings shall be returned with the writ of error, if it shall appear from a consideration of the entire evidence that the verdict was against the weight of the evidence, the Appellate Court shall remedy the wrong by reversing such verdict and awarding a new trial.

The entire record of the proceedings in this case has been returned with the writ, as will appear from the certificate of the Trial Judge (Case, p. 139).

As previously argued, the very nature of a charge of an act of lewdness in private is impossible of refutation excepting by a positive, unequivocal denial, coupled with reputation testimony. The latter has already been discussed.

Plaintiff-in-error made such a denial. Unless the testimony of the complaining witness, Perry, in that respect, were similarly positive, the State's case fails because of the weight of the evidence against it.

Complaining witness betrayed great hesitancy and vacillation in the following instances: He testified on direct examination that defendant ran his hand over his chest when first in bed and that he repelled defendant. Then he suggested going to sleep, though he himself did not. That some time after—later in the night—defendant put his hand upon witness's private parts; that witness turned over and defendant "let go," and that after defendant "let go," he had a discharge (Case, p. 18, ll. 10 to 33, inclusive).

Complaining witness vitally and materially altered his testimony on cross-examination when he said that the discharge resulted from a hugging immediately as he got into bed, and that he pushed defendant away, after which he had the discharge (Case, p. 32, ll. 28 to 41, inclusive; p. 33, ll. 1 to 10, inclusive).

Plaintiff-in-error respectfully submits that a discrepancy such as this, particularly on such a charge, is practically destructive of the character of proof requisite to support such an indictment.

Moreover, if the testimony of the expert witness, Dr. Joseph M. Rector (Case, p. 92, l. 30), is entitled to any credit, and it is not contradicted, then it is natural to conclude that the boy could not have had the discharge.

The testimony of the complaining witness deserves the closest scrutiny, occasioned by his history, even as briefly disclosed. He did not know his age or birthday (Case, p. 21, l. 12). He said he was about seventeen years of age (Case, p. 21, l. 11). He made poor progress in school, being at that age (seventeen) at the time of the alleged occurrence, in the eighth grade (Case, p. 23, l. 20). He required four years to advance through two grades in school (Case, p. 26, l. 9). He was utterly free of any home influence, being separated at times from his father's household; was once dismissed from school (Case, p. 24, l. 20) and once left school of his own accord and went to sea (Case, p. 22, ll. 1 and 32-40, inclusive). He lived at times by himself (Case, p. 21, l. 25). All of which deprives the State of practically all of the credit and weight to which the testimony of the usual complaining witness would be entitled.

The contrast between this type of witness and the defendant need not be stressed, and plaintiff-in-error regards as manifest the failure of the weight of evidence in favor of the State, particularly in view of any defendant's difficulty already alluded to in resisting such a charge.

It is true that what has been said by Sir Matthew Hale regarding the "detestable crime of rape" is equally pertinent and applicable to the crime charged against plaintiff-in-error.

" 'It is true, that rape is a most detestable crime, and therefore ought severely and impartially to be punished with death; but it must be remembered that it is an accusation easy to be made, hard to be proved, but harder to be defended by the party accused, though innocent.' He then relates two very extraordinary cases of malicious prosecution for this crime, that had happened within his own observation, and concludes thus: 'I mention these instances that we may be the more

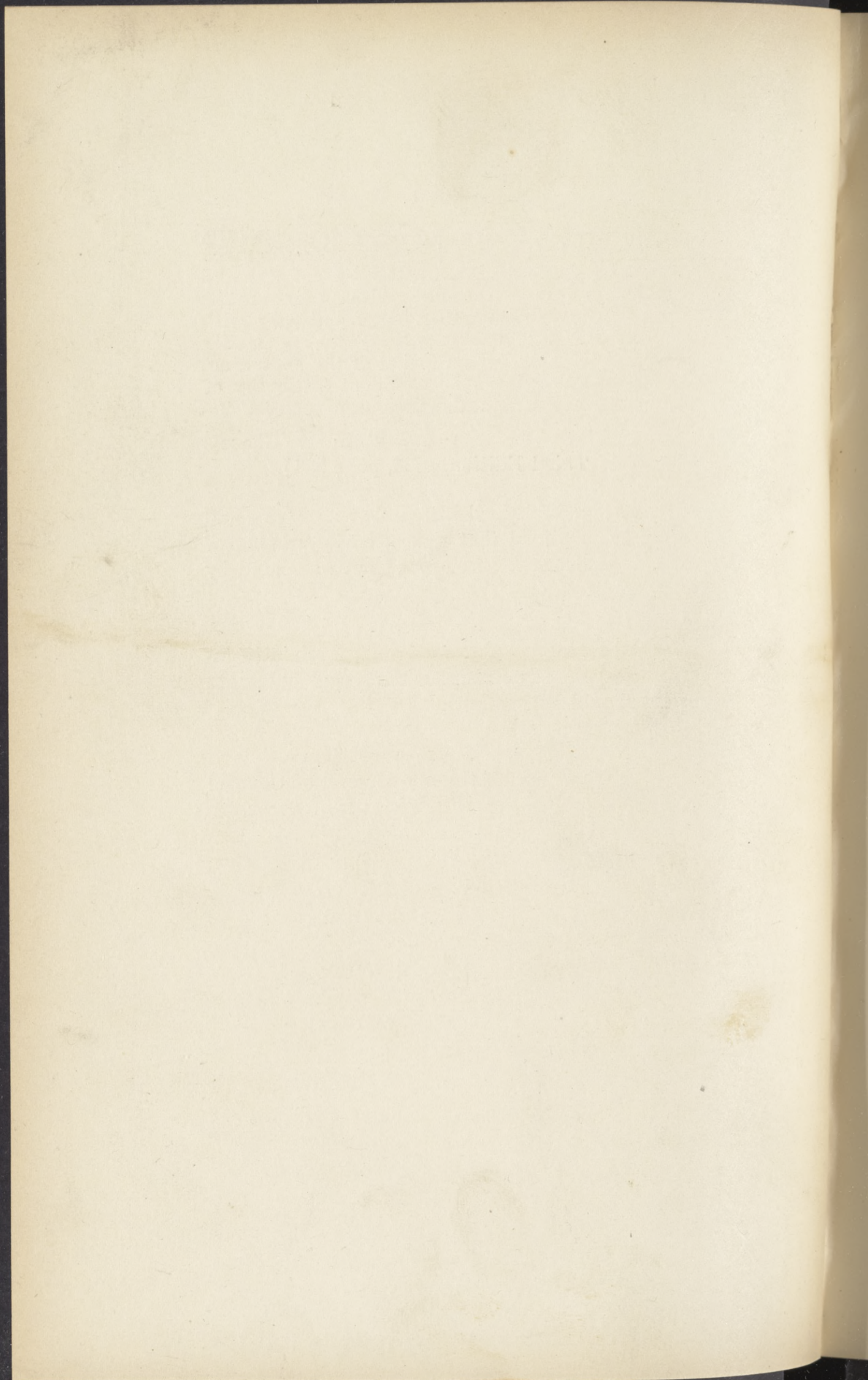
cautious upon trials of offenses of this nature, wherein the court and jury may with so much ease be imposed upon, without great care and vigilance; the heinousness of the offense many times transporting the judge and jury with so much indignation that they are overhastily carried on to the conviction of the person accused thereof, by the confident testimony of sometimes false and malicious witnesses.' "

