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New Jersey Court of Errors and Appeals

THE STATE OF NEW JERSEY, *Defendant in Error,* *vs.* WILLIAM F. SHUPE, *Plaintiff in Error.*	*In Error to Supreme Court.*

BRIEF FOR PLAINTIFF IN ERROR.

ABSTRACT OF THE CASE.

The indictment in this case charges that William F. Shupe on June 4, 1912, with force and arms—and upon one Mabel Jones—an assault did make, with an intent on the part of him, the said William F. Shupe, her the said Mabel Jones, then and there forcibly and against her will, feloniously to ravish and carnally know, and her the said Mabel Jones then and there did beat, wound and illtreat and other wrongs and injuries to the said Mabel Jones, then and there did, etc.

The statute upon which the indictment is founded, is paragraph 113, Comp. Stat. Vol. 2, p. 1782, of the Crimes Act, which reads as follows: "Any person who shall commit an assault with intent to kill, or commit a burglary, rape, robbery or sodomy, or to carnally abuse a woman child under the age of sixteen, with or without her consent, shall be guilty of a high misdemeanor,"—

The evidence on the part of the State, may be summarized as follows:

Mabel Jones, a young woman, was walking North on the West side of Broad Street below William Street, on the evening of June 4, 1912, after nine

o'clock. The defendant riding in an automobile, and accompanied by two men, and going in the opposite direction, passed her, and the defendant nodded to her, and she nodded. When she got to William Street, the automobile had been turned about, and was standing at the corner of William and Broad Streets. The defendant said to her, "How do you do?" and she stopped. She testified (p. 53): "He asked me something, but I don't just remember now what it was." She stood and talked for about five minutes, and finally got in the car with the understanding, as she testifies, that the defendant would take her to a girl friend's house on Springfield Avenue and Belmont Avenue. The defendant offered to take her, and the car was started and went through William Street to Halsey, down Halsey Street to Kinney, and finally out on Avon Avenue, and that then defendant started to pull on her clothes, and as she stated:—"was going through actions a gentleman shouldn't, pulling up my dresses and skirts and all that sort of thing," (p. 54). She told him to stop, and he put his hand over her mouth and got very rough, and then he stopped that and began to say different things: "about looks, or something like that," (p. 54). He told her that "she was a well built girl, or something like that, things that would flatter one." She testifies (p. 57) that the car was stopped, and that the two men got out, leaving her alone with the defendant, and then he pushed her back in the seat on the car and held her with one hand, and put his other hand on her person under her clothes.

There is no evidence, that the defendant exposed his person. She testified that she screamed, and her testimony is somewhat remarkable: "O, I screamed and cried; I said, 'if there is a gentleman in the crowd, you will help me'" (p. 58).

It seems, according to her testimony, that the defendant did not believe in her innocence, and said

he could tell whether she was a virtuous girl, and that he would make a physical examination, and that he did so, and that then after saying to her that he did not believe there was a good girl in Newark like her, he desisted from any further efforts to induce her to permit any more familiarities.

The testimony of Mabel Jones fails to show that the defendant intended at all events to ravish her. Her testimony (on p. 58), he said, in reply to her assertion that she was a good woman, "you don't give me any stall like that." This shows the state of mind of the defendant: that he assumed undoubtedly from the fact that the girl who was willing to get in an automobile at that hour of the night with three strange men, would also be willing to submit to his proposals; and that he did not intend to commit rape.

The Prosecutor evidently realizing the weakness of the case, called Robert L. Eaton (p. 113), a Justice of the Peace, before whom the complaint was made which led to the indictment; and the said Eaton testified, that when the defendant was brought before him, and the complaint was read to him, he said: "Well, I suppose I ought to plead not guilty to this" (p. 116). And that the defendant also said at that time that he didn't think he was going to get in any trouble, that he did not want anything, but that he had a young fellow out with him that night, and wanted to get the girl for him, or words which bear that meaning, but are too indecent to be repeated.

The Prosecutor also called John Gallatian (p. 117), who was a county detective, and who testified (p. 118), that the defendant came to the Prosecutor's office, and that he told him that they, meaning Mabel Jones and her people, were in the Prosecutor's office at that time making a complaint against him, and that they claimed pretty hard things about him, and that the defendant asked him what they claimed, and

he testified: "I told Shupe what the charge was and what the girl claimed in detail, as much as I could at that time, and he said that it was all true, that he was foolish and had made a d—— fool of himself." He also told Gallatian at that time that he wanted to get the girl for the kid chauffeur, and not for himself, and that he had picked her up in the street.

It is manifest that the testimony of Eaton and Gallatian falls short of proving an admission on the part of the defendant, that he intended at all events to ravish Mabel Jones. The Prosecutor, still feeling the weakness of the case, then introduced in evidence over objection, the minutes of the court in this particular case (p. 124). Those minutes show, that the defendant pleaded not guilty to the indictment prior to October 31, 1912. He afterwards pleaded *non vult.*

The extract from the minutes (on p. 126) is as follows: Indictment No. 15, State *vs.* William F. Shupe. Indictment for assault and battery. Retracts; plea of *non vult.* Sentenced December 13, 1912. Bail continued.

The minutes further showed that afterwards (at the bottom of the page 126, as follows) Indictment No. 15, State *vs.* William F. Shupe. Indictment for assault and battery, with intent, etc. Sentence postponed until December 20, 1912.

And afterwards (p. 127), the minutes are as follows: December 20, 1912. Indictment No. 15, State *vs.* William F. Shupe. Indictment for assault and battery with intent. Retracts. Defendant pleads not guilty. Trial January 14, 1913. Bail continued.

It is manifest that the defendant pleaded *non vult* to the indictment, and thereby confessed for the purposes of this case, that he was guilty as charged, and the jury could not draw any other inference. It is plain therefore, that the admission in evidence of the minutes of the court showing the plea of *nolo contendere* was the turning point in the case, and if illegally admitted, prejudiced the defendant.

It is proper to state, that the two men who were in the car with the defendant, testified that they remained in the car during the time that the girl was there, and did not leave the car at any time and did not hear any screams, or any commotion, and that on the contrary, she sat in the rear of the car with her feet in the lap of the defendant; and that when they drove back to Kinney and Broad streets where the girl wished to alight, she got out of the car and smiled and said "good-night."

In charging the jury, the court, at page 186, said: "If the testimony of Gallatian is worthy of belief, the defendant is guilty, because he states that the defendant confessed that he had been guilty of the crime. Eaton said that the defendant acknowledged to him that he brought this girl out for criminal purposes." At page 185, the court said, speaking of the testimony of Eaton: "From his testimony, it appears that when the defendant was arraigned before him, he said, 'I suppose I might plead not guilty.'" This was an erroneous statement, because Eaton did not testify that the defendant said "might," but on the contrary, "ought to plead not guilty." The court further stated, at page 185: "Defendant asked Gallatian what was going on, and when Gallatian told him what the charge was that was being made against him, the defendant confessed that the charge was true."

After making these erroneous statements and erroneous inferences from the testimony, the court proceeded to say, at page 187: "In considering the testimony in the case, the jury are to be governed by the preponderance of the evidence, but in doing so, you are not to weigh the evidence by the mere number of witnesses. For character in a witness and consistency in his testimony, will often outweigh the testimony of several witnesses, but where all things are equal, then the preponderance goes to the side producing the greatest number of witnesses and ought to carry with it your verdict."

A writ of error was sued out of the Supreme Court, and in that court, counsel for the defendant raised the point as to the inadmissibility of the alleged record of the proceedings, and of the plea of *non vult*, but did not elaborate it, and the Supreme Court ignored that point in the opinion filed.

The Supreme Court held that the charge as to preponderance of evidence was corrected by the subsequent charge to the jury relating to reasonable doubt. The point was also made in the brief in the Supreme Court, that the complaint taken by the Justice of the Peace, was inadmissible in evidence, but the point was not elaborated and was not disposed of in the opinion.

The case is now before this court on a writ of error, and it is deemed that there are two errors in the record which entitle the plaintiff in error to a reversal.

The admission of the complaint made to the Justice of the Peace, it is contended, was error, but in view of the fact that the Justice of the Peace testified that he read the complaint to the defendant, it does not seem to have done any harm to the defendant, except to this extent, that the jury had the written complaint (Ex. p. 194) before it for consideration.

SPECIFICATIONS OF ERROR.

1. THE ADMISSION IN EVIDENCE OF THE MINUTES OF THE COURT OF QUARTER SESSIONS SHOWING THE PLEA OF NON VULT MADE BY THE DEFENDANT.

2. The charge of the court, that the jury should be governed by the preponderance of evidence.

BRIEF OF ARGUMENT.

1. THE PLEA OF NOLO CONTENDERE WAS NOT ADMISSIBLE IN EVIDENCE. Objection was made to it at the trial upon the ground, that the record was immaterial, incompetent, irrelevant and illegal, and an exception

was allowed on that objection. There is an assignment of error based upon the exception, No. 20, p. 26, and in this court 1st, p. 200.

The admission of the minutes is also specified as a cause for reversal, in Specification No. 20, page 34, and in this court, Assignment 2nd, page 200. It is contended also, that Assignment 5 and Assignment 6 in this court would be sufficient to raise the point.

"The plea of *nolo contendere* has the same effect as a plea of guilty so far as regards the proceedings on the indictment." Upon that plea, the defendant in this case could have been sentenced.

The defendant cannot plead *nolo contendere* as of right, but he must obtain the consent of the court to do so, and the fact that he has pleaded *non vult*, presupposes that he had obtained the leave of the court to enter such plea.

State vs. *Henson*, 66 Law, 37 Vr., 601, 608.

The case cited, shows the legal effect of a plea of *nolo contendere*. In this State, a witness may be asked if he has pleaded *non vult contendere* to an indictment. The Criminal Procedure Act of this State, does not provide for any pleas except guilty and not guilty, and guilty cannot be pleaded to an indictment for murder. The plea of *nolo contendere* therefore, is not such a plea as the defendant could make as a matter of right and be an admission.

As is stated by Professor Wigmore in his work on Evidence, par. 1066:

> "A pleading or other litigious allegation (such as plea of *nolo contendere*, or a case stated) may be in its terms merely hypothetical or ambiguous, and may therefore, not be interpretable as an admission."

In this State, under the authority of *State* vs. *Henson*, the plea if accepted by the court, would probably be admissible as a conviction of crime in discrediting

a witness. The question is, whether it can be used as an admission of the party who made it without reading into the record all the circumstances connected with the making of the plea, that is—the application to the court for leave to make it, the reasons given and the order of the court permitting it to be made.

The question came squarely before the Supreme Court of Ohio in the case of *Canter* vs. *State*, 106 N. E. Rep., 656, which was decided February 24, 1914. That was an indictment for shooting, and the indictment contained two counts; shooting with intent to kill and shooting with intent to wound. On the journal of the court, it appears that the defendant appeared, and pleaded not guilty, as charged in the indictment, and then tendered his plea of guilty as to assault and battery under said indictment, which plea was rejected by the State. This journal was admitted in evidence, and the court charged the jury as follows: "If you find from the evidence that the tender made to the State of a plea of guilty of assault and battery, was made for the sole purpose of avoiding the costs made after such plea was made in the event there should not be a conviction for a greater offense, and that there was no intent and purpose upon the part of the defendant of tending said plea for any other purpose, then you are instructed that under such circumstances, said plea of guilty cannot be taken as an admission of guilt upon his part of any offense whatever."

The court further charged the jury: "You are charged as a matter of law, that the only pleas authorized by law to the merits of an indictment are 'guilty' or 'not guilty,' and you are further instructed that a tender of a plea of 'guilty' to any lesser degree included in an indictment, even though at time said plea is made to avoid costs, is in law a plea of 'guilty' to such lesser degree under said indictment."

The defendant was convicted and sued out a writ of error to the Court of Appeals of Ohio, which court affirmed the conviction. It appeared in the record that the entry in the journal did not recite all that occurred at the time tender of the plea was made. The court says, at page 658:

> "Assuming, that this tender amounted to an admission on the part of the accused that he was guilty of an unlawful shooting, was the journal entry competent evidence to establish that fact. Sect. 13632 Gen. Code, provides that upon arraignment, the accused shall plead guilty or not guilty. In this case, defendant pleaded not guilty to the indictment, and this was properly entered upon the journal. Then followed this tender of a plea of guilty of assault and battery, which was rejected by the State. There was no authority for an entry of this fact upon the journal. The Court of Appeals, in reviewing this case, correctly held that the offer to plead guilty of assault and battery, and its refusal by the State, had no proper place on the journal. Yet the trial court permitted its introduction in evidence, and gave to it the same force and effect as though it were duly authorized importing absolute validity. The rule admitting records in evidence, applies only to such matters as are legitimately part of the record. The court therefore, erred in permitting the introduction of this record. There is no evidence tending to show that the entry was on the journal with the knowledge or consent of the accused, or his counsel. If the State desired to present to the jury what was said or done after the formal plea of not guilty was entered, it should have adopted another method. A witness who had knowledge of what had transpired, could have been called, and could have

testified to this tender of a plea, subject, however, to the right of the defendant to inquire as to the condition upon which, or the purpose for which, it was made. True, the court instructed the jury that if it appeared that there was no intent or purpose on the part of the defendant to admit his guilt of any offense when he tendered his plea of guilty, then such tender could not be taken as an admission of guilt of any offense charged in the indictment. This may have weakened to some extent the force of the charge in reference to the language used in the entry, but it nevertheless placed upon the accused the burden of convincing the jury that the tender to plead guilty was not an admission of the unlawful shooting. The defendant by his plea of not guilty to the indictment, denied the shooting. This was one of the essential elements of the crime of which he was convicted. There was little, if any, direct evidence tending to show that the defendant did the shooting. His claim was, that it was done accidentally. In admitting this incompetent evidence to prove the unlawful shooting, the substantial rights of the defendant were prejudiced. The Court of Appeals, which considered and weighed the evidence, stated that the serious question confronting it was whether or not the judgment should be reversed, upon the ground that it was not sustained by the weight of the evidence. On that question, the court was not in full accord. It is most likely, we think, that this incompetent evidence contributed to the result at which the jury arrived."

The judgment was reversed. The reason for excluding a plea of *nolo contendere,* whether it has been made with or without the permission of the court, is that it must have been tendered conditionally. It is a common experience with those who are familiar

with criminal procedure, that such pleas are made upon certain conditions, such as, that there shall be no imprisonment, or, only a fine, or that sentence will be suspended. There is never anything on the minutes of the court, or on the formal record, of such a plea when it is accepted by the court to show any of the surrounding circumstances under which the plea was made.

While it is true that a defendant may be asked whether he has pleaded *nolo contendere*, and the record of it would be admissible in evidence to contradict him if he denied it, that record is not admissible in evidence without the accompanying circumstances or statements or conditions connected with it, except in contradiction of the defendant if he has denied making such a plea.

As stated by the court in Ohio, *the admission of the plea of nolo contendere placed upon the accused the burden of convincing the jury that he did not intend to admit that he was guilty of the charge made against him in this indictment.*

In *State* vs. *LaRose*, 71 N. H., 435, 52 At., 943, Parsons, *J.*, says:

> "The plea (*nolo contendere*) is in the nature of a compromise between the State and the defendant—a matter not of right, but of favor." "Various reasons may exist why a defendant conscious of innocence, may be willing to forego his right to make a defense if he can be permitted to do so without acknowledging his guilt." "The plea is an implied confession of guilt only, and cannot be used against the defendant as an admission in any civil suit for the same act"; citing Com. *vs.* Ingersoll, 145 Mass., 381; 14 N. E., 449.
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> "Judgment of conviction upon the plea, would be admissible in another action between the State and the defendant." "The judgment does not

depend upon the character of the plea." "If the plea were an unlimited admission, it would be evidence against the defendant in all subsequent controversies." "It is settled by the authorities that it is not; therefore, there being no ground for the estoppel, the plea can have no greater effect in a proceeding to which the State is a party, than in a civil suit; and it is therefore, inadmissible against the defendant."

In California, under a statute providing that the court may at any time before judgment, permit the withdrawal of a plea of guilty, and the substitution of a plea of not guilty, it has been held that the plea of guilty is not admissible in evidence against the accused; and the court said, in *People* vs. *Ryan,* 82 Cal., 617; 23 Pac. Rep., 121:

"We do not think that the Legislature in passing the law under which the defendant was allowed to nullify and render *functus officio* his plea of guilty by substituting or putting in place of it a plea of not guilty, intended to say that notwithstanding such substitution and doing away with the first plea, it may be given in evidence, and sometimes serve as the only conclusive proof of a man's guilt, under the plea of not guilty."

In *Clark* vs. *State,* 58 Law, 29 Vr., it was held in this court that the withdrawal of a plea of guilty in a criminal case, and the substitution of a plea of not guilty, is not a right which the law gives to the defendant, but is a matter which is addressed to the discretion of the court.

In *Peacock* vs. *Hudson Quarter Sessions,* 46 Law, 17 Vr., 112, it was held that a plea of *nolo contendere* is equivalent to a plea of guilty, and that a writ of error would not stay proceedings upon the judgment entered upon such plea.

The minutes seem to show that he pleaded *non vult* to assault and battery, and if they do show that, the case is parallel with the Ohio case. But it is deemed that the further record shows that the plea is made to the entire indictment, and the jury was justified in finding that the defendant did plead virtually that he was guilty of the charge made against him. *When the plea was afterwards retracted, the situation was precisely the same as though it had been tendered and not accepted by the court.*

The admission of this record, it is contended, was prejudicial error, and it was prejudicial because it was the turning point in the case, as has been shown in the preliminary statement made in this brief. Up to that point, the evidence was insufficient to show that the defendant had the specific intent to commit rape.

AS TO INSUFFICIENCY OF EVIDENCE TO SUSTAIN CONVICTION, IF PLEA OF NOLO CONTENDERE IS EXCLUDED.

The evidence has been stated in the ABSTRACT OF THE CASE, and the following authorities sustain the point:

> "On an indictment for an assault with intent to commit a rape in order to convict, the jury must be satisfied not only that the prisoner intended to gratify his passions on the person of the prosecutrix, *but that he intended to do so at all events and notwithstanding any resistance on her part.*"
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> *Rex* vs. *Lloyd*, 7 Car. & Pay., 318; 32 E. C. L. R., 633.

In *Reg.* vs. *Staunton*, 1 Car. and Kir., 415; 47 E. C. L. R., 414, the defendant was indicted for an assault with intent to commit a rape. The defendant was a medical man and took advantage of the opportunity that he had when treating the prosecutrix, to endeavor

to have sexual intercourse with her, but did not use any force. Coleridge, *J.* (in summing up), said:

> "An assault with intent to commit a rape, is far different from an assault with an intent to have an improper connection. The former is with intent to have a connection by force; but here, according to the statement of the prosecutrix, the defendant desists the moment she resists, and at the most, it could only be an attempt by surprise to get possession of the person of the prosecutrix, and that is not an assault with intent to commit a rape, but is an assault."

In this case, Shupe, as the evidence of the prosecutrix shows and of the witnesses called as to his admissions, also shows, *did not intend to use force to the extreme.* He evidently thought that he could induce the girl by flattery and persuasion and by taking some liberties with her, thinking she was of loose morals, to submit. When she resisted and insisted that she was virtuous, and would not submit, he desisted.

If the record (minutes) of plea of *nolo centendere* is excluded the verdict must fall as not sustained by the evidence.

2. THE CHARGE OF THE COURT, THAT THE JURY SHOULD BE GOVERNED BY THE PREPONDERANCE OF EVIDENCE, WAS ERRONEOUS. It will be observed that the court treated the indictment as a charge of attempt to commit rape, and stated to the jury, that it was a high misdemeanor, and what sentence could be imposed (p. 181).

On page 185, the court said, speaking of the testimony of Mr. Eaton, a member of the Bar of this State, and a Justice of the Peace of Union County: From his testimony, it appears that when the defendant was arraigned before him, he said, "I suppose I might plead not guilty."

This was a misstatement of the testimony of Eaton, page 116, which was, that the defendant said: *"Well, I suppose I ought to plead not guilty to this."*

On page 185, the court further said, speaking of the defendant's visit to the office of the prosecutor: "Defendant asked Gallatian what was going on, and when Gallatian told him what the charge was that was being made against him, the defendant confessed that the charge was true."

Gallatian did not testify that the defendant confessed that the charge was true, but that when he told Shupe what the charge was, and what the girl claimed in detail, *"as much as I could at that time,"* he said that it was true (pp. 118, 119).

At page 186, the court further says: "If the testimony of Gallatian is worthy of belief, the defendant is guilty, because he states that the defendant confessed that he had been guilty of the crime. Eaton said, that the defendant acknowledged to him that he brought this girl out for criminal purposes."

At the top of page 187, the court calls attention to the fact that the defendant had not denied the testimony of Eaton and Gallatian. The court then proceeds to say: "Considering the testimony in the case, the jury are to be governed by the preponderance of the evidence, but in doing so, you are not to weigh the evidence by the mere number of witnesses, for character in a witness, and consistency in his testimony, will often outweigh the testimony of several witnesses, but where all things are equal, then the preponderance goes to the side producing the greatest number of witnesses, and ought to carry with it your verdict."

At page 188, the court says: "He is guilty, if you believe her story, and you are the judges of all the evidence in this case."

Now, it will be observed that the court had erroneously stated the evidence to the jury, and then instructed the jury that they were to be governed by

the preponderance of the evidence, and that if they believed the girl's story, the defendant was guilty. If the charge had stopped right there, it is plain that the jury could not have done anything else than find a verdict of guilty. The question is, whether the subsequent instruction in any way modified the erroneous charge relating to the preponderance of evidence. What the court said, was this: "Now then, after you have examined all the testimony, after you have gone over it, after you have weighed it, sifted it and scrutinized it, then you are to say whether there exists in your mind any doubt of the guilt of this defendant; and if there be a doubt as to his guilt, he is to have the benefit of that doubt."

The court then proceeded to define reasonable doubt, and no criticism is made of the definition.

It is submitted that the subsequent instruction tended to confuse the jury and to make it difficult for them to apply the two rules, that relating to preponderance of evidence, and that relating to reasonable doubt. They could not have any doubt about the effect of the testimony of Eaton and Gallatian, and they could not have any doubt about the effect of the plea of *non vult,* and it was idle to tell them to give the benefit of a reasonable doubt under such circumstances. All they had to find was, that the evidence on the part of the State outweighed that on the part of the defendant; and the defendant had not denied the evidence of admissions.

Reading the whole charge, it is submitted that the jury was misled, and that the defendant was injured, and that the error was not cured by the subsequent instruction as to reasonable doubt.

Apart from the plea of *nolo contendere,* the evidence was insufficient in law to sustain a conviction; but on the charge made by the court, the jury could not very well do anything else than weigh the evidence and come to the conclusion that the preponderance was in favor of the State.

CONCLUSION.

It is not intended in this brief to endeavor in any way to excuse the conduct of the plaintiff in error. What he did was inexcusable, if the girl's testimony is true. It is probable that the pendency of a civil action for damages against him was the cause of his not testifying, and he ought not to be misjudged by his refusal to testify.

It is only intended to point out to the court, that the defendant, as seems to be clearly shown by the evidence in the case, assumed that the girl was one of loose morals and solicited her and endeavored to persuade her to submit to him. His conduct in that respect is of course, reprehensible, but the evidence fails to show that he intended at all events to force her notwithstanding any resistance to submit to him.

The admission of the plea of *nolo contendere* must have had great weight with the jury. The defendant was not fairly convicted, and it is earnestly prayed that the conviction may be set aside so that he may have a new trial.

Respectfully submitted,

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New Jersey Court of Errors and Appeals

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Brief for Plaintiff in Error in Reply.

In the brief of the defendant in error, it is urged that the specifications of error made by the plaintiff in error were not argued in the Supreme Court. The case was submitted on briefs in the Supreme Court, and I find in the brief of Mr. William R. Wilson, of counsel with the plaintiff in error in the Supreme Court, a reference to the charge of the court as to the preponderance of evidence, which is a repetition of the eighth specification of causes in the Supreme Court.

As to the other point, that is, the inadmissibility of the plea of *nolo contendere,* Mr. Wilson's brief states as follows:

> "The introduction of the testimony of Charles Runyon as to the minutes of the court, had no bearing on the case and its admission affected the minds of the jury. The remarks of the prosecutor worked great injury to the jury when in summing up he used the following: 'When he stood before this court ready for sentence and then retracted his plea of *non vult,* did he raise the question of jurisdiction of this court?' "

In the brief of the counsel for the State in the Supreme Court, I find the following in relation to the admissibility of the plea of *nolo contendere*:

> "The twentieth specification is that the court erred by permitting one Charles M. Runyon, a witness for the State, to put in evidence the minutes of the Court of Quarter Sessions with reference to the indictment found against the defendant and the various pleas made by the defendant, over the objection of his counsel. The witness was a clerk in the office of the County Clerk, and clerk of the court trying the case. The minutes of the court were offered in evidence showing that to this indictment the defendant appeared in court and entered a plea of not guilty. Subsequently, on December 9, 1913, he again appeared in court, retracted his plea of not guilty and entered a plea of *non vult*. Later, on December 13, 1913, he appeared before the court, with reference to this indictment and requested that sentence be postponed until December 20, 1913. On December 20, 1913, he appeared in court again, retracted his plea of *non vult* and entered a plea of not guilty. The pleas of not guilty surely did not result in any harm or injury to the defendant. The plea of *non vult,* carrying with it certain admissions, was properly received. It was the defendant's own act which made the record. Admissions made by him out of court against his own interest would have been received as competent evidence. Evidence of a higher degree of a more solemn act in the way of an admission under his plea of *non vult* as indicated by the record of the court, might be well utilized by the State for the purpose for which it was used, and the fact that the State used the entire record and not a part, certainly could

not have resulted in manifest wrong or injury to the defendant."

I respectfully contend that it was the intention of the plaintiff in error to rely upon both these points in the Supreme Court, and that the Supreme Court evidently ignored them because they were not elaborated in the brief; but such action of the Supreme Court ought not to deprive the plaintiff in error of his right to be heard in this court.

FURTHER ARGUMENT AS TO THE INADMISSIBILITY OF PLEA OF NOLO CONTENDERE.

In *Hill* v. *Maxwell,* 77 Law, 48 Vr. 776, this court held that such a plea is evidence in a civil suit to affect the defendant's credibility as a witness, which was merely following *State* v. *Henson.*

In *Johnson* v. *Johnson,* 78 Eq. 8 Buch. 507, Vice-Chancellor Walker held that such a plea is admissible to discredit the defendant's testimony when he takes the stand in his own behalf. In that case however the Vice-Chancellor held that it was unnecessary to decide whether the plea may be used substantively on the issue as a declaration of the defendant contrary to his sworn statement, or in other words as a confession of guilt. I do not find any other cases. The plea having been withdrawn by leave of the court, ceased to be a record of conviction and is not a determination of any fact. As a record, it was not admissible in evidence for any purpose. "A judgment of nonsuit does not determine the rights of the parties and is no bar to a new action."

"A trial upon which nothing was determined cannot support a plea of *res adjudicata,* or have any weight as evidence at another trial"

Man. Life Ins. Co. v. *Broughton,* 109 U. S. 121, Law Ed. 27, 879 at p. 880.

"A judgment of non-suit is no bar to a subsequent action by the same plaintiff against the same defendant for the same cause of action."

Snowhill v. *Hillyer,* 9 Law, 4 Hals. 38.

"At common law a judgment of nonsuit is no bar to a fresh suit by the plaintiff against the defendant on the same cause of action." "It does not determine the rights of the parties." "There is no statute in New Jersey which changes this common law rule."

Dixon, *J.* in *Chapin Hall Lumber Co.* v. *Dalrymple,* 56 Law 34, Vr. 267 at p. 268.

These authorities show that the record of the plea of *non vult* is not admissible in evidence as showing a determination of any matter that is—as showing a finding that the defendant was guilty of the crime charged. It could not have any more legal effect as a record than a reversed judgment of conviction. It is contended on behalf of the State however that the plea is a voluntary statement made by the defendant admitting his guilt and is admissible in evidence just the same as though the statement had been made to some person who was called as a witness to prove it.

My answer to that argument is, that the record is not admissible in evidence as a record, because it doesn't prove anything, and proof of the oral statement should be made by the person or persons to whom it was made, or who heard it, that is for instance, the judge of the court; and such witness would be subject to cross examination as to the

circumstances and conditions under which the admission was made. Admitting the record in evidence without any proof of the surrounding circumstances and any conditions under which the admission was made, puts the burden upon the defendant to prove that he did not make an unqualified admission of his guilt.

I respectfully submit that this court should hear this case and dispose of it on the points that have been made by the plaintiff in error, and that the conviction should be reversed.

FRANK E. BRADNER,
Of Counsel with Plaintiff in Error.

New Jersey Court of Errors and Appeals

The State of New Jersey, Defendant in Error, vs. William F. Shupe, Plaintiff in Error.	In Error to Supreme Court.

BRIEF FOR DEFENDANT IN ERROR.

The plaintiff in error was indicted by the Grand Jury of Union County for an assault with intent to rape.

The indictment was tried in the Union Quarter Sessions and the jury found the defendant guilty.

The entire record of the trial was brought to the Supreme Court by writ of error. The printed case sets forth twenty-there causes for reversal and twenty-two assignments of error, of which **three** only were passed upon by the Supreme Court, as they were the only ones **argued.**

The points argued in the Supreme Court were:

(1) The refusal of the trial court to sustain a challenge to the array of jurors.

(2) Because the court permitted the prosecuting witness to testify that on her return home she complained to her mother about the assault.

The Supreme Court in taking up the third and only **other** point argued, said:

> "The only **other** ground of reversal which is **argued** by Counsel is directed at the instruction of the Court to the jury that 'If the defendant is acquitted of the indictment by your verdict he cannot hereafter be tried in the County of Essex.' "

The Court decided all three points against the plaintiff in error and affirmed the judgment (see opinion, Case pages 195 to 197).

It is the contention of the state that all assignments of error and causes for reversal not argued in the Supreme Court are waived and abandoned.

In Lavin vs. Public Service Railway Company, 48 Vroon, page 217, the Supreme Court held:

> "Grounds for revesral not **discussed** in either argument or brief will not be considered."

The record of the case before the court shows that all points argued in the Supreme Court were passed upon.

In this court it was held:

> "Assignments of error not argued by counsel for plaintiff in error may properly be considered as having been **abandoned."**
>
> Marten vs. Brown, 52 Vroon 599.

The first, second, third and fourth assignments of error (Case, pages 200 and 201) relied upon in this court for reversal not having been argued in the Supreme Court, as the record shows, and for such reasons not passed upon by that court, cannot now be argued or considered in this court as reasons for reversal of the judgment, as was held in the case of Marten vs. Brown, 52 Vroon 599.

The only question before this court on this writ of error is whether the Supreme Court was justified or not in refusing to disturb the judgment of the Quarter Sessions for any of the reasons it was there attacked. **The record of this case now before the court shows that none of the grounds now mooted were argued or pressed by the plaintiff in error in the Supreme Court.**

The fifth assignment of error in this court is that the Supreme Court held that the bill of exceptions and the specification of causes for reversal did not

show that any injurious error had been committed at the trial. This is not correct, inasmuch as the Supreme Court held that **the grounds argued, three in number, did not show any reversible error and the plaintiff in error does not in his brief challenge the correctness of the court's rulings on the points argued in the Supreme Court,** and consequently the sixth assignment of error in this court, namely: "Because the Supreme Court affirmed the judgment of the Court of Quarter Sessions," is immaterial.

The judgment of the Supreme Court, for the reason stated, ought to be affirmed.

MARTIN P. O'CONNOR,
Assistant Prosecutor of the Pleas,
Of Counsel with the State of New Jersey, Defendant in Error.

New Jersey Court of Errors and Appeals

THE STATE OF NEW JERSEY, *Defendant in Error,* *vs.* WILLIAM F. SHUPE, *Plaintiff in Error.*	*In Error To* *Supreme Court*

SUPPLEMENTAL BRIEF FOR DEFENDANT IN ERROR.

If the contention of the State, as set forth in its first brief in this case, is not sound and well founded, then the question arises as to whether or not judgment in this case should be reversed for the reasons relied upon and argued in the brief of the plaintiff in error.

THE FIRST ASSIGNMENT OF ERROR IS AS TO THE ADMISSION IN EVIDENCE OF THE MINUTES OF THE COURT OF QUARTER SESSIONS, SHOWING THE PLEA OF NON VULT MADE BY THE DEFENDANT.

The State in proving its case offered in evidence the minutes of the Court showing that in October, 1912, the defendant was arraigned on the indictment in this case and entered a plea of "Not Guilty." On December 9th, 1912, to the same indictment the defendant appeared in Court and retracted his former plea of not guilty and entered the plea of "Non Vult" to assault and battery. On December 13th the defendant again appeared in

Court and to the same indictment entered a plea of "Not Guilty."

In *Peacock* vs. *Court of General Quarter Sessions of Hudson County,* 17 Vr., page 112, the Court stated:

> "A plea of nolo contendere is an **implied confession** of the crime of which he is charged," citing, *Burn's Just.,* 388; 2 *Hawk,* P. C. 225.

Continuing the Court said:

> "The difference between his implied confession and the expressed confession by the plea of guilty is that after the latter 'Not Guilty' cannot be pleaded to an action of trespass for the same injury, whereas it may at any time be done after the former." *1 Chitty Cri. Law 293.* In fact, the only difference between the two pleas is in the force each has upon a collateral proceeding. The implied confession is only for the purpose of the prosecution in the course of which it is entered, while the plea of guilty in that form may be used against the defendant in a civil suit. *1 Bish., Cri. Pro.,* Sec. 802; *1 Whart., Cri. Law,* Sec. 33."

