

NEW JERSEY  
Court of Errors and Appeals

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STATE OF NEW JERSEY }  
                  *vs.*        } In Error to  
MAX SWILLER.        } Supreme Court.

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**Brief of Defendant in Error.**

STATEMENT OF FACTS.

This writ of error brings up the judgment of the Supreme Court affirming the conviction of the plaintiff in error in the Court of Quarter Sessions of Middlesex County of the crime of carnal abuse.

The testimony offered in behalf of the State tended to show that one Tillie Esakov, the prosecutrix, a fourteen-year-old girl, resided, on October 21, 1913, with her mother and brothers and sisters on a farm about two miles from Metuchen. On the evening of that day she was sent by her mother to the defendant's store in New Brunswick to ask him to go to their farm and buy their corn, the defendant being in the feed business. When she reached the store and announced her errand the defendant told her he would be obliged to consult his brother before he could tell whether or not he would purchase the corn. He thereupon invited

her to go to his living apartment in a nearby street, saying his brother was there. When they reached the apartment, the defendant locked the door and told her his brother was not there. He then forcibly and against her will had intercourse with her, which intercourse was repeated after the lapse of an hour or so. She was then detained in his apartment all night and allowed to go home early the next morning. When she left the defendant's apartment he gave her a piece of white paper folded, and directed her to give it to her mother, stating that the mother knew what it was for. There was evidence that the mother had directed the child to spend the night at the defendant's apartment and had given her but seven cents when she left for New Brunswick, which paid her one-way fare only from Metuchen to New Brunswick. When the prosecutrix returned to the farm she gave her mother the piece of paper given her by the defendant, and as her mother opened it the prosecutrix saw two five-dollar notes in it, which the mother placed in her blouse. The prosecutrix also told her mother what the defendant had done to her and was told by the mother to keep quiet about it. At the time of this occurrence the prosecutrix's father was living in Baltimore, and the prosecutrix left the farm for that city to join him about one week later.

As a result of this intercourse the prosecutrix became pregnant, and in the latter part of March, 1914, she told her father what the defendant had done. A physician was consulted as a result of this interview, and on July 25th, 1914, the prosecutrix gave birth to a child.

In December, 1914, the prosecutrix and her baby and one of her sisters (Ida) went to New Brunswick to see the defendant, and during the interview he admitted the paternity of the child.

At the trial the defendant admitted that the prosecutrix had come to his store to see about his buying their corn, but placed the date of this call as September,

instead of October 21st, and denied that he had taken her to his apartment and that he had had intercourse with her. The prosecutrix's mother testified in behalf of the defendant and corroborated a part of the story told by him.

The case came to the Supreme Court and now comes to this court on strict bill of exceptions and assignments of error, no certificate of the trial judge having accompanied the record certifying that the entire record and proceedings had upon the trial had been sent to the Supreme Court. (See *St. v. Armstrong*, 95 *Atl. Rep.* 997.)

The assignments of error are based on alleged errors in the admissions of evidence and will be considered in the order in which they appear in the case.

## ARGUMENT.

### I.

*The defendant insists that the Court erred in permitting the prosecutrix to answer the following question on the part of the plaintiff, "That piece of paper folded that you say he told you to give to your mother, what did you do with that?"*

The circumstances under which this question was asked appear on pages 27 and 28 of the case. The question referred to the folded piece of paper which the prosecutrix testified had been given her by the defendant when he released her from his apartment in the morning after the alleged ravishment and which he said at the time was for her mother, that the mother would know what it was for. The answer to the question disclosed the fact that the prosecutrix gave the paper to her mother as directed and that when her mother opened it the prosecutrix saw two five-dollar notes in it. Since the paper was given to prosecutrix

by the defendant before he had released her from his apartment following the ravishment it may fairly be presumed that it had some connection with the defendant's crime. It could scarcely be questioned but that the fact that the defendant gave the prosecutrix this piece of paper for her mother as he released her after violating her was a material fact. This was testified to without objection. When this testimony is considered in connection with the fact that, as testified to by the prosecutrix without objection, her mother had directed her to stay all night at the defendant's apartment and had refused to give her carfare for the return trip from New Brunswick to Metuchen (*Case, p. 18, line 20, et seq., page 39, line 12, et seq.*), its relevancy is apparent, and especially is this true in view of the fact that although the prosecutrix complained to her mother immediately after her violation nothing was done about the matter until complaint was made to the father. These facts were testified to without objection, and were elicited both by questions asked on behalf of the State and by cross-examination of prosecutrix. At all events the defendant's act in giving a piece of paper to the prosecutrix was a part of the whole criminal transaction. If this is true, no argument is needed to support the ruling of the trial court in permitting the prosecutrix to tell what she did with the paper and what the paper contained. The fact that she gave the paper to her mother accounted for her failure to produce it at the trial in corroboration of her testimony, and the fact that it contained ten dollars was very significant in view of the other testimony as to the prior and subsequent conduct of the mother.

It is contended in the brief of plaintiff in error that the evidence objected to was inadmissible, and that its harmful character consisted in the fact that the jury may have inferred therefrom that an agreement existed between Mrs. Esakov, the mother of the complaining witness and the plaintiff in error, by which Mrs. Esakov

was to profit by her daughter's dishonor. The Supreme Court effectually disposed of this contention by conceding this effect to the testimony and stating that because of this the testimony was not only admissible but most important in the establishment of the State's case.

## II.

The second assignment of error is in these words:

*"And in this, that the said Court permitted the witness, Tillie Esakov, to answer the question on the part of the plaintiff, 'As the result of the interview with your father did you consult a physician?'"*

This question and the colloquy between Court and counsel for defendant which ensued appear on page 29, line 28, to p. 31, of the case. As has above been stated, the witness testified that she reported the occurrence to her father in March, 1914, about five months after it happened. There was no objection to this testimony. She was then asked the question, to which objection was taken on the ground that it was "rather remote six months after."

In this State the purpose of admitting in evidence the fact that a complaint was made by a woman who has been ravished is to meet in advance a self-contradiction in her conduct, which, if unexplained, would discredit her as a witness, for human experience shows that a woman who has been outraged in this manner would naturally make complaint. *State v. Rodesky*, 86 N. J. L. 220.

In *State v. Schaeffer*, 87 N. J. L. 663, the Court of Errors held that evidence that a woman who has been ravished made a complaint is admissible without regard to the nearness or remoteness of the complaint to the occurrence.

See, also, 2 *Wigmore Evidence*, Sec. 1135 (near end of section), in which the rule is stated as follows:

"But if it be considered that the purpose of the evidence is merely to negative the supposed silence of the woman it is conceived that the fact of complaint at any time should be received. After a long delay, to be sure, the fact is of trifling weight, but it negatives silence, nevertheless, and the accompanying circumstances must determine how far the delay has been successfully explained away."

There can be no doubt, therefore, but that the fact that a complaint was made was admissible even though it was made some time after the occurrence. The fact that a complaint was made to the father being admissible and being in evidence without objection, the fact that as a result of that complaint a physician was consulted, is certainly not too remote. This proof was preliminary to the proof of pregnancy and the subsequent birth of a child. It was followed by proof that the witness went to Johns Hopkins Hospital shortly after and stayed there until the birth of her child.

Furthermore, as pointed out in the opinion of the Supreme Court, the question of remoteness is left to the discretion of the trial court, and in the absence of palpable abuse of such discretion the exercise thereof is not reviewable.

### III.

The third assignment of error is in the following language:

*"And in this, that the said Court permitted the witness, Anna Esakov, to answer the question on the part of the defendant, 'Were you in New Brunswick at the home of Max Swiller with Sammy and Morris after you left the farm in 1913 and before you went to Baltimore?'"*

The question and answer appear on page 137 of the case. It will be noted that no reason for the objection

was assigned by counsel for defendant. The witness, Anna Esakov, the mother of prosecutrix, testified for defendant, and the question objected to was asked on cross-examination. Her testimony had contradicted a large part of the testimony of the prosecutrix. The question was undoubtedly admissible for the purpose of disclosing the relationship between the witness and the defendant.

It was in evidence that the prosecutrix had been violated at the home of defendant that the next day she had reported the occurrence to her mother, who had taken no steps for the punishment of the defendant; that at the time of making the complaint the prosecutrix delivered to the mother the money which the defendant sent her. In view of these facts it was very significant if the prosecutrix's mother went to the defendant's apartment with her two boys within a few weeks after the commission of this crime. This would certainly have an important bearing upon her attitude as a witness for the defendant. Even if it be assumed that this question called for irrelevant matter in reply, and was, therefore, objectionable, the answer to it was in the negative, and, consequently, as stated in the opinion of the Supreme Court, no harm could come to the plaintiff in error by reason of this question and answer.

#### IV.

The fourth and fifth assignments are abandoned in the brief of plaintiff in error, and will not be here considered.

#### V.

The plaintiff in error insists in this court, as he did in the Supreme Court, that, notwithstanding the fact that he has failed to properly bring before this court the record of the entire proceedings at the trial under section 136 of the Criminal Procedure Act, this court

should, nevertheless, give him the benefit of the review contemplated by that statutory provision. This relief the Supreme Court denied, and that denial was in entire accord with the decisions in this State. (*St. v. Armstrong*, 95 *Atl. Rep.* 997; *St. v. Clark*, 75 *N. J. L.* 473; *St. v. Hendrick*, 70 *N. J. L.* 41; *St. v. Webber*, 77 *N. J. L.* 580; *St. v. Kind*, 75 *A.* 438; *St. v. Shutts*, 69 *N. J. L.* 206.) Furthermore, even had the record of the proceedings at the trial been properly certified, the plaintiff in error would not have been entitled to this review, because of the fact that he entirely failed to serve upon the Attorney-General or the prosecutor (as required by section 137 of the Criminal Procedure Act, 2 C. S., 1866) the specifications of the causes in the record relied upon for review or reversal. There is, therefore, no basis in his claim for any kind of relief other than upon strict bill of exceptions and assignment of error.

Even if these matters were to be considered, it is submitted that they are without merit.

The claim of the plaintiff in error that the portion of the judge's charge, excluding from the consideration of the jury the count in the indictment charging assault and battery was injurious to the plaintiff in error, is unsound. Assuming that the evidence in the case might warrant the conviction of the plaintiff in error for assault and battery, and that in the opinion of the jury it did not warrant conviction on either of the other counts, it is plain that the result of the portion of the charge to which objection is made would have been the acquittal of the plaintiff in error when he should have been convicted of assault and battery. It cannot be assumed that had this charge not been given, the jury, while convinced of the defendant's guilt of carnal abuse, might have acquitted him of that charge and convicted him of assault and battery, and in the absence of this assumption it is apparent that the defendant could not have been damaged by this portion of the Court's charge.

The objections made to the testimony of the complaining witness, given on pages 29, 30 and 31 of the Case, have been dealt with under the second assignment of error.

The testimony of Hammerslau, referred to in brief of plaintiff in error (*Case*, p. 98) to the effect that the complaining witness made a complaint of the alleged assault to the police department of Baltimore, is governed by the same principle applied to the testimony given by the complaining witness, discussed under the second assignment of error.

It further appears upon an examination of the record that the only objections made to the questions asked of Hammerslau were sustained by the Court. As no exceptions were taken to this testimony, and the action of the Court is not the basis of an assignment of error, these objections cannot, of course, be considered. Furthermore, this objection is not covered by any assignment of error in this court.

#### CONCLUSION.

The plaintiff in error was convicted of one of the most serious crimes known under our law. His counsel states that he has married the complaining witness since the trial, and bases a plea that this court depart from its usual practice and permit him to review matters not before this court upon that fact. It nowhere appears in the record that the defendant has married the complaining witness, but, assuming this to be the truth, it forms no basis for the statement that he has expiated his crime against society, or even against the complaining witness by this marriage.

It appears in the record, on page 6, that the defendant was first sentenced to imprisonment for not more than fifteen nor less than seven and one-half years, and that subsequently this sentence was changed to a fine of five

hundred dollars and imprisonment of not more than fifteen nor less than two years.

It is possible that the trial court was influenced by the marriage of the plaintiff in error in thus reducing the sentence. Certainly this fact, if it be a fact, is one which this court cannot consider in dealing with any phase of the case which is presented to it.

It is respectfully submitted that the judgment of the trial court should be affirmed.

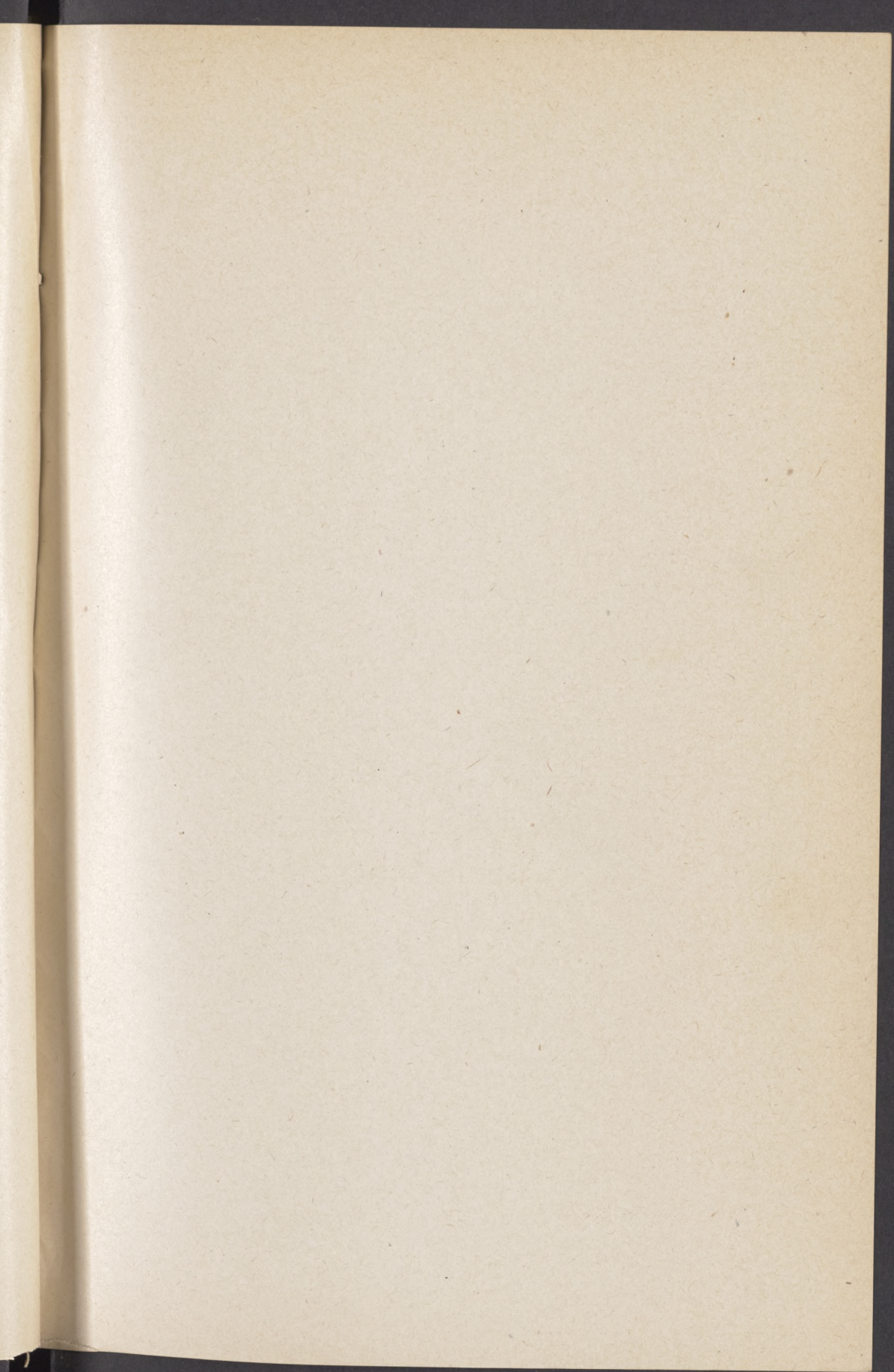
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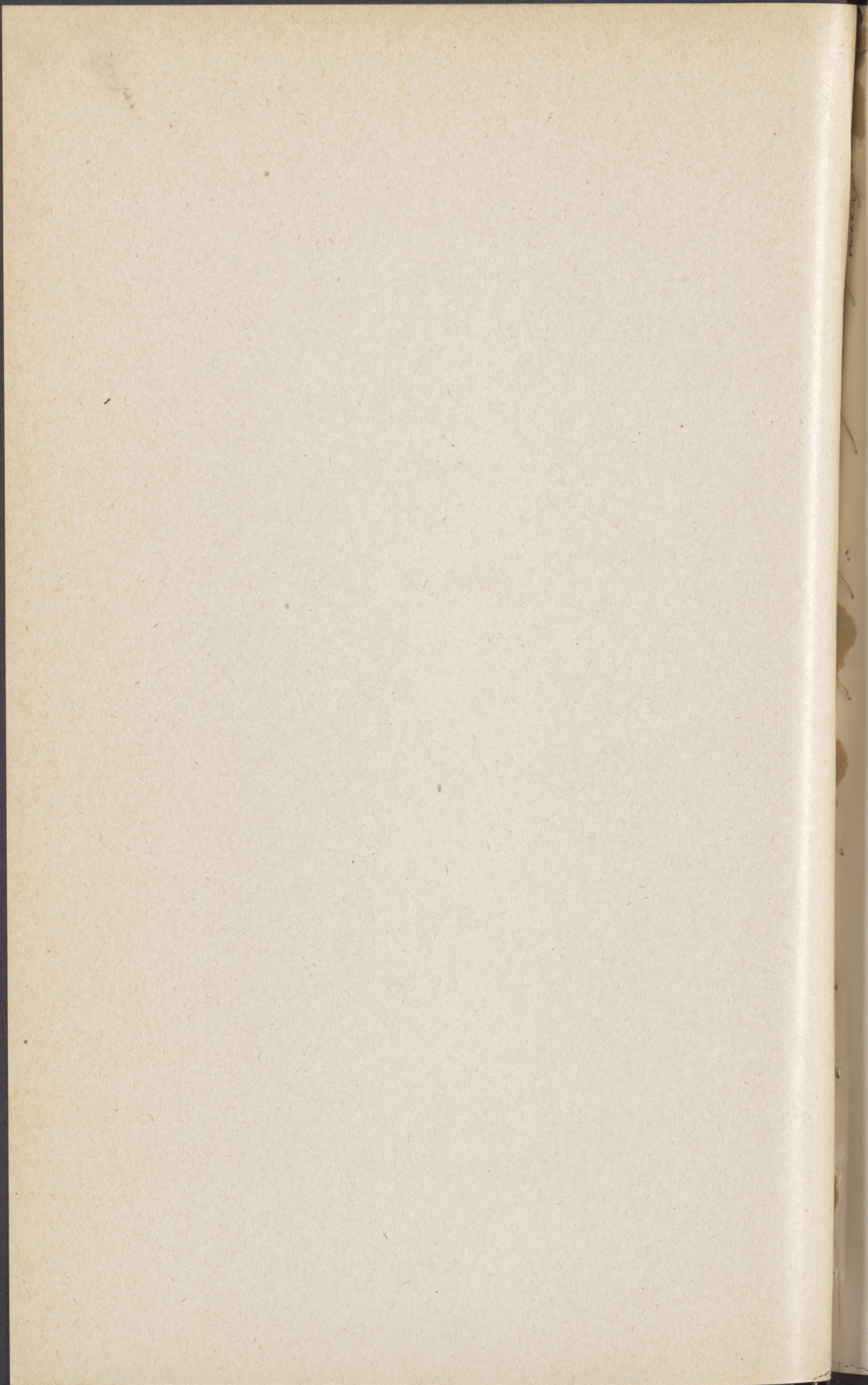
JOSIAH STRYKER,