Blackstone's Commentaries (Chase's Third Edition, 1896, page 954).

It is respectfully submitted that no case could easily be imagined that presented in support of such an indictment less proof than presented by this record.

For the reasons above advanced, plaintiff-in-error respectfully submits that the judgment below should be reversed.

JOHN F. RYAN,
Attorney for and of Counsel
with Plaintiff-in-Error.



New Jersey Court of Errors and Appeals

THE STATE OF NEW JERSEY, <i>Defendant-in-Error,</i> <i>vs.</i> D. RALPH STARRY, <i>Plaintiff-in-Error.</i>	}	<i>On Writ of Error.</i>
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BRIEF FOR DEFENDANT-IN-ERROR.

Upon reading both the State of the Case and the brief of the plaintiff-in-error in the above-stated case, it is clear that there is no substantial question of law raised by the plaintiff-in-error either in the State of the Case or in his brief.

It is evident from the brief of the plaintiff-in-error that this was a case which was heard and decided by the jury on the facts alone.

Criticism of the Charge. This falls within the rule stated in *State v. Contarino*, 92 N. J. L. 381, 385. In that case, it is said to be settled that if instructions contain several propositions, some of which are proper, an objection to the whole will not avail. The particular points deemed erroneous must be pointed out. A reversal will not be had, when the exception is not directed specifically to the proposition to be erroneous.

The comments of the Court on the evidence were not in violation of the above-stated rule, and certainly were not an abuse of the Court's discretion.

In the case at bar there was ample proof before the jury that the plaintiff-in-error was guilty of lewdness in private as laid in the indictment, because (p. 14, l. 1, etc.) plaintiff-in-error ar-

ranged for Nathan Perry to call at his home on the night of March 1, 1927; that (p. 18, l. 10) he massaged said Perry; that (p. 18, l. 20) he touched said Perry's private parts; that (p. 18, l. 33) the acts resulted in an emission. It is not necessary to elaborate upon the several acts which produced this result. Again (p. 19, l. 16) on the following day, Perry personally interviewed the plaintiff-in-error and charged him with corrupting his morals. On the same day, Perry (p. 20, l. 15) complained to Mr. Bonk, director at the Y. M. C. A. of the acts of the plaintiff-in-error.

At (p. 32, l. 40) Perry said he had the discharge after a hugging and a massage given to him by the plaintiff-in-error, and at (p. 39, l. 23) Perry said that during the night and after the emission, plaintiff-in-error had had his hand on Perry's private parts.

Further the plaintiff-in-error (p. 52, l. 34) when confronted by William Cook, Superintendent of the Schools, about four days after the crime, admitted to Mr. Cook the massage of Perry and the resulting emission. The plaintiff-in-error (p. 53, l. 34) then tendered his resignation as a school principal, and at no time petitioned for a hearing on the charges against him.

Further the plaintiff-in-error (p. 67, l. 22) confirms the fact that Perry called upon him the following morning at the school and charged the plaintiff-in-error with having ruined his morals,—from what happened last night (p. 67, l. 35).

These results were accomplished just as the plaintiff-in-error had planned, which, we submit, were the facts in the case, and so found by the jury.

It is respectfully submitted that no error was committed either in the charge of the Court or in the entire proceedings had upon the trial by which the plaintiff-in-error suffered manifest wrong or injury.

The plaintiff-in-error made no proof other than his denial as to the facts themselves, but has confirmed the case of the State, and the weight of evidence was clearly with the State.

We respectfully submit that, where it is sought to sustain a conviction based in part on circumstantial evidence, and the circumstances are consistent with the guilt of the accused and inconsistent with his innocence, and incapable of explanation on any other reasonable hypothesis than that of guilt, the conviction should be sustained.

Cited:

State v. Michalis, 99 N. J. L., page 31;
State v. Browne, 143 Atl. Rep., page 810.

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