The Court further said:

> "The established practice is to treat the plea of nolo contendere as operating as an **admission** of the **truth** of the **charge** as fully as if the plea of (not) guilty had been interposed."

In a later case, the *State* vs. *Henson,* 37 Vr. 608, decided in this Court, it was held:

> "The plea of nolo contendere has the same effect as a plea of guilty so far as regards the proceedings on the indictment. It is a confession only for the purpose of the criminal prosecution and does not bind the defendant

in a civil suit." *Whart., Cri. P. and P.*, Sec. 418; *Bish., Cri. Pro.*, Sec. 802.

Continuing, the Court said:

> In *Com.* vs. *Horton*, 9 Pick (Mass.) 206, it was held that a plea of nolo contendere to an indictment has the same effect in a criminal trial itself as a plea of guilty and sentence thereupon follows. In our Supreme Court in a case decided in 1884 and not since called in question it is held that a plea of nolo contendere is equivalent to a plea of guilty. The only difference in the significance of the two pleas being in the force each has upon a collateral proceeding." *Peacock* vs. *Hudson Sessions*, 17 Vr. 112.

In the case of the *State* vs. *Alderman*, 81 N. J. L. 550, involving an indictment for conspiracy, when arraigned, one of the defendants pleaded nolo to the indictment. When arraigned for sentence he moved to retract his plea, which was denied. Motion in arrest of judgment followed, which was not successful. This court, in speaking of the plea, said:

> "At Common Law the entry of the plea of nolo contendere carried with it an implied confession of guilt, whereby, while the defendant did not expressly own himself guilty he tacitly admitted it by throwing himself upon the mercy of the court," citing *State* vs. *Henson*, 37 Vr. 601; *Com.* vs. *Horton*, 9 Pick (Mass.) 206.

In the case of the *State* vs. *Herlihy* (Me.), 66 Atl. Rep. 643, it was held:

> "The plea of nolo contendere is an implied confession of the offense charged * * *. **It is not necessary that the court should adjudge that the party was guilty for that followed by neces-**

sary legal inference from the implied confession."
Citing, *Com.* vs. *Horton,* 9 Pick (Mass.), 206.

In the case of the *State* vs. *Sidall* (Me.), 68 Atl. Rep. 635, a plea of nolo contendere was accepted to the indictment. A motion to retract and plead not guilty was denied. The court said:

"But in this particular case the respondent who had the best knowledge of the truth entered a plea (nolo contendere) which **admitted he was guilty;** but when a jury in another case involving the same state of facts found that he was not guilty, he then seemed to have been persuaded by the verdict of the jury that he might have been mistaken and wished to retract his plea of nolo contendere and plead not guilty. **But we think the presiding justice was clearly justified in placing great confidence in the voluntary and apparently honest declaration of the respondent as to his guilt than in the finding of the jury in the other case."**

It is the contention of the State that the plea of nolo contendere being an implied confession of guilt was admissible in evidence notwithstanding the fact that such plea was retracted and a plea of not guilty entered. In the case of the *State* vs. *Bringgold* decided by the Supreme Court of Washington and reported in 5 American and English Cases Anno. page 715, it appears that the defendant was charged with tampering with a witness. When arraigned before the Justice he pleaded guilty. Subsequently he moved to withdraw his plea of guilty and enter a plea of not guilty, which was denied. An appeal was taken to the Superior Court, where the defendant was allowed to enter a plea of not guilty, and trial was had and the defendant convicted. The case was then removed

to the Supreme Court and one of the errors assigned was that the court erred in permitting the State to show that the appellant had pleaded "guilty" to the complaint filed against him in the Justice's Court. On this assignment of error the Court said:

> "It is argued that this plea became *functus officio* after it was withdrawn and was not longer admissible in evidence. There are cases which maintain this rule, **but we think the better rule is the other way.** It is generally held that extrajudicial confessions voluntarily made by a defendant are admissible against him as evidence tending to show the fact confessed, whether or not the confession itself or the matter of the confession be afterwards denied. **The withdrawal of a plea of guilty and the entry of a plea of not guilty is in effect only a denial of the facts that was at one time admitted and it would seem that any rule that would admit in evidence a confession made out of court ought to admit one made in court.** Such a plea is not, of course, conclusive evidence against a defendant. It is **competent evidence** merely, its weight and sufficiency being for the jury." Citing, *Terry* vs. *State,* 39 Texas Crim. 47, Southeastern Rep. 654; *Com.* vs. *Brown,* 150 Mass. 330, 23 Northeastern Rep. 49; *Murmutt* vs. *State,* 66 Southwestern Rep. 508; *People* vs. *Guild,* 70 Mich. 240, 39 Northwestern Rep. 232, 12 Cyc. 460.

In the case of the *State* vs. *Canter,* decided by the Supreme Court of Ohio, reported in 106 Northeastern Rep. 656, and cited by the plaintiff in error, it appears the defendant was indicted for shooting with intent to kill and shooting with intent to wound. When arraigned he pleaded not guilty as

charged in the indictment, but pleaded guilty to assault and battery, which was rejected by the State. The criminal code of Ohio expressly provides that upon arraignment the accused shall plead guilty or not guilty. The Court said:

> "In this case the defendant pleaded not guilty to the indictment and which was properly entered upon the journal. Then followed this tender of a plea of guilty of assault and battery, which was rejected by the State. **There was no authority for the entry of this fact upon the journal** * * *. Yet the trial court admitted its introduction in evidence and gave to it the same force and effect as though it were duly authorized and importing absolute verity. The rule admitting records in evidence applies only to such matters as are legitimately a part of the record. The court therefore erred in permitting the **introduction of this record** * * *. If the State desired to present to the jury what was said and done after the formal plea of not guilty was entered it should have been adopted in another method. **A witness who had knowledge of what had transpired could have been called and could have testified to this tender of a plea subject to the right of the defendant to inquire as to the conditions upon which, or the purpose of which it was made.**"

The court reversed the judgment, "for prejudicial error in the **admission of the journal record in evidence.**" The court did not hold that the plea of guilty to assault and battery was not competent evidence. **The evidence was competent.** The **manner** in which it was established was what moved the court to **reverse the judgment.**

If a defendant's guilt is a necessary legal inference from the plea of nolo contendere (an implied

confession of the offense charged) between him and the State it is not material whether he said he was guilty in so many words or something else from which the law necessarily inferred his guilt.

THE SECOND POINT ARGUED IS THAT THE EVIDENCE IS INSUFFICIENT TO SUSTAIN A CONVICTION.

The testimony of the complaining witness, a young woman employed as a bookkeeper in the City of Newark (Case, pages 49 to 76), clearly shows that the defendant by force and against her will intended to have sexual intercourse with her. The cases cited by the plaintiff in error are not in point. In those cases no force was used. It is true the defendant did not succeed in having intercourse with the complaining witness. It is not so charged. But he did not desist in his efforts while she was fighting him off; on the contrary he continued to use force, as the evidence shows, during all which time she was objecting by word of mouth and using physical force in protecting herself. This was a jury question and the jury found him guilty. **The defendant did not take the witness stand on his own behalf and deny the story of the complaining witness.**

THE THIRD ASSIGNMENT ARGUED FOR REVERSAL IS THAT THE COURT CHARGED THE JURY IT SHOULD BE GOVERNED BY THE PREPONDERANCE OF EVIDENCE.

It is true that the Court did use the words "preponderance of evidence" when charging the jury (Case, page 187), and then proceeded to summarize the evidence, and then stated:

> "Now then after you have examined all the testimony, after you have gone over it, after

you have weighed it, sifted it and scrutinized it, then you are to say whether there exists in your mind any doubt of the guilt of this defendant; and, if there be any doubt as to his guilt he is to have a benefit of that doubt. But that doubt must be a reasonable one. It must not be a doubt founded upon prejudice, nor with a desire to save the defendant. In other words, it must be what I have already said, a reasonable doubt."

Then the Court proceeded to define reasonable doubt as approved by the *State* vs. *Donnelly*.

The State contends that the use of the words, "preponderance of evidence," by the trial judge was harmless, as an inspection of the whole charge will show. It is also to be borne in mind that this assignment of error was not argued or discussed in the brief of the plaintiff in error before the Supreme Court or decided by that court.

It is respectfully submitted that judgment should be affirmed.

MARTIN P. O'CONNOR,

Assistant Prosecutor of the Pleas.

Attorney and of Counsel for Defendant in Error.

Arthur W. Cross, Law Printer, 243 Market Street, Newark, N. J.

New Jersey Court of Errors and Appeals

THE STATE OF NEW JERSEY,
Defendant in Error,
vs.
WILLIAM F. SHUPE,
Plaintiff in Error.

In Error to Supreme Court.

Brief for Plaintiff in Error in Reply.

In the brief of the defendant in error, it is urged that the specifications of error made by the plaintiff in error were not argued in the Supreme Court. The case was submitted on briefs in the Supreme Court, and I find in the brief of Mr. William R. Wilson, of counsel with the plaintiff in error in the Supreme Court, a reference to the charge of the court as to the preponderance of evidence, which is a repetition of the eighth specification of causes in the Supreme Court.

As to the other point, that is, the inadmissibility of the plea of *nolo contendere,* Mr. Wilson's brief states as follows:

> "The introduction of the testimony of Charles Runyon as to the minutes of the court, had no bearing on the case and its admission affected the minds of the jury. The remarks of the prosecutor worked great injury to the jury when in summing up he used the following: 'When he stood before this court ready for sentence and then retracted his plea of *non vult,* did he raise the question of jurisdiction of this court?' "

In the brief of the counsel for the State in the Supreme Court, I find the following in relation to the admissibility of the plea of *nolo contendere*:

> "The twentieth specification is that the court erred by permitting one Charles M. Runyon, a witness for the State, to put in evidence the minutes of the Court of Quarter Sessions with reference to the indictment found against the defendant and the various pleas made by the defendant, over the objection of his counsel. The witness was a clerk in the office of the County Clerk, and clerk of the court trying the case. The minutes of the court were offered in evidence showing that to this indictment the defendant appeared in court and entered a plea of not guilty. Subsequently, on December 9, 1913, he again appeared in court, retracted his plea of not guilty and entered a plea of *non vult*. Later, on December 13, 1913, he appeared before the court, with reference to this indictment and requested that sentence be postponed until December 20, 1913. On December 20, 1913, he appeared in court again, retracted his plea of *non vult* and entered a plea of not guilty. The pleas of not guilty surely did not result in any harm or injury to the defendant. The plea of *non vult*, carrying with it certain admissions, was properly received. It was the defendant's own act which made the record. Admissions made by him out of court against his own interest would have been received as competent evidence. Evidence of a higher degree of a more solemn act in the way of an admission under his plea of *non vult* as indicated by the record of the court, might be well utilized by the State for the purpose for which it was used, and the fact that the State used the entire record and not a part, certainly could

not have resulted in manifest wrong or injury to the defendant."

I respectfully contend that it was the intention of the plaintiff in error to rely upon both these points in the Supreme Court, and that the Supreme Court evidently ignored them because they were not elaborated in the brief; but such action of the Supreme Court ought not to deprive the plaintiff in error of his right to be heard in this court.

FURTHER ARGUMENT AS TO THE INADMISSIBILITY OF PLEA OF NOLO CONTENDERE.

In *Hill* v. *Maxwell,* 77 Law, 48 Vr. 776, this court held that such a plea is evidence in a civil suit to affect the defendant's credibility as a witness, which was merely following *State* v. *Henson.*

In *Johnson* v. *Johnson,* 78 Eq. 8 Buch. 507, Vice-Chancellor Walker held that such a plea is admissible to discredit the defendant's testimony when he takes the stand in his own behalf. In that case however the Vice-Chancellor held that it was unnecessary to decide whether the plea may be used substantively on the issue as a declaration of the defendant contrary to his sworn statement, or in other words as a confession of guilt. I do not find any other cases. The plea having been withdrawn by leave of the court, ceased to be a record of conviction and is not a determination of any fact. As a record, it was not admissible in evidence for any purpose. "A judgment of nonsuit does not determine the rights of the parties and is no bar to a new action."

"A trial upon which nothing was determined cannot support a plea of *res adjudicata,* or have any weight as evidence at another trial"

Man. Life Ins. Co. v. *Broughton,* 109 U. S. 121, Law Ed. 27, 879 at p. 880.

"A judgment of non-suit is no bar to a subsequent action by the same plaintiff against the same defendant for the same cause of action."

Snowhill v. *Hillyer,* 9 Law, 4 Hals. 38.

"At common law a judgment of nonsuit is no bar to a fresh suit by the plaintiff against the defendant on the same cause of action." "It does not determine the rights of the parties." "There is no statute in New Jersey which changes this common law rule."

Dixon, *J.* in *Chapin Hall Lumber Co.* v. *Dalrymple,* 56 Law 34, Vr. 267 at p. 268.

These authorities show that the record of the plea of *non vult* is not admissible in evidence as showing a determination of any matter that is—as showing a finding that the defendant was guilty of the crime charged. It could not have any more legal effect as a record than a reversed judgment of conviction. It is contended on behalf of the State however that the plea is a voluntary statement made by the defendant admitting his guilt and is admissible in evidence just the same as though the statement had been made to some person who was called as a witness to prove it.

My answer to that argument is, that the record is not admissible in evidence as a record, because it doesn't prove anything, and proof of the oral statement should be made by the person or persons to whom it was made, or who heard it, that is for instance, the judge of the court; and such witness would be subject to cross examination as to the

circumstances and conditions under which the admission was made. Admitting the record in evidence without any proof of the surrounding circumstances and any conditions under which the admission was made, puts the burden upon the defendant to prove that he did not make an unqualified admission of his guilt.

I respectfully submit that this court should hear this case and dispose of it on the points that have been made by the plaintiff in error, and that the conviction should be reversed.

FRANK E. BRADNER,
Of Counsel with Plaintiff in Error.

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NEW JERSEY, ss.:

L.S. The State of New Jersey to JAMES C. CONNOLLY, Judge of the Court of Common Pleas of the County of Union, and of the Court of Quarterly Sessions, of the County of Union, of the May Term, in the year of our Lord one thousand nine hundred and thirteen.

Because in the record and process and also in giving of judgment upon a certain indictment against William F. Shupe, late of the City of Elizabeth, in the County of Union for assault and battery on Mabel Jones with intent to then and there forcibly and against her will feloniously to ravish and carnally know her.

Pro ut the said indictment and the several counts therein 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 William F. Shupe, as it is said, manifest error hath intervened to the great damage of the said William F. Shupe, as from his complaint we have received information, we being willing, in his behalf, to correct the error in due manner, if any there shall be, and a speedy justice be done to him, the said William F. Shupe, 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 Supreme Court of Judicature, to be held at Trenton, on the 7th day of August, 1913, 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 laws and customs of New Jersey ought to be done.

Witness WILLIAM S. GUMMERE, ESQ., our Chief Justice of our said Supreme Court, at Trenton, this

18th day of July, One thousand nine hundred and thirteen.

WM. C. GEBHARDT,
Clerk.

W. D. WOLFSKEIL,
Attorney.

NEW JERSEY SUPREME COURT,

UNION COUNTY.

THE STATE OF NEW JERSEY, Defendant in Error, against WILLIAM F. SHUPE, Plaintiff in Error.	In Error

WRIT OF ERROR

Returnable

WILLIAM D. WOLFSKEIL,
Atty. of Plff. in Error,
207 Broad Street,
Elizabeth, N. J.

Writ served in open Court
July 18, 1913
JAMES C. CONNOLLY,
Judge.

The answer of James C. Connolly, Judge of the Court of Common Pleas of the County of Union, and of the Court of Quarter Sessions of the County of Union, within named:

In obedience to the command of this writ, and pursuant to Sections 136 and 137 of an Act entitled

"An Act relating to Courts having criminal jurisdiction and regulating proceedings in criminal cases (Revision of 1898)", I herewith return the indictments against William F. Shupe, the entire record of the proceedings had upon the trial of said cause, the bill of exceptions as signed and sealed by me in said cause, whereof mention is made within, and all things touching and concerning the same, to our Supreme Court of Judicature at Trenton, within specified, at the time and place within mentioned, I, the Judge of the Court of Common Pleas and of the Court of Quarter Sessions within mentioned, under my seal and hereunto annexed, send, as within I am commanded, as appears by the schedule hereto annexed.

JAMES C. CONNOLLY (Seal)
Judge of the Court of Common Pleas and of the Court of Quarter Sessions in and for the County of Union.

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

(Seal) In Testimony Whereof, I, James C. Calvert, Clerk of the County of Union and of the Court of Common Pleas and Court of Quarter Sessions in and for said County, have hereunto subscribed my name and affixed the seal of said courts, the first day of August, A. D. 1913.

JAMES C. CALVERT,
Clerk.

STATE OF NEW JERSEY, } SS.:
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 first Tuesday of October, in the year of our Lord one thousand nine hundred and twelve, before the Hon. JAMES J. BERGEN, one of the Justices of the Supreme Court of Judicature of the State of New Jersey, and the Hon. EDWARD S. ATWATER, Judge of the Court of Common Pleas in and for the County of Union, upon the oaths of

Walter Chandler	Harry Simmons
William Zontlein	DeWitt C. Peek
Peter C. Walls	Thomas Fitzpatrick
Austin F. Knowles	Peter H. Meisel
Dr. Frank H. Warncke	David C. Smalley
Louis C. Clauss	James Guttridge
John P. Arnold	Thaddeus Doane, Jr.
Floyd R. Berriman	Winfield S. Stephenson
William H. Foose	William S. Post
John L. Gray	Rev. Wm. S. Coeyman
Thomas H. Girtanner	Robert F. Hayes
Willard C. Freeman	

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:

UNION OYER AND TERMINER.

October Term, A. D. Nineteen hundred and twelve.

UNION COUNTY, to wit: The Grand Inquest for the State of New Jersey, and for the body of the County of Union, upon their oath

PRESENT that William Shupe, late of the Township of Union, in the County of Union aforesaid, on the fourth day of June, in the year of our Lord one thousand nine hundred and twelve, with force and arms, at the township Union aforesaid, in the County aforesaid, and within the jurisdiction of this Court and upon one Mabel Jones in the peace of God and of this State then and there being, an assault did make, with an intent on the part of him, the said William F. Shupe, her, the said Mabel Jones, then and there forcibly and against her will, feloniously to ravish and carnally know, and her, the said Mabel Jones, then and there did beat, wound and ill-treat, and other wrongs and injuries to the said Mabel Jones then and there did, to the great damage of the said Mabel Jones, 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.

C. ADDISON SWIFT,
Prosecutor of the Pleas.

And afterwards, that is to say, at a Court of Quarter Sessions, holden at Elizabeth, in said County of Union on Thursday, the seventeenth day of October, in the year of our Lord one thousand nine hundred and twelve, before Hon. EDWARD S. ATWATER, 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 said 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.

And afterwards, that is to say, at the same Term of the said Court of Quarter Sessions, holden at Elizabeth aforesaid, on Tuesday, the twenty-second day of October, in the year last aforesaid, before Hon. EDWARD S. ATWATER, Judge aforesaid, comes the said William F. Shupe, in his own proper 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 he is not guilty thereof, and of this he puts himself upon the country, etc. And C. Addison Swift, Esq., who prosecutes for the State in this behalf doth likewise the same.

And afterwards, that is to say, at the same Term of the said Court of Quarter Sessions, holden at Elizabeth, aforesaid, on Monday, the ninth day of December, in the year last aforesaid, before Hon. EDWARD S. ATWATER, Judge aforesaid, comes the said William F. Shupe, in his own proper person, and informs the Court that he desires to retract the plea of not guilty heretofore presented by him, in answer to said Indictment, and to now plead *non-vult* to Assault and Battery thereto. The State being willing to accept the plea of *non-vult* to Assault and Battery now offered, the Court thereupon ordered that said Plea be accepted.

And afterwards, that is to say, at the same Term of the said Court of Quarter Sessions, holden at Elizabeth aforesaid, on Friday, the twentieth day of December, in the year last aforesaid, before Hon.

EDWARD S. ATWATER, Judge aforesaid, comes the said William F. Shupe, in his own proper person, and prays the Court for leave to withdraw the plea of *non-vult* to Assault and Battery by him heretofore offered to the said Indictment, and to renew his former plea of not guilty, which request the Court granted, and thereupon the defendant being asked in what manner he would acquit himself of the charge in the said Indictment above specified against him, says he is not guilty thereof, and of this he puts himself upon the Country, etc. And C. Addison Swift, Esq., who prosecutes for the State in this behalf doth likewise the same.

And afterwards, that is to say, at a Court of Quarter Sessions, holden at Elizabeth, in said County of Union, on Tuesday, the first day of July, in the year of our Lord one thousand nine hundred and thirteen, before Hon. JAMES C. CONNOLLY, 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 William F. Shupe, being set to the Bar, Alfred A. Stein, 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 William F. Shupe, to recognize upon their oaths, whether the said William F. Shupe be guilty of Assault and Battery, with intent, etc., in the Indictment aforesaid specified or not guilty, because as well the said Alfred A. Stein, who prosecutes for the State in this behalf as the said William F. Shupe has put himself upon the said jury and the jurors of the said jury by

William H. Wright, Sheriff of said County of Union, for this purpose impanelled and returned agreeably to the statute in such case made and provided, to wit: 1—John J. Hauch, 2—George W. Steinmetz, 3—Frank D. Beebe, Jr., 4—Harold L. Coster, 5—Edward N. Brown, 6—Frederick J. French, 7—George Froggett, 8—Raymond R. Blancke, 9—John H. Beck, 10—James Bannon, 11—Harry E. Grote, 12—David Buchanan, who being chosen, tried and sworn to speak the truth of and concerning the premises, on Wednesday, the second day of July, in the year last aforesaid, to which day the trial of the issue aforesaid had been continued, returned into Court in charge of the officers sworn to attend them, and then and there upon their oath say that the said William F. Shupe is guilty of Assault and Battery with intent, etc., in the form aforesaid, and as in the Indictment aforesaid is above supposed against him.

And afterwards, that is to say, at a Court of Quarter Sessions, holden at Elizabeth aforesaid, in the County aforesaid, on Friday, the eighteenth day of July, in the year of our Lord one thousand nine hundred and thirteen, before Hon. JAMES C. CONNOLLY, 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 William F. Shupe, being set to the Bar Alfred A. Stein, Esq., who prosecutes for the State in this behalf, moves for judgment on the said William F. Shupe.

Whereupon all and singular the premises being seen and by the Court now here fully understood—It is ORDERED and adjudged that the said William F. Shupe having been convicted of the crime of Assault and Battery with intent, etc., be im-

prisoned in the State Prison of this State for a minimum term of three years and for a maximum term of twelve years at hard labor upon this conviction, that he pay the costs of this prosecution, which costs are taxed by the Court at the sum of One hundred and eighty-four dollars and fifty-one cents, and that he be further imprisoned from and after the expiration of the imprisonment above imposed until said costs are paid. And the said defendant in Mercy, etc.

Judgment signed July 18, 1913.

JAMES C. CONNOLLY,
Judge.

NEW JERSEY SUPREME COURT,

THE STATE OF NEW JERSEY, Defendant in Error, against WILLIAM F. SHUPE, Plaintiff in Error.	In Error. Bill of Exceptions.

At the conclusion of the Court's charge the defendant prays a general exception to the said charge, and the same is allowed and signed and sealed accordingly.

JAMES C. CONNOLLY,
Judge.

At the conclusion of the Court's charge in response to a request from the Prosecutor of the Pleas, the Court said, "The Prosecutor desires me to say to you, that if the defendant is acquitted on this indictment by your verdict, that he cannot hereafter be tried in the County of Essex." To this request the Court said, "I so charge you. Under the laws and Constitution of the State of New Jersey, no man can be put twice in jeopardy of his life, his liberty or his property in a criminal case." To which instruction the defendant prays an exception, and the same is allowed and signed and sealed accordingly.

JAMES C. CONNOLLY,
Judge.

And the defendant by his Counsel requested the Court to charge as follows: "The jury must first decide that an offense was committed in Union County, and if not satisfied of such fact beyond a reasonable doubt, a verdict of acquittal must be rendered," which the Court refused to charge, and thereupon defendant prays an exception to said refusal so to charge, and the same is allowed and signed and sealed accordingly.

JAMES C. CONNOLLY,
Judge.

At the conclusion of the Court's charge defendant's Counsel addressing the Court said "I except to the Court's remarks regarding my address to the jury in which your Honor said, in addressing the jury, 'You are not to take into consideration the statement made before you by Counsel in his closing argument for the defendant to the effect that your verdict will have some bearing upon a civil

action that she has or may bring against the defendant.' " To which instruction the defendant prays an exception, and the same is allowed and signed and sealed accordingly.

JAMES C. CONNOLLY,
Judge.

At the conclusion of the Court's charge defendant's Counsel addressing the Court said "I take a special exception to this charge as the Prosecutor requested in which he asked your Honor to charge alluding to the defendant. That if acquitted on this charge he could not be tried in Essex County." To which instruction the defendant prays an exception, and the same is allowed and signed and sealed accordingly.

JAMES C. CONNOLLY,
Judge.

That the Court charged the jury as follows: "In considering the testimony in this case, the jury are to be governed by the preponderance of the evidence, but in doing so you are not to weigh the evidence by the mere number of witnesses, for character in a witness and consistency in his testimony, will outweigh the testimony of several witnesses, but where all things are equal, then the preponderance goes to the side producing the greatest number of witnesses, and ought to carry with it your verdict." To which instruction the defendant prays an exception, and the same is allowed and signed and sealed accordingly.

JAMES C. CONNOLLY,
Judge.

At the opening of the trial, the Counsel for the defendant, addressing the Court, challenged the array of jurors for and on behalf of the defendant for the following reasons:

1. Because the Prosecutor of the Pleas of Union County on June thirtieth, nineteen hundred and thirteen, after moving the case for trial, in opposing the defendant's application for a postponement, indulged in remarks concerning the case in the presence and hearing of the whole panel of jurors, which remarks were illegal, improper and are prejudicial to the defendant if he is compelled to be tried before a jury selected from said panel. Said remarks were taken stenographically by the Court Reporter, and are submitted to the Court as a part of this motion as follows: "In order to familiarize your Honor with this case let us get down to the bottom and start up right, so you can see the position that I am being placed in to-day. This is not a new case. This is an old case. This case has a history with this Court for being shuffled around, everything but try it, and it was regularly set down for last Thursday. Now it is not the duty of the Prosecutor, and if the Prosecutor is good enough to notify Counsel that the case in which he is engaged will probably take two days, Thursday and a good part of Friday, Counsel has no right to assume that their case, being in the calendar, that it will not be moved at all, without any notice. They are supposed to take care of their own cases. That has always been my idea and the Courts have told me so on one or two occasions. This defendant was indicted in October, 1912, and he appeared in Court on one day in October and his trial was set down, as the minutes of the Court which are before me show, for October 31, 1912, giving bail and having his case set down. The next

that happened with the case the defendant reappeared here and retracted the plea which he had then entered, and entered a plea of non vult to the indictment. The next we find of it in the records of this Court is in the proceedings of Friday, December 13, 1912, when the sentence which was to be pronounced upon him was postponed until December 20, 1912, and then he appeared in Court again, and with the leave of the Court retracted his former plea of non vult and entered a plea of not guilty, and his case was set down for trial for January 14, 1913. Now all during the January Term this case was postponed by my predecessor for one reason and another. I presume they were all good, until it came to pass that I was appointed Prosecutor."

2. Because the said panel of jurors was chosen on May nineteenth, nineteen hundred and thirteen, by the Sheriff of the County of Union, in accordance with the statute then in force, for the term of two weeks, but the same was illegally continued by order of the Court made on the second day of June, nineteen hundred and thirteen, subsequent to the approval on May twenty-seventh, nineteen hundred and thirteen of an act of the Legislature of the State of New Jersey entitled "A supplement to an act entitled 'An act concerning Jurors.'" (Revision), approached March twenty-seventh, one thousand eight hundred and seventy-four, which took effect immediately and which prescribed the method of choosing Jurors, wherefore the defendant alleges that said panel of jurors is illegally constituted and that he should not be tried before a jury selected therefrom. Which motions the Court refused to allow and did not proceed to determine the right to such challenge to the array, and thereupon defendant prays an exception to said

refusal, and the same is allowed and signed and sealed accordingly.

JAMES C. CONNOLLY,
Judge.

That the Prosecutor of the Pleas during the empanelling of the jury moved the Court as follows: "I move that there be talesmen drawn from the general panel, under the Criminal Procedure Act, Section 38. I find that when the special panel or list of jurors served on a defendant in any case in which the defendant shall be entitled to twenty peremptory challenges shall be exhausted from any cause before a jury for the trial of the indictment shall be obtained, talesmen shall be taken from the general panel of jurors returned for the term at which such defendant is to be tried, if any remain, my understanding is that there are three of the general panel in the box. And then it provides further that if more talesmen should be required than the number of jurors remaining on the general panel the Sheriff or other proper officer shall forthwith summon from among the bystanders or others such additional number of persons qualified to serve as jurors as may be ordered by the Court, and make return thereof immediately, and place the names of the jurors so returned in the box and draw therefrom until the jury be completed, and so forth," to which motion, the Counsel for the defendant, objected in the words following, "I desire in order that we may be consistent, to enter an objection to any order of the Court to the effect that an additional juror be called, either from the panel or as a talesman for the panel, or order them to be called for the panel, and if the remaining members of the panel not upon the list certified should be exhausted, for the reason, that my contention is that the act upon which the State relies, and re-

quests your Honor to now direct the Sheriff to call a juror or jurors under, is the act of the Session of the Legislature of 1898, pamphlet laws, page 897, section 83. That act has been repealed by an amendment of the New Jersey State Legislature, approved May 27, 1913, entitled, A supplement to the act entitled, An act concerning Jurors (Revision) approved March 27, 1894, which act as I have already stated was approved May 27, 1913, and my insistment is that there can be no act by this Court, or by this Sheriff, regarding any juror or jury, except under the provisions of this act, since it has become operative, and since the repealing clause of the same is as follows: All acts and parts of acts, inconsistent with this act, are hereby repealed, and this act shall take effect immediately."

At the conclusion of which motion so made by the Counsel for the defendant, the Court, over the objection of the Counsel for the defendant, directed as follows: "The Sheriff will proceed to draw jurors from the general panel of jurors, the special panel having been exhausted in the selection of the jury in this case," to which instruction the defendant prays an exception, and the same is allowed and signed and sealed accordingly.

JAMES C. CONNOLLY,
Judge.

That the Court permitted the following question to be asked of the complaining witness by the Counsel for the State: "What did you say to your mother?" To which the Counsel for the defendant objected, and prayed an exception, and the same is allowed and signed and sealed accordingly.

JAMES C. CONNOLLY,
Judge.

That the Court permitted the complaining witness to be asked the following question by the Counsel for the State: "What was done the next day if anything by you?" To which the Counsel for the defendant objected and prayed an exception, and the same is allowed and signed and sealed accordingly.

JAMES C. CONNOLLY,
Judge.

That the Court permitted the Counsel for the State to ask the complaining witness the following question: "When did you return to work after June 4th?" To which the Counsel for the defendant objected and prayed an exception, and the same is allowed and signed and sealed accordingly.

JAMES C. CONNOLLY,
Judge.

That the Court permitted the Counsel for the State to ask the complaining witness the following question: "Why didn't you continue with your work?" To which the Counsel for the defendant objected and prayed an exception, and the same is allowed and signed and sealed accordingly.

JAMES C. CONNOLLY,
Judge.

That the Court permitted the Counsel for the State to ask the complaining witness the following question: "When you met Justice Eaton what did you do there?" To which the Counsel for the defendant objected and prayed an exception, and the same is allowed and signed and sealed accordingly.

JAMES C. CONNOLLY,
Judge.

That the Court permitted the Counsel for the State to ask the complaining witness the following question: "How long after fourth of June?" To which the Counsel for the defendant objected and prayed an exception, and the same is allowed and signed and sealed accordingly.

JAMES C. CONNOLLY,
Judge.

That the Court permitted the complaining witness, in reply to a question of the Prosecutor of the Pleas to answer as follows: "I told the Doctor, I said I was awful sick." The Judge at the same time, saying, "I will allow her to tell what she said to the Doctor." To which the Counsel for the defendant objected, and prays an exception, and the same is allowed and signed and sealed accordingly.

JAMES C. CONNOLLY,
Judge.

That the Court permitted the complaining witness in reply to a question of the Counsel for the State to answer as follows: "I said Doctor I am awful sick." He said, "Well, what is the matter with you?" I said "I don't know." I said "I am sick. I am a healthy girl, but I have been sick for the last week." I said, "I don't feel well at all." I said, "My head bothers me." I said, "Can you do anything?" He said to me, "Why, sure." So he sat there, he said and he wanted, so he examined me." To which the Counsel for the defendant objected and prays an exception, and the same is allowed and signed and sealed accordingly.

JAMES C. CONNOLLY,
Judge.

That the Court permitted the Counsel for the State to ask one Robert L. Eaton, a Justice of the Peace the following question: "I show you a complaint marked Identification S1 for Identification. Was that complaint made before you?" and permitted the same to be offered in evidence. To which the Counsel for the defendant objected and prays an exception and the same is allowed and signed and sealed accordingly.

JAMES C. CONNOLLY,
Judge.

That the Court permitted the Counsel for the State to call one Charles M. Runyon, a Clerk in the County Clerk's office, as a witness and to be sworn and put in evidence the minutes of the said Court with reference to the indictment found against the defendant and the various pleas made by the defendant, over the objection of the Counsel for the defendant. To which he objected and prays an exception and the same is allowed and signed and sealed accordingly.