JOHN W. WESCOTT,

Attorney-General,

*Attorney of Defendant in Error.*





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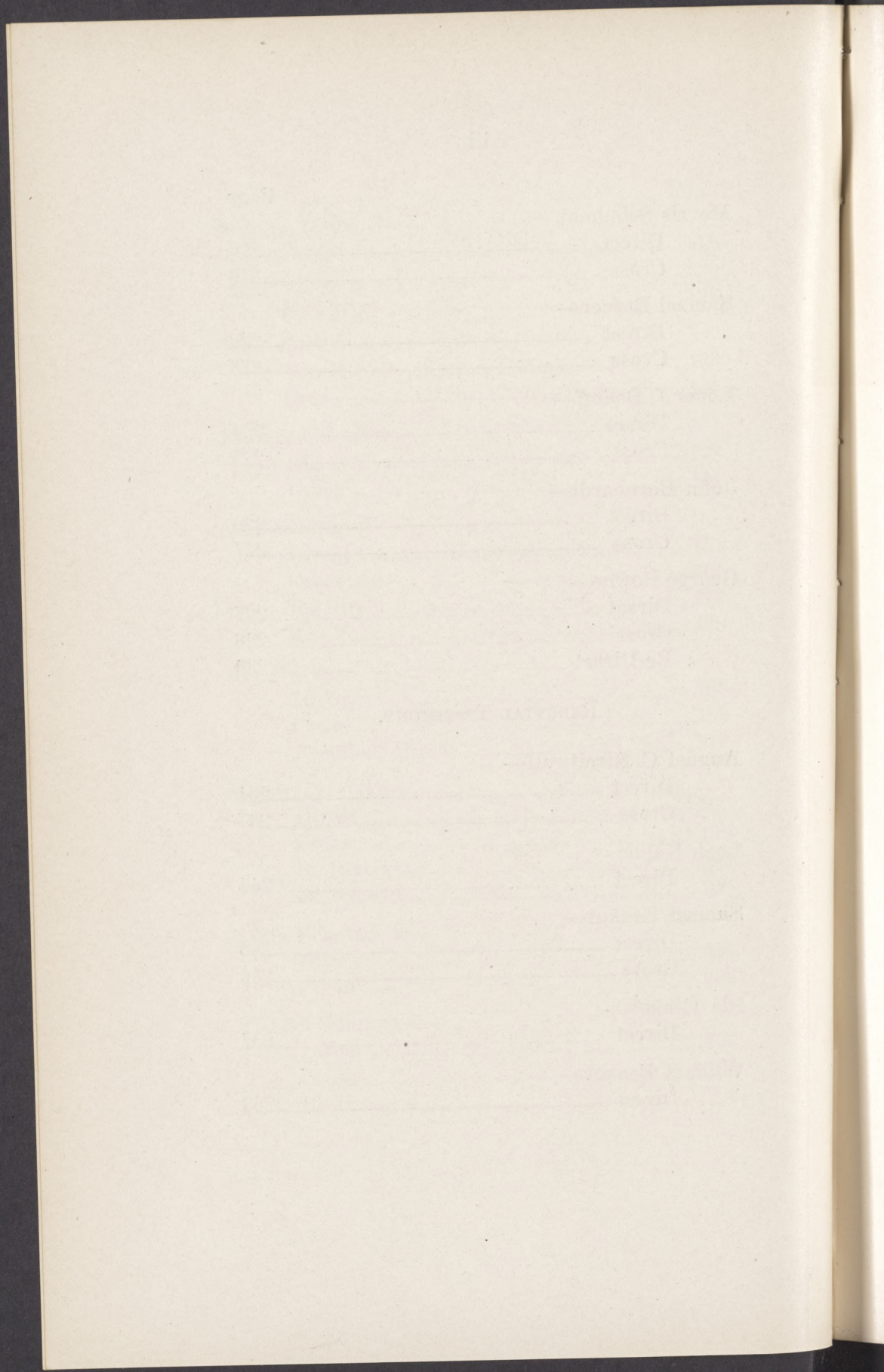
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## INDICTMENT.

State of New Jersey } ss. Be it remembreed, That  
Middlesex County. } at a session of the  
Court of Oyer and Terminer, held at New Brun-  
swick, in and for said County of Middlesex, on the  
second Tuesday of April, in the year of our Lord  
one thousand nine hundred and fifteen, before the  
Honorable James J. Bergen, one of th Jeustices  
of the Supreme Court of Judicature of the State  
of New Jersey, and Honorable Peter F. Daly,  
Judge of the Court of Common Pleas in and for  
the said County of Middlesex, the same being the  
April Term of the said Court of Oyer and Ter-  
miner in the year aforesaid, according to the form  
of the statutes in that case made and provided,  
upon the oaths of Charles W. Bumstead, Ralph  
T. Holman, C. M. Liddle, John C. Barlow, Edward  
Pfeiffer, Marius S. Darrow, Charles K. Seaman,  
C. H. Rogers, William Schlosser, N. W. Clayton,  
Edward Banker, George H. Bissett, Leonard  
Schneidig, Edward J. Gleason, E. B. Latham,  
James Avery, John Hanson, Sr., O. O. Stillman,  
James M. Wade, William Van Nuis, Jr., Howard  
Jemison, Augustine Cornell, and Clayton A.  
Clark, good and lawful men of the said County  
of Middlesex, duly summoned, and then and there  
empaneled, sworn and charged to inquire in be-  
half of the State of New Jersey, and for the body  
of the said County of Middlesex, it is presented  
in manner and form, to wit:

“Middlesex Oyer and Terminer  
of April Term, A. D. 1915.  
Middlesex County, to wit:

The Grand Inquest for the State of New Jer-  
sey, and for the body of the County of Middlesex,

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21

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*Indictment.*

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upon their oath Present, That Max Swiller, late  
of the City of New Brunswick, in the said County  
of Middlesex, on the twenty-first day of October,  
in the year of our Lord one thousand nine hun-  
dred and thirteen, with force and arms, at the City  
of New Brunswick aforesaid, in the County afore-  
10 said, and within the jurisdiction of this Court, in  
and upon one Tillie Esakov in the peace of God  
and of this State then and there being, violently,  
forcibly and feloniously did make an assault, and  
her the said Tillie Esakov then and there forcibly,  
violently and against her will feloniously did  
ravish and carnally know, 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.

20 And the Grand Inquest of aforesaid, upon their  
oaths aforesaid, do further present, that the said  
Max Swiller on the twenty-first day of October  
in the year of our Lord one thousand nine hundred  
and thirteen, with force and arms, at the City of  
New Brunswick aforesaid, in the County of Mid-  
dlesex aforesaid, and within the jurisdiction of  
this Court, in and upon the body of one Tillie  
Esakov in the peace of God and this State then  
30 and there being an assault did make and here the  
said Tillie Esakov being and there a woman  
child over the age of twelve years and under the  
age of sixteen years, he, the said Max Swiller  
being then and there above the age of sixteen  
years, did unlawfully and carnally abuse and other  
wrongs to the said Tillie Esakov, then and there  
did to the great damage of the said Tillie Esakov,  
contrary to the form of the statute in such case  
made and provided, and against the peace of this  
40 State, the government and the dignity of the same.

*Indictment.*

And the Grand Inquest aforesaid, upon their oaths aforesaid do further present that the said Max Swiller on the twenty-first day of October, in the year of our Lord one thousand nine hundred and thirteen, with force and arms, at the City of New Brunswick, aforesaid, in the County of Middlesex aforesaid, and within the jurisdiction of this Court in and upon one Tillie Esakov in the peace of God and of this State then and there being, an assault did make, and her the said Tillie Esakov then and there did beat, wound and ill-treat and other wrongs to the said Tillie Esakov then and there did, to the great damage of the said Tillie Esakov, contrary to the form of the statute in such case made and provided, and against the peace of this State, the government and the dignity of the same.

W. Edwin Florance,  
Prosecutor of the Pleas.”

And the said Judge do order that the said Indictment be delivered to the Clerk of the Court of Quarter Sessions, in and for the County of Middlesex, and the said Indictment was thereupon then and there delivered to and filed by the Clerk of said Court of Quarter Sessions and an entry of such order and delivery and filing was then and there by the said Clerk made in the Minutes of the said Court of Quarter Sessions, at the same term pursuant to the statute in such case made and provided. And afterwards, that is to say, at the session of the said Court of Quarter Sessions holden at New Brunswick aforesaid, in and for the County of Middlesex, on Tuesday, the fifteenth day of June, in the year of our Lord one

*Indictment.*

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thousand nine hundred and fifteen, as yet of the term of April of the said Court of Quarter Sessions before the Honorable Peter F. Daly, Judge of the Court of Quarter Sessions in and for the County of Middlesex here cometh the said Max Swiller under the custody of Edward F. Houghton, Esquire, Sheriff of the County of Middlesex, in whose custody the said Max Swiller then was, the said Max Swiller, being brought to the Bar here in his own proper person by the said Sheriff, and forthwith being demanded of and concerning the premises in the said Indictment above specified, and charged upon him how he will acquit himself thereof, he saith, he is not guilty thereof, and he puts himself upon the Country; and W. Edwin Florance, Prosecutor of the Pleas of the State for the said County in this behalf, doth the like.

Therefore, let the said Indictment be continued until the twenty-ninth day of November, in the year of our Lord one thousand nine hundred and fifteen, and a Jury thereupon come before the said Court of Quarter Sessions holden at New Brunswick, in and for said County, twelve good and lawful men each of whom shall be a citizen of this State and residents within the County of Middlesex aforesaid, above the age of twenty-one years and under the age of sixty-five years, by whom the truth of the matter may be better known and who are not of kin to the said Max Swiller to recognize upon their oath whether the said Max Swiller be guilty of the premises in the said Indictment above specified or not guilty because as well W. Edwin Florance, Prosecutor of the Pleas for the County of Middlesex, etc., as the said Max

*Indictment.*

Swiller hath put himself upon the Jury and the same day is given to the parties aforesaid, and the same place, at which day, that is to say, on the twenty-ninth day of November, in the year of our Lord one thousand nine hundred and fifteen at the Court of Quarter Sessions, holden at New Brunswick in and for the County of Middlesex, before the Honorable Peter F. Daly, Judge of our said Court of Quarter Sessions, comes as well the said W. Edwin Florance, Prosecutor of the Pleas aforesaid, and the said Max Swiller, in his own proper person. 10

And the Jury of the Jury of whom mention is before made and by the Sheriff of the County of Middlesex for that purpose empaneled and returned, to wit:

John J. Harkins, Jr., Douglas Montgomery, George Van Deventer, Elwood Manahan, Charles P. Grover, Harry Haywood, Joseph Dowdell, Garret Kinney, Charles Reid, Mads Dinesen, Edward Suydam and James Eden, being called and who being chosen, tried and sworn to speak the truth of and concerning the premises and thereupon the trial of the said issue commenced before the said Court and Jury. And the said issue after a charge from the said Court was submitted to the Jury, and the said Jury in charge of the Officer of said Court, duly sworn for the purpose were taken to a private room to consider upon their verdict, and afterwards, that is to say, on the thirtieth day of November, in the year of our Lord one thousand nine hundred and fifteen, at the City of New Brunswick aforesaid, the said Jury returned into and before the said Court in charge of said Officer sworn as afore- 20 30 40

*Indictment.*

said, and then and there in the presence of the said W. Edwin Florance, Prosecutor of the Pleas, and the said Max Swiller, upon their oath say that the said Max Swiller is guilty of the offence aforesaid, as charged in second count in said Indictment above specified, in manner and form as  
 10 in the said Indictment charged against him.

Whereupon all and singular the premises being seen and by the last mentioned count do not here fully understood and the said Max Swiller at the Bar of said Court for Judgment.

It is on this tenth day of December, in the year of our Lord one thousand nine hundred and fifteen, the Court thereupon doth order and adjudge that the prisoner, Max Swiller, pay a fine of two thousand dollars, and be imprisoned at hard  
 20 labor in State Prison for a maximum term of not more than fifteen (15) years, and a minimum of not less than seven and one-half (7½) years, and from thence until the fine and the costs of prosecution are paid.

The defendant being placed at the Bar, the Court, for reasons then and there stated, and on its own motion, Ordered that judgment heretofore entered December 10th, 1915, on the conviction of said Max Swiller, be opened and vacated.  
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This being done, the prisoner was ordered by the Court to be placed at the Bar for re-sentence as right and justice may seem to require; he being accordingly set to Bar, the Court did thereupon order and adjudge as follows:

You stand convicted of the crime of carnal abuse, a high misdemeanor, and the sentence of the Court upon that conviction is that you, Max Swiller, pay a fine of five hundred dollars, and be

*Indictment.*

imprisoned at hard labor in State Prison for a maximum term of not more than fifteen (15) years, and minimum term of not less than two (2) years, and from thence until said fine and costs of the prosecution are paid.

Judgment signed this fourteenth day of December, A. D. nineteen hundred and fifteen.

PETER F. DALY,  
*Judge.*

10

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

I, Bernard M. Gannon, Clerk of the County of Middlesex, do hereby certify, That the foregoing is a true, full and correct copy of the record in re *The State vs. Max Swiller*, as the same is on record in my office.

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IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my seal of said county, this fourteenth day of December, A. D. 1915.

BERNARD M. GANNON,  
*Clerk.*

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## WRIT OF ERROR.