JAMES C. CONNOLLY,
Judge.

On the occasion of the summing up of the Counsel for the State, defendant's Counsel, addressing the Court, said: "If the Court please may I ask the Court to direct the stenographer to take down the remarks of the Prosecutor, with reference to the record, which he is commenting on now, in order that I may include them in my objections, and which remarks so made by Counsel for the State, and taken down by the stenographer are as follows: 'When he stood before this Court ready for sentence, and then retracted his plea of non vult, did he raise the question of jurisdiction of this Court?'" To which remarks of Counsel for the

State the defendant's Counsel prays an exception and the same is allowed and signed and sealed accordingly.

JAMES C. CONNOLLY,
Judge.

Assignments of Error.

Afterwards, etc., comes the plaintiff in error by William D. Wolfskeil, his attorney, and assigns errors in the following respects for the reversal of the judgment in this cause:

1. That the verdict is fatally and incurably defective and of no legal validity or effect.

2. That the charge of the Court as a whole, and in each and every part of it, is illegal, and thereby defendant suffered manifest wrong and injury, which is cause for reversal.

3. That in the entire proceedings had upon the trial of the said plaintiff in error, he suffered manifest wrong and injury in the admission of evidence and the charge of the Court, which prejudiced the said plaintiff in error in maintaining his defense upon the merits, and are causes for reversal.

4. That the conclusion of the Court's charge, in response to a request from the Prosecutor of the Pleas, the Court said: "The Prosecutor desires me to say to you that if the defendant is acquitted on this indictment by your verdict, that he cannot hereafter be tried in the County of Essex." To this request the Court said: "I so charge you. Under the laws and Constitution of the State of New Jersey, no man can be put twice in jeopardy of his life, his liberty or his property in a criminal case."

5. That the defendant, by his counsel, requested the Court to charge as follows: "The jury must first decide that an offence was committed in Union County, and if not satisfied of such fact beyond a reasonable doubt a verdict of acquittal must be rendered," which the Court refused to charge.

6. That at the conclusion of the Court's charge defendant's counsel, addressing the Court, said: "I except to the Court's remarks regarding my address to the jury, in which your Honor said, in addressing the jury. 'You are not to take into consideration the statement made before you by counsel in his closing argument for the defendant to the effect that your verdict will have some bearing upon a civil action that she has or may bring against the defendant.' "

7. That at the conclusion of the Court's charge defendant's counsel, addressing the Court, said: "I take a special exception to this charge as the Prosecutor requested, in which he asked your Honor to charge, alluding to the defendant, 'That if acquitted on this charge he could not be tried in Essex County.' "

8. That the Court charged the jury as follows: "In considering the testimony in this case, the jury are to be governed by the preponderance of the evidence, but in doing so you are not to weigh the evidence by the mere number of witnesses, for character in a witness and consistency in his testimony will outweigh the testimony of several witnesses, but where all things are equal, then the preponderance goes to the side producing the greatest number of witnesses, and ought to carry with it your verdict."

9. At the opening of the trial, the counsel for the defendant, addressing the Court, challenged the array of jurors for and on behalf of the defendant for the following reasons:

1. Because the Prosecutor of the Pleas of Union County on June 30, 1913, after moving the case for trial, in opposing the defendant's application for a postponement, indulged in remarks concerning the case in the presence and hearing of the whole panel of jurors, which remarks were illegal, improper and are prejudicial to the defendant if he is compelled to be tried before a jury selected from said panel. Said remarks were taken stenographically by the court reporter, and are submitted to the Court as a part of this motion as follows: "In order to familiarize your Honor with this case, let us get down to the bottom and start up right, so you can see the position that I am being placed in to-day. This is not a new case. This is an old case. This case has a history with this Court for being shuffled around, everything but try it, and it was regularly set down for last Thursday. Now it is not the duty of the Prosecutor, and if the Prosecutor is good enough to notify counsel that the case in which he is engaged will probably take two days, Thursday and a good part of Friday, counsel has no right to assume that their case, being in the calendar that it will not be moved at all, without any notice. They are supposed to take care of their own cases. That has always been my idea and the courts have told me so on one or two occasions. This defendant was indicted in October, 1912, and he appeared in Court on one day in October and his trial was set down, as the minutes of the Court which are before me show for October 31, 1912, giving bail and having his case set down. The next that happened with the case the defendant

reappeared here and retracted the plea which he had then entered, and entered a plea of *non-vult* to the indictment. The next we find of it in the records of this Court is in the proceedings of Friday, December 13, 1912, when the sentence which was to be pronounced upon him was postponed until December 20, 1912, and he then appeared in Court again, and with the leave of the Court retracted his former plea of *non-vult* and entered a plea of not guilty, and his case was set down for trial for January 14, 1913. Now all during the January Term this case was postponed by my predecessor for one reason and another. I presume they were all good, until it came to pass that I was appointed Prosecutor."

2. Because the same panel of jurors was chosen on May 19, 1913, by the Sheriff of the County of Union, in accordance with the statute then in force, for the term of two weeks, but the same was illegally continued by order of the Court made on the 2d day of June, 1913, subsequent to the approval on May 27, 1913, of an Act of the Legislature of the State of New Jersey, entitled "A supplement to an Act entitled, 'An Act concerning jurors (Revision) approved March 27, 1874, which took effect immediately and which prescribed the method of choosing jurors, Wherefore the defendant alleges that said panel of jurors is illegally constituted and that he should not be tried before a jury selected therefrom.

10. That the Prosecutor of the Pleas during the empanelling of the jury moved the Court as follows: "I move that there be talesmen drawn from the general panel, under the Criminal Procedure Act, Section 38. I find that when the special panel or list of jurors served on a defendant in any case

in which the defendant shall be entitled to twenty peremptory challenges shall be exhausted from any cause before a jury for the trial of the indictment shall be obtained, talesmen shall be taken from the general panel of jurors returned for the term at which such defendant is to be tried, if any remain, my understanding is that there are three of the general panel in the box. And then it provides further that if more talesmen should be required than the number of jurors remaining on the general panel the Sheriff or other proper officer, shall forthwith summon from among the bystanders or others such additional number of persons to serve as jurors as may be ordered by the Court, and make return thereof immediately, and place the names of the jurors so returned in the box and draw therefrom until the jury be completed, and so forth," to which motion the counsel for the defendant objected in the words following: "I desire in order that we may be consistent, to enter the objection to any order of the Court to the effect that an additional juror be called, either from the panel or as a talesman for the panel, or order them to be called for the panel, and if the remaining members of the panel not upon the list certified should be exhausted, for the reason, that my contention is that the act upon which the State relies, and requests your Honor to now direct the Sheriff to call a juror or jurors under, is the Act of the Session of the Legislature of 1898, pamphlet laws, page 897, Section 83. That Act has been repealed by an amendment of the New Jersey State Legislature, approved May 27, 1913, entitled "A supplement to the Act entitled 'An Act concerning Jurors (Revision), approved March 27, 1894,' which Act as I have already stated was approved May 27, 1913, and my insistment is that there can be no act of

this Court, or by this Sheriff regarding any juror or jury, except under the provisions of this Act, since it has become operative, and since the repealing clause of the same is as follows, 'All Acts and parts of Acts, inconsistent with this Act, are hereby repealed, and this Act shall take effect immediately.' At the conclusion of which motion so made by the counsel for the defendant, the Court, over the objection of the counsel for the defendant, directed as follows: "The Sheriff will proceed to draw jurors from the general panel of jurors, the special panel having been exhausted in the selection of the jury in this case.

11. That the Court below erred to the prejudice and injury of the plaintiff in error by permitting the complaining witness for the State to be asked the following: "What did you say to your mother?"

12. That the Court below erred to the prejudice and injury of the plaintiff in error by permitting the complaining witness for the State to be asked the following: "What was done next day, if anything, by you?"

13. That the Court below erred to the prejudice and injury of the plaintiff in error by permitting the complaining witness for the State to be asked the following: "When did you return to work after June 4th?"

14. That the Court below erred to the prejudice and injury of the plaintiff in error by permitting the complaining witness for the State to be asked the following: "Why didn't you continue with your work?"

15. That the Court below erred to the prejudice

and injury of the plaintiff in error by permitting the complaining witness for the State to be asked the following: "When you met Justice Eaton what did you do there?"

16. That the Court below erred to the prejudice and injury of the plaintiff in error by permitting the complaining witness for the State to be asked the following: "How long after 4th of June?"

17. That the Court below erred to the prejudice and injury of the plaintiff in error by permitting the complaining witness to reply to a question of the Prosecutor of the Pleas as follows: "I told the doctor, I said I was awful sick," the Judge at the same time saying: "I will allow her to tell all what she said to the doctor."

18. That the Court below erred to the prejudice and injury of the plaintiff in error by permitting the complaining witness for the State to reply to a question of the Prosecutor of the Pleas as follows: "I said, Doctor, I am awful sick." He said: "Well, what is the matter with you?" I said: "I don't know." I said: "I am weak." I said: "I don't feel well at all." I said: "My head bothers me." I said: "Can you do anything?" He said to me: "Why, sure." So he sat there he said and he wanted, so he examined me."

19. That the Court below erred to the prejudice and injury of the plaintiff in error by permitting one Robert L. Eaton, a Justice of the Peace and a witness for the State, to be asked the following: "I show you a complaint marked Identification S. 1 for identification. Was that complaint made before you?" and permitted the same to be offered in evidence.

20. That the Court below erred to the prejudice and injury of the plaintiff in error by permitting one Charles M. Runyon, a witness for the State, to put in evidence the minutes of the Court of Quarter Sessions with reference to the indictment found against the defendant and the various pleas made by the defendant, over the objection of the counsel for the defendant.

21. That on the occasion of the summing up of the counsel for the State, defendant's counsel, addressing the Court, said: "If the Court please, may I ask the Court to direct the stenographer to take down the remarks of the Prosecutor, with reference to the record, which he is commenting on now, in order that I may include them in my objections, and which remarks so made by counsel for the State and taken down by the stenographer are as follows: "When he stood before this Court ready for sentence and then retracted his plea of *non-vult*, did he raise the question of jurisdiction of the Court? Did he ever raise the question of jurisdiction of this Court?" over the objection of the counsel for the defendant.

22. That the evidence as a whole did not show beyond a reasonable doubt that the said plaintiff in error committed the said crime in the said County of Union.

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 to all things he has lost on occasion of the said judgment.

WILLIAM D. WOLFSKEIL,
Attorney for and of Counsel with
the Plaintiff in Error.

Specifications for Causes of Reversal.

Afterwards, etc., before the Supreme Court of Judicature of New Jersey, comes the said plaintiff in error by William D. Wolfskeil his attorney and specified the following errors and causes in the record and proceedings therein relied upon for the reversal of all judgment in this cause.

1. That the verdict is fatally and incurably defective and of no legal validity or effect.

2. That the charge of the Court as a whole, and in each and every part of it, is illegal, and thereby defendant suffered manifest wrong and injury, which is cause for reversal.

3. That in the entire proceedings had upon the trial of the said plaintiff in error, he suffered manifest wrong and injury in the admission of evidence and the charge of the Court, which prejudiced the said plaintiff in error in maintaining his defense upon the merits, and are causes for reversal.

4. That at the conclusion of the Court's charge in response to a request from the Prosecutor of the Pleas, the Court said "The Prosecutor desires me to say to you that if the defendant is acquitted on this indictment by your verdict, that he cannot hereafter be tried in the County of Essex." To this request the Court said: "I so charge you. Under the laws and Constitution of the State of New Jersey, no man can be put twice in jeopardy of his life, his liberty or his property in a criminal case.

5. That the defendant by his Counsel requested the Court to charge as follows: "The jury must

first decide that an offense was committed in Union County and if not satisfied of such fact beyond a reasonable doubt a verdict of acquittal must be rendered" which the Court refused to charge.

6. That at the conclusion of the Court's charge defendant's Counsel addressing the Court said "I except to the Court's remarks regarding my address to the jury in which your Honor said, in addressing the jury. "You are not to take into consideration the statement made before you by Counsel in his closing argument for the defendant to the effect that your verdict will have some bearing upon a civil action that she has or may bring against the defendant."

7. That at the conclusion of the Court's charge defendant's Counsel, addressing the Court, said, "I take a special exception to this charge as the Prosecutor requested in which he asked your Honor to charge, alluding to the defendant, 'That if acquitted on this charge he could not be tried in Essex County.' "

8. That the Court charged the jury as follows, "In considering the testimony in this case, the jury are to be governed by the preponderance of the evidence, but in doing so you are not to weigh the evidence by the mere number of witnesses, for character in a witness and consistency in his testimony, will outweigh the testimony of several witnesses. but where all things are equal then the preponderance goes to the side producing the greatest number of witnesses, and ought to carry with it your verdict."

9. At the opening of the trial the Counsel for

the defendant, addressing the Court, challenged the array of jurors for and on behalf of the defendant for the following reasons:

1. Because the Prosecutor of the Pleas of Union County on June thirtieth, nineteen hundred and thirteen, after moving the case for trial, in opposing the defendant's application for a postponement, indulged in remarks concerning the case in the presence and hearing of the whole panel of jurors, which remarks were illegal, improper and are prejudicial to the defendant if he is compelled to be tried before a jury selected from said panel. Said remarks were taken stenographically by the Court Reporter, and are submitted to the Court as a part of this motion as follows: "In order to familiarize your Honor with this case let us get down to the bottom and start up right, so you can see the position that I am being placed in today. This is not a new case. This is an old case. This case has a history with this Court for being shuffled around, everything but try it, and it was regularly set down for last Thursday. Now it is not the duty of the Prosecutor and if the Prosecutor is good enough to notify Counsel that the case in which he is engaged will probably take two days, Thursday and a good part of Friday, Counsel has no right to assume that their case, being in the calendar that it will not be moved at all, without any notice. They are supposed to take care of their own cases. That has always been my idea and the Courts have told me so on one or two occasions. This defendant was indicted in October, 1912, and he appeared in Court on one day in October and his trial was set down, as the minutes of the Court which are before me show for October 31, 1912, giving bail and having his case set down. The next that happened with the case the defendant reappeared here and

retracted the plea which he had then entered and entered a plea of *non vult* to the indictment. The next we find of it in the records of this Court is in the proceedings of Friday, December 13, 1912, when the sentence which was to be pronounced upon him was postponed until December 20, 1912, and then he appeared in Court again, and with the leave of the Court retracted his former plea of *non vult* and entered a plea of not guilty, and his case was set down for trial for January 14, 1913. Now all during the January term this case was postponed by my predecessor for one reason and another. I presume they were all good, until it came to pass that I was appointed Prosecutor."

2. Because the same panel of jurors was chosen on May nineteenth, nineteen hundred and thirteen, by the Sheriff of the County of Union, in accordance with the Statute then in force, for the term of two weeks, but the same was illegally continued by order of the Court made on the second day of June, nineteen hundred and thirteen subsequent to the approval on May twenty-seventh, nineteen hundred and thirteen of an act of the Legislature of the State of New Jersey, entitled a supplement to an act entitled "An act concerning juror (Revision) approved March 27th, one thousand eight hundred and seventy-four which took effect immediately and which prescribed the method of choosing jurors." Wherefore the defendant alleges that said panel of jurors is illegally constituted and that he should not be tried before a jury selected therefrom.

10. That the Prosecutor of the Pleas during the empanelling of the jury moved the Court as follows: "I move that there be talesmen drawn from the general panel, under the Criminal Procedure

Act, Section 38. I find that when the special panel or list of jurors served on a defendant in any case in which the defendant shall be entitled to twenty peremptory challenges shall be exhausted from any cause before a jury for the trial of the indictment shall be obtained, talesmen shall be taken from the general panel of jurors returned for the term at which such defendant is to be tried, if any remain, my understanding is that there are three of the general panel in the box. And then it provides further that if more talesmen should be required than the number of jurors remaining on the general panel the Sheriff or other proper officer, shall forthwith summon from among the bystanders or others such additional number of persons to serve as jurors as may be ordered by the Court, and make return thereof immediately, and place the names of the jurors so returned in the box and draw therefrom until the jury be completed, and so forth," to which motion the Counsel for the defendant objected in the words following, "I desire in order that we may be consistent to enter the objection to any order of the Court to the effect that an additional juror be called, either from the panel or as a talesman for the panel, or order them to be called for the panel, and if the remaining members of the panel not upon the list certified should be exhausted, for the reason, that my contention is that the act upon which the State relies, and requests your Honor to now direct the Sheriff to call a juror or jurors under, is the act of the Session of the Legislature of 1898. Pamphlet laws, page 897, section 83. That act has been repealed by an amendment of the New Jersey State Legislature, approved May 27, 1913, entitled "A supplement to the act entitled, 'An act concerning Jurors (Revision) approved March 27, 1894, which act as I have already stated was approved May 27, 1913, and my insistment is that there can

be no act of this Court or by this Sheriff regarding any juror or jury, except under the provisions of this act, since it has become operative and since the repealing clause of the same is as follows, "All acts and parts of acts, inconsistent with this act, are hereby repealed, and this act shall take effect immediately." At the conclusion of which motion so made by the Counsel for the defendant, the Court over the objection of the Counsel for the defendant, directed as follows: "The Sheriff will proceed to draw jurors from the general panel of jurors, the special panel having been exhausted in the selection of the jury in this case."

11. That the Court below erred to the prejudice and injury of the Plaintiff in error by permitting the complaining witness for the State to be asked the following: "What did you say to your mother?"

12. That the Court below erred to the prejudice and injury of the plaintiff in error by permitting the complaining witness for the State to be asked the following: "What was done next day if anything by you?"

13. That the Court below erred to the prejudice and injury of the plaintiff in error by permitting the complaining witness for the State to be asked the following: "When did you return to work after June 4th?"

14. That the Court below erred to the prejudice and injury of the plaintiff in error by permitting the complaining witness for the State to be asked the following: "Why didn't you continue with your work?"

15. That the Court below erred to the prejudice

and injury of the plaintiff in error by permitting the complaining witness for the State to be asked the following: "When you met Justice Eaton what did you do there?"

16. That the Court below erred to the prejudice and injury of the plaintiff in error by permitting the complaining witness for the State to be asked the following: "How long after fourth of June?"

17. That the Court below erred to the prejudice and injury of the plaintiff in error by permitting the complaining witness to reply to a question of the Prosecutor of the Pleas as follows: "I told the Doctor, I said I was awful sick.", the Judge at the same time saying, "I will allow her to tell all what she said to the Doctor."

18. That the Court below erred to the prejudice and injury of the plaintiff in error by permitting the complaining witness for the State to reply to a question of the Prosecutor of the Pleas as follows: "I said Doctor I am awful sick." He said, "Well what is the matter with you?" I said, "I don't know." I said, "I am weak." I said, "I don't feel well at all." I said, "My head bothers me." I said, "Can you do anything?" He said to me, "Why sure." So he sat there he said, and he wanted so he examined me.

19. That the Court below erred to the prejudice and injury of the plaintiff in error by permitting one Robert L. Eaton, a Justice of the Peace and a witness for the State, to be asked the following: "I show you a complaint marked Identification S1 for Identification. Was that complaint made before you?" and permitted the same to be offered in evidence.

Specifications for Causes of Reversal

20. That the Court below erred to the prejudice and injury of the plaintiff in error by permitting one Charles M. Runyon, a witness for the State, to put in evidence the minutes of the Court of Quarter Sessions with reference to the indictment found against the defendant and the various pleas made by the defendant, over the objection of the Counsel for the defendant.

21. That on the occasion of the summing up of the Counsel for the State, defendant's Counsel, addressing the Court, said, "If the Court please may I ask the Court to direct the stenographer to take down the remarks of the Prosecutor, with reference to the record, which he is commenting on now, in order that I may include them in my objections, and which remarks so made by Counsel for the State and taken down by the stenographer are as follows 'When he stood before this Court ready for sentence and then retracted his plea of non vult, did he raise the question of jurisdiction of the Court? Did he ever raise the question of jurisdiction of this Court?', over the objection of the Counsel for the defendant."

22. That the evidence as a whole did not show beyond a reasonable doubt that the said plaintiff in error committed the said crime in the said County of Union.

23. 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 to all things he has lost on occasion of the said judgment.

WILLIAM D. WOLFSKEIL,
Attorney for and of Counsel
with Plaintiff in Error.

Joinder in Error.

And thereupon, afterwards, to wit, on the first day of October, A. D., nineteen hundred and thirteen, the State of New Jersey, by Alfred A. Stein, Prosecutor of the Pleas of the County of Union, comes into Court and says that there is no error either in the record and proceedings aforesaid or in giving the judgment aforesaid, and it prays here that the Court here may proceed to examine as well as the record and proceedings aforesaid as the matters aforesaid assigned for error, and that the judgment aforesaid, in a manner aforesaid given, may in all things be affirmed, etc.

ALFRED A. STEIN,
Prosecutor of the Pleas of the County of Union in the State of New Jersey, for the Defendant in Error.

Transcript of Stenographer's Notes

UNION COUNTY COURT OF OYER AND TERMINER.

THE STATE OF NEW JERSEY, Defendant in Error, against WILLIAM F. SHUPE, Plaintiff in Error.	Assault and Battery, with Intent.

Indictment No. 15, October Term, 1912.

Transcript of stenographer's notes of evidence taken in the above entitled cause, before Hon. JAS. C. CONNOLLY, Judge of the Court of Oyer and Terminer, at the Court House in the City of Elizabeth, N. J., on the 13th day of June, 1913, at 10:00 A. M.

Appearances:

Mr. ALFRED A. STEIN, *Prosecutor*, Mr. MARTIN P. O'CONNOR, Assistant Prosecutor, for the State.

Mr. WILLIAM D. WOLFSKEIL, Mr. SAMUEL SCHLEIMER, Attorneys for Defendant.

Mr. Schleimer moves for a postponement on the ground that through some misunderstanding his witnesses were scattered along the Jersey shore, and he is unable to proceed.

Mr. Stein: In order to familiarize your Honor with this case, let us get down to the bottom and start up right, so you can see the position that I am being placed in today. This is not a new case. This is an old

case. This case has a history in this Court for being shuffled around—everything but try it; and it was regularly set down for last Thursday. Now, it is not the duty of the Prosecutor, and if the Prosecutor is good enough to notify counsel that the case in which he is engaged will probably take two days—Thursday and a good part of Friday—counsel has no right to assume their case, being in the calendar, that it will not be moved at all, without any notice. They are supposed to take care of their own cases. That has always been my idea, and the Courts have told me so on one or two occasions.

This defendant was indicted in October last, 1912, and he appeared in Court on one day in October and his trial was set down, as the minutes of the Court which are before me show, for October 31st, 1912; giving bail and having his case set down. The next that happened with the case the defendant reappeared here and retracted the plea which he had then entered, and entered a plea of *non vult* to the indictment. The next we find of it in the records of this Court is in the proceedings of Friday, December 13th, 1912, when the sentence which was to be pronounced upon him was postponed until December 20th, 1912. And then he appeared in Court again, and, with the leave of the court, retracted his former plea of *non vult* and entered a plea of not guilty.

The Court: When was that?

Mr. Stein: That was on December—Friday, December 20th, 1912, and his case was set down for trial for January 14th, 1913.

Now, all during the January term this case was postponed by my predecessor for one reason and for another, I presume they were all good, until it came to pass that I was appointed Prosecutor. Several times I spoke to Mr. Wolfskeil about this, saying that the case would be tried this term. Eventually, as the calendar moved on and the new cases and some of the old cases were disposed of, I gave notice and we had the case put down for a date. I have not the reference now of that, and we could not try it. As your Honor well knows, the calendar went to pieces several times. It was then set down for the 26th, last Thursday. Now, the McRorie case started on Wednesday, took us over all day Thursday and all of Friday. Now, it is not the State's business, or the Prosecutor's business, to watch these cases for defendant's counsel. We are here, and the jury is here.

The Court: Now, I will tell you what I have concluded to do in this case. I will put it over until to-morrow morning at 10 o'clock.

Mr. Schleimer: I desire to move the adjournment of the Shupe case for the term, by reason of the remarks made by the Prosecutor this morning in the presence of this panel. They do most certainly prejudice the defendant's case. To the effect that since the defendant had pleaded *non-vult* and then retracted that plea and entered a plea of not guilty, as a statement made to a panel of jurors, that without question would prejudice them in the determination of a criminal trial.

Mr. Stein: My answer, of course, to your Honor is this: It cannot hurt them any more than the fact that the indictment was spoken of as a record of the Court, and no matter what jury tries this case, the record of this Court will be in evidence in the case. It doesn't make a particle bit of difference, and it cannot be urged that when arraigned in Court the defendant at one time pleaded *non vult* would prejudice the defendant, than on the State's part, that he retracted it afterwards by leave of the Court and changed it to a plea of not guilty may prejudice the State. The whole record was read, not part of it. There was no prejudice in that.

Mr. Schleimer: Now, the indictment in this case is an indictment for assault and battery with intent, then and there forcibly and against her will, feloniously to ravish and carnally know her, the said Mabel Jones. The plea of *non vult* was a plea of *non vult* to assault and battery, clearly understood in Court at that time. The record shows assault and battery. The plea was to assault and battery.

Now, they prejudice the defendant's case by alleging before that jury, and it never can be wiped out—it has been said and done and is there—that there was a plea of *non vult* to an attempt to ravish. The defendant is prejudiced without any question. All we want is a fair trial, but we do want that, and we are entitled to it, and that remark should never have been made in the presence of a jury, and, having been made, I say without any question, to permit the jury after hearing it to stand, is error.

Mr. Stein: I submit, your Honor, as I said before, it doesn't make a particle bit of difference. You may just as well argue that the reading—I might argue if Mr. Schleimer read this record, that he retracts it afterward by leave of the Court and entering a plea of not guilty, after he plead *non vult,* would prejudice the State. At no time can the record of the Court prejudice the defendant, because the record was made by himself, by his own act. If he had not made that record it would not be here, and I argue seriously to your Honor that there is no reason why this case should be adjourned because of that, because the next jury would get this record, for I propose to make it part of the case. This is simply in line—I don't blame counsel, mind you—to get this case postponed as often as they can; but it is simply in line with what the record shows that this defendant has been doing. Now, can he get away with it all the time?

Mr. Schleimer: That isn't fair. You said that the Prosecutor, your predecessor, adjourned this case from time to time, and you believed with good reason, and so do I. But then, if that remark was to have been made, if these remarks were to have been made by the Prosecutor, the jury should have been asked to withdraw. These remarks being made in the presence of the jury, it is absolutely reversible error. This statement to the jury that this man has pleaded guilty to an indictment. The evidence of reading the indictment, the Court says, shall go to the Court and the jury, and the Court is enjoined by the Courts—the highest Courts of our

land—to say to the jury when they charge that the indictment is no presumption of guilt, and that he is innocent notwithstanding the indictment, and he is innocent until that presumption is removed by evidence that removes it without a doubt. I say to your Honor it is absolutely reversible error, and it starts this case with a prejudice in the minds of the jury by reason of what the Prosecutor stated, that he pleaded *non vult* to that indictment. As I say, we want a fair trial, but we do want a fair trial.

Mr. Wolfskeil: I would say there has never been any argument before the Court on the question of postponing this case, to my knowledge, since I have been in it.

Mr. Stein: It has been postponed then without argument.

The Court: When this case was called this morning, the attorneys for the defendant stated that they were not prepared to go on. The Prosecutor insisted that the case should be commenced and that there was no reason why the defendant should not be ready to go on with it, and then he read the records of the Court so far as they were related to the past history of this case. The general panel of the jury was then seated in the seats outside of this railing enclosure, and no doubt they heard some of the argument that was carried on between counsel. I understand, however, that in reading the records of the Court relating to this case the Prosecutor did not inject anything foreign to the record, but simply read the clerk's minutes, which might on the trial of the case be offered in evidence. I do not see how the de-

fendant can be prejudiced by reading the records of his case—by the reading of the records in his case by the Prosecutor before the Court—and under the circumstances I shall refuse the motion to adjourn the case for the term.

Mr. Schleimer: Prays exception.

Exception allowed. Sealed accordingly.

(Seal) JAMES C. CONNOLLY,
Judge.

UNION COUNTY COURT OF OYER AND TERMINER.

STATE	
against	Assault & battery with intent.
WILLIAM F. SHUPE,	

Indictment No. 15, October Term, 1912.

Transcript of stenographer's notes of evidence taken in the above-entitled cause before Hon. JAMES C. CONNOLLY, Judge of the Court of Oyer and Terminer, and a jury, at the Court House in the City of Elizabeth, N. J., on the 1st day of July, 1913, at 10 a. m.

Appearances:

Mr. ALFRED A. STEIN, Prosecutor; Mr. MARTIN P. O'CONNOR, Assistant Prosecutor, for the State.

Mr. WILLIAM D. WOLFSKEIL, Mr. SAMUEL SCHLEIMER, Attorneys for the Defendant.

Mr. Wolfskeil challenges to the array on the part of the defendant.

1. Because the Prosecutor of the Pleas of Union County on June 30, 1913, after moving the case for trial, in opposing the defendant's application for a postponement, indulged in remarks concerning the case in the presence and hearing of the whole panel of jurors, which remarks were illegal, improper, and are prejudicial to the defendant, if he is compelled to be tried before a jury selected from said panel. Said remarks were taken stenographically by the court reporter, and are submitted to the Court as a part of this motion, as follows: "In order to familiarize your Honor with this case, let us get down to the bottom and start up right, so you can see the position that I am being placed in to-day. This is not a new case. This is an old case. This case has a history in this Court for being shuffled around, everything but try it, and it was regularly set down for last Thursday. Now, it is not the duty of the Prosecutor, and if the Prosecutor is good enough to notify counsel that the case in which he is engaged will probably take two days, Thursday and a good part of Friday, counsel has no right to assume that their case, being in the calendar, that it will not be moved at all, without any notice. They are supposed to take care of their own cases. That has always been my idea and the courts have told me so on one or two occasions.

"This defendant was indicted in October last, 1912, and he appeared in Court on one day in October and his trial was set down, as the minutes of the Court which are before me show, for October 31, 1912, giving bail

and having his case set down. The next that happened with the case the defendant reappeared here and retracted the plea which he had then entered, and entered a plea of *non-vult* to the indictment. The next we find of it in the records of this Court is in the proceedings of Friday, December 13, 1912, when the sentence which was to be pronounced upon him was postponed until December 20, 1912, and then he appeared in Court again, and with the leave of the Court retracted his former plea of *non-vult,* and entered a plea of not guilty, and his case was set down for trial for January 14, 1913. Now, all during the January Term this case was postponed by my predecessor for one reason and another, I presume they were all good, until it came to pass that I was appointed Prosecutor. * * *"

2. Because the said panel of jurors was chosen on May 18, 1913, by the Sheriff of the County of Union, in accordance with the statute then in force, for the term of two weeks, but the same was illegally continued by order of the Court made on the 2d day of June, 1913, subsequent to the approval, on May 27, 1913, of an Act of the Legislature of the State of New Jersey, entitled a Supplement to an Act entitled "An Act concerning Jurors" (Revision) approved March 28, 1874, which took effect immediately, and which prescribed the method of choosing jurors; wherefor, the defendant alleges that said panel of jurors is illegally constituted and that he should not be tried before a jury selected therefrom.

The Court: Your motion is what?

Mr. Wolfskeil: A challenge to the array, on the two grounds set forth in the written motion. It is not desirable to argue a question of this sort in the presence of the jury, in the presence of the panel, and, therefore, my understanding of the practice is to submit it in writing. Consequently, I followed that procedure.

The Court: I do not know if the Prosecutor is going to be heard on it now.

Mr. O'Connor: The first point yesterday was fully covered after argument.

The second point raised by counsel has been determined time and again in this Court since the new jury act went into effect, so that we have adjudications of this Court on that same question, which presumably are still in effect, I do not know, in this case.

The Court: I do not understand the motion of the counsel for the defendant. I ruled yesterday on one question connected with your present motion.

Mr. Wolfskeil: That was on the motion, if your Honor please, to postpone for the term.

The Court: Yes.

Mr. Wolfskeil: I think you ruled against the defendant. Now, then, we challenge to the array on the ground that to be tried by this jury, or the jury which has been ordered to be impanelled, would be prejudicial to his interest, and for the reason set forth in the motion.

The Court: What is your motion?

Mr. Wolfskeil: My motion is that—I have no motion, except the challenge to the ar-

ray. We claim that we should not be tried before a jury drawn from this panel, on the grounds set forth as—I will repeat what is in the motion, if you like.

The Court: No; that is not necessary. I cannot grasp the situation. I do not see what I am to rule on. You simply wish to enter a protest here?

Mr. Wolfskeil: In effect, the challenge to the array is a protest. If the Court allows the challenge, no jury can be drawn from that panel.

The Court: If that is your motion, I will overrule it.

Mr. Wolfskeil: The challenge to the array, then, I understand, is overruled by the Court?

The Court: It is overruled.

Mr. Wolfskeil prays exception.

Exception allowed; sealed accordingly.

JAMES C. CONNOLLY,
Judge.

The Court: Impanel the jury.

JURY CALLED.

Challenges.

State,	11
Defendant,	19

Mr. Stein: I move that there be talesman drawn from the general panel; under the Criminal Procedure Act, Section 38, I find that when the special panel or list of jurors served on a defendant in any case in which the defendant shall be entitled to twenty peremptory challenges shall be exhausted from any cause before a jury for the trial of

the indictment shall be obtained, talesmen shall be taken from the general panel of jurors returned, for the term at which such defendant is to be tried, if any remain; my understanding is that there are three of the general panel in the box. And then it provides further that if more talesmen should be required than the number of jurors remaining on the general panel, the Sheriff or other proper officer shall forthwith summon from among the bystanders or others such additional number of persons qualified to serve as jurors as may be ordered by the Court, and make return thereof immediately, and place the names of the jurors so returned in the box and draw therefrom until the jury be completed; and so forth.

The Court: Section 83?

Mr. Stein: Did I say 38, or 83?

The Court: Yes. It is 83. All right.

Mr. Schleimer: I suggest, however, before I answer the Prosecutor, that we arrive at the position where it is necessary to call an additional juror.

The Court: Yes; I so think, and if the juror is not so excused, I——

Mr. Stein: I will challenge Juror No. 2.

The Court: All right, you challenge then. Call another juror.

Mr. Schleimer: I desire, in order that we may be consistent, to enter an objection to any order of the Court to the effect that an additional juror be called, either from the panel, or as a talesman for the panel, or order them to be called for the panel, and if the remaining members of the panel not upon the list certified should be exhausted,

for the reason that my contention is that the Act upon which the State relies, and requests your Honor to now direct the Sheriff to call a juror or jurors under, is the Act of the Sessions of the Legislature of 1898, pamphlet laws, page 897, Section 83. That Act has been repealed by an enactment of the New Jersey State Legislature, approved May 27, 1913, and my insistment—entitled a Supplement to the Act entitled An Act Concerning Jurors (Revision), approved March 27, 1894, which Act, as I have already stated, was approved May 27, 1913, and my insistment is that there can no act by this Court, or by this Sheriff, regarding any juror or jury, except under the provisions of this Act, since it has become operative, and since the enacting clause of the same is as follows: "All Acts and parts of Acts, inconsistent with this Act, are hereby repealed, and this Act shall take effect immediately."

The Court: The Sheriff will proceed to draw jurors from the general panel of jurors, the special panel having been exhausted in the selection of the jury in this case.

Mr. Schleimer prays exception.

Exception allowed; sealed accordingly.

JAMES C. CONNOLLY, (Seal)
Judge.

Jury sworn.

Opening for the State by Mr. O'Connor.

Mabel Jones—Direct

MABEL JONES, a witness produced on behalf of the State, being duly sworn according to law on her oath, saith:

Direct examination by Mr. O'Connor:

Q. Miss Jones, where do you live?
A. 22 Mulberry Place, Newark.
Q. You just turn around so the jury can hear and speak distinctly. Face the jury. Where do you live?
A. 22 Mulberry Place, Newark, N. J.

The Court: Witness. I must hear what you say also, so that you will have to talk loud enough for me to hear, as well as the jury.

A. All right.
Q. Speak loud enough, so we all hear. With whom do you live?
A. My parents.
Q. Where are you employed?
A. William J. Lynch Company, 140 Walnut Street, Newark.
Q. And their business?
A. Leather manufacturers.

By the Court:

Q. Rubber manufacturing?
A. Leather.

By Mr. O'Connor:

Q. In what capacity are you employed there?
A. Bookkeeper.
Q. How long have you been so employed?

A. Four and one-half years.
Q. Are you married?
A. Single.
Q. Do you know the defendant, William Shupe?
A. I met him on two occasions only.
Q. When was the first occasion you met him?
A. In December, 1912.
Q. Where?
A. December, 1911. December, 1911.
Q. State the circumstances under which you met him?

Mr. Schleimer: I object.

Mr. O'Connor: All right.

Mr. Schleimer: I object to anything but relevant and proper evidence.

Mr. O'Connor: Question withdrawn.

Q. When did you meet him next?
A. June, 1912.
Q. Do you remember the date?
A. June 4th.
Q. Where were you that you met him?
A. I was on the corner. I was passing him on Broad Street.
Q. Now, tell us all——

By the Court:

Q. Now wait. On the corner of what?
A. I spoke to him on the corner.

The Court: Repeat the answer stenographer.

A. Answer repeated by stenographer.

By Mr. O'Connor:

Q. Just state how you came in contact with William Shupe.

By the Court:

Q. Did you say at the corner of what other street?

A. William and Broad Streets.

By Mr. O'Connor:

Q. State how you came in contact with William shupe on June 4, 1912?

A. Why, I left the house about ten minutes past nine. I walked up Mulberry Street to Walnut, up Walnut to Broad——

By Mr. Wolfskeil:

Q. At night, or morning?

A. 9.10 P. M. Left the house at 9.10, walked up Mulberry Place to Mulberry Street, from Mulberry Street to Walnut Street, up Walnut Street to Broad, over Broad, and he passed on the opposite side of the street in a car, accompanied by two other gentlemen, and he nodded his head, and I nodded back, but did not recognize him. It was across from the City Hall in Newark. I walked right on, and when I got to William and Broad, he was there with the car. There I stopped and spoke to him.

Q. You say you saw him in a car, what do you mean by that?

A. In a machine, an automobile.

Q. An automobile. And the time you state to be 9.10. Was that in the morning or evening?

A. 9.10 P. M.

Q. In the evening. When you first saw him in the automobile, he was travelling in the same direction with you?

Mr. Schleimer: Do not lead the witness.

A. Opposite direction. Opposite direction.

Q. All right. Opposite direction. And when you first saw him where was this, with reference to Broad and William Streets?

A. That was between Franklin Street and Green Street. Green Street is one block this side of William, on the opposite side of the street. Green Street does not cross Broad.

Q. And the point where you first saw him in the car, was it north or south of William Street?

A. When I first saw him, it was south of William Street.

Q. South of William Street?

A. I was going north on Broad.

Q. You were going north——

A. On Broad.

Q. Where did you meet him?

A. Corner of William and Broad, south corner.

Q. On what side of the street? What side of South Broad Street?

A. On the west side.

Q. Were you walking?

A. I was walking.

Q. And when you arrived at the corner of William Street and South Broad Street, where was Shupe?

A. He was on the corner of William and Broad, in his car. His car was stopped there.

Q. Was his car on William Street, or on Broad Street?

A. On William Street.

Q. Facing what direction?

A. Facing westerly.

Q. Facing westerly. You stopped, did you?

A. He said "how do you do," and I stopped. He said something in a quick fashion. I stopped. He asked me something, but I don't just remember now what it was.

Q. How long did you remain there?

A. Oh, I talked possibly five minutes.

Q. Where were you going?

A. Why, I was going for a hat.

Q. Where?

A. On Springfield Avenue, near Belmont Avenue.

Q. And what did Shupe say to you at that time?

A. Why, he asked me how my sister was, and some little questions, how was business, or something of that sort; it was mostly about my sister, and he asked me where I was going, and I did not wish to tell him I was going for a hat, because men do not understand those things. I told him I was going to a girl friend's house, which I intended to do if I got the hat and had time, which I told my mother I would do, if I was home a little later. I wanted to show the girl my hat. So he said, why, he said, "how far are you going?" I said, why "I am going up to Springfield Avenue and Belmont Avenue." He said, "Why, I will take you up there." I said, "No, I don't care about your taking me up there," I said, "I can go up quicker by walking," I said, "I am in the habit of going up the street whenever, I always go up William Street and step out on Springfield, am right out on Springfield Avenue." He said, "Why, I will take you." I said, "No." I did not consent, but finally I consented. He said "Why, I can take you up there in a few minutes." So, knowing him,

thinking he was a gentleman, man of business, I consented to go. He was to take me up to the corner of Belmont Avenue and Springfield Avenue, and leave me out there.

Q. Well, did he take you there?

The Court: I did not get that last answer.

A. Answer repeated by stenographer.

Q. Did he take you?

A. No, sir. He did not. We went up William Street, and when we got to Halsey, I said "Why, we go right up here." He made the excuse, William is in a bad state, he said, "Why, we can go up Kinney Street." We went down Halsey Street to Kinney Street. I said, "Why, it would be much quicker if I walked." The street was opened, I believe, at that time, they were having some trouble with the street, and he also said the street was in a bad state, so he said, "We will go around Avon Avenue. We can go around Avon Avenue."

Q. Continue with your story.

A. We kept right on going, past Kinney Street, he said "We can go around Avon Avenue. We come to Avon Avenue, I said, "This is Avon Avenue." He paid no attention to me whatever, never answered me, but then he directed the chauffeur to turn down Elizabeth Avenue, and then he started pulling on my clothes, and pulling my dresses, and going through actions a gentleman shouldn't, pulling up my dresses and skirts, and all that sort of thing. I protested, I told him, "now, you will have to stop it," and I started to scream. He put his hand over my mouth, kept holding his hand over my mouth, and got very rough. Then he stopped that, he tried to, oh, say about different things, about looks or something like that.

Q. What did he say? Do not be backward about telling it, we want to know.

A. He said something about me being a well built girl or something like that, which I don't remember just now, but things that would flatter one. I said "I don't want to listen to that," I said, "I want you to let me out of this car." He paid no attention, just kept right on. We got a little further, I was crying all the time, he kept putting his hand over my mouth, he got excited, he said, why, started to call me——

Q. Tell us just what he said?

A. He said things about the——

By the Court:

Q. What is that?

A. He said things to the effect, oh, he said don't bother me, and he kept hollering at me, told me to shut up. Just kept pulling on my clothes all the time.

By Mr. O'Connor:

Q. I want to know what he said, Miss Jones.

A. Oh, he told me to shut up.

Q. What language did he use?

By the Court: If he used any.

A. He didn't say an awful lot, he just kept pulling on my clothes, and holding his hand over my mouth, and telling me "shut up, shut up, shut up," and pulling my clothes away up here (indicating). I was struggling with him.

Q. Where was his hands?

A. His hands were on the upper part of my limbs, and all around in the vicinity of the upper

portion of my body, and the centre of my body.

Q. Were his hands under your clothing?

A. Yes, they were. He had my clothing up. I was struggling to put it down. He had his other hand over my mouth all the time.

Q. Continue.

A. We kept right on going out, kept right on going; I was crying and screaming, until we got to past the blacksmith shop there, which I have heard later——

Mr. Schleimer: I object, and ask that be stricken out. She is going to say what she heard later.

The Court: Yes. Only tell what was said and done on that occasion.

Q. Go ahead. Where was the blacksmith shop, if you know?

A. It is on Elizabeth Avenue, about where the main line car turns.

Q. Yes. Where does it turn over?

A. Over the bridge.

Q. Yes. Where did he turn, with reference to the point where the car turns over the bridge?

A. Where did he turn the machine?

Q. Yes.

A. Why, I should imagine it is, why, about half a minute's ride. It is a street. I believe it is called Hillside Avenue.

Q. Hillside Avenue?

A. Yes.

Q. That is where he went?

A. Yes, he went right on this avenue, turned right.

Q. And did he keep on going after he struck Hillside Avenue?

A. For a ways, for possibly two minutes, as I can remember, then he made a turn which——

Q. Yes.

A. (Continued) To the left, and I can't rememmer, I was too excited; that is as much as I can remember.

Q. He turned to the left. How far did he go?

A. Why, I imagine from the time we left Elizabeth Avenue, going up Hillside Avenue, it must have been, possibly between five and seven minutes' ride altogether.

Q. Then what did he do?

A. Why, he stopped the machine. He said to this chauffeur, he said "stop the machine." The man stopped the machine and went away. They were sitting in the front seat. We were sitting in the back seat. They got out. They went away. From my condition, as far as I know, there may have been some motions, but there was no word spoken, as I can remember. They got out and disappeared. Don't know where they went, because he held me down, and then——

Q. How did he hold you?

A. Why, he pushed me back of the car, on the back of the car, put me in the corner like, and he stood and he held me there, and then he was, he was very rough, then he went——

Q. What did he do?

A. Why, he tried to—he lay over on me.

Q. And where did he have his hand?

A. Why, he had his hand——

Q. Outside or inside?

A. Inside. He had my clothes up. I was struggling to put my clothes down. He had my clothes up, and his hands in the centre of the body. I said "For God's sake," I said "don't touch me," I said, "I am a good woman."

Q. Where was his hand, with reference to your private parts?

A. It was on the private part.

Q. And what did you say to him then?

A. I cried, I begged him not to touch me.

Q. What did he say?

A. Why, I said, "for God's sake," I said, "don't touch me, don't you," I said "I am a good woman;" and he said "How do I know that? I don't know if you are a good woman or not. I don't believe women, I don't believe any woman," and he said "I went out with a woman last week," he said "you don't give me any stall like that," he said "I was out with a woman last week, she tried to tell me that, but she admitted she gave birth to a child over a year previous." I said "oh," I screamed and cried; I said "if there is a gentleman in the crowd, you will help me."

Q. Where were these other two men at that time?

A. I don't know. I don't know. I couldn't see. They went away from the machine, and paid no attention to my screams. I yelled, I called, I asked for God to help me; I said "God, please help me." I screamed, I said "If my father or brother were here, you would never do this," I said "you take advantage of a defenseless girl."

Q. What did he say?

A. He said "if you are a good woman, let me see?" I said I couldn't. I said "why, what do you want to do?" He kept, I kept holding my hand, and he kept pulling my hand away. He said "shut up, I will kick your head off," and he swore and cursed at me.

Q. Tell us the language that he used.

A. He called me something, I wouldn't want to say.

Q. Well, say it. Tell the jury, the Court and jury what he said.

A. He called me——

Q. Go ahead.

A. He said "God damn you," he said things like that, son of a so, he kept swearing and cursing at me. I said "oh, for God's sake don't touch me; please don't touch me;" I said, "when I get married I want a decent man; I want to be a decent girl, for God's sake don't touch me," and he said, oh, he said, well, he said "I am a doctor; I was a doctor; I will know if you are a good girl or not." I kept holding my hand on there, and I screamed. He said "now, shut up, or I will kick your head off." He kept pushing me back against the car, every way.

Q. What did he do when he said—what did he do, if anything, when he said I am a doctor?

A. He took his finger, and he rammed it up in me.

Q. Go ahead.

A. I screamed and cried, and I said, oh, I said, "for God's sake, don't do that," and then he said, well, he said "I never thought there was a girl in Newark," or something like that, to use his expression, if I remember correctly, it was "a girl as big as you in Newark who has a cherry," he said.

Q. What did he say? What did he continue to do, if anything?

A. He didn't say anything. I was crying and screaming, and he didn't say anything. The other fellows came back to the car, and then the other fellows came back, and I was still crying and he said nothing, but the fellows got in the car, and when they, oh, why, about a few seconds later, as soon as I stopped screaming so loud, they came back, they got in the front of the car, he told them "all right, drive on." He said to me he was so surprised that a girl as big as me, why, something like that, he said if he was marrying a woman, he would marry a woman like me. That is all I remember, and he asked me where I wanted to get

out. That was all he said going home. I was crying.

Q. What was said between these men and Shupe at the time they returned to the car?

A. I don't remember a word being said.

Q. Now, which way did the car go then?

A. Why, it came right back down Broad, the way it went.

Q. What is that? Which way?

A. It came right down Elizabeth Avenue, and Clinton Avenue. No, it wasn't Broad. Elizabeth Avenue, then Clinton Avenue, up Kinney. Left me out on Kinney Street, corner of Broad.

Q. Yes.

A. And he went on Broad.

Q. Where is that—now, at the corner of Broad and Kinney Streets he left you out, as I understand it. Is that right?

A. Yes.

Q. Where is that with reference to your home?

A. It is about three blocks and a half from my home.

Q. Three blocks and a half from your home. What was your condition at that time.

A. Condition was very bad. I could hardly walk home. When I did get home, why, I was just almost dead. I got home, and my mother had the light lighted downstairs, and I walked in, in the basement, and I sat on my couch. I couldn't move, I couldn't hardly move. I couldn't move, couldn't raise my limbs or my arms. Got home—I couldn't get my hat off, and I sat there for about a few minutes. I was crying, and my mother came down. She said, "Mabel," she said, "what is the matter"?

Mr. Schleimer: I object.

The Court: You must not tell what your mother said. You may tell what you did.

Q. What did you say to your mother?

Mr. Schleimer: I object to what she said to her mother.

Q. (continued). On what occurred?

Mr. Schleimer: On the ground that it is incompetent, it is not relevant, no way binding upon this defendant, because it was without his presence.

Mr. O'Connor: If your Honor please, in the case—the same case as this—of *State* v. *Ivins* the Court has ruled that a complaint made by a girl to the person to whom she would naturally complain is admissible in evidence. I have that case right here.

Mr. Schleimer: The fact that she made a complaint, but not what she said.

The Court: I remember the rule sufficiently, Mr. O'Connor. It is not necessary to look up the case. I remember the rule. The rule is that in cases where an attempt is made to commit a rape, or where a rape has been committed, it is the duty of the person upon whom such a crime has been committed to make known that fact at the first opportunity she can, to the first person with whom she can talk on such a subject. Now, it appears to me that the person to whose ears she would naturally confide a tale such as she has told here to-day would be to her mother, and if she kept silence on that occasion when she met her mother as to what happened her immediately preceding her coming home, it would look very much as though her present story was an exaggerated

one, or made up for the purpose of punishing this defendant. I think in cases of this kind statements made by the complaining witness are always allowed in evidence, and I shall allow this statement made to her mother immediately after the crime was committed, and after she got home, to be offered in evidence.

Mr. Schleimer prays exception.

Exception allowed; sealed accordingly.

JAMES C. CONNOLLY, (seal)
Judge.

Mr. O'Connor: As far as I care to go in that respect, your Honor, is not that the girl shall detail or testify what she told her mother—that is, the details of what happened—but merely that she did complain to her mother.

The Court: Yes.

Mr. Schleimer: That is not what you asked. You asked what she said to her mother. Your Honor will allow me an exception?

Exception allowed: sealed accordingly.

JAMES C. CONNOLLY, (seal)
Judge.

Q. When you got home, whom did you first meet?

A. My mother.

Q. Was there anything said to your mother with reference to this matter——

Mr. Schleimer: Object, for the purpose of my record.

Q. (continued). By you, Miss Jones?

The Court: I suppose you ought not to be leading. You have asked her that question. Do not be leading. Ask her what——

Mr. O'Connor: I do not care to lead, your Honor. I merely wanted to straighten the witness out.

The Court: She said her mother came downstairs, and she was crying when she came downstairs. Now, what happened after that?

Q. Tell us what happened.

A. What I said to my mother?

Mr. Schleimer: Subject to my exception.

The Court: Yes, of course.

Exception allowed; sealed accordingly.

JAMES C. CONNOLLY, (seal)
Judge.

Q. Yes.

A. I was sitting there. I couldn't take off my hat. I said to mother, "I have such a headache; take off my hat." She said, "What is the matter with you, Mabel; are you crying"?

The Court: Do not tell what your mother asked you. Tell just what you said.

A. I said, "I can't tell you, I can't tell you." Then I said, oh, I said, "There is no justice; there is nothing for a good woman." I said, I said, "these men around town here," I said, "they are ready to ruin any girl."

The Court: Of course, if this testimony does not come up to the requirements, I shall rule it out afterwards.

Q. What was said by you to your mother, if anything, with reference to this occasion?

A. I told her the story then.

Q. Yes?

A. I told her the whole thing—everything.

Q. You told her the story?

Mr. Schleimer: I now move that the testimony of this witness given in response to Mr. O'Connor's question regarding what transpired after she returned home be stricken out, and that the jury be directed to pay no attention to same.

The Court: Unless you follow up her general statement that she told her mother all that happened, by giving the particulars of what she told her mother, I shall rule out the answer.

Mr. O'Connor: I do not quite understand the Court. You say that I must follow up the particulars?

The Court: You must. It is not a proper thing for her to say that she told her mother all about it. We want to know the language in which she conveyed to her mother what happened.

Mr. O'Connor: Your Honor does not mean to rule that she goes into the details of this particular ride, and again relates it step by step to her mother?

The Court: I want her to state what was told her mother, and the language in which she told it to her mother, no matter how long it takes.

Mr. Schleimer: Well, now, I want a ruling on my motion.

The Court: She made a general statement

that she told her mother all about it. As to that general statement, I would rule that out, and tell the jury to pay no attention to it, because it does not show us what she said to her mother.

Mr. Schleimer: Your Honor directs as to part of it. As to the part that Your Honor does not direct about, I ask an exception.

Exception allowed; sealed accordingly.

JAMES C. CONNOLLY, (seal)
Judge.

Mr. Schleimer: I understand, your Honor to say he has simply ruled out the general statement she made, that she complained to her mother.

The Court: Yes.

Mr. Schleimer: Now, do I understand your Honor rules out the rest of the testimony?

The Court: You have an exception to that.

Mr. Schleimer: Yes, but I want an exception to this refusal to direct.

The Court: I refuse to give you an exception.

Mr. Schleimer (continued): And striking out the statement of the witness, she complained to her mother. I ask an exception to the Court's refusal to allow me an exception.

Exception allowed; sealed accordingly.

JAMES C. CONNOLLY, (seal)
Judge.

Q. Now, I do not want you to tell or relate the details of this transaction as told to your mother by you, but I simply ask you the question, to

whom, if anybody, did you report what happened to you that night after you got home?

Mr. Schleimer: I object.
The Court: Question allowed.

A. I told it to my mother

Mr. Schleimer: On the ground it was not in the presence of this defendant.
The Court: Answer the question.

A. I told it to my mother.

Mr. Schleimer: Prays exception.
Exception allowed; sealed accordingly.
JAMES C. CONNOLLY, (seal)
Judge.

Q. Now, as a result of what you told your mother, what did you do?

Mr. Schleimer: I object.
The Court: Question allowed.
Mr. Schleimer: On the ground it is without the knowledge or in the presence of the defendant. Prays exception.
Exception allowed; sealed accordingly.
JAMES C. CONNOLLY, (seal)
Judge.

Q. Go ahead, what did you do as a result of that?
A. As a result?
Q. Of what you said to your mother, what did you do? What was next done by you?
A. Why, I told my mother, and she asked me——

Mr. Schleimer: I object.

The Court: You must not tell what your mother said.

Q. What did you do?

A. I showed my mother my limbs. They were all bruised.

Mr. Schleimer: I object.

Q. What next did you do?

The Court: What is your objection?

Mr. Schleimer: Ask that it be stricken out. She has told what she did, not what she told.

The Court: I will allow the answer to stand.

Mr. Schleimer: Prays exception.

JAMES C. CONNOLLY, (seal)
Judge.

Q. What was the condition of your limbs?

A. Why, they were all bruised, and there was a scrath there; but they were mostly black and blue. There was some blood on my, next to my skin, and there was a tear in my, also—in clothing next to my skin.

Q. In your what? In your petticoat?

A. No, sir.

Mr. Schleimer: Is the Court going to allow this leading?

The Court: You must not lead.

Q. Now, state the garment which had the tear.

A. A combination which I wear, consisting of the cover and drawers.

Q. Well, what did you do after that?
A. Well, I went to bed shortly after that.

By the Court:

Q. You went to where?
A. Bed.

By Mr. O'Connor:

Q. What was done the next day, if anything, by you?

Mr. Schleimer: Object.

Q. What was done the next day, if anything, by you?

Mr. Schleimer: I object.
The Court: Question allowed.
Mr. Schleimer prays exception.
Exception allowed; sealed accordingly.
JAMES C. CONNOLLY, (seal)
Judge.

A. Nothing was done by me; but I begged my mother not to tell my father.

Mr. Schleimer: I ask that that be stricken out—what was told to her mother the next day.

The Court: You cannot suffer any harm by that. I will allow the question.
Mr. Schleimer prays exception.
Exception allowed; sealed accordingly.
JAMES C. CONNOLLY, (seal)
Judge.

Mr. O'Connor: Mr. Eaton, will you please stand up? (Person stands up in court room.)

Q. Did you ever seen that man before?
A. I think I seen him about here, yes.
Q. Eh?
A. I have seen him around here, yes.
Q. When did you see him? How long after this occasion with Shupe?
A. The next day.

Mr. Schleimer: I object, on the ground it is immaterial and irrelevant, and not in the presence of the defendant, and no way binding on us.

The Court: Your objection comes too late, doesn't it?

Mr. Schleimer: No, sir. I objected while the witness was answering.

Mr. Stein: He was the justice who took the complaint the next day.

Mr. Schleimer prays exception.

Exception allowed; sealed accordingly.

JAMES C. CONNOLLY, (seal)
Judge.

Mr. Schleimer: I ask that that be stricken out. It is not evidence by any rule of law I ask that the remark of the Prosecutor regarding who, if anyone, took a complaint be stricken out, and that the jury be directed to disregard it.

The Court: The Court will refuse the motion.

Mr. Schleimer prays exception.

Exception allowed; sealed accordingly.

JAMES C. CONNOLLY, (seal)
Judge.

Q. Did you go to work the next day?

Mr. Schleimer: Object.

A. No, I did not.

The Court: Question allowed.
Mr. Schleimer prays exception.
Exception allowed; sealed accordingly.

JAMES C. CONNOLLY, (seal)
Judge.

Q. When did you return to work after June 4th?

Mr. Schleimer: Object. In no way binding on the defendant.
The Court: Question allowed.
Mr. Schleimer prays exception.
Exception allowed; sealed accordingly.

JAMES C. CONNOLLY, (seal)
Judge.

A. I returned the following day, but only for the two days. I got my books fixed up. I turned in—I went in the morning, I was sick in the afternoon. I went in the next afternoon for about two hours, and was home about two weeks after.

Q. After what?

A. After this—after the following Saturday.

Q. Why didn't you continue with your work?

Mr. Schleimer: Object.
The Court: Question allowed.
Mr. Schleimer prays exception.
Exception allowed; sealed accordingly.

JAMES C. CONNOLLY, (seal)
Judge.

A. Why, I was sick. I was very sick. I had a nervous breakdown.

Q. How long did that last?

A. I was out two weeks.

Mr. Schleimer: I do not want to object each time, if your Honor will give me a general exception to this line.

Mr. O'Connor: You cannot grant a general exception to this line. Object to each question.

The Court: Yes, I will do so. I will rule on the question and grant an exception.

Q. And you say you were home how long?

A. Two weeks.

Q. When you met Justice Eaton what did you do there?

Mr. Schleimer: I object.

The Court: On what ground do you object?

Mr. Schleimer: On the ground it is immaterial, irrelevant and improper, and without the presence of the defendant, and in no way can bind him.

The Court: Question allowed.

Mr. Schleimer: Prays exception.

Exception allowed; sealed accordingly.

JAMES C. CONNOLLY, (seal)
Judge.

Q. Answer the question.

A. I met him in the Prosecutor's office the day after it occurred in company with my father.

Q. Yes. And what did you do?

A. Why, Mr. Gallatian was there, and he took my statement, together with this man.

Q. No, no. What did you do when you met Jus-

tice Eaton. What did you do? This man we just spoke about?

Mr. Schleimer: Object.
The Court: Question allowed.
Mr. Schleimer: Prays exception.
Exception allowed; sealed accordingly.
JAMES C. CONNOLLY, (seal)
Judge.

Q. I show you this paper here——

The Court: She did not answer that last question, what did she do.

Q. Answer it, if you can.

By the Court:

Q. Can you answer that question?
A. No, sir. I could not.

By Mr. O'Connor:

Q. Did you ever see that paper before (producing paper)?
A. I signed that the day after. I remember signing that in the Prosecutor's office.
Q. And who was there?
A. Mr. Gallatian, another gentleman, who is now in the court room, and this gentleman here (indicating).

By the Court:

Q. Justice Eaton?
A. Yes.

Mr. O'Connor: I want this paper marked for identification.
Marked Identification S-1.

By Mr. O'Connor:

Q. What was the nature of the locality where this automobile stopped in Union Township?

A. Well, there were no houses near. It was on the road, and it was wilderness.

Q. Do you know this man (indicating man in court room)?

A. Yes, sir; I do. That is the doctor who examined me.

Q. Where did the examination take place?

A. He examined me in my aunt's house.

By the Court:

Q. In your aunt's house?

A. Yes, sir, Judge, your Honor.

By Mr. O'Connor:

Q. How long after the fourth of June?

A. On the following Saturday, which was the eighth of June.

Mr. Schleimer: Object. Too remote.

The Court: I will allow the answer to stand.

Mr. Schleimer: Prays exception.

Exception allowed; sealed accordingly.

JAMES C. CONNOLLY, (seal)
Judge.

Mr. Schleimer: My motion should be, your Honor, that the answer be stricken out.

The Court: Yes.

Mr. Schleimer: Your Honor denies that and allows me an exception?

The Court: Yes.

Q. Why was it you were examined at your aunt's house, and not at your own home?

A. Well, my aunt was sick——

Mr. Schleimer: I object.

The Court: Question allowed.

Mr. Schleimer: Prays exception.

Exception allowed; sealed accordingly.

JAMES C. CONNOLLY, (seal)
Judge.

Q. Answer the question.

A. My aunt was sick at the time, and, of course, I was feeling bad. I was feeling very bad. Of course, I worked that day, and it was on a Saturday morning. I had worked a few hours, and I was too sick, I couldn't remain, so I came home, and I said to mamma; I said, "oh, mamma," I said——

The Court: Do not tell what you said to your mother.

A. Well, my mother and I went over to my aunt's, and so my aunt was sick, mamma said "she is sick."

Q. Now, not what your mother said.

A. I went to my aunt's. My aunt was sick, and he was there.

Q. I see

A. I told the doctor, I said "I am awful sick."

Mr. Schleimer: I object to what was said by this witness.

The Court: I will allow her to tell what she said to the doctor.

Mr. Schleimer: Prays exception.

Exception allowed; sealed accordingly.

JAMES C. CONNOLLY, (seal)
Judge.

A. I said "Doctor, I am awful sick." He said "well, what is the matter with you?" I said "I don't know" I said "I am sick. I am a healthy girl, but I have been sick for the last week," I said "I don't feel well at all," I said "my head bothers me," I said "can you do anything?" He said to me "why, sure," so he sat there, he said, and he wanted, so, he examined me.

Mr. Schliemer: Object to what the doctor said, and ask an exception.

Exception allowed; sealed accordingly.

JAMES C. CONNOLLY, (seal)
Judge.

The Court: Well, is that all your examination? Perhaps, I did not understand one question or one answer she made; when the doctor called upon her at her aunt's house she said she was sick for the last week. Now you ask her——

Mr. Stein: That is very simple. She said the doctor examined her the Saturday following when this happened.

Mr. Wolfskeil: If the Court please, I think the record is the best thing as to what she said, not the statement of the Prosecutor, or my friend Mr. Schliemer:

Q. I ask you, how long did the doctor examine you after this occurred?

A. On the eighth.

Q. On the eighth?

A. Four days later, on a Saturday afternoon.

By the Court:

Q. Then it was four days later that the examination took place. Four days later than this act?

A. Yes, your Honor. Yes.

Mr. O'Connor: That is all.

Cross examination by Mr. Schleimer:

Q. Miss Jones, you came down Elizabeth Avenue, did you?

A. Yes.

Q. Do you remember coming back on what you call Clinton Avenue, on which you rode into Newark?

A. Remember coming back on Clinton Avenue?

Q. On Clinton Avenue. The road you told us on which you were taken into Newark?

A. Yes.

Q. Where did you enter Clinton Avenue, if you know?

A. At Elizabeth Avenue.

Q. Elizabeth Avenue connects then with Clinton Avenue?

A. Yes.

Q. Then you came down Elizabeth Avenue, and you turned into Clinton Avenue and started to make what I would call sort of a semi-circle, am I right? A half circle?

A. Yes. Yes, that is right.

Q. Then, after making that turn, I understood you to tell the court and jury that you travelled six or seven minutes before you stopped, that was the best of your recollection, am I right?

A. Making the turn where?

Q. You said that after you turned you went what you thought was six or seven minutes before the car stopped. If I misunderstood you, I want it straightened out. Am I correct in saying that after you made the turn you went six or seven minutes before the car stopped?

A. After we made the turn on Elizabeth Avenue?

Q. Yes.

A. Well, it must have been between five and seven minutes.

Q. Yes. That is right. Do you know as a matter of fact, Miss Jones, where it was the car stopped, as you tell us it did?

A. Well, I know it went up Hillside Avenue, and it made a turn, I don't know that country out there.

Q. Yes.

A. But I told Mr. Gallatian, the day——

Q. No, no. I am sorry, but we cannot have what you told some one else. Where is Hillside Avenue, if you know? Not from what some one has told you since, but if you knew?

A. Why, it is the first macadam road below Williamson's blacksmith shop on Elizabeth Avenue. The blacksmith shop is just below where the main line turns over the bridge.

Q. When had you been over that road before that?

A. Never.

Q. Never? What time of night was it that you rode there? You told us that you left your house about ten minutes after nine. Now, how long did it take you to walk from your house on Mulberry Place, am I right?

A. Yes.

Q. That is where you said you live?

A. Yes.

Q. To the corner of Broad and William Street, where you stopped to talk to Mr. Shupe?

A. About ten minutes.

Q. Ten minutes. How long did you stop there before you got in the car?

A. Five minutes.

Q. Five minutes. So it was about 9.25 when you left that corner?

A. About that.

Q. How long did it—could—you how long did it take to get out on Elizabeth Avenue?

A. From William?

Q. Yes. Approximately. I don't mean to limit

A. I should think it would take about ten minutes in the machine.

Q. Then it would be about twenty-five minutes to ten?

A. I presume it would be about that.

Q. And it was dark, wasn't it?

A. Dark.?

Q. Yes.

A. Yes, it was dark.

Q. Yes. You knew nothing about these roads or streets?

A. I knew Elizabeth Avenue and Clinton Avenue, that is all.

Q. And the others you did not know. Do you know Wilbur Avenue?

A. Wilbur Avenue? No, sir.

Q. Do you know Vassar Avenue?

A. No, sir.

Q. Do you know Goldsmith Avenue?

A. No, sir, I do not.

Q. Do you know Pomona Avenue?

A. No, I do not.

Q. Do you know Weequahic Avenue?

A. I believe I do.

Q. What does that run into?

A. Weequahic Avenue?

Q. Yes.

A. Why, I just seen it coming along in the cars. I don't know anything about it; never been on the road at all.

Q. Have you seen the avenue, or the name, Weequahic Park?

A. I seen the sign.

Q. Which sign, the park sign or the avenue sign?

A. It is right across from the park, isn't it?

Q. What I am asking you is this: I do not want to confuse you. Going from Newark to Elizabeth you would see the large signs of Weequahic Park?