New Jersey, ss.:

(L. s.) To Peter F. Daly, Esquire, Judge  
of the Court of Quarter Sessions of  
the County of Middlesex: Because of  
the record and proceedings, and also  
10 in giving of judgment upon a certain  
indictment against Max Swiller, late of the City  
of New Brunswick, in the County of Middlesex  
and the State of New Jersey, for carnal abuse,  
pro ut the said indictment and the several counts  
therein, whereof, before you he hath been in-  
dicted, and is thereof convicted by a certain jury  
of the County taken between the State of New  
Jersey and the said Max Swiller, as is said mani-  
20 fest error hath intervened to the great damage of  
the said Max Swiller, as upon his complaint we  
have received information; we being willing in  
this behalf, to correct the error in due manner,  
if any there be, and that speedy justice be done to  
him, the said Max Swiller, to command you that  
if judgment be thereon given, then that you dis-  
tinctly and openly send, under your seal, the rec-  
ord and proceedings aforesaid, with all things  
touching and concerning the same, to our Justices  
of our Supreme Court of the State of New Jer-  
30 sey, on Tuesday, the third day of January, 1916,  
and this writ, that the record and proceedings  
aforesaid being inspected, we may cause further  
to be done thereupon for correcting that error,  
what of right and according to the law ought to  
be done.

WITNESS, WILLIAM S. GUMMERE, ES-  
QUIRE, our Chief Justice, at Trenton, aforesaid,

*Writ of Error.*

the fourteenth day of December in the year of  
our Lord one thousand nine hundred and fifteen.

WILLIAM C. GEBHARDT,  
*Clerk.*

JOSEPH E. STRICKER,  
*Attorney.*

10

**ANSWER OF JUDGE DALY.**

The Answer of Peter F. Daly, Esquire, Judge  
of the Court of General Quarter Sessions of the  
Peace within named, the entire record and pro-  
ceedings of the plaint whereof mention is within  
named, with all things touching the same. I  
certify to the Justices of our Supreme Court of  
the State of New Jersey, at Trenton, at the day  
and year within contained in a certain schedule  
to this Writ annexed, as I am commanded.

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PETER F. DALY,  
*Judge.*

**ASSIGNMENTS OF ERROR.**

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And now on this twenty-ninth day of January,  
in the year of our Lord nineteen hundred and  
sixteen before the Supreme Court of the State of  
New Jersey comes the said Max Swiller, Plaintiff-  
in-Error, by John P. Kirkpatrick, his attorney,  
and says that in the record and proceedings and  
also in the giving of judgment upon the said in-  
dictment against him in the Court of Quarter Ses-

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*Assignment of Error.*

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sions of Middlesex County, and in the bill of exceptions taken upon said trial there is manifest error in this:

10 .1 That the said Court permitted the witness, Tillie Esakov, to answer the question on the part of the Plaintiff, "That piece of paper folded that you say he told you to give to your mother, what did you do with that?" to which permission due and timely exception was taken by the Plaintiff in error (pro ut the bill of exceptions).

20 2. And in this that the said Court permitted the witness, Tillie Esakov, to answer the question on the part of the Plaintiff, "As the result of the interview with your father did you consult a physician?" to which permission due and timely exception was taken by the Plaintiff-in-error (pro ut the bill of exceptions).

30 3. And in this that the said Court permitted the witness, Anna Esakov, to answer the question on the part of the Defendant, "Were you in New Brunswick at the home of Max Swiller with Sammy and Morris after you left the farm in 1913 and before you went to Baltimore?" to which permission due and timely exception was taken by the Plaintiff-in-error (pro ut the bill of exceptions).

4. And in this that the said Court permitted the Defendant, Max Swiller, to answer the question on the part of the Defendant, "On this occasion, that is, the occasion that Tillie called upon you at the store, you were engaged to marry one of the Esakov girls, were you not?" to which permission due and timely exception was taken by the Plaintiff-in-error (pro ut the bill of exceptions).

5. And in this that the said Court permitted

*Assignment of Error.*

the witness, Samuel Esakov, to answer the question on the part of the Plaintiff, "How did you go?" to which permission due and timely exception was taken by the Plaintiff-in-error (pro ut the bill of exceptions).

JOHN P. KIRKPATRICK, 10  
*Attorney for Plaintiff-in-Error.*

**JOINER IN ERROR.**

And hereupon afterwards, to wit, on the twenty-fifth day of February, nineteen hundred and sixteen, comes the said State of New Jersey and says there is no error either in the record or proceedings aforesaid, or in giving the judgment aforesaid, and he prays 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, assigned for error, and that the judgment aforesaid in manner aforesaid given, may be in all things affirmed. 20

JOHN A. COAN, 30  
*Assistant Prosecutor of the Pleas  
of the County of Middlesex.*

## AFFIDAVIT ON JOINDER IN ERROR.

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

10 JOHN A. COAN, of full age, being duly sworn according to law upon his oath says, that he is the Assistant Prosecutor of the County of Middlesex, and in charge of the case of the *State vs. Swiller*, hereinabove mentioned. That he has read the foregoing petition, and that the matters and things set forth therein are true.

(Signed) JOHN A. COAN.

Sworn and subscribed before me  
 this 25th day of February, 1916.

ANTHONY SILZER,  
*Notary Public for N. J.*

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**TESTIMONY.**  
MIDDLESEX CIRCUIT.

April Term 1915.

<p style="text-align: center;">STATE OF NEW JERSEY</p> <p style="text-align: center;"><i>vs.</i></p> <p style="text-align: center;">MAX SWILLER.</p>	}	<p>Indictment for Rape, Carnal abuse, etc. 27, 1518, 4401.</p>	10
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Transcript of stenographer's notes of evidence taken in the above entitled cause, before HON. PETER F. DALY, Judge, and a Jury, at the Court House in the City of New Brunswick, New Jersey, on the twenty-ninth day of November, A. D. 1915, at 10.00 a. m. 20

APPEARANCES:

W. EDWIN FLORANCE, ESQ., *Prosecutor of the Pleas.*

AUGUSTUS C. STREITWOLF, ESQ., *Representing the State.*

JOSEPH E. STRICKER, ESQ.,

GEORGE L. BURTON, ESQ., *Representing the Defendant.* 30

A jury being empanelled and found satisfactory, they were sworn.

Mr. Streitwolf opens the case for the State.

## STATE'S OPENING.

MR. STREITWOLF: May it please Your Honor, and gentlemen of the jury: the defendant, Max Swiller, of the City of New Brunswick, has been indicted by the grand jury of this county for three counts, Rape, Carnal Abuse and Assault arising out of a situation that occurred at his home on October twenty-first, 1913. The facts, as the State will endeavor to present them to you, are: one Tillie Esakov, then a young girl of fourteen years and residing with her family at Metuchen, or about two miles from Metuchen, on a farm known as the Townley Farm, was sent by her mother late in the afternoon before the evening of October twenty-first, 1913, to go to the store of Max Swiller in the city of New Brunswick. Swiller Brothers were doing business at that time at 279 Burnett Street, engaged in the feed business. She arrived at that store at eight o'clock at night. She said, "Mr. Swiller, my mother sent me to you—come out to the farm in the morning and buy the corn. Just before she stated her mission there was a party there in the store and he went out with this party and returned in twenty minutes. It was then, on his return, that she stated to him her mission. He said to her, I will have to see my brother Abe, come up to my house where my mother and my brother Abe is, and I will let you know." He and his brother Abe at that time were living at Five Schureman street, or a distance of two blocks from the store. So she accompanied him to Five Schureman street

*State's Opening.*

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where he lived, and they resided on the second floor, the first floor being occupied by the family of one Levy. Mr. Swilled goes up the flight of stairs and this young girl, Tillie Esakov, immediately behind him, and the door leading into his dwelling apartment was opened, and he entered and she followed, and there is a small gas light burning. He closes the door, takes the key, locks the door, puts the key back in his pocket. There was then a conversation between Tillie and Mr. Swiller. She demanded to know where the brother was, and where the mother was. He told her his brother Abe was in New York, and the mother was on the farm, and that he was going to have a good time with her. She insisted upon his releasing her, opening the door, and he refused to do it. I am not going to narrate all the details of that night. The girl will tell it to you herself. She was in there until early morning, and he ravished her during that time on two occasions. In the morning he let her out. At the time he gave her a folded piece of paper with instructions to give it to her mother. She got home about eleven o'clock in the morning. She gave that folded piece of paper to her mother and she had a conversation with her mother. I suppose that conversation is not relevant to this issue.

THE COURT: Then no reference should be made to it. Go on.

MR. STREITWOLF: She saw the con-

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*State's Opening.*

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10 tents of that paper, containing two five dollar bills, and the mother put those two five dollar bollar bills in her bosom. The father, who at the time was in Baltimore, having gone there three months previously to acquire a place of business and a home, had his family return about the first of November, or ten days after this occurrence, and he knew nothing of the situation or the condition of his daughter until April, 1914. Now, in April, the father took certain action as he thought necessary, and that is important, because we are now in a situation almost two years from this occasion. I think it is important to show to you just what efforts this father has  
20 gone through, not to detail it, but to show you the position he has taken in the matter. He came on here to New Brunswick and conferred with counsel. Nothing resulted.

MR. STRICKER: I object to that.

THE COURT: Objection sustained.

30 MR. STREITWOLF: so that after, in December, 1914, the child having been born, as we claim, as the result of this on July twenty-fifth, 1914, in the John Hopkins Hospital in Baltimore, this Tillie, this girl, and Ida came on to New Brunswick, and went to the store of Max Swiller, at the time she carried the infant on her arm, and there was a conversation there in which she demanded to know of Mr. Swiller, what he proposed to do for his child. I am not going to narrate the de-

*State's Opening.*  
*Tillie Esakov—for State—Direct.*

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tails of that conversation. It was continued again in the matter—

MR. STRICKER: I object to this. Your Honor has ruled on that.

THE COURT: No, I have not ruled on that. Go on. 10

MR. STREITWOLF: As I said, I am not going to go into the details of that conversation. The girl will tell it to you. That substantially, gentlemen, is the State's case.

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TILLIE ESAKOV, a witness produced on behalf of the State, being duly sworn on her oath, according to law, saith: 20

*Direct Examination by Mr. Streitwolf:*

Q. Miss Esakov, your full name? A. Tillie Esakov.

Q. Where do you reside at present? A. 1 East Montgomery Street. At the Mansion House.

Q. At present where do you reside? A. 1 East Montgomery Street, Baltimore, Maryland. 30

Q. You reside with whom? A. My father and family.

Q. Where did you reside in October, 1913? A. In Middlesex County, on the Townley farm.

Q. About where is the Townley farm located from Metuchen? A. On the New Durham Road.

Q. About how far from Metuchen? A. About two miles.

Q. This side or the other side? A. This side. 40

*Tillie Esakov—for State—Direct.*

Q. Towards New Brunswick? A. Yes, sir.

Q. How old were you on the twenty-first day of October, 1913? A. Fourteen.

Q. When was your next fifteenth birthday? A. Last year, October twenty-seventh.

Q. The twenty-seventh following? A. Yes, sir.

10 Q. Do you remember the twenty-first day of October, 1913? A. Yes.

Q. State what occurred. A. I was called from the corn field by my mother to go to Mr. Swiller's store, at 279 Burnet Street to tell him to come for some corn the following morning. And she told me to remain there——

MR. STRICKER: I object to what the mother told her.

20 THE COURT: Objection sustained.

Q. What hour of the day was this? A. Around seven o'clock in the evening.

Q. Did the mother give you carfare? A. Seven cents to go from Metuchen to New Brunswick on the Pennsylvania Railroad.

Q. What could you buy, or did you buy, for seven cents? A. Half-fare ticket.

30 Q. Excursion ticket, or just single trip? A. Single trip ticket.

Q. And how much did you pay for that single fare, half-trip ticket? A. Seven cents.

Q. Did you obey your mother's instructions? A. She told me—yes.

Q. Did you go to Mr. Swiller's office as you were directed to do by your mother? A. Yes.

Q. How did you come? Just narrate that. A. Walking from the depot to the store.

40 Q. The depot at New Brunswick? A. Yes.

*Tillie Esakov—for State—Direct.*

Q. What time did you get down to the store, about? A. Around eight o'clock.

Q. Now, tell us what you saw.

*By the Court:*

Q. Eight o'clock in the morning? A. Eight o'clock in the night. 10

*By Mr. Streitwolf:*

Q. Is that night time, eight o'clock in the night?

A. Yes, sir.

Q. Who did you see when you went in the store? A. Mr. Max Swiller and some old man, some farmer.

Q. Did you know that man? A. No.

Q. Have you ever seen him after that? A. Never. 20

Q. Now, go on. A. I came to the store and I went in the office. Mr. Max Swiller and this old man were standing there talking. I came in and Mr. Swiller said, "Hello," and I answered, and he told me to take a seat, and I sat down, and I was there about fifteen minutes before he got through talking with that man, and he got up and walked out and he said, "I will be back in a few minutes," and he went out. And later on I got up and looked out of the office door and didn't see anybody. I sat down again, and about fifteen minutes later from the time he went he came in and he says, "Just wait a few minutes, I will talk to you as soon as I get through with my books." Then about fifteen or twenty minutes he got through with his books and I got up—he closed his books and I got up and walked over to his 20

*Tillie Esakov—for State—Direct.*

10 desk and said, "Mama wants you to come for the corn early to-morrow morning, and to be sure and come." He said, "I can't come because my brother Abe don't know about it. I have to talk to him first." He said, "Just wait until I get through here," he says, "and you will come up to my home on 5 Schureman Street, and we will talk things over. My mother and brother Abe is up there."

MR. STREITWOLF: Not so fast, but a little louder.

20 A. And he closed his—about twenty or twenty-five minutes later he closed his books and closed his desk, and he told me to walk out of the office and I walked out; he turned out the light, and we walked out to the pavement in front of the store and he locked the store door and we went down Burnet Street, and came to his home on 5 Schureman Street; the first house next to the corner.

Q. Let me ask you here a minute. That entrance door, 5 Schureman Street, was it open or locked? A. Open.

30 Q. Now, gon on. Did you enter? A. We entered. He went first and I followed. We went in the hall and there was a flight of stairs to walk up and he went first and I followed, and he opened the upstairs door.

Q. Was that door locked or open? A. Open.

Q. I mean unlocked. A. Unlocked. He opened it, and he walked in and I followed him and he says, "Take a seat."

Q. Let me ask you, what was the condition of the room when you entered? A. The kitchen.

*Tillie Esakov—for State—Direct.*

Q. Was there a light lit or not? A. A dim light, low.

Q. That was burning when you entered? A. Yes. He told me to sit down, and I took a seat, and then when I took a seat he locked the door and put the key in his pocket. And then I says, "Where is your brother Abe, and your mother, Mr. Swiller?" He said, "Oh, never mind about them," he says, "my brother Abe is out on the farm and my—my brother Abe is in New York, and my mother is out on the farm." And I said, "Then you can't buy the corn without him knowing about it?" He said, "Never mind about that, we are going to have a good time." And I says, "Well, then, I am going," and I got up to open the door, and the door was locked. I said, "Mr. Swiller, open the door, I want to go home now, mama is expecting me." And he says, "No, it is too late; you can't get no train now; it is too late for you to go home; you can't go." And I says, "I have got to go home because mama is expecting me home. I was supposed to come back the same night." And he grabbed me away from the door and put his hand over my mouth; I went to holler, I began to cry and holler, "Mr. Swiller, let me go," I hollered, and he put his hand over my mouth and I couldn't holler, but I was crying, and he carried me into the next room.

Q. Carried you? A. Yes. And he threw me over the bed in the next room. It was a room like a parlor and had a bed in it.

Q. Yes? A. And he threw me over the bed and had—and picked up my skirt, I wore short dresses then, he picked up my skirt and threw it over my face, skirt and underwear, and tore my

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*Tillie Esakov—for State—Direct.*

underwear down, and he got in bed and then had connections with me for a few minutes, and had his hand over my mouth and my clothes over my face yet, and I was crying and trying to holler and all; he said if I hollered I would make it worse, so I was afraid to holler, but I done the  
 10 best I could.

Q. Now, Tillie, you say he had connections with you. What do you mean exactly? Just be a little bit more explicit?

THE COURT: Answer the question.

A. I can't exactly explain it. I know what it means and all.

20 *By the Court:*

Q. What does it mean? What did he do to you? A. Had connections with me.

Q. What do you mean by connections with you? What part of your body did he have connection with? A. My private.

Q. And what part of his body did he have connection with your privates with? A. The same.

THE COURT: *Proceed.*

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*By Mr. Streitwolf:*

Q. Then after he relinquished his hold of you what happened? Continue your story. You say he had you down and had his hand over your mouth. Now, when he relinquished his hold and you were there, tell us what happened? Follow it up. A. He got out of bed and walked into the kitchen.

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*Tillie Esakov—for State—Direct.*

Q. Let me ask you right there, on that occasion how was he dressed? A. He was dressed all but his coat and hat.

Q. Had his shoes on, and his trousers? A. Yes.

MR. STRICKER: I object to this question.