A. Yes.

Q. Are those the signs you mean you seen, or have you seen the street signs there? I want to be fair with you.

A. Why, I am not sure. Oh, I don't know where any of these streets are, but I think I have seen that sign.

Q. Where you seen that sign, isn't it up on the hill opposite Lyons Farms, if you know where that is? That is, I do not mean on the Farms side; I mean on the Weequahic Park side.

A. I only know Weequahic Park has a Lyons Avenue.

Q. Was it in Weequahic Park that you have seen that sign you thought was Weequahic Avenue?

A. Why, it is right across from the park where I think I have seen it.

Q. Right through the park from Elizabeth Avenue?

A. Somewheres there.

Q. Now, what day of the week was this? The evening of what day of the week?

A. Tuesday.

Q. Tuesday. On the Saturday you say you saw doctor whom?

A. Yes, on Saturday.

Q. What is his name?

A. Doctor Devlin.

Q. Doctor Devlin. And you worked a little that Saturday, didn't you?

A. Yes, I did—a few hours in the morning.

Q. Now, didn't you tell the Prosecutor, on your direct examination, that you worked a little the day after, and a little the second day after, and then went off two weeks?

A. Well, I went in on a Saturday.

Q. Pardon me. I am asking you now whether you did not say so, not to make a statement. Did you not say to the Prosecutor, on your direct examination, that you worked the day after this, and the second day, and then quit for two weeks?

A. I went in the morning.

Q. Won't you please answer me yes or no.

A. Yes, I said that. But I did not consider that work on Saturday, because I was only in a short time. I came right home. I was too sick.

Q. You were in a couple of hours on Saturday morning, you said, did you not?

A. Yes, I was in a couple of hours.

Q. You told us you were in about two hours the next day, to fix up your books. Did you mean that?

A. I was in the next morning, and a couple of hours the next afternoon.

Q. Yes. And then you did not go in again until Saturday, when you stayed in a couple of hours?

A. Saturday, yes. I did not do much work Saturday. I went in. I was too sick to do any work.

Q. When you met your doctor, you told him you had felt bad, and was all broken up and sore for a week?

A. During the past week. During—since the time it occurred. I am never sick. I have always been a healthy girl.

Q. Did you not tell the Prosecutor that you told the doctor that you had been sore and bruised and ill for a week?

A. For a week?

Q. Yes, ma'am.

A. Well, if I told him a week, I couldn't be before the thing happened.

Q. I am just asking you whether or not you did not tell us that, Miss Cook?

A. I may have said for the past week. I meant during the past week.

Q. Yes. The doctor asked you very casually about how long you had been in this condition, did he not?

A. Yes, he did.

Q. Did you not say to him, "I have been this way for a week"?

A. No, I did not.

Q. Then, when you said that to the Prosecutor, you were mistaken?

A. Well, if I used those words, "for the past week," for the past week I mean for during the past week since it happneed—since the previous Tuesday night.

Q. Do you recall speaking to Charles Smith, who was in that machine that night as it went down Broad Street?

A. Charles Smith?

Q. Yes, ma'am.

A. I don't know the gentleman; never met him.

Q. No. Do you recall when you got to that corner saying to him——

Mr. O'Connor: What corner?

Q. (continued). Corner of William and Broad, the corner they met her. "I am going to a girl friend's house"?

A. I do.

Q. And where did you say that friend lived?

A. I asked him to leave me out at Belmont Ave-

nue. I did not say where the girl lived. Didn't mention any girl, with the exception I was going to a girl friend's house.

Q. Say anything about Kinney Street?

A. Kinney? Nothing.

Q. Did you say to them, "You can take me up there, if you don't mind"?

A. No, sir. I did not.

Q. And did you say after you started off, "Take me for a little ride"?

A. I did not; no, sir. I did not.

Q. Do you recall saying "Good night" when you got out of the machine?

A. No; I do not.

Q. Positive you did not?

A. Positive.

Q. When you started off, Miss Cook, there was a chauffeur—Miss Jones—there was a chauffeur driving that car, was there not?

A. Yes, sir. There were.

Q. And who was in the rear seat besides you and Mr. Shupe?

A. No one else but him and I.

Q. When you started?

A. When we started. Well, he was in the front seat with the chauffeur when I met him, but then he changed seats with another man; I don't know. Another man got in the front, and him and I were in the back.

Q. When you started from Broad and William Streets, he was not there in the rear seat?

A. No time.

Q. At no time?

A. No time whatever, but two.

Q. When was it that the man changed and got in the front seat?

A. He went into it before I entered the car.

Q. You are sure of that?

A. Positive.

Q. Yes. Who was the man that got in the front?

A. I don't know. I don't know either one of the gentlemen in the front.

Q. Don't you remember stopping and talking to the gentleman who got in the front seat alongside the chauffeur, before you got in the car?

A. Stopping and talking to him?

Q. Yes, ma'am?

A. Another gentleman that was in the car beside Mr. Shupe?

Q. Yes, ma'am?

A. No; I do not.

Q. There was another gentleman in that car, wasn't there?

A. There were two others.

Q. Two others besides the chauffeur and Mr. Shupe?

A. No; two others besides Mr. Shupe.

Q. Yes. And one was the chauffeur and the other was a man by the name of Smith.

A. I don't know.

Q. And had never seen him before?

A. I may have seen him. I would know the man again, but I don't know the man to speak to. I would know him if you showed him to me again; I would know him.

Q. Did you know him that night, as having seen him and talked to him before?

A. No; I never spoke to the man in my life.

Q. Now, you say you stopped there and talked above five minutes before you started?

A. About that; yes.

Q. And it was then between twenty minutes after and half-past nine at night?

A. Yes; about that.

Q. And your talk was pleasant, on generalities?

A. At first, yes; but I wanted to get away.

Q. You wanted to get away. Did not you have every opportunity to get away?

A. Why, I was going, and I was going to leave him——

Q. Yes.

A. (Continued) When he——

Q. Nobody prevented you by any act, did they?

A. No, sir.

Q. No?

A. They did not.

Q. But it was the suggestion that you ride up to the friend's house?

A. It was to leave me off at Springfield Avenue and Belmont Avenue.

Q. But it was the suggestion, wasn't it, Miss Jones, that they ride you to your friend's house that prompted you to enter the car?

A. Well, it was that they would ride me up to Springfield Avenue and Belmont Avenue, but I refused on two occasions, and he said, "Why, I will get you up there in a few minutes"——

Q. Yes.

A. (Continued) And me, thinking him a gentleman, that was my only reason for going in that car.

Q. How long did that all take from the time you first stopped until after the car started?

A. Why, not over five minutes. About five minutes.

Q. You did not tell them that you were going to get a hat?

A. Well, would you tell—why would any girl tell a man she was going to get a hat? A man does not understand those things.

Q. I don't know. Why not? What is there about that that——

A. Why——

Mr. O'Connor: That is a good deal in the nature of arguing.

The Court: Question allowed.

Q. Why not?

A. Why not?

Q. Yes, ma'am.

A. Why, I wouldn't tell any man I was going to get a hat. Why, that would sound silly to a man, sound foolish.

Q. If it was the truth, it would not sound silly.

A. I intended to get the hat, and after stopping at one of my girl friends to show her the hat.

Q. You changed your idea, and told them you were going to the house of a girl friend?

A. Yes.

Q. And your only object in telling them that, after you had deliberately started from your house, to go from your own house to get the hat you had ordered, I presume for that day, or the milliner promised to have it ready that night——

A. I was going to get the hat that night.

Q. You were going to get the hat that night. So, you see men do know something about hats. When you met them you changed your story from the truth, which was that you were going to get a hat, to the statement that you were going to call on a friend?

A. Well, I would have called on the friend possibly, I can't say, if it would not be too late. I told them I was going to call on a girl friend.

Q. Did you tell them on Kinney Street?

A. On Kinney Street? No, sir.

Q. You did not mention where that friend lived?

A. No; I did not mention.

Q. You are sure of that now?

A. He said he would take me to Springfield and Belmont Avenue.

Q. Are you sure you did not mention Kinney Street, as the street your friend lived on?

A. I am positive.

Q. She did live on Kinney Street, did she not?

A. No, sir.

Q. What street?

A. Ruttger Street.

Q. Near what?

A. Near Bank. Near Bank Street.

Q. And how far was that from the corner you wanted them to leave you out at?

A. I wanted to go to the millinery store, which is right about a block and a half from Springfield Avenue, the millinery store.

Q. A block and a half from where your friend lives?

A. No; from where I wanted them to let me out.

Q. Well, how far did your friend live, whom you were going to see?

A. From where?

Q. From the corner you requested them to let you out?

A. Oh, she lives possibly about half a mile.

Q. Yes. Had you any previous arrangement to call on her that night?

A. No; I did not. I might have called on her. I might have called on another girl.

Q. Where does the other girl live?

A. I have several friends. I go with different girls.

Q. I thought you meant one particular one?

A. No. I don't go with one particular girl.

Q. When you were left out of the car that night, what corner was that?

A. Corner of East Kinney and Broad.

Q. And where was that near?

A. Where?

Q. Your milliner, your home, or your girl friends?

A. Near my home.

Q. How far from your home?

A. About three blocks and a half.

Q. Yes. Did you request them to leave you out there?

A. He asked me where I wanted to be left out, East Kinney and Broad.

Q. So the car stopped at the corner you requested?

A. Yes; it did.

Q. And this was where you got out?

A. Yes; I did.

Q. And you did not go to your friend's house, or the milliner's, you went right home?

A. I went right home, directly home.

Q. Now, you said in answer to the Prosecutor's question, "You wanted them to take you up to your girl friend's house, because you wanted to show her the hat." Did you mean that?

A. To show her the hat. I would have shown her the hat. Well, like the girls show me things. I would have shown my hat to the girl.

Q. Question repeated by the stenographer.

A. No; I didn't want them to take me to any girl's house.

By the Court:

Q. Did you say that to the Prosecutor in your testimony here this morning?

A. That I wanted them to take me up there to the girl's house, so I could show her my hat?

Q. Yes.

A. I couldn't have them take me to the girl's house, when I did not have the hat.

By Mr. Schleimer:

Q. I am not asking whether you had the hat. I am asking you, did you tell the Prosecutor that?

A. How could I tell him that?

Q. Do you recall whether or not you told the Prosecutor that this morning?

A. No, sir. I do not.

Q. You did not?

A. I did not say that I did not. I don't recall that thing. How could I when I did not have the hat.

Q. Then, if you said that, you did not mean it, and was in error?

A. I don't remember saying that.

Q. During this ride, did you make any protest to the men, the chauffeur who was driving the car, and the man on the front seat with him?

A. I did not. My yelling and screaming was enough. They paid no attention. On several occasions they turned around and seen it.

Q. When did you start to yell and scream?

A. Why, on Elizabeth Avenue.

Q. Yes. How far down?

A. Why, when we, when we turned around Elizabeth Avenue and Clinton Avenue, just the point where those streets meet, Elizabeth Avenue and Clinton Avenue and Avon Avenue, instead of going up Avon Avenue, when he turned into Elizabeth Avenue, I started to make a protest and from there out, why I was screaming all the time.

Q. It is very thickly settled right there on Elizabeth Avenue?

A. What is that? On Elizabeth Avenue?
Q. At that point. Yes.
Q. It is what?
Q. Thickly settled?
A. Thickly settled?
Q. Yes. Right at that point, isn't it?
A. Yes.
Q. And it was a summer night, people sitting in their hammocks on their porches, isn't that so?
A. Very likely.
Q. In June?
A. Very likely.
Q. And weren't the people there on the street?
A. This man was holding his hand over my mouth.
Q. Won't you listen to my question. There were people on the street there that summer night?
A. Yes. No doubt. In riding——
Q. There are a series of arc lights?
A. Yes.
Q. Along Elizabeth Avenue?
A. Yes.
Q. And these extend for a space of over a mile?
A. About that.
Q. And the Elizabeth and Newark trolley runs along there?
A. Yes.
Q. And the Mount Prospect trolley line runs along there?
A. The main line car; yes, sir.
Q. Yes. The Mount Prospect?
A. Mount Prospect, yes.
Q. And the Miller Street line goes all the way —doesn't it go up there at all?
A. It goes into Elizabeth Avenue, but there is seldom a car there. Run every half hour, I believe.

Q. And that is a road, as you observed that night, that is frequently used by automobiles?

A. A macadamized road. It is a good road. Yes.

Q. So you know that that night you passed numerous machines?

A. I couldn't say. I couldn't notice. That man had his hand over my mouth.

Q. For the whole mile?

A. Off and on, yes. It got bad when I got to Elizabeth Avenue and Meeker Avenue.

Q. When he did not have his hand over your mouth——

A. Very little of the time.

Q. Won't you please listen. When he did not have his hand over your mouth, you could see the automobiles passing you in both directions?

A. I was too excited to know.

Q. And notwithstanding the fact that you passed through all this, no one's attention was attracted, that you noticed?

A. Not that I noticed, no.

Q. And after you started back what was said?

A. Started back?

Q. To Newark?

A. Why, nothing much was said, with the exception, he said something to the effect that if he married, he would marry a woman like I. That is all I remember, and he said he did not think there was a girl like me in Newark, something like that.

Q. Was that all that was said?

A. That is all I remember.

Q. Except your telling where you wanted to get out?

A. He asked me where I wanted to get out; yes, that is all I remember. Very few words passed. He said nothing and I was crying.

Q. Now, when you got out of the car were there people on Kinney Street?

A. I didn't notice any one.

Q. Did you notice anybody?

A. No one on foot.

Q. From the time you got out of the car until the time you got home?

A. I don't remember. I don't. I did not notice any one.

Q. Notice any officer?

A. No, I did not.

Q. You may have passed people and not noticed them?

A. I may have.

Q. You spoke to no one?

A. I spoke to no one.

Q. You approached no one to advise them of what had happened?

A. No, I did not.

Q. Now, isn't it a fact that everything was pleasant on the way back to Newark that night between the two of you?

A. No, it is not. There was nothing much said, with the exception of what I have already told you.

Q. And that was he said he would marry a girl like you, and he did not think there was another girl like you in Newark?

A. Yes, a girl like me with such a thing to use his expression, he said "with a cherry."

Q. And in addition to that, the other remark was "where do you want to get out?" and you told him where?

A. That was all. I said nothing to him. I was crying.

Q. Where did you say you wanted to get out?

A. East Kinney and Broad.

Q. And that was all that was said?

A. That was all that was said.

Q. You addressed no remark to the chauffeur or

the man sitting on the front seat with him, and the chauffeur and the gentleman on the front seat addressed no remark to you, am I right?

A. Right.

Q. Do you recall your position in that automobile, as you left Newark and went out Elizabeth Avenue?

A. My position?

Q. Yes. Your position?

A. I was sitting on the left hand side of the machine, on the back seat. No, I have that wrong. On the right hand side. I was sitting on this side (indicating).

Q. You sat on the right hand side. Right or left hand drive? Was the chauffeur directly in front of you?

A. The chauffeur was in front of me. He was in front of me.

Q. It was a right hand drive car? You were on the right hand side?

A. Yes, I was on the right side.

Q. What side did you get in, from the right or left?

A. From the left.

Q. How did you know this was Mr. Strupe?

A. How did I know?

Q. Yes.

A. Why, I was introduced to him by my sister.

Q. Yes. Where?

A. In his office on Halsey Street, about 287 Halsey Street. I don't know whether it was his office. There was an automobile garage.

Q. When?

A. In December, 1911, on a Sunday afternoon.

Q. How do you remember the date?

A. How do I remember it? Why, I don't remember the date, but I remember about the month.

Q. Why do you remember the month?

A. Why, I was going skating.
Q. Yes——

Mr. O'Connor: If your Honor please, this line of examination now objected to, when I was pursuing it, on the ground it was remotely connected with the res gestae of this action.

Mr. Schleimer: It was not competent direct, but it was competent cross.
The Court: I will allow it.

Q. It was in the month of December?
A. About that, yes. I was going skating at the time. It was in the winter time.
Q. Are you sure it was December?
A. Well, I am not certain, because I had no reason for remembering that, you know, but I am quite certain it was December.
Q. Isn't this the fact, that you and your sister crossed the street that day to talk to a gentleman by the name of O'Brien?
A. Of who?
Q. By the name of O'Brien?
A. No, I did not. I can tell you how we crossed the street. I did not cross, it was my sister. I was walking, we were going along Halsey Street together, because it was Sunday afternoon we had our skates with us at the time. It was my usual habt to go skating whenever I could, and so I would go on a Sunday all day skating. It was about four o'clock in the afternoon. We came over Halsey Street and were going up to William and over High, right over to Orange, and up Orange to the Park. We went over Halsey Street this afternoon about four o'clock, just my sister and I, she on the outside of the street, and I on the inside. She

saw two gentlemen out there, one I know by the name of Eddie, I don't know his other name.

Q. Was it O'Brien?

A. I don't know. I don't know his name. I did not know either one of the gentlemen.

Q. Well, go on with the rest of your story then.

A. She went over and talked to them for ten minutes. I stood there and waited, getting kind of impatient, because it was getting late and I wanted to get up to the park. I asked her several times to hurry, she paid no attention to me. She stood there, and turning around said she would be along in a minute, or something. Finally she called me over. She said "this is my sister." She introduced me to Mr. Shupe and another gentleman. There was nothing said, with the exception of something about a position, and they were talking about a civil service examination, something like that. He acted a gentleman, and so, naturally, we had no reason to believe otherwise.

Q. You do not recall the name of the gentleman your sister introduced you to?

A. Eddie. That is all I know.

Q. Did she introduce him as Eddie?

A. He was introduced to be as Mr., the name, I don't recall it.

Q. Where did you get the name Eddie from?

A. She called him Eddie.

Q. Your sister knew him very well, then?

A. I don't know. She said that name, that was all.

Q. Now, you say you travelled five or seven minutes and got to some where in a wilderness when this affair took place.

A. Well, I say about that, yes. I don't know just, I can't say just, I was too excited to know.

Q. You do not know just where that was, do you?

A. I know about the road. Yes, I know the road, and I know that turn, but I don't——

Q. How do you know? You were never over that before, you have told us.

A. I have seen the road since several times.

Q. It was dark that night, you were excited.

A. I know where the blacksmith shop is, have known it for years. I lived down in that section ten or eleven years.

Q. You do not know the names of the streets?

A. No, I lived up further in a place called Park View. I know the blacksmith shop for years.

Q. How far is Park View from Elizabeth Avenue?

A. Why, Park View—Elizabeth Avenue is in Park View to.

Q. Yes.

A. Elizabeth Avenue, it is a part of Park View.

Q. How far where you lived in Park View is it, from Elizabeth Avenue?

A. From what part of Elizabeth Avenue?

Q. The nearest point?

A. Why, only about three blocks.

Q. Yes. When you made that turn into Hillside Avenue, didn't you keep going around and get back into Elizabeth Avenue, or don't you know?

A. Back into Elizabeth Avenue?

Q. Yes.

A. We come back Elizabeth Avenue.

Q. You say you know these roads good?

A. No, I don't say I know these roads.

Q. Where did you go to when you went right?

A. We come back into Elizabeth Avenue. I don't remember how we came back, I don't remember making a turn.

Q. Did you turn the car around, or did you go straight ahead until you struck Elizabeth Avenue again?

A. We went straight ahead.

Q. Went straight ahead?

A. Yes.

Q. Went right around in a circle practically, didn't you, and struck Elizabeth Avenue again?

A. Well, I will tell you. I can't just recall that —a circle.

Q. Well, you kept going head on, until you got back?

A. We did not turn the car, but we came back to Elizabeth Avenue.

Q. At what point did you strike Elizabeth Avenue again?

A. What point?

Q. Yes.

A. Well, that I couldn't say.

Q. What street brought you into Elizabeth Avenue?

A. I don't know any street, but the one street we went out.

Q. Elizabeth Avenue. And that is the only street you know?

A. Hillside Avenue. That is Hillside Avenue I went up; I remember making a turn.

Q. Wasn't it near Weequahic Park?

A. No, no. I told Mr. Gallatian the next day—

Q. I do not care what you told him. The Court will not allow you to state what you told Mr. Gallatian; it is not proper evidence. I would like to have it, but we cannot. What I am trying to get at now is whether you know any street there at all but Hillside Avenue?

A. No, I do not.

Q. When did you first know Hillside Avenue?

A. After this thing occurred——

Q. Yes?

A. (continued). I knew it.

Q. And the night the affair happened, you did not know there was a Hillside Avenue there, did you?

A. No, sir, I did not. I knew about—I knew where the blacksmith shop was. I knew it was down past the blacksmith shop. I knew the road we went up, that is all.

Q. After you made the turn, got past the blacksmith shop, you did not know where you went that night—that dark night?

A. I know just about where I went.

Q. Just how far then after this was—let us go into it—how far did you travel from the time you made that turn until the car stopped?

A. I say it must have been about five or seven minutes.

Q. I am asking you about the distance. Now, you claim to know the location. I want to know how far you went.

A. Possibly a half mile, I guess.

Q. You think it was about a half mile?

A. I think so; I am not sure.

Q. The car was going at a very fair gait, wasn't it?

A. Pretty fast, yes.

Q. Twenty-five or thirty miles an hour?

A. What is that?

Q. Twenty-five or thirty miles an hour?

A. Well, it was a few minutes later.

Q. I am asking you now how fast the car went. We will get to the next step.

A. I don't know much about machines.

Q. You went at a fast rate of speed?

A. Yes, rather fast.

Q. You came down Elizabeth Avenue as fast, if not faster?

A. We came down very fast.

Q. Made that turn, and went very fast for five or seven minutes after you made it?

A. They didn't go—it was dust road along there —not quite so fast.

Q. To the best of your judgment, you went half a mile?

A. Well, yes, as I can remember. I was very excited that night, but the next day I knew.

Q. And yet you say that it took you some time to get around to Elizabeth Avenue again, and you do not know how you got back?

A. Yes. We did not turn the car. We came right back Elizabeth Avenue.

Q. On what roads, or don't you know?

A. I don't know the names of the roads.

Q. You do not know the name of the road where you stopped several minutes, after you made that turn?

A. It was in the wilderness.

Q. It was on the road, wasn't it?

A. On the road.

Q. You do not know what that road was, do you, Miss Jones? That was a dark——

A. If I went out there I could find it.

Q. I am asking you now. You do not know what the road was?

A. You cannot expect me to know the names of roads out in the country.

Q. Question repeated by stenographer. Do you or do you not?

A. The name of the road?

Q. Yes.

A. No, I do not.

Q. And did you or did you not know what road it was you went in from that road on to? What road you went on to from that road?

No answer.

RECESS.

AFTERNOON SESSION, 1.55 P. M.

Q. What is your age, Miss Jones?
A. I was twenty-two May 24th, 1913.

By the Court:

Q. Twenty-two?
A. Yes, sir.

By Mr. Schleimer:

Q. Last May, isn't it? Now, you have told us some things in answer to Mr. O'Connor, about what you did after that affair took place. I am going to ask you about some other things. You retained counsel for the purpose of collecting damages from Mr. Shupe, did you not?

Mr. O'Connor: If your Honor please, is this material to the case. Of course, I have not personally any objection to going into that. She has an action for damages, a civil remedy; that is her right. It is not material to this case. Everybody knows that if an assault was committed upon her the State can prosecute this man by a criminal action, and she may, if she wishes, prosecute this man by a civil action.

Mr. Schleimer: Ordinarily Mr. O'Connor could object to this, and the objection would be proper.

Mr. O'Connor: I do not object to it.

The Court: Proceed. No objection was made.

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

Q. Did not Mr. Walsh, representing you, make a demand upon Mr. Shupe, and in that letter say he had been retained by Miss Mabel Jones?

A. I don't. I had nothing to do with that. If there is anything about that, that is up to my father. You will have to put my father on the stand to answer any questions about that, Sir.

Q. Do you know Mr. Walsh?

A. I have met Mr. Walsh, yes.

Q. In this case?

A. In this case, yes.

Q. And relating to this case?

A. Relating to this case?

Q. Yes, Ma'am.

A. Well, he knew the particulars of this case.

Q. Answer the question.

A. Well, as far as I know. As far as I know.

Q. You know he is a lawyer in Summit, do you not?

A. I know he is a lawyer, no more.

Q. You know he was retained in your behalf on this case by your father?

A. I know there was something between my father and him, but furthermore, I know nothing about any money or civil suit, nothing whatever.

Q. You knew he was acting in your behalf, did you not?

A. I knew my father knew him. I just casually spoke to Mr. Walsh.

Q. I am not asking you if you casually spoke to him. I am asking you whether the truth isn't that you knew your father retained Mr. Walsh in this case? Did not you know that?

A. No, no I did not.

Q. Did you know that?

A. I knew nothing about that.

Q. Was he retained by your father?

A. I couldn't say. You will have to ask my father.

Q. You have talked this case over with Mr. Walsh, have you not?

A. Why, I spoke to Mr. Walsh.

Q. Yes. When?

A. I spoke to Mr. Walsh on one occasion about this case. He asked the particulars of it, that is all I know.

Q. When?

A. About——

Q. When?

A. Oh, along about the first of the year, I believe.

Q. First of what year?

A. The first of this year.

Q. Miss Jones, didn't you have a conversation with Mr. Walsh on the 8th of October, 1912?

A. Well, I don't recall the date. I know I spoke to him on one occasion there.

Q. It was not in October, 1912?

A. Why, wait a minute. I can recall by the clothes I had on. I don't remember otherwise. Yes, I had no coat on. I guess it may have been in the fall of the year.

Q. And now, I will try to refresh your memory by this question. Do not you know that it was before the indictment was found in this case?

A. No, I do not.

Q. You do not recall whether it was or not?

A. No, I do not.

Q. You do think it was in the fall, by the clothing you had on?

A. Yes, I recall I had no coat on.

Q. It was not yet winter?

A. What is that?

Q. It was not yet winter, because you had no coat on?

A. Yes, I guess it was in the fall, but I don't recall the month.

Q. Where was this talk?

A. Why, it was in my office, where I am employed.

Q. Mr. Walsh came there?

A. Yes, he came there.

Q. Was your father with him?

A. What is that?

Q. Who was with him?

A. No one.

Q. Now, as a matter of fact, on this occasion at your office, your father not present (we have eliminated that), Mr. Walsh and you discussed the fact of bringing suit against Mr. Shupe?

A. No, he started to tell me he would come to the house. Later he came to the house, one evening, and I don't know——

Q. And you saw him——

Mr. O'Connor: The line of examination you are pursuing is absolutely immaterial to this case.

The Court: Proceed.

Q. Then you saw Mr. Walsh twice?

A. Oh, I saw him several times, I admit that.

Q. I thought you said only once?

A. No; I admit I seen him several times. Spoke to him; casually spoke to him.

Q. You talked to him several times?

A. What is that?

Q. You talked to him several times?

A. I seen him here several times, just to simply speak to him. No, I did not. You must have misunderstood me. I said he came to the office this day he waited for me. I came in from lunch.

Q. You knew from his coming to the office and coming to the house, he represented you in this matter?

A. My father has all to do with that.

Q. I am not asking you that.

A. I knew he had something to do with it.

Q. You knew by reason of his coming to the office and coming to the house several times, and talking about the facts of what transpired, that Mr. Walsh was acting in your behalf, did you not? Yes or no.

A. I knew he was. Yes, I knew that.

Q. How much money was discussed in your conversation?

A. No money. He discussed no money whatever to me. Whatever was said was between my father and him.

Q. All right. That is all.

A. I simply told him——

The Court: That is all.

Re-direct examination by Mr. O'Connor:

Q. Who directed the movement of the automobile that night?

A. Why, we simply came back and got into the car.

Q. Who directed the movement of the machine that night?

A. I did not hear a word spoken. The men simply got in the car and went off.

Q. When you were driving back to the corner of East Kinney Street and Broad Street, was anything said?

A. He said "you ain't mad, are you?"

Q. Who said?

A. He said something like that, Mr. Shupe. And I never, I did not answer him.

Q. When you were driving along Hillside Avenue, what was Shupe doing to you, if anything?

A. Why, he had his hand over my mouth, and he

had his hands under my clothing, and, oh, doing things that no gentleman would do. Everything of that sort.

The Court: Haven't we gone into that?

Mr. O'Connor: I want to make sure, your Honor. I have no more questions.

Re-cross examination by Mr. Schleimer:

Q. Now, you told us this morning, I think, on the night in question that you saw you were in a wild spot out there when this car stopped?

A. Yes.

Q. Were the head lights, or any of the lights on that car out?

A. Well, that I couldn't say, because these other two gentlemen got out of the car, and they went around to the front and then to the back. They both got out of the side of the car and went around to the front, and wherever they went, I don't know. They went in the back, some place.

Q. Any machines passing while the car was stopped there?

A. No, sir. None whatever.

Q. None whatever?

A. No, sir.

Q. You said this morning that when you started down Elizabeth Avenue Mr. Shupe started to do this to you, put his hand over your mouth, and that is why you could not see automobiles and trolley cars passing, and that is so, is it?

A. Well, I was too excited——

Q. I am asking about your testimony this morning.

A. Yes, that is right.

Q. (continued) About that night. That is so, isn't it?

A. Why, yes. That is right.

Q. I want you to tell us how far it is from where you first struck Elizabeth Avenue to where you turned into this wilderness.

A. I should judge about two miles.

Q. About what?

A. Two miles.

Q. During that two miles up there, Elizabeth Avenue is brilliantly lighted by arc lights, isn't it?

A. Yes.

Q. Lighted trolley cars passing to and fro?

A. Yes.

Q. Automobiles passing to and fro?

A. Yes.

Q. As a matter of fact, on that particular avenue the houses on the right, coming from Newark to Elizabeth, are on an embankment right against the road, are they not?

A. Some of them set quite a distance back, some on the street.

Q. Some of them right on the street, are they not?

A. Some of them, yes; especially the right-hand side.

Q. Especially the right hand side. I am talking about the right-hand side. And do you recall people sitting, I think——

A. No, sir, I do not.

Q. Do not what?

A. Recall sitting—recall seeing people sitting. How could I?

Q. I did not finish my question. And during this entire time Mr. Shupe had his hand over your mouth and was doing these things to you?

A. No, sir; I did not say right there. I said this morning he started at Elizabeth Avenue, when we made the turn, when I asked him to go up Avon

Avenue. He started then to pull my dresses. I begged this man then to let me out. He turned the machine around and went along until we come to Elizabeth Avenue and Meeker Avenue. Then he started putting his hand over my mouth, when he struck Elizabeth Avenue and Meeker Avenue, which is a distance of one mile, or half the distance.

Q. Miss Jones, didn't you tell me this morning, when I asked you why you did not make an outcry or call somebody's attention on the stoops or on the street to this, when you came along Elizabeth Avenue, after his attack on you at Avon Street, that the reason you made no outcry at all on Elizabeth Avenue was that his hand was over your mouth, and you couldn't? Didn't you so state?

A. Why, it was off and on, yes; he was getting bad then. But it was at the moment when he got to Elizabeth Avenue and Meeker Avenue, I started to cry then. He was—he was a brute in his actions.

Q. Did you tell us the truth this morning?

A. Yes, I did. (Witness starts crying.)

Q. Yes. I do not want to excite you, only listen to my questions. When you said—— Now, I want you to calm yourself, Miss Jones. I just want the evidence. I understood you to say this morning that his first advance to you was made when you wanted—asked him to let you out at Avon Street, is that so?

A. Yes, that is right.

Q. And that then he was trying to raise your clothing, am I right?

A. Yes, that is right.

Q. And then, as you started over Elizabeth Avenue, you made no outcry because he had his hand over your mouth, is that right?

A. Why, I tried to beg the man off. I asked him to please stop. Why, a man, if he was a gentle-

man, wouldn't he have some respect for a woman?

Q. Yes. I am asking you. If you will only answer my question instead of arguing with me, we will get along much quicker. Am I right when I say that you this morning stated that as you started over Elizabeth Avenue you could not make an outcry, because he had his hand over your mouth?

A. He had; but I couldn't remember just where it was he started, though it was along Elizabeth Avenue somewhere.

Q. Well, that wasn't the question. At Avon Avenue, why didn't you make an outcry when he did not let you out at Avon Street?

A. Why——

Q. (continued). After you requested him to, and after his first—what you thought was his first attack?

A. Well, him a man of business, and a prominent man in town, wouldn't you think he would have some mercy for a girl? Would you think a man would do that to a girl?

Q. We are not arguing. Do you want us to understand now that the reason you did not cry out coming along Elizabeth Avenue was not because he had his hand over your mouth, but because you thought as a business man he would not do anything, which is it?

A. I begged him—I begged him not to. Why, I did not see the necessity of screaming at the time. But we came past—then I saw the location when I got past Meeker Avenue—I did, I know I did. The machine made some noise, too, you must understand.

Q. Yes, that is true. Did he have his hand over your mouth coming over Elizabeth Avenue, as you said this morning?

A. Yes, he did.

Q. Was the muffler open at any time on that machine?

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

By the Court:

Q. Was the defendant drunk?

A. Well, I don't know. I don't think he was. He did not appear to be.

Q. I thought I understood you to say this morning, when he left you off at Broad Street and some other street to go home, that he was in a terrible drunken condition. Did you say that?

A. No, sir.

Q. Then I am mistaken about it.

ELLA JONES, a witness produced on behalf of the State, being duly sworn according to law on her oath, saith:

Direct examination by Mr. O'Connor:

Q. Mrs. Jones, you are the mother of Mabel Jones, who just left the witness stand?

A. Yes, sir.

Q. And do you remember the evening of June 4th, 1912?

A. Yes, sir; I do.

Q. Tell us, in what condition was your daughter that evening when she came home?

Mr. Schleimer: Object.

The Court: Objection over-ruled.

Mr. Schleimer: Prays exception.

Exception allowed; sealed accordingly.

JAMES C. CONNOLLY, (seal)

Judge.

A. She was in a very——

Q. Speak loud, so everybody can hear, Mrs. Jones.

A. She was in a very excitable condition at the time when—I was up stairs at the time when she came in. When I came down, she was very excited, lying on the lounge, very excitable, with her hat on. I said "why Mabel, what in the world has happened——"

The Court: Do not tell what you said. Tell what she said.

A. Well, and so she—I came down, and then I unloosened her clothes and hat, and took off her hat, and her hair down——

The Court: Does the jury hear this lady?

Some of the Jurors: No, sir.

The Court: You see, you will have to talk louder, so the jury may hear you.

A. (continued) I took her hair down, and her hat off, and she was—still she was crying, very excitable and crying. I asked her what had happened, and she told me that she met this man, Mr. Shupe, when he was going up——

Mr. Schleimer: I ask that the conversation be stricken out.

The Court: You must not tell us what the conversation was. Only tell what she said happened to her.

A. Well——

Mr. Schleimer: Of course, I ask an exception to that.

Exception allowed; sealed accordingly.

JAMES C. CONNOLLY (seal)
Judge.

Q. Was there any particular incident brought to your attention by your daughter that night?

Mr. Schleimer: I object.
The Court: Question allowed.
Mr. Schleimer: Prays exception.
Exception allowed; sealed accordingly.
JAMES C. CONNOLLY, (seal)
Judge.

A. Why, she was—she was crying, and her clothes was all torn, and her limbs was all black and blue, and she was very excitable for three or four days, even at night time; I had an awful time.

The Court: We do not care about that part. Confine yourself to what happened there on that occasion.

A. I unloosened her clothes, then I quieted her down, and she told me what had happened to her.
Q. That is all. I do not want the details. She told you what happened?
A. What happened, and she told me it was——

The Court: She has told herself what happened.

Q. When was she examined by Dr. Devlin?
A. The following Saturday.
Q. What?
A. The following Saturday.

Mr. Schleimer: I presume this witness was present?
Mr. Stein: Oh, yes.

Q. How was that brought about?

Mr. Schleimer: I object.

Q. Where did you meet Dr. Devlin?

Mr. O'Connor: I will withdraw the question.

Q. Where did you meet Dr. Devlin that day?

Mr. Schleimer: I will object to it as immaterial.

The Court: Question allowed.

Mr. Schleimer prays exception.

Exception allowed; sealed accordingly.

JAMES C. CONNOLLY, (Seal)
Judge.

Q. Question repeated by stenographer.

A. I met him in my sister's house. She was very sick, and we went over there with the intention——

The Court: Do not mind about her condition.

A. (Continued) With the intention of having Mabel——

Q. We do not care about that. Tell us where the examination took place?

A. That is where the examination took place, over in my sister's house.

Q. The examination of your daughter?

A. Yes, sir.

Q. By Dr. Devlin?

A. Yes, sir; by Dr. Devlin.

Q. How long was your daughter home from work?

Mr. Schleimer: Object, as immaterial.

The Court: Question allowed.

Q. (Continued) If you know?

Mr. Schleimer prays exception.
Exception allowed; sealed accordingly.
JAMES C. CONNOLLY, (Seal)
Judge.

A. Well, she was home partly every day.

Q. What is that?

A. Every day she was home. I guess, well, she was home for near two months at the very least. She was home off and on; she would go to work and she would come back again, at least two months. For two months she would go to work for a short time, and then she would come back.

Mr. O'Connor: That is all.

Cross examination by Mr. Schleimer:

Q. What time, Mrs. Jones, that night, did your daughter get home?

A. Well, I should say around half-past ten.

Q. Were you up when she came in, or had you retired?

A. No; I was just going to bed, and I heard her come in; I came down.

Q. Any one else in the house?

A. Yes, sir; my husband was in the house, but he had retired.

Q. Your husband and who?

A. And my baby.

Q. How many rooms are there?

A. Seven.

Q. You occupy the entire house of seven rooms?

A. Yes.

Q. You stayed with your husband—your daugh-

ter, then, until she retired that night?

A. I stayed with my daughter, but my husband had retired.

Q. I corrected that. I said your daughter. You stayed with your daughter until your daughter had retired that night?

A. Yes; yes.

By the Court:

Q. You saw the condition of your daughter's clothing and person that night when you came down stairs?

A. Yes, Judge; I did.

ROBERT L. EATON, a witness produced on behalf of the State, being duly sworn according to law on his oath, saith:

Direct examination by Mr. O'Connor:

Q. Mr. Eaton, you are a member of the bar?

A. Yes, sir.

Q. And Justice of the Peace?

A. Yes, sir.

Q. I show you complaint marked Identification S-1——

Mr. Schleimer: For identification.

Q. (Continued) For identification. Was that complaint made before you?

Mr. Schleimer: Object, as immaterial, irrelevant and incompetent.

The Court: Well, on those grounds, I will

not refuse to have the witness answer the question. I shall allow the question.

Mr. Schleimer prays exception.

Exception allowed; sealed accordingly.

JAMES C. CONNOLLY, (Seal)
Judge.

A. Yes, sir; that complaint was made before me.

Mr. O'Connor: I offer that complaint in evidence, your Honor.

Mr. Schleimer: I object.

The Court: What is your objection founded on?

Mr. Schleimer: That it is not legal evidence; it can in no way constitute evidence against the defendant in a criminal trial; made without his hearing, without his knowledge, and can in no possible way be part of the record. It is immaterial, incompetent and irrelevant.

Mr. O'Connor: If your Honor please, that complaint was made on the 5th of June, 1912, the day after this alleged offence. It shows that the girl went promptly before a judicial officer and made a complaint against this man.

The Court: That is the day following?

Mr. O'Connor: The day following. She could not have made a complaint any sooner.

The Court: Question allowed.

Mr. Schleimer prays exception.

Exception allowed; sealed accordingly.

JAMES C. CONNOLLY, (Seal)
Judge.

Marked Exhibit S-1.

Q. Was William Shupe brought before you?

A. Yes, sir; he was.

Q. Do you recall when?

A. Within a day or two afterwards; I am not sure which.

Q. And by whom?

A. Why, he was brought before me in the Prosecutor's office in this building by County Detective Gallatian.

Q. What was said, if anything, to you or in your presence?

Mr. Schleimer: Object; unless he was cautioned that he was under arrest.

Mr. O'Connor: If your Honor please, it is not necessary that this defendant should be cautioned that he is under arrest.

Mr. Schleimer: I do not say that he was not cautioned that he was under arrest. I do not say cautioned under arrest, that he was not cautioned regarding his rights while he was under arrest.

The Court: Repeat the question.

Stenographer repeats question.

Mr. Schleimer: I object.

The Court: I do not think the reasons advanced by the attorney for the defendant are such as should govern me in rejecting the testimony or the evidence now sought through this witness. Question allowed.

Mr. Schleimer prays exception.

Exception allowed; sealed accordingly.

JAMES C. CONNOLLY, (Seal)
Judge.

A. May I answer the question, your Honor?

The Court: Answer the question.

A. Shupe was brought before me, and that complaint was read to him by me, and he said, "Well, I suppose I ought to plead not guilty to this," and I asked him if he had a bondsman. He said that he had and produced a bondsman, and his bail was, I think, taken then and there. After his bondsman had gone out of the room, Shupe came over and spoke to me, spoke to me personally; there was nobody else in the room that I recall, except, possibly, Mr. Gallatian. I am not sure whether he was there. He said, "You know me"; he said, "You know the boys over there, the Apgars and Russ Cullum, you know him." I said, "Yes, I know Russ." And he says, "I didn't think I was going to get in any trouble over this thing," and he used a very indecedent expression, your Honor.

Q. I would like to know what it was.

The Court: Tell what he said.

A. He said, "I didn't know I was going to get in any trouble over this; I didn't want anything. I had a kid out that night, and I wanted to get him fucked."

By the Court:

Q. Get what?

A. I wanted to get him fucked. I said to him, "You had better not talk to me; I don't want to talk to you about this," and he went out of the room.

Q. Is that all? Is that all he said, Mr. Eaton?

A. That is all the conversation took place between us.

Mr. Schleimer: It is understood I have an

objection to all of Mr. Eaton's testimony, so I now move to strike out.

The Court: I do not know what objections you got there on the record.

Mr. Schleimer: I now move that all the evidence adduced by this witness be stricken out, and the jury directed to pay no attention to it.

The Court: I refuse to grant the request of the attorney for the defendant.

Mr. Schleimer prays exception.

Exception allowed; sealed accordingly.

JAMES C. CONNOLLY, (Seal)
Judge.

Mr. Schleimer: No questions.

JOHN GALLATIAN, a witness produced on behalf of the State, being duly sworn according to law on his oath, saith:

Direct examination by Mr. O'Connor:

Q. Mr. Gallatian, you are the Chief County Detective, connected with the Prosecutor's office?

A. I am.

Q. You know William Shupe?

A. I do.

Q. Have you ever met him?

A. I have.

Mr. Stein: Louder.

A. I have.

Q. Have you ever had any conversation with him, in connection with this case?

A. Yes, sir.

Q. When, if you recall?

A. The first time I ever met Mr. Shupe was on the morning of June 5th, 1912, at the Prosecutor's office, up stairs.

Q. What was said by Mr. Shupe to you, if anything?

Mr. Schleimer: I object.

The Court: Objection overruled.

Mr. Schleimer: Prays exception.

Exception allowed; sealed accordingly.

JAMES C. CONNOLLY, (seal)

Judge.

A. At the time Mr. Shupe—at the time I met Mr. Shupe at the Prosecutor's office, Miss Jones and her father was in the front room of the office. Mr. Shupe and Mr. Vreeland came to the door and knocked, one or the other knocked. I opened the door and met the two gentlemen right there——

By the Court:

Q. Vreeland, did you say?

A. Yes. I stepped out in the room where they were, and closed the door. Mr. Shupe asked me what was going on, and I looked at him, and at that moment Mr. Vreeland introduced me to Shupe as Mr. Shupe. "Oh," I says, "you are the party that these parties inside are complaining against." He says "I suppose I am." "Well," I says, "they are in there now making a complaint against you, and they claim pretty hard things about you." He asked me what they claimed. I told him. I had already taken their entire statement, but was reducing it to writing when the knock came to the door. I told Shupe what the charge was and what the girl claimed in detail, as

much as I could at that time, and he said that it was all true, that he was foolish and had made a damn fool of himself. He said he wanted to get out of it the best he could.

Q. Was that the only conversation you had with him?

A. He asked me in regards to when he would be arraigned. I told him the Justice would be sent for and a warrant would be issued upon the complaint, and that he would be placed under arrest. He said, "well, I will go down and get a bondsman and come back up here." He did so, and returned in about an hour with Mr. Reutter, his bondsman, and they gave bail to await the action of the grand jury.

Q. Was there anything said?

A. This happened, the statement was taken of the Jones girl at 11.30 in the following morning, after this had happened.

Q. When Shupe returned with his bondsman was there anything said by him in addition to what you have testified to?

A. No. There was a whole lot more said that I didn't tell about.

Q. Well, tell me what was said?

A. I told him that the girl claimed that he had promised to take her to some friend's house and that instead of doing so he took her in another direction, and took her away against her will and her protest, against her protest. He said "yes, she acted like a baby, and was crying all the way after I got started." And I said she further claimed that you claimed you were a doctor, and that she claimed she was a virtuous girl; you said that you could tell whether she was a good girl or not, that you was a doctor, and that you put your finger in her vargina;" I said, "is that true?" and he said "Yes, I made a damn fool of myself, I did

that;" he used that expression. And he says afterwards, he says "I wanted to get the kid chauffeur a fuck," used that expression. And when, during the conversation, when he was referring to Miss Jones, he referred to her as a cunt; he used that vile expression instead of a girl, he said "I picked up with a cunt on the street."

By the Court:

Q. I did not hear that.

A. Why, whenever—in referring to the girl, instead of saying girl or anything, he would say, "I picked up a cunt on the street."

By Mr. O'Connor:

Q. Was there anything further said by Shupe at that time or any other time, that you recall?

A. As I remember it now, I have gone over all of it.

Cross examination by Mr. Schleimer:

Q. That is all was said, as you recall it?

A. That occurs to me now, yes.

Q. Yes. That was a year ago—a little over a year ago?

A. Yes.

Q. And since then you have handled a great many criminal cases, interviewed a great many witnesses, did you not?

A. Yes.

Q. You are sure, Mr. Gallatian, are you not, that Miss Jones said to you she requested Mr. Shupe to take her to a girl's house?

A. Yes.

Q. And that instead of stopping——

A. I may be mistaken about the girl. It was a friend or a girl, or some——

Q. Well, either a friend or a girl's house?

A. Yes.

Q. And instead of stopping at the girl or friend's house he went out——

A. He went elsewhere—took her elsewhere.

Q. Then you are positive about that. Just as positive as you are of the rest of the testimony?

A. Oh, yes. That was her claim, and that was his admission.

Q. Now, Mr. Gallatian, she did not tell you, not that she wanted to go to her friend's, or a girl's house, but she wanted to get a hat, did she?

A. That phrase of it I don't recall. I don't remember what she claimed.

Q. Now, let me ask you to reflect a moment and tell us whether it was not on the sixth that Mr. Vreeland and Mr. Shupe came?

A. Absolutely no. It was the morning of the fifth. They came in the office in the neighborhood of ten o'clock. They sat out in the outer office from, well, between 10 and 10:30, I should judge. They sat out in the office there some time before I went out and asked them what their business was, and I invited them in the main office and went over the case with them. The statement——

Q. Wasn't it the same day that the bail was given, as you told us?

A. No, sir. The bail? Yes, sir. The bail was given on that same day. The bail was given on June 5th.

Q. Yes.

A. No, I think not, though. The arrest was made the next day, I think, if I recall it right; the arrest was made the next day.

Q. Now, Mr. Gallatian——

A. (continued). I think so.

Q. Your recollection is that the arrest was made the next day?

A. I would not be positive now. There was some time given him for the purpose of getting a bondsman. Whether that was the following day or part of the day, I am not sure.

Q. Isn't this the time you have given, when you told us on direct——

A. What have I told you?

Q. As you have told us on direct, that Mr. Shupe said, all right, I will go get a bondsman and bring him back here, and he was gone thirty minutes, when he came back with Mr. Reutter, his bondsman, isn't that a fact, just as you told us on direct?

A. I think it was, yes.

Q. Wasn't it the same day the bail was given, this happened?

A. It strikes me it was the same day; I am not sure though.

Q. Do you recognize it, the 6th of June? I ask you whether or not that was the bond that John Reutter and Mr. Shupe signed?

Mr. O'Connor: You offer that in evidence, Mr. Schleimer?

Mr. Schleimer: One minute, please. I cannot offer anything in evidence on your side of the case, if I know the rules of law.

A. Well, that date is wrong, and to the best of my recollection it was on the 5th of June. It was not on the 6th, as I recall it.

Q. As you recall it?

A. This complaint was taken and the bond given, and the arrest made and bond given all on the same day.

Mr. Stein: Won't you ask to have all those papers go in?

Mr. Schleimer: I have stated that isn't proper evidence.

A. (continued). The statment there bears the correct date, whatever date that is, in the order I took it.

Q. You say now that your recollection, even in the face of the bond taken by the Justice of the Peace, is correct, or do you not think that you could be mistaken as to that exact date? Look at that date. I want to be fair.

A. No, I think the date is wrong there. Instead of the 6th of June, it should have been the 5th of June that the bond was given.

Q. You are relying entirely on your memory on that?

A. Yes, and a pretty good recollection of it.

By Mr. O'Connor:

Q. Mr. Schleimer asked you a question as to whether or not you had not examined a great many criminal cases, and you answered yes. Did you ever examine a case like this?

Mr. Schleimer: I object.

The Court: I do not see how that is going to be material, Mr. O'Connor.

CHARLES M. RUNYON, a witness being duly sworn according to law on his oath, saith:—

Direct examination by Mr. O'Connor:

Q. Mr. Runyon, you are a clerk in the County Clerk's office?

A. Yes, sir.

Q. I show you the minutes of this court. Will you please turn to the first entry in these minutes effecting this case?

A. Shall I read it?

Q. Yes.

Mr. Schleimer: No. One minute.

The Court: What is your objection, Mr. Schleimer?

Mr. O'Connor: Is it about the contents?

Mr. Schleimer: There is no question about the contents.

The Court: Just turn to the note. What is the question?

Q. Have you a record of that case at that page that you have turned to?

A. Yes, sir.

Q. Will you please read that record?

Mr. Schleimer: I object on the ground that this record is immaterial, incompetent and irrevalent, and illegal, and in no way—that is enough. That is an objection sufficient.

Mr. O'Connor: Your Honor, this is a record of this court. I did not know they were illegal.

Mr. Schleimer: As evidence in this case, yes.

The Court: Objection over-ruled, to allow the records of the clerk's office, so fas as this case in concerned, to be read.

Mr. Schleimer: Prays exception.

Exception allowed; sealed accordingly.

JAMES C. CONNOLLY, (sealed)
Judge.

Q. Proceed.

A. Yes. Indictment No. 15, State vs. William F. Shupe; indictment for assault and battery with intent, and so forth. Plea, not guilty. Bail, one thousand dollars. Surety, John Reutter. Trial, October 31st, 1912.

Q. What page of the minutes?

A. Page 289.

Q. Now, you will turn to the next entry in the minutes——

The Court: of what term? Has he given you the term?

Mr. O'Connor: He has given me the date, October, 1912.

Mr. Schleimer: What is the page?

Q. What page was that first entry made upon, Mr. Runyon?

A. It is on page 289.

Q. Now, turn to the next entry in this case. On what page is that?

A. 335.

Q. And what does that entry read?

Mr. Schleimer: Object on the ground it is immaterial, incompetent, irrevelant and illegal.

The Court: I will over-rule the objection.

Mr. Schleimer: Prays exception.

Exception allowed; sealed accordingly.

JAMES C. CONNOLLY, (sealed)
Judge.

A. Indictment No. 15, State vs William F. Shupe. Indictment for assault and battery. Retracts; plea of Non Vult. Sentence, December 13th, 1912. Bail continues.

Q. Plead non vult?

A. Yes, sir.

Q. Now then, turn to the next entry on the minutes.

Mr. Schleimer: May we not know the date?

A. December 9th, 1912.

Q. Now, the next entry, Mr. Runyon.

A. December 13th.

Q. What year?

A. 1912.

Q. Mr. Schleimer:

Q. Page ?

A. Page 337.

Q. Yes.

A. Indictment No. 15——

Mr. Schleimer: May I have my objection before it is read, that it is immaterial, incompetent and irrelevant and illegal, and without the offer in evidence of the book.

The Court: Overrules objection.

Mr. Schleimer: Prays exception.

Exception allowed; sealed accordingly.

JAMES C. CONNOLLY, (seal)
Judge.

A. Indictment No. 15, State v. William F. Shupe. Indictment for assault and battery with intent, and so forth. Sentence postponed until December 20th, 1912.

Q. And the next entry that you have in there?

A. Page 340, December 20th, 1912. Indictment No. 15, State vs. William F. Shupe. Indictment for assault and battery with intent. Retracts. Defendant pleads not guilty. Trial January 14th, 1913. Bail continued.

Mr. Schleimer: Objection, on the same grounds.

The Court: Objection overruled.

Mr. Schleimer prays exception.

Exception allowed; sealed accordingly.

JAMES C. CONNOLLY (seal),

Judge.

Q. Is that the last entry?

A. That is the last entry; yes, sir.

Mr. O'Connor: That is all.

The Court: Do you offer that in evidence?

Mr. O'Connor: I will offer the record in evidence. I offer the minutes of this Court in evidence.

Mr. Schleimer: Object, on the ground they are immaterial, irrelevant, incompetent and illegal.

The Court: Objection overruled.

Mr. Schleimer prays exception.

Exception allowed; sealed accordingly.

JAMES C. CONNOLLY (seal),

Judge.

Marked Exhibit S-2.

Mr. O'Connor: If your Honor pleases, I have just one more witness—Dr. Devlin. The doctor was here this morning; he was called away. He will be back here about 3 o'clock. With the exception of the doctor, the State will rest. Now, if the defense will consent to allow me to call the doctor later in the day, we can go on with the case.

Mr. Schleimer: Your witness should be here, and I will ask that the State call the doctor. The doctor could have been put on this morning.

The Court: The Court will take a recess for fifteen minutes.

HUGH J. DEVLIN, a witness produced on behalf of the State, being duly sworn according to law, on his oath saith:

Direct examination by Mr. O'Connor:

Q. Doctor, where are you practicing?

A. Newark, N. J.

Q. Newark. How long have you been practicing there?

A. Eight years last May.

Q. Do you know Mabel Jones?

A. Yes, sir.

Q. Were you ever called by her professionally?

A. Yes, sir.

Q. When?

A. On June 8th.

Q. And what was the purpose of that visit?

A. I was attending her aunt, on 94 Market Street, and she was visiting there with her mother. Her mother asked me to examine her, and see if I could discover——

Mr. Schleimer: I object to what her mother asked him.

The Court: Only tell what you did in consequence of what the mother said.

A. Well, I examined the lady, and before the

final examination, externally, I could discover nothing, other than that she appeared to be suffering from some depression of some sort, or was worrying about something which she tried to conceal from me. I then told them I could discover——

Mr. Schleimer: Don't, dont.

The Court: Do not tell what you said; tell what you did.

A. Well, I later examined her.

Q. What did you find, Doctor?

A. I found her, in her physical condition, very bad.

Q. You say her physical condition was very bad?

A. Yes, sir.

Q. In what respect?

A. In the fact that she seemed to be suffering under a depression, or something. Something bothered her mind.

Q. You examined her other than that?

A. After that, I then questioned her, and she said——

Mr. Schleimer: I object to any——

The Court: You must not tell what she said, but tell what you did in consequence of what she said.

A. Well——

Q. You can say she spoke to you, and that is as far as you can go on that; and then tell what you did.

A. I spoke to her, and the conversation led to my making a further examination of her person.

Q. And what did you find?

A. I found on examining her person, her limbs and close to the vulva—that is, the vagina—marks,

black and blue marks, and scratches, as though it had been torn by a finger-nail in a struggle of some sort.

Cross examination by Mr. Schleimer:

Q. You say as though it was caused by finger-nails. From your experience as a physician, what else could have caused it?

A. My experience as a physician, that the torn tissue that I found would prove to me that it must have been torn in some sort of a struggle, because she had complete lacerations.

Q. What else besides the lacerations, Doctor?

A. Blue marks, echymosis of the skin, caused by pressure or pinching of the tissue.

Q. Contusions?

A. Yes, you consider them on the class of contusions.

Q. In your opinion, in addition to what you have stated, were there any other contusions?

A. No other contusions, only around the inner part of the knee joint.

Q. And a contusion such as you found she had, continues how long after the production of it, or cause of it?

A. Oh, those contusions could come there for twelve days after.

Q. Yes.

A. Just like a black eye.

Q. And that was the only time that you had examined her. Was that the only time that you examined her?

A. I examined her on the Monday following, the tenth of June.

A. And they were still there?

A. Yes, sir.

Q. Did you then again examine her?

A. No, sir.

Q. Now, did you examine her prior to the eighth of June?

A. No, sir.

Q. Is it a fact that she told you that she had been suffering as she was then suffering for one week?

A. She told me that she had been suffering during the week.

Q. She did not use the words "for a week"?

A. No, sir.

Q. You are positive of that, doctor?

A. Positive.

Q. Now, give me her exact words about that? About the time she had been suffering.

A. Well, if I bring that in, I will have to tell the whole conversation.

Q. I want the exact words about that one circumstance, and that is all you can tell us, about the condition?

A. Well, I examined the lady——

Q. I am asking you what she said about how long she had been suffering?

A. During the whole week.

Q. And those were her exact words?

A. Exact words.

Q. That is what I want, Doctor. And you, as a physician, say now, that in your opinion these wounds, lacerations and contusions could have been caused in no other way that by finged nails?

A. I don't say in no other way.

Q. I am asking you whether you say so?

A. I do not say, no.

Q. In what other way could they have been caused?

A. They could have been caused by any instrument if it was used; could be caused by a knife;

could be caused by anything. I say there was lacerations, such as would be caused by the finger nails.

Q. The contusions, if I am right, can be caused by blows?

A. Contusions can be caused by pinching.

Q. Yes.

A. (continued) And can be caused by a blow.

Q. And can be caused by falls?

A. And can be caused by floors if the tissue come

Q. I said falls, not floors?

A. Not in that position, no.

Q. Not in that position?

A. No, sir.

Q. Not in that position. And a person falling and slipping, could not, fall, straddling something, coming in contact with it?

A. If a person fell from a height and straddled, they would have more than contusions.

Q. I am asking you whether or not contusions could not be caused by slipping and falling from a couch? I am asking you now as a physician.

A. Could be, yes.

Mr. Schleimer. That is all.

Mr. O'Connor: State rests.

Opening for the defence by Mr. Schleimer.

AUGUST SKILLMAN, a witness produced on behalf of the Defendant, being duly sworn according to law, on his oath saith:—

Direct examination by Mr. Schleimer:

Q. What is your occupation?

A. Chauffeur.

Q. Were you a chauffeur in June, 1912?
A. Yes, sir.
Q. For whom?
A. Mr. Shupe.
Q. For whom?
A. Mr. Shupe.
Q. Do you recall the night of the fourth of June?
A. Yes, sir.
Q. Where were you in the neighborhood of nine o'clock that night?
A. On Broad Street.
Q. Well, Broad Street and what?
A. And William.
Q. And what City?
A. Newark.
Q. Who was with you?
A. Mr. Shupe and Mr. Smith.

By Mr. O'Connor:

Q. Who?
A. Smith.

By Mr. Schleimer:

Q. Speak louder so we can all hear you.
A. Mr. Shupe and Mr. Smith.
Q. What were you doing, walking or riding?
A. I was showing Mr. Smith the car. He was going to buy it—his boss was going to buy it.
Q. Whose car?
A. Mr. Shupe's car.
Q. What happened at that corner?
A. We were going to leave Mr. Smith off. He was going home. After this girl walked up.
Q. Did you know her?
A. No, sir.
Q. What happened?

A. And Mr. Smith says how do you do, and they spoke a couple of words that I didn't catch.

Q. Who did?

A. They said something——

Q. Who do you mean by they?

A. The girl and Mr. Smith.

Q. Yes.

A. They had a conversation; I didn't hear it, but I was sitting in the car. They were standing on the sidewalk, and she got in the car.

Q. Where was Mr. Shupe?

A. He was sitting in the car.

Q. In the car?

A. Yes, sir.

Q. Go ahead.

A. And she got in the car. I looked around and Mr. Shupe said go ahead.

Q. Yes.

A. So, he says, "Go over Washington Street."

Q. Who, if any one, when you started, after he said go ahead, was in the front seat with you?

A. No other.

Q. Where was Smith?

A. In the rear.

Q. With whom?

A. With Mr. Shupe and the girl.

Q. All right. Go ahead.

A. I went up William Street to Washington, turned down Washington Street and went up Clinton Avenue, and Mr. Shupe says, "Go for a little ride, Gus," so, I looked around, and I was mad because I wanted to go home.

Q. It was after your hours, was it?

A. Yes, sir.

Q. Go ahead.

A. So, I went down Elizabeth Avenue all the way down to Chancellor Avenue.

Q. Yes.

A. Up Chancellor Avenue to Clinton Place.

Q. Right there. Do you remember the way you turned from Elizabeth Avenue into Chancellor Avenue?

A. To the right.

Q. To the right. Go ahead.

A. Went up Chancellor Avenue to Clinton Place.

By Mr. O'Connor:

Q. What place?

A. Clinton Place, and turned to the right on Clinton Place into what—into Clinton Place, went over Clinton Place to Weequahic Avenue, and turned right again, which brought me right back into Elizabeth Avenue.

By Mr. Schleimer:

Q. Yes.

A. And then turned left on Elizabeth Avenue, back into Newark town.

Q. What kind of a road is Elizabeth Avenue?

A. Good road.

Q. What kind of a road is Chancellor Avenue?

A. Why, that is a dirt road, but it is very good. A lot of people use it.

Q. Had you been over that road before?

A. Yes, sir.

Q. Why did you take Chancellor Avenue?

A. Well, I just took it for a very short ride.

Q. Why did you take Chancellor Avenue, in preference to Wilbur, Vassar or Goldsmith Avenue?

A. Because the roads are not as good.

Q. At any time that night from the time you left Broad and William Street until you returned, were

you this side of Chancellor Avenue—that is, west of Chancellor Avenue?

A. No, sir.

Q. What, if anything, was said, when the girl got out of the car, by her?

A. The only thing she said, she said "good night."

Q. Did you hear her say "good night"?

A. Yes, sir.

Q. Did you at any time on that ride, from the time you left Broad and William Street until the time Miss Jones got out of that car, leave your car?

A. No, sir.

Q. Were you in that car all of the time?

A. Yes, sir.

Q. Did the car stop at any time?

A. No, sir.

Q. Were the lights on the car out at any time during that ride?

A. No, sir.

Q. Did you hear any screams or calls for help?

A. No, sir.

Q. What make car was this?

A. Peerless.

Q. And what passenger?

A. Seven passenger.

Q. Then, let me see if I know anything about it, so the jury, if they don't know, may know something about a Peerless seven. Your seat is in front?

Q. With a seat to your left? Right-hand drive car?

A. Right-hand steer.

Q. And immediately behind your seat there are two seats closed up and turned around?

A. Yes, sir.

Q. And immediately behind those two seats is the rear seat, called the tonneau, which will hold three passengers?

A. Yes, sir.

Q. And the passengers in the rear seat——

A. Yes, sir.

Q. Or on the two rear seats, if they are occupied, if there are seven passengers in the car, are facing your back?

A. Yes, sir.

Q. And you are—they are looking in the same direction you are?

A. Yes, sir.

Q. So that in talking, they would talk in the direction——

A. Yes, sir.

Q. That you were going, and sitting?

A. Yes, sir.

Q. Now, after you had been going some time, did any one occupy the seat with you?

A. Yes, sir.

Q. Who?

A. Mr. Smith.

Q. Well, where did you get to when he occupied that?

A. Why, down Elizabeth Avenue.

Q. Near what?

A. Near the railroad crossing, the first railroad crossing.

Q. That is the railroad crossing by the home, in Newark?

A. The old men's home.

Q. How many railroad crossings did you cross?

A. One. This was the only railroad crossing.

Q. That is the crossing in Newark, the Newark branch of the Pennsylvania?

A. Yes; freight.

Q. That runs on the level with the ground?

A. Yes, sir.

Q. And on the left as you go along is the home for aged people?

A. Yes, sir.

Q. And that is before you strike Weequahic Park?

A. Yes, sir.

Q. Now, tell us about Elizabeth Avenue. Is that a dark, dingy avenue, or not?

A. No, sir. It is well lighted.

Q. By what?

A. Arc lights.

Q. Travelled?

A. Sir?

Q. Is it a travelled road?

A. Oh, yes, sir.

Q. Well, much or not?

A. Why, it is the main street.

Q. Any trolley cars on it?

A. Yes, sir.

Q. What line?

A. Mount Prospect and Main Line.

Q. Any other line? The Main Line. By that you mean the line running from Newark to Plainfield?

A. Yes, sir.

Q. Passes through Elizabeth. When you arrived that night, were there other vehicles on the road?

A. Quite a few.

Q. People on the road?

A. Yes, sir.

Q. Did you get off into any unused road in the wilderness that night at any time?

A. No, sir.

Cross examination by Mr. O'Connor:

Q. What is your name?

A. Gustave Skillman.

Q. Gustave?

A. Yes, sir.

Q. How do you spell it?
A. (Witness spells names) A-u-g-u-s-t-u-s.
Q. How do you spell the last name?
A. S-k-i-l-l-m-a-n.
Q. Where do you live?
A. 70 Avon Place, Newark.
Q. Are you a married man?
A. No, sir.
Q. How long have you lived there?
A. For the last year and a half.
Q. Where did you live before that?
A. Burnett Street.
Q. What number?
A. Seventy-one.
Q. How long did you live there?
A. Fourteen years.
Q. How old did you say you are?
A. Twenty-three.
Q. Where did you live before that?
A. On Plane Street.
Q. What number?
A. 242.
Q. How long did you live there?
A. Oh, about seven years.
Q. Now, where were you born?
A. Trenton.
Q. When did you move to Newark?
A. In 1890.
Q. Is your father living?
A. Yes, sir.
Q. Is your mother living?
A. Yes, sir.
Q. Who are you living with?
A. With my parents.
Q. With your father and mother?
A. Yes, sir.
Q. In Newark?

A. Yes, sir.
Q. Are you working for Mr. Shupe now?
A. No, sir.
Q. How long since?
A. About eight months.
Q. Eight months?
A. Yes, sir.
Q. How long did you work for Mr. Shupe?
A. About one year.
Q. Where did you work before that?
A. Auto. Renting Company.
Q. How long did you work there?
A. Two years.
Q. Where did you work before that?
A. For the Packard Renting Company. That is a different concern.
Q. How long did you work there?
A. A year and a half.
Q. Before that?
A. Before that I worked for Mr. Hardin.
Q. Doing what?
A. Driving for him, private.
Q. Coachman?
A. No, sir; chauffeur.
Q. Chauffeur. How long did you work for Mr. Hardin?
A. About three months.
Q. And where did you work before that?
A. For J. W. Mason Automobile concern, on Halsey Street.
Q. How long did you work there?
A. About a year.
Q. What business, if you know, is Mr. Shupe engaged in?
A. Real estate.