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A. Everything except——

THE COURT: Objection sustained. What did he have on, is the question.

A. Everything but his hat and coat.

Q. Now, follow up where I interrupted you there, Tillie. After you were released what did you do afterwards? A. I got out of bed. I had to be in bed for a few minutes because I couldn't get up right away. My head was dizzy and whirling around, and after I got out of bed he was in the kitchen, and I heard him flushing the water, and I didn't want to go out there right away. And I looked in the kitchen, but the sink is towards the side so I didn't see it, but I knew he was in there. And then he walked into the next room. He went out of those two. Walked into the side room, and I went in the kitchen and I tried to open the door, and it was still locked, and then I walked over and went into a bath room. I went in the bath room and looked at myself, and my clothes and body were stained with blood. And I found some old rag there and I washed myself and straightened myself a little bit, and then I came out and sat between the table and the chair near the table and chair crying. I tried to get out at first, but everything was locked and closed. And about an hour later, he came in the room

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*Tillie Esakov—for State—Direct.*

again, out of the second room, out of his bed room, I think.

Q. How was he dressed then? A. His underwear.

Q. Go ahead. A. He came to the kitchen, and he says, "Don't worry yourself. Don't cry, I didn't hurt you." And I wouldn't answer him. He said, "Your mother and sister Florence do the same," he said not to be afraid. And I says, "Mr. Swiller, please let me go home"; I didn't want to holler or cry; I asked him in a nice way and he wouldn't open the door; he said, "No, it is about two o'clock now, you can't go home, it is too late for you." And when I asked him again he grabbed me and asked for a kiss, and I said, "No, I want to go home," and then he kissed me and hugged me and dragged me into the next room again, the same room where I was at first.

Q. How did he drag you? A. He dragged me in, he didn't carry me then, he dragged me in, took me by my hands and dragged me in.

Q. He said it was two o'clock. Did you believe it was two o'clock at that time?

MR. STRICKER: I object.

30 A. No, it couldn't have been.

THE COURT: One moment. Objection sustained.

..... Q. What time was it when he said it was two o'clock? A. Somewheres after ten, around.

Q. How do you arrive at that? Did you have a watch? A. No. It couldn't have been over—two o'clock, because we weren't—I wasn't in the city more than about two hours or so.

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*Tillie Esakov—for State—Direct.*

Q. When he dragged you in this room on the second occasion, tell us what happened? A. He threw me over the same bed again and picked my clothes up again, and had them over my face and had connections with me again for a little longer than the first time, and then he got out of bed, and he said, "Don't cry, and don't worry yourself, I told you once before," he said, "your mother and your sister Florence do the same," and he said, "Don't let anybody know that I was here with you and what has happened." And I asked him to let me go, and he said, "No, it is too late now, you can't go." 10

Q. On this second occasion did he have his hand over your mouth? A. Yes.

Q. Now, you have stated again that he had connections with you. What do you mean by connections? A. The same thing as the first time. 20

Q. Now, go on. A. He told me not to worry; he said, "Your mother and sister do the same," he said, "Don't worry about that, and don't let anybody know you have been up here, and what happened." And he walked into his next room, into his bed room, some room right opposite the kitchen, and I went out in the kitchen and straightened myself, and tried to get out again, but everything was locked the same way. The shutters were closed and the windows pulled—the windows locked and the shades pulled down, and there was lace curtains on the window, and I was afraid to pick up anything and break the window open or try to get out in a hard way, so I could make any noise, because he threatened me at first, he said if I hollered, or made any noise, he would make it worse for me. 30

*Tillie Esakov—for State—Direct.*

Q. He went into an adjoining room? A. Yes.

Q. Did he remain there? A. Until the following morning.

Q. Where did you stay? A. Between the parlor door and the kitchen door.

10 Q. Did you disrobe at all that night? Did you take your clothes off at all? A. No.

Q. What did you do during the night, Tillie? A. Sat there crying. I tried to get out at first, and there was no use my trying again, because everything was locked up and closed the same way.

Q. Did you or did you not hear Mr. Swiller in the adjoining room during the night? A. I did.

20 Q. Tell us what happened in the morning. A. In the morning, about daybreak, Mr. Swiller came in the parlor, and whether he saw me or not, I don't know. He pulled up the shade in the parlor and opened the shutters and then he walked into the kitchen past me and opened the shutters and pulled up the shades in the kitchen, and he says to me, I was crying, he says, "Don't cry," he said, "You are going to go home soon, and I didn't hurt you," he said, "Your mother and sister do the same," he said, "I told you that over and over, not to cry." And he says, "Here is 30 seven cents for you to go home." And I didn't want to take it at first.

Q. Had you asked him for that? A. No. I didn't want to take it at first, and he gave it to me as if he knew what it was for.

THE COURT: Strike out the last.

40 Q. Give you anything else? A. Yes, he gave me a little white paper, folded, and he says, "Give this to your mother, she knows what it is for."

*Tillie Esakov—for State—Direct.*

And I didn't answer him. And then he says, "Straighten yourself and comb your hair," he says, "and then go ahead." He said, "Do you want to have breakfast with me? I said, "No, I can do without it, I will get it when I get home." He said, "When you go downstairs, bang the door real hard so it will lock." Before I went out he said, "Don't let anybody know what you have been up here." So he went down, and after I straightened myself, and fixed myself, I went out, and slammed the door real hard, and I went downstairs and went up Schureman and down Neilson, and then I went up Albany, that street brought me right to the depot. 10

Q. Did you go home by trolley or railroad? A. Pennsylvania railroad, by train. 20

Q. When you got home—— A. I came home around eleven o'clock, and when I came down at the end of our farm my mother was outside feeding chickens. Some other man's chickens that was left from the sale. He didn't have no room for them, and he asked her to keep them. And she was feeding them and she saw me coming, and she came in front of me, and I was crying. She didn't ask me what was the matter. I told her, and said—— 30

Q. Never mind what you said to her. A. I told her everything that happened and all, and she said, "All right, keep quiet, don't cry, he didn't hurt you and he didn't kill you yet." She said, "You are nothing but a child."

MR. STRICKER: I object to that conversation.

THE COURT: Objection sustained. Strike out what the mother said. Anything 40

*Tillie Esakov—for State—Direct.*

further than the mere fact that she had complained to her mother is not relevant evidence in a criminal case.

Q. That piece of paper folded that you say he told you to give to your mother, what did you do with that?

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MR. STRICKER: I object to that.

THE COURT: I will allow that. You may have an exception.

MR. STRICKER: I pray an exception. The ground of my objection being that it is irrelevant to this issue.

THE COURT: Proceed. You have your exception. Exception allowed, sealed accordingly.

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PETER F. DALY,  
*Judge.*  
(Seal)

Q. What did you do with that? A. Gave it to my mother and she opened it in front of me, and there was two five-dollar notes in it. She stuck it down her blouse, and she told me to go inside—

MR. STRICKER: I object to what she said.

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MR. STREITWOLF: She didn't say what she said.

Q. Don't say anything your mother said, Tillie, I don't want it. You say you saw those bills?

A. Yes, sir.

Q. How long after this day that you are testifying to did you remain at the farm in Metuchen?

A. About a week's time.

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*Tillie Esakov—for State—Direct.*

Q. And then where did you go? A. To Baltimore, Maryland.

Q. The whole family went down there? A. Part of the family.

Q. Who went down? A. My three little sisters, one of my brothers, Davy, my sister Florence and myself. My mother and sister Lena and two brothers, Sammy and Morris, were left at the farm. 10

Q. When did they join you? A. About two weeks following.

Q. Did you say anything of the occurrence you have testified to to anyone but your mother? A. To no one but her.

Q. When did you tell your father? A. The latter part of March. 20

*By the Court:*

Q. That was 1914? A. Yes, sir.

*By Mr. Streitwolf:*

Q. Now, at that time, did you, in company with your father, consult a physician, or physicians, in Baltimore?

MR. STRICKER: I object to that, on the ground that it is rather remote, six months after. 30

MR. STREITWOLF: I will put it this way—

THE COURT: Then you withdraw the question?

MR. STREITWOLF: I will reframe it.

THE COURT: The question is withdrawn. 40

*Tillie Esakov—for State—Direct.*

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Q. As the result of your interview with your father did you consult a physician?

MR. STRICKER: I object.

A. I don't understand.

10 THE COURT: Objection overruled and exception allowed, sealed accordingly.  
 PETER F. DALY,  
*Judge.*  
 (Seal)

MR. STRICKER: May I state the grounds?

THE COURT: Yes, surely.

20 MR. STRICKER: This question is objectionable on the ground that whatever consultation took place six months afterwards is entirely too remote from this issue.

THE COURT: I have not allowed the details of the consultation to be admitted in evidence. Simply the fact that there was a consultation. That leaves it that your only objection is, as you suggested before, that it is too remote.

30 MR. STRICKER: Yes. Now, I want to make another objection, that it should appear what she had consulted a physician for. She may have consulted a physician for a cause entirely other than arising out of this transaction.

THE COURT: That may be followed up. Answer the question.

*Tillie Esakov—for State—Direct.*

(Question repeated by the stenographer.) A.  
I don't understand that.

*By the Court:*

Q. Did you go see a physician? A. Yes.

Q. What did you see a physician about, about 10  
the complaint that you had made to your mother  
and your father as to what you say Swiller did to  
you? A. Yes.

*By Mr. Streitwolf:*

Q. What doctor did you see? A. Dr. Herch,  
Linden Avenue, Baltimore.

Q. Did you see any other? A. Dr. Collenberg,  
I don't know the street where he lives at, but they 20  
are both in Baltimore.

Q. Did your father accompany you? A. Was  
he with me?

Q. Yes. A. Yes, mother and father both.

Q. What was your condition at that time? A  
I don't understand that what you mean.

*By the Court:*

Q. Was there anything the matter with you at  
that time, as the result of what you say Swiller 30  
did to you on October twenty-seventh? A. Yes.

Q. What? A. I was in the family way.

THE COURT: Proceed.

*By Mr. Streitwolf:*

Q. What happened following that in reference  
to this? That is, were you ever in John Hopkins  
Hospital? A. Yes, sir.

*Tillie Esakov—for State—Direct.*

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Q. Tell me what happened. A. I went to 5 North Exeter Street, which is the place for pregnant girls, and I stayed there from the twenty-ninth of April, until the twenty-fifth of July, the night of the birth of my child.

10 *By the Court:*

Q. What was the night of the birth of your child? A. Twenty-fifth of July.

*By Mr. Streitwolf:*

Q. 1914? A. Yes, sir.

Q. Child still living? A. Yes, sir.

20 Q. Now, following that, when did you see Mr. Max Swiller? Let me ask you this first: the man that you say was up in that room that night and kept you in his house that night, is he in Court? A. Yes, sir.

Q. Where is he? A. In front of me.

Q. You identify him as the man who detained you in his home that night? A. Yes.

THE COURT: Point him out.

A. Right here in front of me.

30 THE COURT: Pointing to the defendant.

Q. Now, tell me when you saw this man again. A. the first part of December.

Q. What year? A. 1914.

40 Q. Tell us the circumstances? Who was with you? A. My sister Ida and the baby came here from Baltimore and we arrived here at New Brunswick depot, and we phoned down to Mr.

*Tillie Esakov—for State—Direct.*

Swiller and told him we were coming, we were coming to his office.

Q. Never mind, you went down to his office. Tell us what happened? A. We went down to his office, we went in his office and he told us—there was an old man there which I understand was his father, because I heard somebody call him Mr. Swiller, and he came in and he said hello, and we answered, and then he said, take a seat. And we sat down. And he told us to put the suit case down and take our coats off, and we didn't take our coats off, but we put the suit case down and we remained there. And later on he walked out of the office, and the other man was sitting there, reading a paper, then he went out of the office, and Mr. Swiller came in again and he said, how is everybody at home. We told him all right. And then he says, "How is Lena, does she worry, does she seem to worry any about me?" And we said, "No." Then he said, "I heard she was married." And we said, "Yes, she is married since April fifth." He said, "Did she marry a rich man?" We said "No." And then he says, "She didn't marry no rich man?" And we said, "No, she didn't marry the man for his money, she married because they loved each other," and then he says—then he didn't say any more. He got up and walked out into the street, and my sister and I we got up and followed him, we went out into the street after him, and he was right at the end of the store, in front of the store when we came out, and we went over to him, and I said, "Mr. Swiller, what do you intend to do for your child." He looked at me and he says, "This is not my child," he says, "I can get plenty of false

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*Tillie Esakov—for State—Direct.*

Christian boys to swear they have meen out with you." I says, "How can you say that when you too me up in your home on 5 Schureman Street the twenty-first of October, and assaulted me there. You locked me in those rooms and told me that  
10 your mother and brother were up there and you couldn't do anything about buying corn without your brother Abe." He says, "Hush, don't make so much noise." He said, "Just wait a minute." So my sister said, "Why can't we talk?" He said, "I don't want everybody to hear." And he went in the office and told the bookkeeper or stenographer to take care of the store and office, that he was going away for a few minutes. And  
20 it was raining on that day and we left our suit case there and he said he wanted us to go up and talk to him quietly up in his home on 5 Schureman street. And we all three walked under the umbrella.

Q. Who were the three? A. Mr. Swiller, Ida and myself and the baby. I had the baby in my arms. And we went through Burnett street, and then we went—we got to Schureman street and we went up in his home. He went up first and we followed him. There was nobody in there. The  
30 house was fixed different because we heard his brother Abe was married.

THE COURT: Never mind what you heard.

Q. Tell us the conversation you had. A. We sat down and he took a seat between us. And I said, "Mr. Swiller, what do you intend to do for your child." He said, "Wait a minute," and he got  
40 up and closed the door. Then he sat down again,

*Tillie Esakov—for State—Direct.*

and he says, "I will tell you what I will do. I will take the child from you," and he says, "and I will put it away some place," and he said he will dispose of it, and no one will know where it is at, neither you nor I. I said "No, the child is mine as well as yours and you won't get him."

Q. Just give us the rest of that conversation now, Tillie. A. Then he offered me one dollar and a half a week for the child, and wanted me to go back to Baltimore with him. But I said, "No, I won't. One dollar and a half can't support the child; he is growing older every day." And then he says, "I will give you three dollars a week for it, and go back to Baltimore." I said "No, I don't want any support." Then he says, "Well, what do you want?" I said, "Marry me and give me and the child a name." And then he said he can't get married for no sum of money in this world. Then he won't say why or anything.

Q. Did you see any money there that day? A. We got up, after he said he couldn't get married, then we got up, and he says, "Do you need any money," he said, "here is money;" he took a big roll of money out of his pocket and put it on the table, and he wanted us to take the money and go to New York, and rent rooms and stay until he comes there and he will fix everything up for me and the child.

Q. What then? A. Then we said, "No, we don't want the money, papa borrowed money and got enough to bring us here, and if we will need any more papa will send it to us."

Q. You said, go to New York and fix up a room, give me that conversation. A. He said, "Take this money and go to New York and get a room there

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*Tillie Esakov—for State—Direct—Cross.*

and stay there until I come and I will fix things up for you and the child." We said, "No, we are going right back to Baltimore. Then he says, "I will tell you what I will do, if you want me to marry you, he says, go to New York and I will keep you in the room there for a year's time, and  
 10 I want to live with you, and after a year's time if I will see you are decent, you are a decent girl, I will marry you, and even so, if I wouldn't want to live with you I can get a divorce the next twenty-four hours."

Q. At this time Ida was present, wasn't she?

A. Yes, sir.

Q. Did you take any money from him that day, Tillie? A. No.

20 Q. Did Ida? A. No, sir.

MR. STREITWOLF: I think that is all.

*Cross Examination by Mr. Stricker:*

Q. Now. Miss Esakov, on the day that you started from New Brunswick, you were directed to notify Swiller to come to your farm and get some corn? A. I started from Metuchen, from our home.

30 Q. That was your purpose, wasn't it? A. Yes, sir.

Q. Was that corn cut, or was it in the field? A. Already cut and husked, ready to take away. Q. And that is all you had to do? Nothing else? A. Yes, sir.

Q. Had you ever been in New Brunswick before? A. Lots of times.

Q. And had you gone by the Pennsylvania Railroad? A. Yes, sir.

*Tillie Esakov—for State—Cross.*

Q. You knew what the fare was? A. Yes, sir.

Q. Starting out with that in mind, how did you expect to return? A. I would have walked home.

Q. At night? A. Many a time my sister and myself had to walk home if we were left there.

Q. Well, did you expect to be left there? A. No.

Q. Well, now, you started out at seven o'clock in the evening as you say. Quite dark, wasn't it? 10

A. Yes.

Q. And all you had was seven cents? A. I would have loaned from somebody.

Q. I said all you had was seven cents? A. Yes, sir.

Q. And you didn't take the trouble to ask your mother to give you sufficient money for your return fare? A. I did. She wanted me to come back with him the following morning. 20

Q. Then you knew when you started out that you were to stay at Swiller's all night, is that so? A. She wanted me to, but I didn't intend to do it.

Q. And your idea—did you tell her you would not do it? A. Yes.

Q. Did you ask her for an additional seven cents then for your return? A. Yes.

Q. And she refused? A. Yes, sir.

Q. And you thought you would borrow seven cents for your return trip? A. Yes, sir. Either borrow, or either walk home. 30

Q. Who did you expect to borrow that seven cents from? A. There was lots of our friends in New Brunswick, where my mother used to deal with. Anybody would loan seven cents.

Q. So when you got—who, for instance, in New Brunswick, could you have borrowed seven cents from? A. Well, there is lots of places, there are 40

*Tillie Esakov—for State—Cross.*

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lots of groceries that we know people that we deal with.

Q. Who was there in New Brunswick that you could have borrowed seven cents from that night for your return trip? A. I don't recall that now, but we know lots of people in New Brunswick. Anybody would have loaned me seven cents.

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Q. I am asking you who you had in mind when you started out that night? A. Didn't have anybody in mind then.

Q. When you got to Swiller's store and asked him to buy the corn, and he replied that he couldn't do anything without first consulting his brother Abe, you knew then that your errand had ended, isn't that so? A. I don't understand what you mean by that.

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Q. Well. Abe Swiller wasn't there, was he, when you went there? A. No.

Q. Max told you that he couldn't decide anything until he spoke with his brother? A. Yes.

Q. So you were through then, weren't you? A. No, he wanted me to wait until he talked to his brother, so I can let mama know.

Q. Did he talk to his brother? A. No.

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Q. What time was it that you started for this house, with Swiller, on Schureman Street? A. Somewhere around nine or—well, somewheres around nine.

Q. And had you determined then to stay there, or go home? A. Go home right after we were done talking with his brother.

Q. And who did you expect to find after nine o'clock who would loan you seven cents to go home with? A. Well, all the stores were open then.

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*Tillie Esakov—for State—Cross.*

Q. Which store was open at that time that you could have borrowed the seven cents? A. I don't remember. I didn't take any notice.

Q. Now, you testified in your direct examination that when Swiller got you up into this room that you pleaded with him, and that amongst other things you said, "I want to go home, because mama expects me home." A. Yes, that is what I said. 10

Q. Well, did mama expect you home? A. No, she didn't, but I was going to come home. I didn't have to tell him that she wanted me to stay there.

Q. Why, if your mama didn't expect you home, did you say to him that mama did expect you home? A. I didn't want to say, I am going to stay there over night. 20

Q. So mama did expect you home, didn't she? A. No, she didn't.

Q. You told Swiller so. A. Well, I told him, but she didn't expect me home.

Q. Well, did your mother tell you where you were to stop? A. Yes, she told me to stop to Mr. Swiller's home and stay there over night.

Q. Which Mr. Swiller? A. Max Swiller.

Q. You made no protest against that? A. By staying there? 30

Q. No. You made no objections to starting out from Metuchen with only seven cents, with no means of coming back? A. I told her I wasn't going to stay there, and she wanted me to come back the following morning with him. She made me go.

Q. She made you go? A. Yes. I didn't want to go. I told her different things that happened 40

*Tillie Esakov—for State—Cross.*

before in his office, and she made me go. She hit me and made me go.

Q. Your mother struck you, beat you? A. Yes.

Q. Before you started? A. Yes.

10 Q. So that when you started out from Metuchen to New Brunswick you knew enough about Swiller from what you had heard and from what you had known to fear him, isn't that correct? A. I don't understand that.

Q. Weren't you scared of Swiller? A. Yes.

Q. In view of the fact of what you had heard? A. Yes.

Q. And didn't you expect that he would do something wrong with you if you stayed with him?

20 A. I wasn't supposed to stay there. If I knew his mother and brother wasn't up there I wouldn't have gone up in his home.

Q. But you knew that if you were left in New Brunswick over night with Swiller, that there would be some—that he would do some wrong with you? You felt that? A. I felt it, but didn't know for sure.

Q. And you felt it before you started? A. Yes.

Q. You refused to go? A. Yes.

30 Q. And you only went because your mother beat you and made you go? A. Yes.

Q. Where was your father at that time? A. Baltimore, Maryland.

Q. Did you have any friends in New Brunswick at that time, that you could have stopped with? A. I didn't have to stop.

Q. Did you have any friends in New Brunswick at that time— A. Well, there was lots of friends.

*Tillie Esakov—for State—Cross.*

Q. (Continued) —with whom you could have stopped over night? A. No.

Q. Wouldn't the same people who would have loaned the seven cents for your return trip, entertained you over night? A. They might have loaned me money, but I didn't intend to stay at their place. I never asked whether I could stay there or not. 10

Q. Had you ever stayed in New Brunswick over night before? A. I don't think so.

Q. Do you know a lady by the name of Mrs. Hain? A. Yes, I think I recollect that name.

Q. Did you ever stay there over night? A. I don't think I did.

Q. Well, now, you know whether you did or not, don't you? Do you deny that you ever stayed there over night? A. I don't think I stayed there any time. 20

Q. Is that the best answer you can give me? A. Yes.

Q. You don't know positively now whether or not you have ever stayed over night with Mrs. Hain in New Brunswick? A. No, I don't think I ever stayed there.

Q. Did you or didn't you? A. No.

Q. Do you know a lady by the name of Mr. Meyerovitz? A. I might know her; I think I recall the name, but I can't exactly place who she is. 30

Q. Did you ever stay over night at the house of Mrs. Meyerovitz, in the City of New Brunswick?? A. No.

Q. Never. Now, then, why did you get out of Swiller's store after you had delivered your message? A. Why I got out? 40

*Tillie Esakov—for State—Cross.*

Q. Why didn't you get out? A. Well, he wanted me to come up at his home, so he can talk to his brother Abe about it, so I can tell mama about it, whether he can come or whether he can buy the corn or not.

10 Q. Had you ever been in New Brunswick before that? A. Lots of times.

Q. You worked in New Brunswick, didn't you? A. Yes.

Q. In Johnson's and Johnson's place? A. No, at the hosiery.

Q. But you were pretty well acquainted with New Brunswick? A. Yes, pretty well acquainted with certain parts.

20 Q. Who was present when your mother beat you? A. No one.

Q. Just before sending you to New Brunswick? A. No one.

Q. Where was your sister Florence about that time? A. She wasn't home that day.

Q. She wasn't home that day? A. No, sir.

30 Q. Isn't it a fact that your mother wanted your Sister Florence to go, and the only reason why you went was because you happened to be dressed at the time and Florence wasn't? A. No, I wasn't dressed, I had to go in and dress myself.

Q. Whereabouts were you when your mother beat you? A. Out on the yard.

Q. Did she beat you very severely? A. Yes, she cracked me across my face and pushed me and made me go.

Q. And that was because you refused to go to New Brunswick? A. Yes.

Q. And stay over night at Swiller's? A. Yes.

*Tillie Esakov—for State—Cross.*

Q. What time of the night was it that you reached Swiller's house, that is, his residence? A. Twenty-first of October?

Q. Yes? A. Around nine o'clock.

Q. And what time was it that you reached his store? A. Around eight.

Q. What time did you leave Metuchen? A. Took the train? 10

Q. Yes. A. Somewheres after seven.

Q. How much after seven? A. I don't recall that.

Q. Half-past seven? A. I don't think it was half-past. It was before. Between seven and half-past.

Q. And who was at Swiller's feed store when you got there? A. Some old farmer, an old man. 20

Q. Anybody else? A. No, sir.

Q. Wasn't the bookkeeper there? A. No.

Q. You are positive there was nobody else there? A. Nobody.

Q. When you got to Swiller's house who went upstairs first? A. Mr. Swiller.

Q. And you followed him? A. Yes.

Q. Was the door locked? A. Downstairs door?

Q. No, upstairs door. A. No.

Q. Was there any door locked when you came in? A.No. 30

Q. And you found nobody there? A. No.

Q. Didn't that immediately excite your suspicions? A. No. I didn't know—I thought maybe his mother and brother was in the second room.

Q. Well, you got in and you found they weren't in the second room? A. Well, I didn't look in the room; I didn't go to look in the second room.

Q. Well, he told you to sit down, didn't he? A. Yes. 40

*Tillie Esakov—for State—Cross.*

Q. And you didn't see anybody else there?  
A. No.

Q. Didn't that excite your suspicion? A. Not until I saw him lock the door and put the key in his pocket.

10 Q. Well, when you got in there the light was turned on very dim? A. Yes.

Q. And didn't that excite your suspicion? A. No.

Q. Did you expect to meet his brother and the other person in a room that wasn't lit up at eight o'clock at night? A. Couldn't he have turned the light up higher in the kitchen?

20 Q. Yes, but couldn't they have turned it up if they were in the room? A. Well, the other doors were locked. Maybe they were in the other room.

Q. Locked up in the other room, you thought, perhaps. A. They were closed. I don't know whether they were locked or not. I thought maybe they were in the other room talking to each other, or something like that.

Q. You didn't hear anybody talking, did you?  
A. No.

30 Q. Well, didn't you get scared then? A. Well, I didn't have to hear nothing. He just walked in the room and he told me to sit down.

Q. How long were you sitting down before he locked the door? A. Just as I sat down he locked the door.

Q. Turn up the light? A. No.

Q. And without any talk with you he simply picked you up and carried you in the other room?  
A. No. I asked him where his brother was, and he said, "Never mind about my brother," he said, "He is in New York, and my mother is out on

*Tillie Esakov—for State—Cross.*

the farm." I said, "Then you can't buy your corn without your brother knowing about it?" And he didn't answer me. And then I told him again, "I am going home again, you can't do nothing without your brother." He says, "Never mind about my brother," he says, "we are going to have a good time." And I got up and walked out—I got up and walked over to the door, and tried to open it, and found it was locked. I said, "Mr. Swiller, open the door, I am going to go home now, mama is expecting me." He said, "No, it is too late for you to go home now, you can't get no train, it is too late for you, you can't go." 10

Q. And was it then that he put his hand over your mouth? A. Yes. 20

Q. Why did he put his hand over your mouth? A. So I couldn't holler.

Q. You didn't holler, did you? A. Yes, I started in to holler, "Mr. Swiller, let me go," and he put his hand over my mouth.

Q. How many times did you holler before he put his hand over your mouth? A. Just that once. I couldn't holler any more, but I was trying.

Q. Can you remember which hand he put over your mouth? A. No. 30

Q. And he carried you? A. Yes, sir.

Q. And threw you on this folding bed in the front room? A. Yes.

Q. And did he have his hand on your mouth while he was carrying you? A. Yes.

Q. How did he carry you? A. In his arms, he picked me up like he would a baby.

Q. Like a baby? A. Yes. 40

*Tillie Esakov—for State—Cross.*

Q. And had you—I take it, one hand on your mouth and the other one around you? A. Yes.

Q. And then he threw you on this bed? A. Yes.

Q. And still had his hand on your mouth? A. Yes.

Q. And threw up your clothes? A. Yes.

10 Q. Did you struggle? A. Yes, I tried to get away.

Q. Well, now, what frustrated your attempt to get away? What prevented you from getting away? A. Because I was afraid.

Q. No, but what prevented you? You say you were struggling. A. I tried to get off the bed again.

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

20 Q. And the other hand was lifting up your clothes? A. Yes, and when I went to get up he would push me down again.

Q. Still keeping his hand on your mouth? A. Yes.

Q. And you were struggling and resisting him all that time? A. Trying to get away, yes.

Q. And whilst you were in the act of trying to get away from him, he succeeded in having intercourse with you? A. Yes.

30 Q. You had never had any experience of that kind before, had you? A. No.

Q. You never knew about sexual intercourse before, did you? A. No.

Q. Had never heard about it? A. No.

Q. And had no notion what it was like? A. No.

Q. Did you preserve any of the clothes that you had on that night? A. Whether I took it off or not?

*Tillie Esakov—for State—Cross.*

Q. No. Did you keep any of the clothes that you had on that night? A. No.

Q. What became of the clothes that you wore that night? A. I wore them out. They were washed and I wore them until they went to rags.

Q. Did your father ever see those clothes? A. No. 10

Q. Did your mother ever see those clothes? A. Yes.

Q. Where did your father see those clothes?

THE COURT: She did not say her father.

A. He never saw them.

Q. Your father never did see the clothes? A. No.

Q. Anybody else see them? A. No. 20

Q. How long after this alleged assault was it that you kept those clothes? A. I don't remember.

Q. Well, did you take them to Baltimore with you? A. No.

Q. You say you had them until you wore them out? A. Well, I wore them around the house, around the farm.

Q. What clothes did you have on that night that were destroyed or torn? A. My underwear was torn. 30

Q. Yes. A. I didn't have nothing fancy on. I just had a plain school dress on, a school petticoat on, and I had a red sweater on.

Q. And that was torn? The sweater? A. No.

Q. Was the petticoat torn? A. No.

Q. Was your underwear torn? A. Yes.

Q. How long was it after this assault that you went to Baltimore? A. About a week following.

*Tillie Esakov—for State—Cross.*

Q. And you took those clothes with you? A. No.

Q. Didn't you? A. No.

Q. Where did you leave them? A. I had the sweater with me, but not the dress.

10 Q. I am speaking of the underclothes now, the clothes that were torn? A. No.

Q. Where was it that you wore out those clothes after the assault? A. At the house, on the farm.

Q. I know, but you didn't wear them out in a week, did you? A. Well, I might have not worn them out, but I didn't see them after.

Q. Then you didn't wear them out, did you? A. I wore them but I didn't see them after I took them off.

29 Q. Then you didn't wear them out, did you? A. No, I didn't wear them out altogether.

Q. What did you mean by a few moments ago when you said you wore those clothes until you wore them out? A. I couldn't wear my under-wear no more because it was all torn!

30 Q. What did you mean when you said a few minutes ago that you kept those clothes or wore those clothes until you wore them out? A. Well, I didn't exactly mean until I wore them out, but I wore them and then I had a different dress to put on and I left the old dress out at the farm.

Q. No. But the other dress, the old dress had nothing to do with the underclothes that were torn, did it? A. No.

Q. You could wear any kind of dress with the same underclothes, couldn't you? A. Not if it wasn't given to me by my mother.

*Tillie Esakov—for State—Cross.*

Q. You understand my question, don't you? A. Yes.

Q. You stated a few moments ago that the clothes that you had on that night, that is the underclothes which you say Swiller had torn in his efforts to ravish? A. Yes.

Q. Were kept by you—were worn by you until you wore them out. A. Not the underclothes. 10

THE COURT: She did not confine herself in her answer to underclothes.

Q. What became of the underclothes? A. Threw them into rags.

Q. You didn't wear them out, did you? A. No.

Q. What became of the other clothes? A. My dress? 20

Q. Yes. Any of the clothes that were torn? A. I don't know. My mother—she gave me another dress when I came home.

Q. All right. Then the other clothes were torn into rags, that is sure? A. Yes.

Q. And the other dress you never saw after that? No.

Q. Then you didn't wear the clothes out, or any of them? A. No. Well, the underwear went to the rags. 30

Q. Yes. And the other dress disappeared? A. I never saw it any more, no.

Q. Therefore you didn't wear out the underclothes, and you didn't wear out the dress either, did you? A. No, but it wasn't fit to wear.

Q. Therefore you didn't wear it out, did you? A. No.

Q. You told your father about this assault in March, 1914? A. Yes. 40

*Tillie Esakov—for State—Cross.*

Q. That is correct, isn't it? A. Yes.

Q. When did you make a complaint, that is, a criminal complaint against Swiller? A. To who?

Q. To the authorities, in New Brunswick here?

A. In January.

10 Q. Of what year? A. 1914-1915.

MR. STRICKER: May I have the complaint in this case?

MR. FLORANCE: If I have it.

Q. You say it was made in January, 1915?

THE COURT: That is what she said.

(Last three question read by stenographer.)

20 MR. STREITWOLF: May I ask the witness if she understands what the question has reference to? Authorities, whether she understands that?

Q. When did you have Swiller arrested on this particular charge, which we are investigating? A. Mr. Streitwolf had all that done. We turned the case over to Mr. Streitwolf.

30 Q. Well, when did you turn this case, this case that you are testifying in now, over to Mr. Streitwolf? A. January, 1915.

*By the Court:*

Q. When you speak of the authorities to whom you turned over this complaint, or made this complaint, what authorities have you reference to, the authorities here, or authorities some place else? A. We had different lawyers, but they weren't any good.