Mr. Schleimer: Object, as immaterial and not cross examination.

The Court: I suppose it is not cross examination.

Mr. Schleimer: It is not material.

The Court: It is not material.

Q. Was the machine stopped at the corner of William and Broad Street?

A. Yes, sir.

Q. How long did it stop?

A. About five minutes.

Q. Where did you go from there?

A. Go over Broad.

Q. What part of Broad?

A. We were going down Broad Street.

Q. South Broad, isn't it?

A. South Broad; yes, sir.

Q. And then you circled and turned back again, didn't you?

A. Yes, sir.

Q. And you stopped at William?

A. Yes, sir.

Q. Who told you to do that?

A. Mr. Smith was going to get off there.

Q. Off where?

A. William and Broad.

Q. Did he get off?

A. No, sir.

Q. How long have you known Mr. Smith?

A. About three years.

Q. Been in his company before?

A. Yes, sir.

Q. Where does Mr. Smith live?

Mr. Schleimer: Object. It is not cross examination.

The Court: Well, it is not cross examination.

Mr. O'Connor: Well, if your Honor please, if Mr. Smith wanted to get off there, he might not have lived at that particular point. Naturally he would be about to get off where——

The Court: I think that point is very well raised. I shall allow the question.

Mr. Schleimer prays exception.

Exception allowed; sealed accordingly.

JAMES C. CONNOLLY, (Seal)
Judge.

Q. Did Smith get off?

A. No, sir.

Q. Why didn't he get off, if you know?

A. I don't know.

Q. Eh?

A. I don't know.

A. You don't know. Who was he talking to while he was there?

A. He was talking to me the first part of it.

Q. Who told you to drive to the corner of William Street and Broad?

A. Why, I drove there myself, to let Mr. Smith off.

Q. How did you know that Mr. Smith wanted to get off there?

A. He said he did.

Q. When he did not get off, did you ask him why?

A. No, sir.

Q. Well, when he did not get off, where did he want to be taken to?

A. He didn't say nothing.

Q. Where did Mr. Shupe want to be driven to?

A. Mr. Shupe just told me to take a little ride.

Q. Take a little ride. A little joy ride?

Mr. Schleimer: I object, if the Court please. That interjection is improper and unnecessary.

Mr. O'Connor: I will withdraw it, and apologize for it.

Mr. Schleimer: Accepted.

Q. When you started off were you driving the car?

A. Yes, sir.

Q. And where was Shupe sitting?

A. In the back.

Q. And where was Smith?

A. In the back.

Q. Facing Shupe?

A. They were sitting alongside of each other.

Q. And the girl?

A. Was in the centre.

Q. Between the two men?

A. Yes, sir.

Q. Which way was the car facing on William Street?

A. West.

Q. And from William Street you drove where?

A. Washington Street.

Q. Then which way did you turn?

A. We turned south on Washington Street.

Q. Who told you to turn south?

A. Mr. Shupe.

Q. Then how long—how far along Washington Street south did you go?

A. All the way to Clinton Avenue.

Q. And then which way did you turn?

A. Up Clinton Avenue, west.

Q. Who told you to turn?

A. I turned myself.

Q. Shupe did not tell you where to drive?

A. No, sir.

Q. And you went along Clinton Avenue how far?

A. To Elizabeth Avenue.

Q. Elizabeth Avenue, and along Elizabeth Avenue?

A. I hesitated there.

Q. You hesitated?

A. Yes, sir.

Q. Why?

A. Waiting for my orders.

Q. Why didn't you wait for your orders in Clinton Place?

A. Clinton Place?

Q. Yes; or Clinton Street?

A. Clinton Avenue.

Q. Or Clinton Avenue.

A. I don't know, just kept on going.

Q. Why did you hesitate for orders on Elizabeth Avenue?

A. Well, I did not know which way to go then.

Q. How was it you knew which way to drive on Clinton Avenue?

A. Because that is the only way to go.

Q. Couldn't you have gone down?

A. You could.

Q. But you did not, did you?

A. No, sir.

Q. And after you came over Clinton Avenue and entered upon Elizabeth Avenue, you drove along Elizabeth Avenue, didn't you?

A. Yes, sir.

Q. And passed the blacksmith shop on Elizabeth Avenue?

A. No, sir.

Q. Did you go up that far?

A. No, sir.

Q. Where did you turn on Elizabeth Avenue?

A. Chancellor Avenue.
Q. How did you turn?
A. To the right.
Q. Who told you to turn?
A. Nobody.
Q. On Chancellor Avenue, where did you go?
A. Up to Clinton Place.
Q. Clinton Place?
A. Yes, sir.
Q. When you went along Chancellor Avenue, did you turn left or right to get into Clinton Place?
A. Right.
Q. Right. And Chancellor Avenue is all lighted up?
A. No, sir; just small lights.
Q. Small lights?
A. Small country lights.
Q. And from Chancellor Avenue you turned into Clinton Place, and where did you go along Clinton Place?
A. Went over as far as Weequahic Avenue.
Q. Weequahic Avenue?
A. Yes, sir.
Q. Who told you to drive along Clinton Avenue—Clinton Place, rather?
A. Nobody; that was just a little trip I picked out myself for a ride. I was told to take a little ride.
Q. You were not under orders then?
A. I was told to take a little ride, so that is the place I picked out for a ride, just around there, that was pretty short.
Q. And along Clinton Place, Clinton Avenue, or Clinton Place, rather, I think was the last street you were driving, was it?
A. Yes, sir.
Q. Is that right?

A. Clinton Place runs north—north and south—I turned back north.

Q. You went north?

A. Yes, sir; after I turned around Clinton Place.

Q. And that brought you where?

A. To Weequahic Avenue.

Q. Weequahic Avenue. And after you got on Weequahic Avenue, where did you go?

A. To Elizabeth Avenue.

Q. To Elizabeth Avenue?

A. Yes, sir.

Q. How far west—when you turned, how far west were you when you turned into Elizabeth Avenue, from the point where you entered into Chancellor Avenue?

A. About two blocks.

Q. Two blocks. And then when you entered upon Elizabeth Avenue two blocks west of where you turned in from Elizabeth Avenue to Chancellor Avenue, which way did you go?

A. To the left, towards Newark again.

Q. What street?

A. Elizabeth Avenue.

Q. From there where?

A. To Clinton Avenue.

Q. And from there?

A. Down Clinton Avenue to Washington Street.

Q. And from there?

A. To Kinney Street.

Q. And where did you drive from there?

A. Stopped on the corner of Kinney and Broad.

Q. Why did you stop?

A. Mr. Shupe told me to stop there.

Q. What was the reason?

A. I don't know.

Q. Shupe told you to stop at Kinney and Broad?

A. Yes, sir.

Q. And then where did you drive?
A. I drove into the garage.
Q. Where?
A. Halsey Street—287 Halsey Street.
Q. Now, did you drive this girl home?
A. No, sir.
Q. Why?
Q. Was she crying?
A. No, sir.
A. I don't know.
Q. Now, from the time that you left William Street until the time that you stopped on East Kinney and Broad Street, did that machine stop?
A. No, sir.
Q. How then did Smith get in from the rear seat to the front seat?
A. He jumped over the front seat.
Q. Where did that happen?
A. On Elizabeth Avenue.
Q. Whereabouts?
A. Near the old men's home.
Q. Alms house. That is the old alms house there, the brick building?
A. Yes, sir.
Q. Was that as you were leaving Newark?
A. Yes, sir.
Q. (continued) That that happened?
A. Yes, sir; to the left.
Q. Mr. Smith got in on the front seat with you?
A. Yes, sir.
Q. Do you know why?
A. No, sir.
Q. Why did you suppose he did?
A. I don't know.

Mr. Schleimer: I object.
Mr. O'Connor: I will withdraw it.

Q. Now, then Smith took the front seat with you, did he say anything?

A. No, sir.

Q. Was there any conversation passing between you and Smith?

A. Yes, sir.

Q. What was it?

A. About selling the car.

Q. Well, what was it?

A. He was talking about selling the car to his boss, and I was supposed to give him a demonstration of the car the next day, which I did.

Q. Oh, you were going to give him a demonstration the next day——

A. No, his boss.

Q. (continued) I thought you said you had him out that night?

A. I had the chauffeur out; I was giving the chauffeur a ride. The next day I had to take the boss out; Mr. Smith's boss.

Q. Oh, Mr. Smith was a chauffeur?

A. Yes, sir.

Q. I thought you said that Mr. Smith was arranging to purchase this car?

A. No, sir. His boss was purchasing the car.

Q. Are you sure you did not say that. Now, after Smith got in the front seat, did he remain with you until you come to Kinney Street?

A. Yes, sir.

Q. And in the rear of the car, in the last seat, was seated Shupe and Miss Jones?

A. Yes, sir.

Q. How fast were you driving?

A. Between eighteen to twenty miles an hour.

Q. Did you look around?

A. No, sir.

Q. You did not know what was happening in the back of the car then, did you?

A. No, sir.

Q. You say this machine was not driven into the woods or some secluded place?

A. No, sir.

Q. And stopped?

A. No, sir.

Q. Did you get out of the car any time between the time you left William Street and the time you got to Kinney Street?

A. No, sir.

Q. Did any body?

A. No, sir.

Q. Had you seen Miss Jones any time before you picked her up——

Mr. Schleimer: I object, as not cross-examination.

Mr. O'Connor: This cross-examination should be allowed in a case of this kind.

The Court: The manner in which the question is put, is not proper, I think. It may have been a year before.

Mr. O'Connor: That may be.

The Court: Then I will not allow the question.

Q. Did you see Miss Jones any time before the time you met her at the corner of Broad and William Street?

A. No, sir.

Mr. Schleimer: Now, that is the same question. I do not think it is fair after the court rules.

The Court: It is the same question. Now, I will not allow that.

Q. Do you recall Miss Jones crying, or scream-

ing out loud, and asking you to go to her assistance?

A. No, sir.

Re-direct examination by Mr. Schleimer:

Q. Was there anything to prevent your having heard Miss Jones screaming out loud, if she had called for assistance?

A. No, sir.

Q. When you turned around before you turned into Elizabeth Avenue, to get instructions, was Mr. Shupe or anyone else holding his hand over Miss Jones' mouth?

A. No, sir.

Q. Did you have Mr. Crabb over this route?

A. Yes, sir.

Q. When?

A. Before——

Mr. O'Connor: Well, your Honor, what difference does that make?

Mr. Schleimer: I am going to put a man on the stand who is a surveyor. Unless I connect it, the State will say we do not know it is the same route.

Q. When did you go over this route last?

Mr. O'Connor: Why, if your Honor pleases, it does not show that he took— I do not see how that is material—who he took over this route or how many times he went over that route. Whatever he did subsequent to this case is not relevant in that respect.

The Court: Well, I think it is. This witness swears that he did not go outside of the

City of Newark that night, and it may be that his testimony in that respect is founded upon subsequent investigation, and by taking somebody sometime and pointing out the territory which his car covered on that night, and I think that under those circumstances it would be material.

Mr. Schleimer: That is my only purpose.

Q. Do you know Mr. Crabb?
A. Why, not very well.
Q. You know who he is?
A. I know who he is.
Q. Did you take him over that route?
A. Yes, sir.
Q. When you went with Mr. Crabb, did you take the exact route you took that night?
A. Yes, sir.

By Juror No. 3:

Q. What time did you leave William and Broad Streets when Miss Jones got in the car?
A. It was around 9 o'clock.
Q. What time did you get back to Kinney Street?
A. About half past nine, probably, quarter to ten. I am not positive.

By Mr. Schleimer:

Q. About how many miles did you cover in that time?
A. Probably, about eight miles.

Re-cross examination by Mr. O'Connor:

Q. You said a moment ago that you were driving eighteen or twenty miles an hour?

A. Yes, sir.
Q. Well, now, you left at 9 o'clock——

Mr. Schleimer: I do not believe that the Prosecutor intends anything that is not fair, or to misquote the testimony. He said, in answer to the juror's question, about nine.

Q. About nine. You have testified you were driving eighteen or twenty miles an hour?
A. Yes, sir.
Q. And you mean to say that from the time you left William Street, at nine, or about nine o'clock, until half past ten, or a quarter after ten——

Mr. Schleimer: He said half past nine or a quarter to ten.

Q. (continued) that you only drove eight miles?
A. Yes, sir.

By Mr. Schleimer:

Q. You said you got back around half past nine or a quarter to ten——
A. About, yes, sir.
Q. (continued) in answer to the juror's question?

Mr. O'Connor: What time?
Mr. Schleimer: Between half past nine and a quarter to ten.

By Mr. O'Connor:

Q. You got back to Kinney Street at half past nine?
A. About half past nine, or a quarter to ten.

By the Court:

Q. During the period of time that you were away on this trip, did you stand any place, or did you keep going all the time?

A. Kept going all the time.

CHARLES SMITH, a witness produced on behalf of the defendant, being duly sworn according to law, on his oath saith:

Direct examination by Mr. Schleimer:

Q. Where do you live, Mr. Smith?

A. 32 Lafayette Street.

Q. Hoboken, Europe, or where?

A. Newark.

Q. We do not know that. What is your occupation?

A. Chauffeur.

Q. Do you remember the night of the 4th of June?

A. Yes, sir.

Q. Who were with you?

A. Mr. Shupe and Mr. Skillman.

Q. You will have to talk louder.

A. Mr. Shupe and Mr. Skillman.

Q. When were you with Mr. Shupe and Mr. Skillman?

A. At Broad and Market Streets, at 9 o'clock.

Q. Talk to me, then we will all hear.

A. At Broad and Market Streets, at 9 o'clock.

Q. Newark?

Q. What transpired there while you were there?

A. What was that again?

Q. What took place then?

A. I was talking to Mr. Shupe about the car.

Q. Yes. Why?

A. Because my boss wanted to buy a car.

Q. Yes. Who, if anyone, came along or came there while you were there, if anybody?

A. Nobody, at the corner of Broad and Market.

Q. Well, then where did you go?

A. We went down Broad Street, south.

Q. And then where, if anywhere?

A. We took a little ride. We took a little ride, and then we turned around and we was going to pull in the garage. And we turned around and we was going to take a little ride.

Q. Now, talk as loud as you can, Mr. Smith, so we can all hear you.

A. We started down Broad Street to take a little ride, and it was getting late, so Mr. Shupe says, "Well, I guess we will pull in the garage."

The Court: Speak louder.

Q. Cannot you speak any louder?

A. No, sir; but I will try.

Q. Do the best you can.

A. We was going down Broad Street to take a little ride. Mr. Shupe said, "Well, Gus, I guess we better pull in the garage, it is getting late." I said, "Before you do, stop at the corner of William and Broad, until I get off." Because I live at 32 Lafayette Street, near Broad there. We was going down Broad Street. I looked on the other side of the street; there was a girl coming up. I looked over. She smiled, and I smiled at——

Q. Did you know the girl?

A. I have seen her before. I was introduced to her before. I said, "Gus, stop at the corner of William and Broad Streets and let me out." I got out of the car and was talking to him about arrangements for the morning—about where I could

meet him so I could show the boss my car. So this girl, she came up and she smiled, and I smiled. I says——

The Court: Speak louder.

A. This girl came up and she smiled. Of course. so I smiled, too. I said, "Where are you going?" She said, "I am going to a friend's house." She said. "If you don't mind, why, you can take me up there." So, I didn't own the car, and I wasn't driving the car at that time. So I turned around and asked Mr. Shupe, and he said sure. So the door wasn't opened. She opens the door and gets in. I goes in too with her—in the back. So we went west on William Street, south on Broad Street, on Washington Street to Clinton Avenue, up Clinton Avenue to Elizabeth Avenue, down Elizabeth Avenue to Chancellor Avenue, up Chancellor Avenue to Clinton Place, over Clinton Place to Weequahic Avenue, down Weequahic Avenue to Clinton Avenue, down Clinton Avenue over to Washington Street, over Washington Street to Kinney. We stopped at the corner of Kinney and Broad and the girl got out, said "good-night" and smiled. That is the last I seen of the girl.

By Mr. Stein:

Q. What did the girl say?

A. The girl got out and smiled and said "good-night."

By Mr. O'Connor:

Q. Smiled?

A. Yes.

By Mr. Schleimer:

Q. Did you notice the road you travelled that night?

A. Yes, sir.

Q. Had you been over it before?

A. Yes, sir.

Q. In what?

A. In an automobile.

Q. Frequently or not—often or not?

A. Yes, sir; quite often.

Q. Quite often. Are you positive that your statement that you came—that you turned up Chancellor Avenue from Elizabeth Avenue is true?

A. Yes, sir.

Q. Is it a fact that in the position I am in now, going from Newark to Elizabeth, over Elizabeth Avenue——

A. Yes, sir.

Q. (continued) In the position that I am in, going from Newark to Elizabeth, over Elizabeth Avenue, when you strike Chancellor Avenue which way do you turn, to the right or left, to get on Chancellor Avenue?

A. We turned right.

Q. Right. When you went up Chancellor Avenue and made your next turn, how did you turn to get on the next avenue?

A. Right.

Q. (continued) To the right or left?

A. Right.

Q. Right. Then you were on what street?

A. Clinton Place.

Q. Then going along Clinton Place, when you made your next turn, did you turn right or left?

A. Left.

Q. That took you to what street?

A. Weequahic Avenue.

Q. Going along Weequahic Avenue, when you made the next turn, what turn did you make?

A. Left.

Q. When you turned Weequahic Avenue to the left, on what road did you enter?

A. Elizabeth Avenue.

Q. Then where did you go?

A. Right up Elizabeth Avenue to Clinton Avenue.

Q. And from Clinton Avenue where?

A. Up Clinton Avenue to Washington Street.

Q. What city?

A. Newark.

Q. Then, at any time that night were you west of Chancellor Avenue?

A. No. sir.

Q. Were you at any time that night while you were in that car with Mr. Shupe and Skillman, on this entire ride, west of Chancellor Avenue?

A. No, sir.

Q. When you left the corner of William and Broad Streets where were you in that car?

A. In the back seat.

Q. You told me, or rather you said in your statement that you had gotten out of the car at William and Broad?

A. Yes, sir.

Q. Who, if any one else, got out of the car at that corner?

A. Nobody.

Q. What seat was Mr. Shupe in?

A. Rear.

Q. Where was Skillman?

A. Front.

Q. Did they remain in the car until you got in and they started off?

A. Yes, sir.

Q. Now, when you got in what seat did you take?

A. I took the rear seat on the left.

A. And who else was in that seat?

A. Why, the young lady and Mr. Shupe.

Q. How far did you go before you left that—did you leave that seat during the ride?

A. I did. At Elizabeth Avenue.

Q. Why?

A. Why, because the girl turned her back to me and put her leg on Mr. Shupe.

Q. What else? What else prompted you? Any reason you wanted to leave?

A. I thought two was a couple and three was a crowd.

Mr. Stein: I did not hear that.

A. I said I thought two was a couple and three was a crowd.

Q. Where did you go?

A. I stayed right there and got in the front seat.

Q. And when you got in the front seat, who did you sit alongside of?

A. Mr. Skillman.

Q. And did you remain on that seat?

A. Yes, sir.

Q. Until when?

A. Until I got out at the garage, 287 Halsey Street.

Q. Was that after Miss Jones had gotten out?

A. Yes, sir.

Q. Now, when you left that seat to get in the front seat, on Elizabeth Avenue, I think you said?

A: Yes, sir.

Q. Had there been any disturbance between Shupe and Miss Jones?

A. No, sir.

Q. Had she made any outcry?

A. No, sir.

Q. Did she complain to you?

A. No, sir.

Q. From the time you got into the front seat until she left that car?

A. No, sir.

Q. Was there any outcry?

A. No, sir.

Q. Was there any disturbance of any kind?

A. No, sir.

Q. Did you at any time that night on that ride get on a dense road in a wilderness?

A. No, sir.

Q. At any time that night during that ride was that car stopped?

A. No, sir.

Q. Were the lights turned out?

A. No, sir.

Q. At any time during that ride did you and Skillman leave that car, from the time you started at William and Broad Street until you left this young lady out on West Kinney Street?

A. No, sir.

Q. Who were you working for then?

A. I was working for Mr. O'Malley. Mr. O'Malley, a Brooklyn broker, 44 Court Street, Brooklyn.

Q. What were his initials? You were not working for Mr. Shupe?

A. No, sir.

Q. Are you now working for Mr. Shupe?

A. No, sir.

By Mr. Stein:

Q. 44 Court Street, you said?

The Court: Brooklyn, he said.

Charles Smith—Cross

By Mr. Schleimer:

Q. You said a New York broker, didn't you?

A. Brooklyn; but he lives in Newark. He lives in Hadden Terrace.

Q. Where does he live in Newark?

A. He lives up in 56 Hadden Terrace, Newark.

Q. What are his initials?

A. Mr. M. O'Malley.

Q. Is he a contractor or broker?

A. Broker.

Q. And his offices are where?

A. 44 Court Street.

Q. New York?

A. Brooklyn.

Cross examination by Mr. O'Connor:

Q. Where did you meet Shupe?

A. Corner of Broad and Market.

Q. What time?

A. Nine o'clock.

Q. By arrangement?

A. What did you say?

Q. By arrangement?

A. No, sir.

Q. Oh, not by arrangement?

A. No, sir.

Q. And where did you go?

A. Why, we took a little ride down Broad Street, as far as Franklin Street.

Q. As far as Franklin?

A. Yes.

Q. How far is that below William Street?

A. Two blocks.

Q. Two blocks south of William Street.

A. Yes, sir.

Q. The car was turned there, wasn't it?

A. Yes, sir.

Q. Did you see this young lady on your way down?

A. Yes, sir.

Q. What side of the street was she on?

A. The left.

Q. Is that the time she smiled at you?

A. Yes, sir.

Q. Are you sure she smiled at you?

A. Well, I am not sure, because there was three of us in the car.

Q. No. Where was she when she smiled at you?

A. Why, right in front of the drug store, opposite the City Hall.

Q. And how far did you go beyond that point where she smiled at you?

A. One block?

Q. One block. Then you turned?

A. Turned around.

Q. When you turned around, where was the young lady?

A. Why, she was right opposite Green Street, on Broad.

Q. She crossed over, didn't she?

A. No; she stayed on the same side.

Q. Where did she cross?

A. She did not cross.

Q. Did she go on the west side of Broad Street at all?

A. That is the side where she was first.

Q. You saw her crossing, did you?

A. No, sir.

Q. How do you know she crossed at that point, then?

A. She may have crossed before we started from Broad and Market, but I never seen her cross.

Q. You told me she was on the east side.

A. No, I did not.

Q. On the east side of Broad Street, going down.

A. No, I did not.

Q. As you were going south?

A. I said she was on the west side of Broad Street going north. We were going south on Broad.

Q. She is on the west side now——

A. Walking north.

Q. And you got to William Street before she did, didn't you?

A. Yes, we did.

Q. Yes. And run the car around the corner of William Street and Broad, didn't you?

A. On the corner. And we stopped on the west side, on the south side of William Street.

Q. On the south side, just around the corner?

A. Yes.

Q. And why did they stop?

A. Because I wanted to get off and go home. I only live across the street.

Q. Did you go home?

A. What did you say?

Q. Did you go home?

A. No, I didn't go home.

Q. You did not get off there, did you?

A. Yes, I got off.

Q. You got off?

A. Yes.

Q. Why didn't you go home?

A. Because I wanted to take a little ride.

Q. Eh?

A. Because I wanted to take a little ride.

Q. Changed your mind?

A. Yes.

Q. What was it caused you to change your mind?

A. It was so hot, I thought I couldn't sleep.

Q. Was it the girl that changed your mind?

A. (continued) So I thought I would go out for a short ride.

Q. Was there any difference in the weather at the time you drove around the corner of William Street and the time you decided not to go home?

A. No, only that the automobile stopped and we commenced to get a little warm.

Q. How far did you live from where the automobile stopped?

A. About eighteen steps.

Q. Eighteen steps?

A. Yes.

Q. And when the girl came along, did she walk up to you?

A. Why, she walked by the car.

Q. She walked by the car?

A. She smiled and nodded.

Q. What?

A. I say she smiled and she nodded, and then we started a conversation.

Q. At you?

A. Yes.

Q. Nodded at you?

A. Well, I don't know. I guess she did at me.

Q. And you started the conversation?

A. Yes.

Q. What did you say to her?

A. I asked her where she was going. She says to a friend's house on Kinney Street.

Q. What else did you say to her?

A. She says, "Why, if you don't mind, why you can run me up there." So I turned around and asked Mr. Shupe.

Q. You never saw this girl——

A. I saw her.

Q. You never met this girl before?

A. I was introduced to her.

Q. When?

A. By a fellow that runs an automobile on Halsey Street, one night about half past ten.

Q. What was his name?

A. I couldn't tell you his name. He lives on Mulberry Place. I couldn't tell you if it is her brother or not. I couldn't tell you.

Q. Don't know his name. Now, describe where abouts on Mulberry Street is this automobile place where you met, where this man worked that introduced you to the Jones girl.

A. He lives on Mulberry Place; I think it is number twenty-two.

Q. Number twenty-two?

A. Yes.

Q. What kind of a looking man is he?

A. Why, he is not a man; he is a young fellow.

Q. Describe him.

A. I guess he is about nineteen years old.

Q. Yes.

A. He used to work for a party up in Forest Hill, on a Chalmers-Detroit.

Q. What is the name of the party?

A. I couldn't tell you?

Q. Do not know the name of the party?

A. I couldn't tell you.

Q. And you do not know his name?

A. Don't know his name. Just know him by sight.

Q. How did you know he worked up there?

A. Because he worked up there at the same time I did, when I worked for Mrs. Wagner, the pieman.

Q. How far from where you worked?

A. About two blocks.

Q. How often did you meet this fellow?

A. Every time I used to come down there, I used to see him.

Q. Talked to him many times?

A. Many times.

Q. Still you do not know his name?

A. Don't know his name. Never asked him.

Q. Now, when you left William Street and Broad that night, where did the machine go?

A. Went down to Washington Street.

Q. And which way did it turn?

A. Turned south on Washington Street.

Q. And who directed the machine to turn south on Washington Street?

A. Why, nobody.

Q. Nobody. Then you, then what—then the statement, or the testimony that Skillman has given that Shupe directed the car to be turned south on Washington Street, is not true, is it?

A. Mr. Shupe gave the chauffeur his orders at Elizabeth Avenue and Clinton Avenue.

Q. Oh, Elizabeth Avenue and Clinton Avenue. What did he say to him?

A. He says, "Go for a little ride," and the chauffeur slowed up a little bit, as if he was mad, and he started up again.

Q. Was he mad?

A. I guess he was pretty mad, because he had to work. After working all day, a chauffeur don't want to work all night, I guess.

Q. And the mere fact the chauffeur slowed up would indicate the fact that he was mad?

A. And turned around and got his orders.

Q. That is not responsive, but let it go. After you got out on Clinton Avenue, which way did you go?

A. Turned right.

Q. And went where?

A. To Elizabeth Avenue from Clinton Avenue.

Q. To Elizabeth Avenue?

A. Yes.
Q. Then along Elizabeth Avenue to where?
A. To Chancellor Avenue.
Q. And how fast were you travelling on this trip?
A. No faster than eighteen miles an hour.
Q. Eh?
A. No faster than eighteen miles an hour.
Q. Faster than eighteen miles an hour?
A. No faster.
Q. No faster?
A. Yes.
Q. Then, after you got on to Elizabeth Avenue, how far did you go?
A. We went down to Chancellor Avenue.
Q. Chancellor Avenue. Which way did you turn there?
A. Turned right.
Q. Who directed the turn at that point?
A. Why, nobody. I guess the chauffeur did on his own accord.
Q. And along Chancellor Avenue to what point?
A. Clinton Place.
Q. And along Clinton Place to what point?
A. To Weequahic Avenue.
Q. And from there?
A. Right down Elizabeth Avenue.
Q. Down Elizabeth Avenue?
A. Yes.
Q. And then where did you drive to?
A. To Clinton Avenue again.
Q. To Clinton Avenue, and along Clinton Avenue to what point?
A. Washington Street.
Q. Washington Street?
A. Yes, sir.
Q. And along Washington Street to what point?
A. East Kinney Street.

Q. East Kinney Street?

A. Then we turned.

Q. Washington Street enters into Broad Street, doesn't it?

A. Yes, sir.

Q. Did you have to turn right or left to get into East Kinney Street?

A. We turned right and went along there and stopped at Broad and Kinney Street.

Q. Broad and Kinney Street?

A. Yes, sir.

Q. Why did you stop there, if you know?

A. To let the young lady out.

Q. What time did you let the young lady out?

A. About twenty minutes to ten. Twenty-five or twenty minutes to ten.

Q. How do you recall that time?

A. Because we got to the garage at ten minutes to ten.

Q. Ten minutes to ten?

A. Yes.

Q. How far was the garage from East Kinney Street?

A. Four blocks.

Q. Did you go home then?

A. Yes, sir.

Q. Wasn't it too warm to go home then?

A. What did you say?

Q. Wasn't it too warm to go home then, at ten minutes to ten?

A. Was it too warm?

Q. Yes.

A. No; it was all right then.

Q. It was all right then, eh?

A. Yes.

Q. Why did you get out of the back seat and go in the front seat?

A. Why?

Q. Yes.

A. Why, I thought that there might be some disturbance back there.

Q. What did you say?

A. I say I thought that there might be some disturbance back there.

Q. What kind of disturbance?

A. Because the young lady wasn't acting like a lady; that is the reason I got out.

Q. What did she do to shock your morals?

A. Well, I think that that is enough to do, ain't it?

Q. What?

A. I think that is enough to do, ain't it?

Q. What did she do?

A. Why, she put her feet on Mr. Shupe's legs.

Q. Anything else she did?

A. Just turned her back around.

Q. You then got out?

A. Got in the front.

Q. Because you couldn't stand that?

A. Oh, I could stand it, but I wanted to get a little cool off.

Q. Yes. What did Shupe do?

A. Why, I didn't look back any more to see what he did do.

Q. You do not know what he did?

A. No, sir.

Q. Well, now, what did Shupe do when the girl put her leg upon Shupe?

A. That I didn't see, because I got out and went in the front.

Q. You say you saw her put her leg upon Shupe, didn't you?

A. What did you say?

Q. You said she put her leg upon Shupe?

A. Her two legs on Shupe.

Q. Well, her two legs on Shupe. What did Shupe do?

A. He was sitting on the right. I didn't see what he done.

Q. Now, was she sitting on Shupe's lap?

A. Not to my knowledge, she wasn't.

Q. What was she doing?

A. She was sitting in the middle.

Q. In the middle. Now, just tell us what she did.

A. She was sitting in the middle. I was sitting on the left-hand side; Mr. Shupe was on the right-hand side. She turned her back to me; she put her two legs on Mr. Shupe's legs.

Q. Where was Shupe's hands?

A. Where was his hands?

Q. Yes.

A. He had one hand on the side of the car; he had it like that (illustrating). I think he had the other hand in his lap.

Q. Where was the other hand?

A. What did you say?

Q. Where was the other hand?

A. Down in his lap.

Q. He did not touch her?

A. Not in front of me.

Q. What was said by Shupe before she threw her legs upon Shupe's lap?

A. I didn't hear nothing said.

Q. You did not hear, although you were right there?

A. That is all right.

Q. What did she say?

A. The only thing that I heard her say, "If you don't mind, why I won't go to my girl friend's house, if you take me for a little ride."

Q. She say, I will direct you to one of my girl

friend's houses, if you will take me for a little ride?

A. You don't have to, if you take me for a little ride.

Q. I won't go to my girl friend's house——

A. If you take me for a little ride.

Q. What else did she say?

A. That is all I heard.

Q. Did you hear Shupe's response to that?

A. What did you say?

Q. Did you hear Shupe's response to that?

A. No, sir; I did not.

Q. You were there, though, weren't you?

A. Yes, sir. Sitting on the right-hand side.

Q. And you heard her and you did not hear him.

Mr. Schleimer: There is no evidence he said anything. We are not summing up. I do not think it is fair for the Prosecutor to make those comments.

The Court: If it is a comment, of course, it is improper. If it was a question asked of the witness, it is all right.

Mr. O'Connor: I will withdraw it, if it is going to be prejudicial to you.

Q. During all the time you were in the back seat, Shupe had one hand on the side of the car and the other in his lap, and he did not in all that time lay his hand on that girl, did he?

A. No, sir; he did not.

Q. Was there any other reason why you went into the front seat of that car?

A. Why, I went in the front seat?

Q. Yes.

A. Because I am a married man; that is the reason I went in the front seat.

Q. Is Shupe a married man?

A. What did you say?
Q. Is Shupe a married man?

Mr. Schleimer: Object. That is not cross examination. This witness is not qualified.

The Court: Yes; I think you are right. It is not cross examination.

Mr. O'Connor: Question withdrawn.

Q. How long have you been married?
A. How long?
Q. Eh.
A. Going on five years.
Q. Five years. How old are you?
A. Twenty-five.
Q. Are you living with your wife?
A. Yes, sir.
Q. Got any children?
A. Two.
Q. Do you know where Hillside Avenue is?
A. Hillside Avenue is?
Q. Yes.
A. Yes, sir.
Q. Where is it? ?
A. Why, Hillside Avenue is three blocks past Elizabeth Avenue going up Clinton Avenue; it doesn't run down.
Q. Three blocks what?
A. Three blocks up Clinton Avenue, from Elizabeth Avenue and Clinton Avenue.
Q. Three blocks up what?
A. Three blocks up Clinton Avenue.
Q. Up Clinton Avenue?
A. From the corner of Elizabeth Avenue.