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*Tillie Esakov—for State—Cross.*

*By Mr. Stricker:*

Q. Do you understand that Mr. Swiller is being tried here with having committed an assault upon you? A. Yes.

Q. Do you remember making a complaint to that very transaction in which you charged him with this? A. Yes, to Mr. Streitwolf. 10

Q. Didn't you go before any judge, or any magistrate? A. The last time I was here in New Brunswick on the trial.

Q. You have no recollection of that?

THE COURT: What?

Q. Haven't you any recollection of when you made the complaint against Swiller in this particular case? A. To Judge Lloyd or Mr. Streitwolf? 20

Q. No, not to Judge Lloyd. To the Prosecutor, or to—— A. I didn't go to the prosecutor.

Q. When did you make a complaint at Judge Sedam's in this case? A. Right after our first trial was over.

Q. After the civil trial. Your civil trial was held in May, 1915? A. Yes.

Q. And you complained to Judge Sedam some time in May, 1915, then didn't you? A. Yes. 30

Q. Did you know, can you explain why it was that no complaint was made against this man? A. When?

Q. Until May, 1915, when your father was in possession of the facts in 1914? A. We did want complaint made about him, but we had lawyers and all and they all kept the case along and never done anything with it. 40

*Tillie Esakov—for State—Cross.*

Q. You say after you went to Baltimore you remained there for sometime, and you child was born and you returned to New Brunswick and interviewed Mr. Swiller? A. Yes.

Q. At his place of business on Burnett street?  
A. And at his home 5 Schureman street.

10

Q. Now, who was with you when you came there? A. My sister Ida and the baby.

Q. Anybody else? A. Not with us.

Q. Who was in the store? A. Some old man, which I think was Mr. Swiller, his father, because I heard somebody call him.

Q. Anybody else? A. Nobody else.

20

Q. Had you communicated between the time that you left for Baltimore and the time that you came to New Brunswick? A. No.

Q. That was the first time that you saw him? A. Yes.

Q. And that was when? A. December.

Q. You left for Baltimore a couple of weeks after this assault, in October, that is right, isn't it? A. One week after.

Q. You went to Baltimore? A. Yes.

Q. And you didn't see Swiller again until after your child was born in July? A. Yes.

30

Q. How long after the child was born that you saw Swiller in New Brunswick? A. About five months later. Four or five months later.

Q. So that you hadn't seen him for fourteen months? A. Fourteen?

Q. Yes. A. Four or five.

Q. This assault took place, as you say, in October, 1913? A. Yes.

Q. That is correct, isn't it? A. Yes.

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*Tillie Esakov—for State—Cross.*

Q. And your child was born in July, 1914? A. Yes.

Q. And you came on and saw Swiller in December, 1914, isn't that correct? A. Yes.

Q. And between the time that you left for Baltimore and December, 1914, you hadn't seen Swiller? A. No. It was about fourteen months. I made a mistake in the year. 10

Q. It was about fourteen months? Yes.

Q. You know that you were pregnant about four or five months after this assault? A. Not until my father had me taken to a doctor.

Q. Well, that was about five months after, wasn't it? A. Yes.

Q. When you came to that store with your sister—and by the way, was that your sister Lena? A. Ida. 20

Q. And demanded that Swiller do something for you, do you say positively that there was nobody else there besides an old man? A. And Mr. Swiller, yes, that is all.

Q. Nobody else? Do you know a man by the name of Shapiro? A. No.

Q. Isn't it possible that somebody also might have been there, that you hadn't seen, or didn't see? A. There might have been in the store some place, but I didn't see them. Not in the office. 30

Q. And you asked Swiller to do something for you and the child? A. Yes.

Q. And he said he would give you one dollar and a half a week at first? A. No. He told me, he says, that isn't my child, he said, I can get plenty of false witnesses—

Q. All right. Now you want to tell us all about that. He could get lots of gentile boys to give 40

*Tillie Esakov—for State—Cross.*

false witness and deny the child, and all that, but the fact is that he offered you one dollar and a half a week?

THE COURT: She didn't say gentile boys.

10

A. Christian boys.

Q. And offered one dollar and a half a week?

A. Up in his home. Yes.

Q. And you didn't want one dollar and a half a week? A. No.

Q. You said you wanted to marry him? A. Yes.

Q. So as to give the child a name? A. Yes.

Q. I suppose you are still willing to marry him, will you? A. I will marry him to give the child  
20 a name, but I will not live with him.

Q. Haven't you said since the arrest of Swiller, to Mrs. Henn, and to Mrs. Meyerovitz, that you didn't want to marry Swiller, that all you wanted was his money. A. No.

THE COURT: Of course, if you are putting this as a basis of contradiction, it is not sufficient. You are not naming the time or place.

30

MR. FLORENCE: I have the original complaint, Mr. Stricker.

MR. STRICKER: Yes.

Q. This is your signature, isn't it, Miss Esakov?

A. Yes.

MR. STRICKER: I desire to have this marked for identification.

THE COURT: That will be done.

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*Tillie Esakov—for State—Cross.*

(Complaint marked D 1 for identification.)

Q. After you got through, where did you go, Miss Esakov? A. Through where?

Q. Where did you go after this man refused to entertain any proposition offered you? A. We went to New York. 10

Q. Who did you go with? A. My sister Ida, and myself, and the baby.

Q. And were you living with your mother at that time? A. No.

Q. Who did you live with in New York? A. We stayed there at some friends.

Q. Where? A. Papa's friends on Cherry street.

Q. What is the name of the friend? A. Mrs. Rome. 20

Q. How long did you live there? A. About a week.

Q. How long was it before you returned to Baltimore then? A. About ten days.

Q. Did you return with your father? A. No.

Q. Have you been living with your father ever since? A. Yes.

Q. And has your mother been living with your father ever since? A. No. 30

Q. The fact is that shortly after you went to Baltimore your mother joined you, isn't that correct? A. After we left the farm?

Q. Yes, after you left the farm, that is right? A. Yes.

Q. And your mother didn't stay there very long? A. No.

Q. Since that time you and your sister Ida and the rest of the family have been living with your

*Tillie Esakov—for State—Cross.*

father in Baltimore, that is correct, isn't it? A. Yes.

Q. And your sister Florence has been living with your mother somewhere else in New York?

A. Yes.

10 Q. Your mother didn't stay in Baltimore very long, did she? A. No.

Q. After she got there? A. No.

Q. Not over a month, did she? A. She stayed there for a month or so, and went to New York for a week, and had one of my little brothers along and she came back again.

Q. And how long did she stay? A. A few months. Until after my married sister's wedding, April the fifth.

20 Q. When was it you say that you went to the doctor to be examined?

THE COURT: In March.

MR. STREITWLOF: I didn't fix the time.

THE COURT: She told her father the latter part of March, and they went to the doctor. If there is any doubt about that, you may examine on it further.

30 Q. When was it that you say that you went to the doctor in Baltimore? A. Right after my father found out about it.

Q. Yes, I know, but when was that? A. March.

Q. Do you know what time in March? A. It was the latter part of March or either the first of April.

*Tillie Esakov—for State—Cross.*

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*By the Court:*

Q. How long before you went to the hospital?

A. A few months.

Q. No. How long before you went to the hospital was it that you saw the doctor? A. About four months.

10

Q. You are confused, are you not?

*By Mr. Streitwolf:*

Q. When did you go to the hospital? A. July twenty-fifth.

*By the Court:*

Q. The child was born July twenty-fifth, wasn't it? A. Yes.

20

Q. How long had you been in the hospital? A. Four weeks—two weeks.

*By Mr. Streitwolf:*

Q. When did you go to the home for pregnant girls? A. Twenty-ninth of April.

*By the Court:*

Q. How long before that was it that you saw the doctor? A. About a month or two months—about two months.

30

*By Mr. Stricker:*

Q. When do I understand you to say you saw the doctor? A. About a month before, one month.

Q. In February? A. No. A month before I went to the Exeter Street home.

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*Tillie Esakov—for State—Cross.*

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Q. When did you go to the Exeter Street home?  
A. Twenty-ninth of April, and I went to the doctor around the twenty-ninth of March, or a few days later.

10 Q. Directing your attention to this room where you were assaulted, you stated that both the doors were locked? That you tried the two doors? A. Yes.

Q. Did you try the windows? A. Yes.

Q. They locked also? A. Yes.

Q. Were they locked in such a manner that you couldn't open them? A. I tried to open them. I couldn't get them open.

20 Q. Was there a latch or any attachment that fastened them? A. I don't know. I guess there was.

Q. Did you try to unfasten them? A. Yes, I tried to raise them, but I couldn't. They must have been locked from the top.

Q. When you found that you couldn't raise the window did you make any attempt to look for a latch? A. No, because it was high. I would have had to have gone up on the chair, or something, if I would have made any noise he would have come out. He told me not to make no noise at first.

30 Q. I know, but do you mean to tell me that the window in this room was so high that you couldn't reach the top of it, in order to determine whether or not it was fastened? A. No, I couldn't reach the top of it.

Q. Beg pardon? A. I couldn't reach the top of it.

Q. Then you do say that it was so high that you couldn't reach the top of it? A. Not where it was locked at. I could reach the window and

*Tillie Esakov—for State—Cross.*

tried to open it, but it was locked from the top, and if I wanted to open it from the top I would have had to have gone up on the chair or something, and I was afraid to get up on a chair.

Q. The top of the sash was so high you couldn't reach it from the floor, where you were? A. Not standing. 10

Q. Did you try? A. Yes.

Q. Why didn't you get a chair? A. There was chairs there, but I was afraid to get it. If I did make any noise he would get at me.

Q. Would it have made any noise for you to take a chair and place it alongside of the window? A. Well, I would have had to move the table, move things in the parlor, and move things in the kitchen. 20

Q. Well, do you mean to tell us that that window was so obstructed that you had to move everything in that room in order to get to it? A. In the kitchen, the kitchen table was right under the window.

Q. Why didn't you get on the kitchen table, that wouldn't have made any noise, would it? A. Yes, it would. Suppose I would have fallen?

Q. Well, suppose you hadn't fallen, would that have made any noise? A. Well, that is a different thing. 30

Q. So the reason why you didn't get on the top of this table in order to unfasten the window was afraid that you might have fallen and thereby made some noise? A. Yes.

Q. That is the only explanation you have to make? A. Yes.

Q. Well, now, what prevented you—how many

*Tillie Esakov—for State—Cross.*

rooms were there in this flat or in this apartment?

A. I don't know. I was in two.

Q. Well, what was in the other rooms? A. I don't know.

Q. Did you go into the other rooms? A. No.

10 Q. Why didn't you? A. Because one door of the other rooms was locked and the other door where Mr. Swiller was in I was afraid to go in there.

Q. Did you try to get into the hall? A. There was no hall. The stairway leads right up to the kitchen door.

Q. The door through which you came was locked? A. Yes.

Q. That is the door he locked? A. Yes.

20 Q. Then there was another door, wasn't there? A. Going towards different rooms, yes.

Q. Was that locked, too? A. Yes, the one that went to a different room, all excepting the bath room door was open and the kitchen into the parlor.

30 Q. Was there a window in the bath room door—I mean was there a window in that bath room? A. I don't know whether there was a window or not, but it was away high. I think there was and it was high.

Q. You couldn't reach that either? A. No.

Q. Now, then, after he had committed this first assault upon you did you make any effort to leave that house? A. Yes. I asked him to let me go, to let me out.

Q. And he refused? A. Yes, he refused.

Q. Now, did you make any effort other than asking him to let you get out of that house? A. I didn't try to break no windows or anything.

*Tillie Esakov—for State—Cross.*

Q. Why not? A. Because I was afraid. He had threatened me at first not to holler or make any noise.

Q. Well, he hadn't struck you, had he, up to that time? A. Yes, he told me not to cry or make any noise? Q. He hadn't struck you up to that time, had he? A. I don't understand what you mean. 10

Q. He hadn't hit you, had he? A. No.

Q. All he did was to tell you not to make any noise, that everything would be all right, that your mother and your sister did the same thing?

A. No. He said, I don't want you to make any more noise, he said, if you make any more noise or holler, or anything, he said, you will make it worse.

Q. But that is all he did say? A. Yes. 20

Q. And that is the reason why you refrained from making any effort to make any escape? A. Yes.

Q. You appreciated, of course, what a serious thing he had done to you, didn't you? A. No.

Q. Didn't you? A. No.

Q. Weren't you conscious of the fact that you had been deflowered at that time, that you had been outraged? A. I don't understand what you mean. 30

Q. Well, didn't you appreciate the fact that he had done something of a very serious nature to you? A. No.

Q. You didn't know that? A. No.

Q. Do you understand my question. A. Yes.

THE COURT: I think this witness is understanding you as addressing to a time before the act itself occurred.

*Tillie Esakov—for State—Cross.*

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Q. I am speaking now after this man has accomplished his purpose the first time, didn't you realize what a serious wrong and injury he had inflicted on you? A. Yes.

Q. You knew that, didn't you? A. Yes.

10 Q. Now, then, you knew that by remaining in that house you were exposing yourself to a second attack, didn't you? A. I don't understand what you mean.

Q. You knew that if you stayed in that house he was likely to do that again. A. No, I didn't.

Q. You thought he was all through? A. I don't remember. I didn't know he was going to come back and do it over again.

20 Q. Yes, but you asked him to let you go? A. Yes, I asked him to leave me go.

Q. And he refused to let you go, didn't he? A. Yes.

Q. Well, didn't that make you rather suspicious, that he would attempt to do the same thing all over again? A. No. I thought he was going to go into his room and go to sleep, until the following morning, but he didn't.

30 Q. And that was the reason why you made no further attempt to get out then? A. Well, I was standing there waiting. I asked him to let me out and all, and I was standing there waiting for him to come back there and let me out, but he didn't return right away.

Q. And you made no further effort to break out? A. No.

Q. You understand what I mean, you made no effort to get to one of the windows? A. No.

40 Q. And effect an opening of the window? A. No.

*Tillie Esakov—for State—Cross.*

Q. You made no effort to holler with the windows closed, did you? A. I was afraid to holler.

Q. Do you know what there is in the back of that house? In the rear of it? A. No.

Q. Don't you know there is a baker shop in the rear there? A. In the rear of it?

Q. Yes, of this place where you were assaulted? 10  
A. No, there was a baker shop opposite his home.

Q. And none in his home? A. No. I don't know.

Q. Tell me one thing, did you look out of the window at all that night, out of any window? A. I couldn't, because the shutters were closed, and the shades pulled down. I picked up the shade and the shutters were closed.

Q. Well, couldn't you open the windows? A. 20  
No, I couldn't get the window open.

Q. That was the window in the kitchen you are speaking about? A. All the windows were the same. The parlor and the kitchen were that.

Q. And the reason why you didn't make any attempt to open the window was because you thought you would make a noise? A. Well, I couldn't get them open.

Q. Did you try? A. Yes, I tried to open them.

Q. Why, I thought you said a few minutes ago 30  
you wouldn't try because you were afraid you might make some noise? A. I didn't try to get up on the table or anything to unlock it, but I tried to see whether they were open or not quietly.

Q. When I pressed you for the noise, you said the noise might be made by your falling from the table. Do you say you did make an effort now? A. Even if in falling would you dare jump from the second story window?

*Tillie Esakov—for State—Cross.*

Q. Oh, no, I didn't ask you to jump out of the window. Do you say now that you did try to open the windows? A. Yes. I said that before.

Q. You did say so before? A. Yes, that I tried to open the windows and they were locked. I couldn't pick them up. I couldn't raise them.

10 Q. Did you try to unlatch them? A. No.

Q. Then you didn't make much of an effort to raise them, did you? A. Well, I done the best I could.

Q. Why didn't you try to unlatch those windows after you found you couldn't raise them? A. Because I would have to move the kitchen table over or either get up on top of the table, and there was things laying on the table.

20 Q. What things were lying on the table? A. I don't remember now.

Q. What time did you get out of that house in the morning? A. In the morning?

Q. Yes. A. I can't exactly recall the time.

Q. Well, was it daylight? A. Yes.

Q. Did you meet anybody when you went out? A. Not in the house.

Q. Did you meet anybody outside of the house?

30 A. Lots of people were walking on the street, but I didn't pay no attention to them.

Q. Do you know any person, can you identify one person that you met that morning? A. Well, I met lots of people on the street.

Q. Can you recall one person? A. No.

Q. That morning that you met? A. No.

Q. And where did you go? A. To the depot.

Q. And you got a train then for Metuchen? A. Yes.

*Tillie Esakov—for State—Cross.*

Q. Do you recall meeting anybody on the train?

A. Not that I knew.

Q. Do you recall meeting anybody in the station that you knew? A. No.

Q. Did you have this torn dress on? A. The dress wasn't torn.

Q. Wasn't it? A. No. My underwear was torn. I had my things on. I straightened up a little bit. I couldn't go out in the street like that.

Q. Now, you say there was nothing but your underclothes that were torn?

THE COURT: Did she ever say before that there was anything but the underclothing?

A. No.

THE COURT: I do not remember it.

MR. STRICKER: I gathered from what she said that the underclothes went into the rags, but the dress was left with her mother, and her mother had disposed of it.

THE COURT: Yes, but that is not the point. The point is, did she say heretofore that anything was torn by Swiller in the matter of her clothing excepting underwear? I do not remember that she did.

MR. STRICKER: Well,—

A. I just said my underwear.

MR. STRICKER: Well, now, if your Honor please, I appeal to the record.

THE COURT: Proceed with the examination.

*Tillie Esakov—for State—Cross.*

MR. STRICKER: It may be that I am wrong, but that is my recollection of the testimony.

THE COURT: It is up to the jury. And during the noon hour we may have him look that up.

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MR. STRICKER: All right.

.Q You knew that Swiller had done wrong to you, didn't you? A. Yes.

Q. And you knew that in the morning? A. Yes.

Q. You were free out on the street? A. Yes.

Q. Did you meet a policeman? A. No.

Q. Did you know where the police station was in New Brunswick? A. No.

20 Q. You had lots of friends in New Brunswick?  
A. Yes.

Q. Why didn't you make an effort to have him arrested right then and there? A. Because my mother would tell me not to tell no one that I was up in his house, and when I left him she told me not to say nothing to nobody that I was going there, or anything, and I was afraid.

Q. I know, but you had been deceived, hadn't you? A. I didn't know what it all meant then.

30 Q. And your mother had deceived you, hadn't she, in sending you to Swiller's? A. Yes.

Q. That is, she had misled you? You understand what I mean. A. Whether she told me to go there or not?

Q. Your mother had actually wronged you, hadn't she, in sending you to Swiller? A. Yes.

Q. And Swiller had actually committed the assault on you? A. Yes.

40 Q. Now, that being the case, why didn't you,

*Tillie Esakov—for State—Cross.*

when you were free the following morning, complain against Swiller to somebody? A. Because I was afraid to.

Q. Before you left Swiller he gave you a package, didn't he? A. A piece of paper, yes, folded.

Q. Was that sealed up? A. No.

Q. Was it folded up? A. Yes. 10

Q. You didn't look at that piece of paper on the way over between New Brunswick— A. No.

Q. (Continued) —and Metuchen, did you? A. No.

Q. Why didn't you? A. Because it wasn't for me. It was sent to my mother.

Q. Now, here was your mother had sent you to Swiller's the night before, had deceived you, Swiller had wronged you, and in the face of all of that you were willing to act as a messenger for him between your mother and him, that is correct, isn't it? A. Yes. 20

Q. You were perfectly willing to take this paper? A. Yes. I didn't know what was in it or anything.

Q. And in view of everything that had happened you weren't a bit curious on the way home from New Brunswick to Metuchen to investigate what this paper contained? A. No. Because it wasn't for me. 30

Q. You wouldn't undertake to mix up—meddle in your mother's business, would you? A. No.

Q. How long was it after you returned that your mother opened this package? A. Right after I gave it to her.

Q. And did you say anything to your mother other than deliver the package? A. Yes, I told her what had happened. 40

*Tillie Esakov—for State—Cross.*

Q. And where was your father at that time?  
A. Baltimore.

Q. When you told your mother what had happened, did she do anything in the way of proceeding against Swiller? A. No. She told me to keep quiet and not to tell anybody. She said, "Go ahead in the house, and if I hear anything out of you I will kill you. You won't live to get to Baltimore to see your father or your sister."

Q. You wanted to see Swiller punished for what he had done? A. Well, I didn't know what it all meant then.

Q. Well, but you wanted him punished, didn't you? A. Yes, I wanted him punished.

Q. Then why didn't you communicate with your father? A. Because I couldn't send no letter.

Q. Why? A. Because she would watch me every step I went.

Q. Do you mean to sit there and tell us that you couldn't have gotten away long enough from your mother long enough to write a letter to your father at Baltimore? A. No.

Q. And that your mother stood constantly over you from morning till night, whereby you were deprived of an opportunity to take five minutes to write to your father? A. Where would I get the paper and stamp at?

Q. And that your condition was such that you couldn't get a sheet of paper and two cents? Do you want this Court and jury to believe that?

THE COURT: She has not answered that question, and, of course, she wants this Court and jury to believe everything she testifies to. That is assumed.

*Tillie Esakov—for State—Cross.*

(Question repeated by the stenographer.)

A. Yes.

Q. You had your sister Ida there, didn't you?

A. No.

Q. Well, which sister was there? A. My sister Lena.

Q. Older than yourself? A. Yes. 10

Q. Friendly with you? A. Yes.

Q. Did you tell her? A. No.

Q. Why not? A. Because my mother told me not to tell anybody, sisters or anybody.

Q. I know, but you couldn't get any sympathy from your mother. You knew that you had been outraged. Now, why didn't you tell your sister Lena? A. Because I was afraid.

Q. And why didn't you try and get two cents and a sheet of paper from your sister Lena? 20  
A. She didn't have any, and I didn't ask her for it because she would want to know what I would want to write with.

Q. And you had never written in all your life?  
A. Yes, I would write a letter for my mother, and then she would give it to my sister Florence to mail.

You had never written a letter o your own up to that time, in your life, had you? A. No. 30

Q. You can read and write, can't you? A. Yes.

Q. And here was something very important that had happened to you that you wanted to communicate to your father, that is correct, isn't it?

A. I didn't quite understand that question.

Q. Well, you wanted to get word to your father that you had been ravished, didn't you? A. Yes, but I didn't have any way to do it.

*Tillie Esakov—for State—Cross.*

Q. And you had no means to do it? And neither you nor your sister nor anybody else for you—

A. I didn't ask them to.

10 Q. You didn't ask anybody to get you a stamp or a sheet of paper? A. No, because they would want to know what it was for and I would have to tell them.

Q. And that is the only explanation that you have? A. Yes.

20 Q. Do you mean to say that you were in such a position that you couldn't raise a sheet of paper and an envelope and two cents for a postage stamp without making known to some body that would ultimately get it back to your mother what it was for? A. Where would I get it from? I didn't have no money.

Q. You had friends in New Brunswick where you could borrow seven cents? A. Well, would I have to walk all the way to New Brunswick? She wouldn't let me go out of the house.

Adjourned Until 2 P. M.

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AFTERNOON SESSION, 2 P. M.

30

TILLIE ESAKOV, (resumed):

*Cross Examination by Mr. Stricker (continued):*

Q. Then, as I understand you were under the constant control of your mother on this farm? A. Yes.

Q. You couldn't leave at any time you wanted to? A. No.

Q. Not even for a short period? A. No.

40

*Tillie Esakov—for State—Cross.*

Q. Not even long enough to make an effort to borrow two cents and the price of a sheet of paper? A. No.

Q. Isn't it a fact that before the day Swiller was arrested on this charge, that you and your father tried to get some money out of him? A. No.

10

Q. And isn't it a fact that within the last two months you have agreed that if he paid you three thousand dollars that this case would not be prosecuted?

THE COURT: One minute.

A. No.

THE COURT: When I say "one minute," or tell you to stop, do not answer until you get directions from the Court. What do you mean by "you"? The last question said "you and your father." Do you mean now she alone?

20

MR. STRICKER: No, I mean you or your father.

THE COURT: Is that objected to?

MR. STRIETWOLF: I haven't any objection.

THE COURT: Yes, I know, but it is not competent evidence to what her father would do unless she were present.

3)

MR. STREITWOLF: I don't want the jury to get the impression by my objection that I am afraid of the question.

THE COURT: That is not the point. The point is that it is not fear of the question, but there is no question that should

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*Tillie Esakov—for State—Cross.*

be allowed to go without being objected to, if it is not a competent question. And it is not a competent question to ask this girl what her father agreed to do unless she was present.

10 MR. STRICKER: I will withdraw that question, and put it this way:

Q. Did you yourself, within the last three months, agree that if three thousand dollars were paid to you or to your father, you would not come on here from Baltimore to prosecute this case?

A. No.

Q. And you yourself did not authorize Mr. Streitwolf, your attorney, to make such an offer?

20 A. No.

Q. Now, directing your attention again to this Swiller apartment, do you know what kind of a lock it was that Swiller locked when he put the key in his pocket? A regular door lock.

Q. And the door that you were told to bang in the morning had what kind of a lock? A. Yale lock. It was both the same door, but it had two locks on.

30 Q. So that Swiller didn't lock the Yale lock?  
A. No.

Q. But locked the lock below it, that is correct?  
A. Yes.

Q. I asked you this morning whether you made any attempt to open the bath room window and your response was that you couldn't because it was up too high. Is that correct? A. I think it was high, I am not quite sure.

Q. Did you make any attempt to open that window? A. Yes.

40

*Tillie Esakov—for State—Cross.*

Q. And you found no way of getting it open?  
A. No.

Q. Was there a light in the bath room? A. No.

Q. There was a light in there sometime, wasn't there, during your stay in that house? A. No. Only in the kitchen.

Q. How many times have you been in that house? A. That is the first time. 10

Q. And you got around in that bath room without any light for the purpose of arranging yourself? A. Yes.

Q. Without any light? A. Yes.

Q. Could you see a window without a light? A. Yes, I could see the window.

Q. How could you see it if there wasn't any light in the room? A. The light was shining in from the witchen. 20

Q. And isn't it a fact that the window in that bath room is far over to the left of that door? A. I don't exactly where the window in the bath room is, but I know there was a window in there.

Q. Did you make any attempt to open that window? A. Yes, I tried to open it.

Q. And what prevented your effort to open it? A. I couldn't open it.

Q. Don't you know that there was a little hook and a staple there which all you had to do was just to touch with your finger and open that window? A. I didn't see no hook or no staple or anything. 30

Q. And don't you know that that window is not much higher than the level of this bar here. A. From the floor?

Q. Yes? A. It might be so. I can't just remember where the window was placed at at that time. 40

*Tillie Esakov—for State—Cross.*

Q. Then it wasn't so high but what you could touch it, was it? A. Well, I wasn't as large as now. I was away shorter then.

Q. Well, were you a foot shorter? How much shorter were you? A. About a foot, or more than a foot, sure.

10 Q. How many doors were there in this room that he locked? A. Just one door to go out or go down the stairs.

Q. Wasn't there another door that opened up on the back porch? A. I didn't see no door.

Q. In the kitchen? A. I didn't see no door.

Q. And right alongside of the table that you said you didn't want to climb on? A. Didn't see no doors there. If there was, there was a curtain or something over them.

20 Q. There was a light in the kitchen, wasn't there? A. Yes.

Q. So you could see the table? A. Yes.

Q. And that table was directly under the window? Wasn't it? A. Yes.

Q. And the bottom of that window was on the level with the table, wasn't it? A. Yes.

Q. And that table wasn't any higher than this, was it, that is, I am pointing to the table here. A. No.

30 Q. And wasn't there a door leading to the back porch alongside of that table? A. I don't remember that.

Q. How many doors did Swiller lock? A. Just the one.

Q. And then if there were two other doors in that room, you didn't see them? A. Yes, I saw lots of doors in there, doors that went into different rooms. Doors that went into his room,

*Tillie Esakov—for State—Cross.*

and the door that went into another room that was locked, and then there was the door that went into the bath room and the door that went downstairs and the door that went into the parlor.

Q. Well, the door into the bath room wasn't locked? A. No. And the door that went into the parlor. 10

Q. And the door that led to the back porch out of that kitchen, you didn't see that either, did you? A. No, I don't know nothing about that door.

Q. How many times that night did you succeed in making an outcry? A. Lots of times.

Q. I know, but what does that mean? A. I tried to cry when he grabbed hold of me, and when I went to open the door I asked him to let me out and he grabbed me and I hollered Mr. Swiller let me go. 20

Q. Yes. That is once. A. And I was crying after.

Q. How many times after that, after you hollered Mr. Swiller let me go, did you make any further outcries? A. I tried to when he had me on the bed.

Q. You couldn't though, your mouth was covered? A. Well, I tried to, I tried the best I can. 30

Q. How many times did you succeed in making an outcry that night? A. I don't remember now.

Q. Was it more than that once? A. I don't remember now. I know I—yes I made more than that once. I made outcries more than once.

Q. Well, how many times? A. I don't remember. 40

*Tillie Esakov—for State—Cross.*

Q. Was it twice? A. Might have been twice, and it might have been three times.

Q. Was it more than three times? A. No, I don't think so.

10 Q. Was it—in how long a space of time did you make those three outcries? A. I can't remember that.

Q. Well, was it all within five minutes, or ten minutes or fifteen minutes? A. Well, I knew it was first and second time.

Q. Well, how far apart were these outcries? A. I can't exactly state the time how far apart it was.

Q. No idea of the at all? A. No.

20 MR. STRICKER: Now I am through with this witness. I would like to reserve the right to ask one more question, and lay the foundation for contradiction. I expect to have a witness here who does not seem to be here. Outside of that I am through with this witness.

THE COURT: What do you mean by laying a foundation?

30 MR. STRICKER: I asked the question this morning and Your Honor did not seem to—no suggestion from the other side, but Your Honor seemed to think that the foundation was not sufficient, and I want to fix the time and place for an admission.

THE COURT: Oh, you mean you cannot frame your question until you see this other witness?

MR. STRICKER: Yes.

40 THE COURT: That will be permitted if it is not too long.

*Tillie Esakov—for State—Re-Direct.*

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*Re-direct Examination by Mr. Streitwolf:*

Q. Tillie, you were asked about the seven cents that your moher gave you to pay your carfare to New Brunswick, and whether you didn't know that that did not pay your carfare back. A. I knew it didn't pay it back.

10

Q. You were asked that. Now what did you say to your mother in reference to that seven cents?

A. I asked her where I—

MR. STRICKER: I object to that.

MR. STREITWOLF: If your Honor will permit, they brought a part of that conversation. I did not touch it. Now if we are entitled to the part, we are entitled to the whole.

MR. STRICKER: I think we had a full explanation of this.

20

THE COURT: Well, it is entirely in the discretion of the Court; as a matter of fact, you did bring out, on direct examination, the assertion from this girl that the mother had given her but seven cents for a fare one way to New Brunswick, and there were more or less of the circumstances incident to the giving of that seven cents, and about the instructions as to what she was to do in New Brunswick, and it was the duty of a proper examination to bring out the whole of it. Now something has been brought on cross examination along that line. At the same time it is absolutely within the discretion of the Court, and I will allow the question.

30

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*Tillie Esakov—for State—Re-Direct.*

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A. I asked her, where is my fare to get home with again. She said, you don't need no fare, you are coming home with Mr. Swiller to-morrow.

THE COURT: Hasn't she already testified to that?

10 MR. STRICKER: Yes, we have had all that.

Q. Now, you were asked why you did not complain, and you said, "Because I was afraid to, I was afraid of my mother." Had your mother said anything to you after you returned that brought that fear in your mind? A. Yes.

MR. STRICKER: I object to that question.

20 THE COURT: Why is that competent now? She has gone into that. Why protract the examination? She said that her mother said she would kill her if she said anything about it.

Q. Prior to this occasion, referring to October twenty-first, 1913, had your mother ever beat you? A. Yes.

30 MR. STRICKER: I object to that.

THE COURT: I cannot see that that is pertinent. She might have beaten her for a good many things. Objection sustained. And the answer was given so quickly that counsel did not have proper opportunity to make his objection. Therefore the answer is stricken out.

*Tillie Esakov—for State—Re-Direct.*

Q. You were asked if you ever made a criminal complaint to the authorities, and I will ask you if you recognize that gentleman there (indicating), Mr. Hammerslee? A. Yes.

MR. STREITWOLF: Stand up.

Q. Do you recognize that gentleman? A. Yes. 10

Q. Where did you see him?

MR. STRICKER: I object to that.

THE COURT: Why?

MR. STRICKER: A complaint made to —this examination did not go to the authorities in any other place than Middlesex County. Now, if we are going to bring in all that was done in Baltimore, and all the various phases of the civil side of this case, we are going to get into trouble. 20  
Now, I submit that whatever she did in Baltimore, and especially acting under the advice of several lawyers, certainly is not binding upon us here.

THE COURT: What is the object of this testimony?

MR. STREITWOLF: The object is this: I want to show that the girl was before the Chief of Police of Baltimore City, and there and then related the story she related here. 30

THE COURT: You cannot prove that. Not in a criminal case. You can prove, in these cases involving the sexual relationship, you can prove whether or not a complaint has been made and you are confined, under decisions, to the fact of the complaint itself, and cannot include any details. And when you say that you want to prove that 40

*Tillie Esakov—for State—Re-Direct.*

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she told the Chief of Police of Baltimore the same story that she told here, way, of course, that is not competent. But the fact that she complained that an assault had been made on her by this defendant is competent testimony.