By Mr. Schleimer:

Q. Three blocks from where?

Mr. Stein: Three blocks up Elizabeth Avenue from Clinton Avenue.

A. Three blocks up Clinton Avenue from Elizabeth Avenue.

By Mr. Stein:

Q. Three blocks up Clinton Avenue from Elizabeth Avenue?

A. From Elizabeth Avenue.

By Mr. O'Connor:

Q. When that girl left the car that night, what did she say?

A. The last thing that I heard her say was "good night," and smiled and walked on.

Q. Smiled and walked on. Now, was that smile at you?

Mr. Schleimer: I object, it is calling for a deduction.

A. I couldn't answer that.

Q. What?

A. I couldn't tell you, because there was three of us in the car.

Q. Where are you working now?

A. I am working for Mr. Alden, the clothier on Broad Street.

Q. How long have you worked there?

A. Four months.

Q. Four months. Where did you work before that time?

A. For the Roseville Auto. Packard Renting Company.

Q. What is that?

A. For the Roseville Auto. Packard Renting Company.
Q. How long did you work there?
A. I worked there six months.
Q. And where did you work before that?
A. For Mr. O'Malley.
Q. How long did you work for Mr. O'Malley?
A. A year and a half.
Q. In what capacity were you employed by him?
A. Chauffeur.

UNION COUNTY COURT OF OYER & TERMINER.

STATE against WILLIAM F. SHUPE.	Assault and Battery, with intent.

Indictment No. 15, October Term, 1912.

Transcript of stenographer's notes of evidence taken in the above entitled cause before Hon. James C. Connolly, Judge of the Court of Oyer & Terminer, and a jury, at the Court House in the City of Elizabeth, N. J., on the second day of July, 1913, at 10 A. M.

Appearances:

Mr. ALFRED A. STEIN, Prosecutor; Mr. MARTIN P. O'CONNOR, Assistant Prosecutor for the State.

Mr. WILLIAM D. WOLFSKEIL, Mr. SAMUEL SCHLEIMER, Attorneys for the Defendant.

DAVID M. CRABB, a witness being produced on behalf of the defendant, and duly sworn, according to law, on his oath, saith:

Direct examination by Mr. Schleimer:

Q. Where do you reside, Mr. Crabb?

A. 295 Mount Prospect Avenue, Newark, N. J.

Q. What is your occupation?

A. I am Assistant City Surveyor, Department of Streets and Highways.

Q. What city?

A. Newark, N. J.

Q. Have you taken a ride recently with Mr. Skillman, a witness on the stand yesterday?

A. Yes, sir.

Q. Over what ground did you go?

A. We started at Broad and William Street, and went on William Street to Washington Street, and along Washington Street to Clinton Avenue, Clinton Avenue to Elizabeth Avenue, thence along Elizabeth Avenue to Chancellor Avenue, westerly on Chancellor Avenue to Clinton Place, along Clinton Place to Weequahic Avenue, thence along Weequahic Avenue to Elizabeth Avenue, thence along Elizabeth Avenue to Clinton Avenue, to Washington Street, thence along Washington Street to West Kinney Street, and on West Kinney Street to Broad.

Q. Was any part of that ride you took in Union County?

A. No, sir.

Q. In what county is all of that ground, and all of those streets?

A. In the county of Essex.

Q. In what city?

A. Of Newark, N. J.

Q. When was it you took this, about?

A. Now, I don't recall the exact date, but it was some time in December, previous to Christmas.

Q. Of what year?

A. 1912.

Cross-examination by Mr. O'Connor:

Q. Mr. Crabb, did you take that ride with Mr. Shupe on June 4th?

A. No, sir.

Redirect examination by Mr. Schleimer:

Q. Have you a map with you, showing this?

A. Yes, sir.

Q. Let us see it.

A. (witness shows map). There is the starting point at Broad and William Streets (indicating).

Mr. O'Connor: I do not deny but what Skillman took him over that route.

The Court: There is no question interposed at all as to the route which he measured lying within the City of Newark, as I understand the testimony.

Mr. Schleimer: I offer the map in evidence, showing the route.

Re-cross examination by Mr. O'Connor:

Q. Who made that map, Mr. Crabb?

A. It was made by the Interstate Map Company, from the official copy of our map.

Q. That is all you know about that map? That is all you know about this map?

A. Yes, sir.

Mr. O'Connor: I do not think it is com-

petent, under those circumstances, your Honor.

Mr. Schleimer: I submit that if it is the official map, it is so.

Q. Is that the official map you use?

A. That is the map we use for reference at all times in the city.

The Court: Mr. O'Connor, look at it and see whether——

Mr. Schleimer: It is the official map they use, and marked official.

Mr. Stein: It might be marked anything.

Q. Made by whom did you say?

A. It is a copy of our map, and it is made by the Interstate Map Company.

Q. Made at whose request, if you know?

A. At the request of the Engineer of the City of Newark.

Q. You do not know that, though, do you, of your own knowledge?

A. Not personal knowledge, no.

Mr. O'Connor: Well, if your Honor pleases, the map I admit has not been proved. Of course, if you want to put it in evidence, I haven't any objection. It is not competent proof, though.

The Court: I will admit it.

Marked Exhibit D-1.

By the Court:

Q. Well, this map does not show any portion of the territory lying within the City of Elizabeth.

A. No, sir.

Q. And to which the extension of the streets shown on this map extends?

A. No, sir.

Mr. Schleimer: We rest.

The Court: Any rebuttal?

Mr. O'Connor: If your Honor pleases, I was going to put Miss Jones in rebuttal as to one of the details brought out by the defense. She is not here, and I think we ought to go on with the case.

The Court: Have you any rebuttal?

Mr. O'Connor: I haven't any rebuttal.

Mr. Wolfskeil: A motion for the direction of a verdict of acquittal on two grounds:

1. On the ground that there has been no proof of venue by the State, and secondly, on the ground that from a preponderance of the evidence it clearly appears that if an offence was committed, as charged in the indictment, it was committed within the limits of Essex County, and this court is therefore without jurisdiction to try the case.

The first ground that there has been no venue, I will say I have listened very carefully and attentively to the evidence. At no place in the same has there been any testimony that the offence was committed in the County of Union.

Mr. O'Connor: If your Honor please I do not agree with Mr. Wolfskeil. We show that the girl was coming along Clinton Avenue in Newark, along Elizabeth Avenue to Hillside Avenue, which is in Union Township, and then they turned to the left on Hillside Road, and there the girl testified, at that particular point, she did not know just

where she was, did not know the locality, did not know the territory after they turned off Hillside Avenue, but the testimony is that they came along Elizabeth Avenue, down into Hillside Avenue, and along Hillside Avenue and turned to the left, which was in Union Township, so that is sufficient.

Mr. Wolfskeil: The Court will take judicial notice, of course, of the political subdivisions of the county, and also of its jurisdiction; and this Court's jurisdiction is coextensive with the limits of the county.

The Court: As I understand the testimony of the complaining witness in the case, she came down to the point on Elizabeth Avenue where the blacksmith shop, known as Williamson's blacksmith shop is, near the turn in the railroad, that is, the street railroad, where that railroad runs across the steam railroad. Now, Hillside Avenue runs at right angles to Elizabeth Avenue, and runs off from it in a northwesterly direction. Of course, we know that that is in Union Township, and in the County of Union, if that is the place they took her. Now, as I remember the testimony——

Mr. O'Connor: And all the way down she testified, along Hillside Avenue, she was being assaulted.

The Court: Yes. Now, she says she was assaulted there at that point and at other points along that avenue, so that the offense may possibly have been committed in Newark, but there is no doubt about its having been committed in the County of Union also. Under the circumstances, I shall refuse to grant the motion, and the application or request of the defendant's attorney to direct a verdict.

The other ground, the preponderance of evidence, I am not satisfied that there is a preponderance of evidence in favor of the defendant in this case, and I shall therefore refuse to direct a verdict on that request.

Mr. Wolfskeil: You will grant me an exception on both grounds?

The Court: Yes, sir.

Exception allowed; sealed accordingly.

JAMES C. CONNOLLY, (seal)
Judge.

Mr. O'Connor: If your Honor please, I just note that Miss Jones has just appeared in Court. I want to make an offer to put her on the stand, or offer her in rebuttal, at least, if there is no objection.

Mr. Schleimer: The case is closed, and under the rules, I do not think you will have the right.

Mr. O'Connor: I just merely want to make the offer.

Mr. Wolfskeil: I object to the offer being made in the presence of the jury, to appear on the record; the case is closed.

The Court: Yes. I will not allow her to be placed upon the witness stand now, it would be re-opening the case. I would not allow her now to be placed on the witness stand, even if the attorneys for the defence consented.

Mr. Wolfskeil: I ask the Court to direct the jury not to be prejudiced by the refusal of the defendant's attorney to consent.

The Court: Yes. The Court has refused to allow her to be placed on the witness stand, and the jury will pay no attention to

the attorneys regarding the rebuttal of the girl on the witness stand this morning.

Summing up for the defence by Mr. Schleimer.

Summing up for the State by Mr. O'Connor:

Mr. Wolfskeil: If the Court please, may I ask the Court to direct the stenographer to take down the remarks of the Prosecutor, with reference to the record, which he is commenting on now, in order that I may include them in my objection to the——

The Court: The stenographer will take the remarks of the Assistant Prosecutor.

Mr. O'Connor: * * * When he stood before this Court ready for sentence, and then retracted his plea of *non-vult*, did he raise the question of jurisdiction of this Court? Did he ever raise the question of jurisdiction of this Court until to-day? When he said to Robert L. Eaton, Justice of the Peace and Clerk of the Grand Jury —— * * *

UNION COUNTY COURT OF OYER AND TERMINER.

STATE against WILLIAM F. SHUPE.	Assault & battery with intent.

Indictment No. 15, October Term, 1912.

Transcript of stenographer's notes of Hon. JAMES C. CONNOLLY'S charge to the jury in the above-entitled cause, at the Court House in the City of Elizabeth, N. J., on the 2d day of July, 1913.

Gentlemen of the Jury:

The defendant has been indicted for an assault with intent to commit rape upon the person of Mabel Jones.

The crime of attempting to commit rape is one of so atrocious a nature that the law visits upon the perpetrator very severe punishment. It is in our law known as a high misdemeanor, and the defendant may be sentenced to an imprisonment of seven years as a maximum, or three and one-half years as a minimum punishment, and a fine in addition thereto may be imposed of two thousand dollars. The Legislature has fixed this penalty, and it is the duty of the Judge to sentence the defendant, if found guilty, as he thinks will be just and proper, and in accordance with the laws. In other words, the jury have nothing to do at all with the sentence which is to be passed if a verdict of guilty shall be rendered against the defendant, and therefore, in considering the evidence in this case, the

jury will eliminate that matter from their consideration altogether.

The evidence in the case, as sworn to by the complaining witness, is that she lives on Mulberry Street in the City of Newark. That on June 4, 1912, she was going north on Broad Street in the City of Newark, on the west side of that street; that the defendant was in an automobile on Broad Street near William, or at William Street. The car was facing westerly, as she states, and as she approached the car, the defendant said, "How do you do?" She talked to him about five minutes. She says she said that she was going to see a girl friend. The defendant asked her how her sister was; and she said further, then, that he offered to take her to the point to which she was going. After being repeatedly requested to do so, she got into the car, and then they drove off, went up to Halsey Street, and noticing that they were not going in the direction that she wished, she said, "You are not going the right way," or words to that effect. She says then the defendant got pulling at her clothes, and pulling them up, her dresses and her skirts. This happened in the City of Newark. She screamed. The defendant put his hand over her mouth. He then said something about her being a well-built girl. Then he got excited, and told her to shut up. She says that he did not say an "awful lot." He pulled up her clothing; that his hands were under her clothing and on her mouth. He turned the machine at Hillside Road, where the trolley cars turn, and made a turn to the left. After five minutes he came back. In other words, I understood the witness to say that after they turned from Elizabeth Avenue, and went off on Hillside Road, they remained there about five minutes, he, during that period of time, or nearly all of that

time, was tugging away at her in the dark, according to her testimony. He lay over against her, she says; he had her clothes up and had his hands on her private parts. She then cried out, "For God's sake, not to touch her, I am a good woman." She says he said, "I don't know that," and that he was out with a woman last week; she said that she then screamed and called out that if there was a gentleman in the crowd, to help her. The defendant then said, "If you are a good woman, let me see." He told her that he would kick her head off, and called her names, which she does not mention. He told her he was a doctor, and could tell whether she was a good girl or not. He also said that he did not think there was a good girl in the City of Newark, or words to that effect. The other gentleman, or men who were with him got into the car at this time and she was placed in the car, or got in there herself and they drove off, back to the City of Newark. During the time that he was talking, the defendant was speaking of her character, he said that if he wanted to get married, he would get married to a woman like her. He left her out in Newark at Broad and Chestnut Streets, as my notes show, but my recollection is that it was Broad and East Kinney Streets; in looking over my notes, I have Chestnut Street. However, I think it is Kinney Street. She says she was almost dead when she got home, that there was a light in the basement of her home, and after she got in her mother came down stairs. She had a combination suit on, consisting of various articles, and her mother examined her. She says that she was black and blue on her person. That the next day she went to work, in order to straighten out the books of the firm by which she was employed, but had to go home after a few hours, and that she was sick for two weeks

after that time. She told her mother not to tell her father. She made complaint at once against the defendant. Subsequently she had a doctor examine her at the house of her aunt. On cross examination, she said she screamed when the defendant attacked her, and that the other men who were in the car started to sing. Finally the girl says that she knows that Shupe was the man that assaulted her because she had been introduced to him some time previously by her sister.

In corroboration of the testimony of the girl is that of the doctor, who says that he saw her four days afterwards, and he says this: That when he examined her he found nothing external the matter with her. He was at her aunt's house, attending her aunt, but on a further examination made on the same day, and after he had heard her partially suppressed story, he made a further examination, and found that close to the vagina there were some black and blue marks, scratches which were like those which would be made by finger nails, and as if a struggle had taken place. That there were contusions, and that the contusions were such as would last for six or seven days, as I remember his testimony, and that the girl told him she had been suffering during the week. The doctor said that the contusions were such as could have been caused by an instrument or a knife, and that contusions could be caused by pinches, and by slipping and falling. He did not, however, say that scratches could be inflicted in that way. Further in corroboration of the complaining witness's testimony, was the evidence of her mother, to the effect that she came down stairs on the night when her daughter came home. She says that her daughter was in bad condition, and that she saw her daughter's person and clothing, which she examined. Then there is

the evidence of Mr. Eaton, a member of the bar of this State, and a Justice of the Peace, of this County. From his testimony, it appears that when the defendant was arraigned before him he said: "I suppose I might plead not guilty," and after talking about some people with whom Mr. Eaton was acquainted, he said, "I did not think I was going to get into this trouble. I had a kid out that night, and I wanted to get him fucked."

Another witness, John Gallatian, the County Detective, swore that on the day when the complaining witness was at the Prosecutor's office, as I understand it, the defendant came and talked with him. He came with a person named Vreeland. Defendant asked Gallatian what was going on, and when Gallatian told him what the charge was that was being made against him, the defendant confessed that the charge was true. That he had been a "damn fool," and he said that he would get a bondsman, and went off and returned with a bondsman named Reuter. He also told Gallatian that he had put his finger into the girl's vagina, and in speaking of the girl to Gallatian, he always referred to her as a "cunt" he picked up on the street.

The defendant meets the charge of the State by placing on the witness stand, Augustus Skillman, a chauffeur, who says that the girl got into the car at Broad and William Streets, in the City of Newark. He says that the girl had a talk with Smith, then he describes the streets through which they went on the car, on said that they did not go west of Chancellor Street, Chancellor Avenue. He heard no screams from the girl, and he says that the lights on his car were not out, that they were riding in a Peerless car, which had accommodation for seven persons. This witness also swears that when the girl got out at Newark on the return home, she

smiled and said good night. Smith says that when they first saw the girl she smiled at him, and that when the girl got in she sat in the car, she sat in the rear. That she said she wanted a ride, and then she put her limbs over the limbs of the defendant. He says that he then got to the front of the car, he did not care to stay in the rear of the car, as he was a married man, and that he thought two was company and three was a crowd.

Finally, David Crabb, a surveyor, doing business in the City of Newark, was placed upon the witness stand, and testified that certain portions of the roads traversed by the defendant on the night of June 4, 1912, lie within the County of Essex. He was not with the defendant on the night of June 4th, and knows nothing of the routes covered by the defendant and his companions on that night.

Smith corroborates Skillman in stating that the farthest west they went that night was Chancellor Avenue, in the City of Newark.

The question now is, Is the defendant guilty of the crime for which he was indicted? That is the question which you are to decide from all the evidence which is before you.

Of course, there is no denial of the fact that the young woman was in the car with the defendant and his companions on the night of June 4, 1912, and that they rode through certain streets and avenues in the City of Newark, and according to her testimony, outside of the City of Newark.

If the testimony of Gallatian is worthy of belief, the defendant is guilty, because he states that the defendant confessed that he had been guilty of the crime. Eaton said that the defendant acknowledged to him that he brought this girl out for criminal purposes. I do not repeat the language which he used.

This testimony has not been denied by the defendant, notwithstanding the fact that he sat here in Court and has heard both Eaton and Gallatian testify. The fact that the defendant did not take the witness stand to testify in his own behalf, should not be taken, however, as evidence of his guilt. It is a constitutional right which he possesses, to testify or not to testify, just as he pleases, but it is a fact that you may consider in weighing the testimony, I mean his silence.

In considering the testimony in the case, the jury are to be governed by the preponderance of the evidence, but in doing so you are not to weigh the evidence by the mere number of witnesses, for character in a witness and consistency in his testimony will often outweigh the testimony of several witnesses, but where all things are equal, then the preponderance goes to the side producing the greatest number of witnesses, and ought to carry with it your verdict.

The defendant in this case has raised a question as to the venue, and insists that the crime was not committed in the County of Union, but that it was committed in the County of Essex, and that if he is to be tried for the crime, it must be in that county.

You have heard the testimony of the girl as to where the crime was committed. She claims that the defendant made an attack upon her in the City of Newark. She also stated that he continued from time to time making those attacks, and that the final attack made upon her was on Hillside Road, near Elizabeth Avenue, or a short distance from it, and she tells you why she knows it was committed there. She says that it is at that point on Elizabeth Avenue where the street railway turns out of the avenue, and near Williamson's blacksmith shop. She knows the lay of the country there, because she at one time lived nearby.

But the testimony of the two men who were in the car with the defendant in this case was contrary to that. They say that they never went west of Chancellor Avenue. Now, you are to reconcile the testimony in the case, and say whether that car was west of Chancellor Avenue, and whether it actually came within the County of Union, because if that car came within the County of Union, and the acts happened to which she has sworn, then this defendant is guilty as he is charged in the indictment. He is guilty, if you believe her story, and you are the judges of all the evidence in this case.

Now, then, after you have examined all the testimony, after you have gone over it, after you have weighed it, sifted it and scrutinized it, then you are to say whether there exists in your mind any doubt of the guilt of this defendant; and, if there be a doubt as to his guilt, he is to have the benefit of that doubt. But that doubt must be a reasonable one. It must not be a doubt founded upon prejudice, nor with a desire to save the defendant. In other words, it must be what I have already said, a reasonable doubt.

Now, a reasonable doubt has been defined in several of our law books, and in one case in particular it has received a definition which will, perhaps, explain what a reasonable doubt is better than I could explain it, and I shall cite it from the case known in this State as the *State v. Donnelly.* In that case, the Court said: "A reasonable doubt is not any doubt. It does not mean a mere possible doubt, because everything relating to human affairs and dependent upon moral evidence is open to mere possible or imaginary doubt. It is that state of the case, which after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that condition that they cannot say

they feel an abiding conviction to a moral certainty of the truth of the charge."

The defendant, through his counsel, has requested me to charge as follows:

That the jury must disregard the remarks of the Prosecutor regarding this case being akin to white slavery, as that is another and a different crime than the one charged in this indictment.

The term white slavery is an indefinable term, and there is no act on our statute books which is designated by that term, but there is an act which generally goes by that name, but I say the words are indefinable. They have no fixed and standard meaning, but you have heard the testimony in the case. You heard all that was said by this girl, and it is for you to say whether the remarks made by the defendant—by the Prosecutor, I mean; whether the remarks made by the Prosecutor were justified.

The Prosecutor also requests me to say that the jury cannot consider in this case any evidence concerning a civil suit. That is an independent right in the complainant.

You are trying the question of the crime, and not a civil suit for damages. In this case the State is the complainant; in a civil suit she is the complainant.

I would say to you with reference to this request, that you are not to take into consideration the statement made before you by counsel in his closing argument, for the defendant, to the effect that your verdict will have some bearing upon a civil action that she has, or may bring against the defendant. You have nothing to do with that. That should never have been brought in before you. She may have a right of action against this defendant, but you are not concerned about that matter at all. The question here is, Does the testimony satisfy

you that the crime which the complaining witness swears to was committed upon her as she says it was? If you are satisfied of that, then bring in your verdict regardless of any civil action that may subsequently be brought against the defendant in this case.

The Prosecutor desires me to say to you that if the defendant is acquitted on this indictment by your verdict, that he cannot hereafter be tried in the County of Essex.

Mr. Wolfskeil: I take issue with the Prosecutor in that statement, and say that it is untrue.

The Court: You are not allowed to make any remarks. I am charging the jury.

I so charge you. Under the laws and the Constitution of the State of New Jersey, no man can be put twice in jeopardy of his life, his liberty, or his property in a criminal case.

I am reminded by the attorney for the defendant that I did not instruct you that you should find a verdict of not guilty in case you should decide that the crime was committed, if the crime was committed, in the County of Essex.

I now instruct you, if you find from an examination of the testimony of this case, that the crime was committed in the County of Essex, then, that will end your labors and you will bring in a verdict of not guilty.

I refuse to charge further than I have charged. Swear an officer.

Mr. Schleimer: We except to the Court's refusal to charge as follows:

The jury must first decide that an offence

was committed in Union County, and if not satisfied of such fact beyond a reasonable doubt, a verdict of acquittal must be rendered.

Exception allowed; sealed accordingly

JAMES C. CONNOLLY, (Seal)
Judge.

I except to the Court's refusal to charge as I requested regarding the white slavery remark.

Exception allowed; sealed accordingly.

JAMES C. CONNOLLY, (Seal)
Judge.

I except to the Court's remarks regarding my address to the jury, in which your Honor said, "You are not to take into consideration the statement made before you by counsel in his closing argument for the defendant, to the effect that your verdict will have some bearing upon a civil action that she has, or may bring against the defendant." My remark was that she might be interested in giving her testimony by reason of her evidence regarding the employment of Lawyer Walsh.

The Court: What is your recollection of it, Mr. O'Connor?

Mr. O'Connor: As I recall his testimony was that he——

The Court: No; his argument.

Mr. O'Connor: That is what I say, his argument was that he commented upon the fact that she had a civil action.

Mr. Schleimer: I said she might be interested by reason of the fact that she had seen Walsh once at the office, and twice at the house, and he had been retained by her father.

Exception allowed; sealed accordingly.

JAMES C. CONNOLLY, (Seal)
Judge.

Mr. Schleimer: And I take a special exception to this charge as the Prosecutor requested, "If acquitted on this charge he could not be tried in Essex County."

Exception allowed; sealed accordingly.

JAMES C. CONNOLLY, (Seal)
Judge.

I also take a general exception to the entire charge.

Exception allowed; sealed accordingly.

JAMES C. CONNOLLY, (Seal)
Judge.

UNION COUNTY COURT OF QUARTER SESSIONS.

THE STATE OF NEW JERSEY, against WILLIAM F. SHUPE,	Battery with Sm Indictment for Assault & intent.

I, JAMES C. CONNOLLY, 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.

JAMES C. CONNOLLY,
Judge.

Exhibit.

STATE OF NEW JERSEY, }
COUNTY OF UNION. } ss.:

MABEL JONES, of the City of Newark, in the County of Essex, and State of New Jersey, upon her oath, complains that on the 4th day of June, A. D., 1912, at the Township of Union, in the County aforesaid, that one William Shupe did make an assault on her, the said Mabel Jones, with an intent on the part of him, the said William Shupe, her, the said Mabel Jones, then and there forcibly and against her will, feloniously to ravish and carnally know,

AND, THEREFORE, she prays that the said William Shupe may be apprehended and held to answer to said complaint, and dealt with as law and justice may require.

MABEL JONES.

Sworn and subscribed June 5th, }
1912, before me, }

ROBERT L. EATON,
Justice of the Peace.

NEW JERSEY SUPREME COURT.

February Term, 1914.

THE STATE
vs.
WILLIAM F. SHUPE. } *Error to Union Quarter Sessions.*

For plaintiff in error, William D. WolfsKeil.

For the State, Alfred A. Stein, Prosecutor of the Pleas.

The opinion of the court was delivered by

GUMMERE, C. J.

The defendant was convicted in the Union Oyer of an assault with intent to commit a rape upon one Mable Jones while she was taking a pleasure ride with him in his automobile.

The first attack upon the legality of the conviction is that there was harmful error in the refusal of the trial court to sustain a challenge to the array of jurors. The challenge was rested on two counts: (1) that upon the day before the trial the Prosecutor of the Pleas, in explaining the case to the court upon an application by the defendant to postpone the trial, indulged in remarks before the general panel which were prejudicial to the defendant; and (2) that the jury which tried the case was drawn from a panel which had been selected and summoned under a statute which had been repealed prior to the trial.

What was said by the prosecutor was a mere recital of the history of the case up to the date of his remarks. It is not suggested that anything which he stated was untrue, and there was nothing in them which can be said to have unquestionably prejudiced the jury against the defendant. In fact, counsel does not attempt to show us just how

his client was injuriously affected by these remarks, but contents himself with the assertion that they were prejudicial. If it be assumed that prejudicial statements made by the Prosecutor of the Pleas in the presence of the general panel constitute a ground for challenge to the array, the trial court was justified in overruling it.

As to the contention that the jury was drawn under a non-existing statute. If it be conceded that the challenge was properly submitted, under the rule laid down in *State* v. *Barker*, 68 N. J. L. 19, it is without merit. The repealing act was approved May 27, 1913, and was known as the "Fielder Act." Although it became a vital statute upon its approval, it did not become operative until the next ensuing term. The general panel of jurors had been drawn on May 19, under the then existing statute; and that panel was legally constituted to try the cases for the then pending term.

It is further contended on behalf of the plaintiff in error that the judge erroneously permitted the prosecuting witness to testify that on her return home she told the whole story, of what had happened, to her mother. This testimony was competent under *State* v. *Irins*, 36 N. J. L. 234, where it was held that the State may prove that the prosecutrix made complaint of the offense promptly after it had been committed against her, although it was not proper to permit proof of what the particulars of the complaint were.

The only other ground of reversal which is argued by counsel is directed at the instruction of the court to the jury that "If the defendant is acquitted of this indictment by your verdict, he cannot hereafter be tried in the County of Essex." The assault occurred somewhere near the border

line between Union and Essex Counties, the proof on the part of the State showing that it occurred in Union, while that submitted by the defendant showed that it was committed in Essex, if committed at all; and the contention of the defendant was that even if the jury should find that he was guilty of the assault, they could not convict him, because the offense was not within the jurisdiction of the criminal courts of Union County. The trial court properly left it to the jury to determine whether or not the offense occurred within its jurisdiction. With the propriety of the instruction complained of we are not concerned, for the only attack made is based upon an alleged unsoundness in law. We agree with the trial judge as to the conclusive effect of the verdict of the jury in the case, and that a verdict of acquittal by them would be a complete defense against a subsequent indictment found against the defendant by a grand jury of Essex County for the same offense.

The conviction will be affirmed.

NEW JERSEY SUPREME COURT.

November Term, 1414.

STATE OF NEW JERSEY, *Defendant in Error,* *vs.* WILLIAM F. SHUPE, *Plaintiff in Error.*	*In Error.* *Order of Affirmance of Judgment and Remittitur.*

This cause having been duly argued at the February Term, 1914, of this court by William D. Wolfskeil and William R. Wilson, Esquires, of counsel for the plaintiff in error, and Alfred A. Stein, of counsel for the defendant in error, and the court

having duly considered the same and finding no error in the record or proceedings in the Union County Court of Quarter Sessions,

It is thereupon ordered and adjudged that the judgment of the Union County Court of Quarter Sessions removed by the writ of error in this cause be and the same is hereby affirmed with costs; and that the record be remitted to the Union County Court of Quarter Sessions to be proceeded with in accordance with this judgment and the practice of said court.

Entered November 21, 1914, on motion of

MARTIN P. O'CONNOR,
Assistant Prosecutor of the Pleas for Union County, Attorney for Defendant in Error.

NEW JERSEY, *ss*:

The State of New Jersey to our Justices of the Supreme Court, *Greeting*:

(Seal) Because in the record and proceedings and also in the giving of judgment upon a certain indictment in the name of William F. Shupe, plaintiff in error, and the State of New Jersey, defendant in error, heard and determined by the said Supreme Court of the State of New Jersey, manifest error hath intervened to the great damage of the said William F. Shupe 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 William F. Shupe, do command you that if judgment be thereupon given then that you do distinctly and openly send the record and proceedings aforesaid

with all things touching the same, to our judges of our Court of Errors and Appeals in the last resort in all causes, under your seal of the said Supreme Court, together with this writ so that we may have the same before our judges of our Court of Errors and Appeals, at Trenton on the twelfth day of December, 1914, that inspecting the records and proceedings aforesaid, we may further do thereupon for correcting that error what of right and according to law ought to be done.

Witness, Edwin Robert Walker, our Chancellor and President Judge of our said Court of Errors and Appeals at Trenton, this twenty-third day of November, in the year nineteen hundred and fourteen.

WILLIAM D. WOLFSKEIL,
Attorney for Plaintiff in Error.

DAVID S. CRATER,
Clerk.

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 to this writ annexed, as within we are commanded.

WM. S. GUMMERE, C. J.

ASSIGNMENTS OF ERROR.

Afterwards to wit, on the seventh day of January, nineteen hundred and fifteen, in the Court of Errors and Appeals in the last resort in all causes, the said William F. Shupe, by William D. Wolfs-Keil, his attorney, comes and says, that in the record and proceedings aforesaid, and also in the

matters recited and contained in the said bill of exceptions, and also in the giving of the verdict and judgment aforesaid, and in the giving of the judgment in the said Supreme Court, there is manifest error in this, to wit:

First. Because the Supreme Court ignored the twentieth assignment of error, which is also the twentieth specification of causes for reversal relied upon by the plaintiff in error for relief, to wit: that the trial court erred to the prejudice and injury of the plaintiff in error, by permitting one Charles M. Runyon, a witness for the State, to put in evidence the minutes of the Court of Quarter Sessions with reference to the indictment found against the defendant and the various pleas made by the defendant over the objection of the counsel for the defendant.

Second. Because the admission of the minutes of the Court of Quarter Sessions, and particularly, of the plea of nolo contendere made by the defendant, was prejudicial error and caused manifest wrong and injury to the defendant in maintaining his defence upon the merits of the case.

Third. Because the Supreme Court ignored the eighth assignment of error, which is also the eighth specification of causes for reversal relied upon by the plaintiff in error for relief, to wit: that the court charged the jury as follows: "In considering the testimony in this case, the jury are to be governed by the preponderance of the evidence, but in doing so, you are not to weigh the evidence by the mere number of witnesses, for character in a witness and consistency in his testimony, will outweigh the testimony of several witnesses, but where all things are equal, then the preponderance goes to the side producing the greatest number of wit-

nesses, and ought to carry with it your verdict;" which was prejudicial error and caused manifest wrong and injury to the defendant in maintaining his defence upon the merits.

Fourth. Because the Supreme Court ignored the nineteenth assignment of error, which is also the nineteenth specification of causes for reversal relied upon by the plaintiff in error, to wit: that the court below erred to the prejudice and injury of the plaintiff in error, by permitting one Robert L. Eaton, a justice of the peace, and a witness for the State, to be asked the following: "I show you a complaint marked Identification S-1 for identification. Was that complaint made before you?" and permitted the same to be offered in evidence; which was prejudicial error and caused manifest wrong and injury to the plaintiff in error in maintaining his defence upon the merits.

Fifth. Because the Supreme Court held that the bill of exceptions and the specification of causes for reversal did not show that any injurious error had been committed at the trial.

Sixth. Because the Supreme Court affirmed the judgment of the Court of Quarter Sessions.

Wherefore, and for other errors appearing in the record and proceedings aforesaid, the said William F. Shupe prays that the judgment of the Supreme Court may be reversed, and the record remitted to that court, with directions to reverse the judgment of the Court of Quarter Sessions in and for the County of Union.

WILLIAM D. WOLFSKEIL,
Attorney for Plaintiff in Error.

Joinder in Error.

And, hereupon, afterwards, to wit: on the twentieth day of January, A. D. 1915, the State of New Jersey, by Alfred A. Stein, Prosecutor of the Pleas of the County of Union, comes into Court and says that there is no error either in the record and proceedings aforesaid or in giving the judgment aforesaid, and he prays here that the Court here may proceed to examine as well the record and proceedings aforesaid as the matters aforesaid assigned for error, and that the judgment aforesaid in manner aforesaid given may in all things be affirmed, &c.

ALFRED A. STEIN,
Prosecutor of the Pleas of the County of Union, Attorney of Defendant in Error.