10

MR. STREITWOLF: I intend to go further and show that the parties down there took it up with the authorities here. I cannot prove everything through this witness, but I can lay a foundation for it.

THE COURT: I do not see its relevancy anyhow. You may ask this witness if she made a complaint that this assault had been made on her.

20

MR. STRICKER: Fixing the time, of course.

THE COURT: Fixing the time and place, of course.

MR. STREITWOLF: That is at Baltimore?

THE COURT: Yes. Certainly. Anywhere.

Q. Were you before the Chief of Police in Baltimore? A. Yes.

Q. When? A. The middle part of April.

Q. What year? A. 1914.

Q. Were you examined by the Chief of Police and Detective Hammerslee concerning your condition?

MR. STRICKER: I object.

THE COURT: Objection sustained.

40

*Tillie Esakov—for State—Re-Direct.*

Q. Did you at that time accuse Max Swiller as being responsible for your condition?

MR. STRICKER: I object to that.

THE COURT: Objection sustained.

*By the Court:*

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Q. Did you at that time make a complaint—

A. Yes.

Q. One minute. Did you at that time make a complaint to the Chief of Police of Baltimore that Swiller had made an assault on you? A. Yes.

THE COURT: Now, you cannot go any further into the details, under the decisions in our State.

20

*By Mr. Streitwolf:*

Q. Now, Tillie, I have asked you if, when you gave the conversation that you had at Mr. Max Swiller's home in December, 1914, whether you have told all of that conversation? A. No.

Q. Do you want to add anything to that conversation that you have overlooked? A. Yes.

Q. What part do you desire to add? A. When we were ready to walk out of the house of his upstairs, my sister says to him, "Mr. Swiller, don't the child look like you? Don't he resemble you?" and he said, "Yes, the child resembles me, and the child is mine," he says, "Didn't I offer you support and everything and you would not take it?" She said, "Why did you want to deny that it was yours at the store?" And he said, "Well, everybody tries to get out of it if they can."

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*Tillie Esakov—for State—Re-Direct—Re-Cross.**By the Court:*

Q. Where did this conversation occur? A. Up at Mr. Swiller's home, 5 Schureman Street.

Q. When? A. In December.

Q. What year? A. 1914.

10

THE COURT: Proceed.

MR. STREITWOLF: That is all.

*Re-Cross-Examination by Mr. Stricker:*

Q. When did you first find out that you omitted this from your testimony? A. I knew I omitted it after you started to ask me other questions, but I didn't want to jump up and say nothing.

20 Q. And then when you got through this noon you spoke to Mr. Streitwolf and told him you had omitted it? A. Yes, I told him I had omitted it.

Q. And when you were asked to give the entire conversation this morning it slipped your memory? A. Yes.

Q. You didn't remember it then. Now, when you complained to the Chief of Police of Baltimore, was that before or after you had seen a lawyer? A. After we saw the lawyer here in New Brunswick.

30 Q. Then you—which lawyer? A. Lawyer Warren Schenck.

Q. And then you complained to the Chief of Police of Baltimore? A. Yes.

Q. And that was in April, 1914? A. Yes.

Q. Then you left Lawyer Schenck and got two or three other lawyers? A. Yes.

Q. Why was it, then, if you had all this assistance, that no complaint against Swiller was made until May, 1915, or thirteen months afterwards?

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*Tillie Esakov—for State—Re-Cross—Re-Re-Direct.*

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A. None of the lawyers took up the case right.

Q. Did I understand you to say this morning that Swiller said he would get a room in New York and dispose of the child? A. At first he said he wanted to—he would dispose of the child.

Q. Did he use the word dispose? A. Well, he said it in Jewish, he said that in a way as if it meant dispose. 10

Q. What did you understand in Jewish by that? A. That he would give the child away and neither I or he would see it, and I shouldn't worry over it any more.

*Re-Re-Direct Examination by Mr. Streitwolf:*

Q. This conversation that you had with Mr. Swiller, was it in January? A. Yes. 20

Q. Now, you have said that you were here and saw Mr. Warren Schenck. Who came with you on that occasion? A. My father and Lawyer Reese from Baltimore.

Q. What did you do with Mr. Reese? Did you continue this—

THE COURT: How is this important?

MR. STREITWOLF: They have opened the door. 30

THE COURT: I know.

MR. STREITWOLF: On a question of laches. It leaves a peculiar question in the minds of the jury. They are capitalizing it. I think it is subject to thorough examination.

THE COURT: I am not going to allow any unnecessary extension of the trial of this case, because of immaterial matters. 40

*Tillie Esakov—for State—Re-Re-Direct.*

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10 The girl charges this man assaulted her, and as the result of that assault a child was born. The fact that a child was born is given out as corroboration of her charge that he assaulted her. She said she was under fifteen years of age at the time of the assault. The question of force is not an element, unless we go to try the first count, which is a charge of rape.

Q. Tillie, is your child here in court? A. Yes, sir.

Q. Will you identify the child? A. Yes, he is with my father.

20 MR. STREITWOLF: I suppose in cases of this character it is perfectly permissible for me to offer the child on a question of resemblance, and so forth.

THE COURT: You are doing that through this witness, aren't you?

MR. STREITWOLF: Yes.

THE COURT: Let the witness exhibit the child. Just go down there and walk through the jury and let them look.

(Witness exhibits child to jury.)

30 MR. STREITWOLF: That is all.

*Samuel Levy—for State—Direct—Cross.*

SAMUEL LEVY, a witness produced on behalf of the State, being duly sworn, on his oath, according to law, saith:

*Direct Examination by Mr. Streitwolf:*

Q. Mr. Levy, your full name? A. Samuel Levy. 10

Q. Where do you live? A. 199 Burnet Street.

Q. Where did you live in October, 1913? A. No. 5 Schureman Street.

Q. How long did you live there? From when until when? A. In 1911, I think.

Q. Until when? A. Until 1914.

Q. In October, 1913, what part of 5 Schureman Street did you occupy. A. The stoop, downstairs.

Q. Downstairs? A. The lower floor.

Q. Lived there with your family? A. Yes, sir. 20

Q. Who occupied the rooms overhead? A. Mr. Max Swiller.

Q. Did you ever see this girl (indicating complaining witness)? A. Yes, sir.

Q. And when did you see her? A. I seen her it was in the month of October.

Q. What year? A. 1913.

Q. Where did you see her? A. I see her coming down the stairs one morning, it was a little after six o'clock. I went out and happened to get the milk, taking in the milk. At the same time I see her coming down the stairs, and she was crying at the same time. 30

MR. STREITWOLF: That is all.

*Cross-Examination by Mr. Stricker:*

Q. Mr. Levy, what is your business? A. Merchant.

*Samuel Levy—for State—Cross.*

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Q. In business for yourself? A. No, sir.

Q. And where were you living at this time?

A. Number 5 Schureman Street, at the time this thing happened.

Q. Were you living upstairs or downstairs? A. Downstairs.

10 Q. Does that girl look about the same now as she did then? A. Just the same to me.

Q. No change in her? A. No change.

Q. Speak up. Don't be afraid. A. No change.

Q. About the same height then as she is now? Just as tall then as she is now? A. Well, I can recognize her, she is the same one.

Q. Yes, but I say she was just as tall, just as heavy, and about the same and looked the same, that is correct, isn't it? A. Yes.

20 Q. Do you know Max Swiller here? A. I do.

Q. How long have you known him? A. Oh, since four or five years.

Q. Do you know his brother Abe, his partner? A. I do.

Q. Are you friendly with them? A. Yes, sir. Always was.

Q. Are you friendly with them now? A. Yes, sir.

30 Q. You don't speak to them, though, as a rule, do you? A. Off and on I do.

Q. Did you ever speak to them? A. Well, he don't speak to me and I don't speak to him. That is all.

Q. Now, that condition of affairs, of you not speaking to him, or he to you, has been going on how long? A. Oh, we always been good friends together right along.

*Samuel Levy—for State—Cross.*

Q. I know, but you didn't speak? A. Well, passing by we say, "How do you do?" and that is about all. We don't speak.

Q. But the fact is that outside of "How do you do," when you pass by, you never speak to him? A. Well, I have no business to speak to him at all whatever. 10

Q. Well, you used to speak to him, didn't you? A. Well, off and on, that is all. Not in business affairs, no.

Q. Well, prior to the year 1913 you were on speaking terms with him, weren't you? A. Not in business affairs. Just saying "How do you do?"

Q. Social affairs? A. Social affairs, passing, walking by, that is about all.

Q. You were more friendly before 1913? A. Always was friendly with him. 20

Q. And you are friendly with him now? A. Always was, yes.

Q. But your friendship with him is limited to saying "How do you do?" when you pass him on the street, and that is all? A. Occasionally, yes.

Q. How far away from Swiller's do you live? A. Do I live now?

Q. Yes, now. A. Oh, right about just a block over. 30

Q. And how far—you lived in the same house with them in 1913, didn't you? A. Yes, sir.

Q. And how long had you been living in the house with them in 1913? Before the morning when you saw this girl? A. How long had I been living in the house?

..... Q. Yes. A. Oh, I been living there since after that, about eight or nine months.

*Samuel Levy—for State—Cross.*

Q. After that? A. Yes.

Q. And how long had you lived there before that? A. Until 1911.

Q. Since 1911? A. Yes, I think it was, yes.

Q. Who owned that house? A. Mr. Gitting, and Solomon.

10 Q. So that for two years you lived in the same house with the man, and you were on friendly terms with him all the time while you lived in the house? A. Always was, yes.

Q. But your friendship was limited to saying "How do you do?" when you met him, and that is all? A. I never had any bad feelings with him.

Q. I didn't ask you that. I asked you whether your friendship was limited to that? A. My

20 Q. Did you ever call on them? A. Never did.

Q. Did he ever call on you? A. No, sir.

Q. Did you ever speak with him outside of saying "How do you do"? A. I had no particular purpose.

Q. Can you explain why it is you lived in the same house with a man, one story below him, and that in two years before the morning you saw the girl, and nine months afterwards there was

30 nothing more than anything but a "How do you do?" between you?

(Question repeated by the stenographer.)

A. Well, used to say "Good morning," sometimes "Good night," something like that, sometimes see him in the evening.

Q. Had you ever seen this girl before? A. At that time?

Q. Yes. A. No.

*Samuel Levy—for State—Cross.*

Q. You never saw her before that morning?

A. No.

Q. And on the morning when you saw her how was she dressed? A. Well, I don't remember how she was dressed. She was dressed in dark clothes, I think.

Q. What is that? A. Dark clothes, or something like that. 10

Q. What kind of clothes? A. I couldn't say. I don't remember what kind of clothes.

Q. What kind of a skirt did she have on? A. I don't remember what kind of a skirt she had on.

Q. What kind of a coat did she have on? A. I couldn't say, I don't remember.

Q. What kind of a hat did she have on? A. I don't remember.

Q. What business are you in? A. Clothing. 20

Q. Ladies' clothes, or gentlemen's clothes? A. Gentlemen's.

Q. Gentlemen's? A. Yes.

Q. And beyond saying that she had on dark clothes, that is as far as you can go? A. Yes, sir.

Q. Did you notice how she wore her hair? A. I do not.

Q. How much of a look did you have at her? A. Just when she was coming downstairs. 30

Q. Well, where did you see her, in the hall? A. I seen her coming down the steps, going out the hall.

Q. Where were you? A. I was outside waiting for the milk, at that time.

Q. How much of a look did you have at her? A. Oh, not very much of a look. I recognize her just the same.

Q. When did you see her again after that? A. 40

*Samuel Levy—for State—Cross.*

I haven't seen her at all after that, only what I see in the court room here.

Q. Last May? A. Last May, I think it was this time in court.

Q. That is, I mean 1915? A. No. I see her 1913.

Q. The first time? A. Yes.

10 Q. Then when did you see her again? A. In the Court House here.

Q. 1915? A. 1913, I think it was. I mean now 1915, yes.

Q. 1915? A. Yes.

Q. And the third time you saw her was in court to-day? A. Yes, sir.

Q. And on the three occasions that you saw her, the first time, second time, and the third time, she always looked the same? A. About the same.

20 Q. No difference in her appearance at all? A. No, sir, about the same.

Q. Is your answer, no, sir? A. No, sir.

Q. Now, you testified in a civil suit here in May of this year? A. Yes, sir.

Q. In which this young lady was one of the parties, or was a witness, rather? A. Yes.

Q. And which involved this same transaction, is that correct? A. Yes, sir.

30 Q. And you were brought here to give the same testimony? A. No, sir.

Q. No. A. I was brought here what I know.

Q. And you told what you knew? A. Yes, sir.

Q. You told practically the same thing as you are telling now? A. Yes.

Q. That is right, is it? And you remember the testimony that you gave in that trial, don't you?

A. I do.

*Samuel Levy—for State—Cross.*

Q. Do you remember this question being asked of you: "You and the Swiller boys are not friendly?" Do you remember that question being put to you? A. No, sir.

Q. And didn't you, in reply to that question, say: "Well, not in a way"? Did you swear to that or testify so last May? A. I don't remember.

10

Q. You don't remember? A. No.

Q. Well, do you say you didn't, or you did?

THE COURT: He does not say either. He says he does not remember. If he does not remember, he cannot say whether he did or whether he did not.

Q. Well, is it true that you and the Swiller boys are not friendly? A. Always was friendly together.

20

Q. I say, is it true that you and the Swiller boys are not friendly? A. Well, I am friendly with the boys. I am always friendly with the boys. Always was. Always been friendly with the boys. Never have no dealings of any kind. Never had no transaction of any kind.

Q. Then if you testified last May that you were not friendly in a way, what did you mean?

MR. STREITWOLF: He did not so testify. I object.

30

MR. STRICKER: How did he testify?

MR. STREITWOLF: He said he didn't remember how he testified. You predicate another question on the theory that he did so testify.

THE COURT: Well, not for the reason you give, do I sustain the objection. The

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*Samuel Levy—for State—Cross.*

question is objectionable in its form. If you did such and such a thing, then you were mistaken. That is not a proper question.

10 Q. Well, if you did so testify, was that correct?  
A. About what?

Q. That you were not friendly in a way with the Swillers? A. I always was friendly with the Swiller boys. Always been friendly with them.

Q. I am asking you if you testified the other way last May? A. I don't remember.

Q. Had you ever seen a girl come out of that house before, at that hour of the morning? A. I seen that lady come out of that house that morning.

20 (Question repeated by the stenographer.) A.  
Yes, sir.

Q. Same girl? A. Same girl.

Q. How many times? A. Once.

Q. Before? Did you ever see that girl come out of that house before at that hour of the morning? A. Before?

Q. Yes, before the morning in October that you speak of? A. No, sir.

30 Q. What do you mean by saying once?

THE COURT: Well, he was mixed up on that question. The question was put in such a way that it was likely for him to be confused.

MR. STRICKER: I assure Your Honor it was not intended so.

THE COURT: I know.

*Samuel Levy—for State—Cross.*

Q. Had you ever seen a girl coming out of that house, any girl?

*By the Court:*

Q. Had you seen any other girl than this girl come out of that house at any other time? A. No, sir. 10

*By Mr. Stricker:*

Q. Never before? A. No, sir.

Q. Did you ever see a girl coming out of that house in tears, crying, any other girl? A. No, sir.

Q. Well, didn't it occur to you that something had happened to this little girl? Didn't you think it was strange to see a crying girl coming out of the house at 6 o'clock in the morning? A. Why, yes, it did seem kind of strange to me. 20

Q. And did you say anything to her? A. No, sir.

Q. Why not? A. Well, I didn't think it was my business to say anything at all to her.

Q. You knew the girl didn't live there, didn't you? A. Of course I knew the girl didn't live there at all, no.

Q. And here you see a girl coming out of a house at 6 o'clock in the morning, and crying, something you had never seen before and you didn't talk to her because it was none of your business? A. Certainly. 30

Q. That is your only explanation, is it? A. Yes, sir.

Q. Did you report this to anybody? A. No, sir.

Q. What time did you go to bed that night? A. Ten o'clock.

Q. Ten o'clock? A. Yes, sir.

Q. And what time did you get up that morning. 40

*Samuel Levy—for State—Cross.*

or that following morning? A. Every morning I get up at 5 o'clock.

Q. Five o'clock? A. Yes, sir.

Q. And when you get up at 5 o'clock in the morning, what do you do? A. Work around the kitchen.

10 Q. Were you in business at that time? A. No, sir.

Q. You were not in business then? A. No, sir.

Q. What were you doing? A. With the same firm, A. J. Levy.

Q. Well, you were going to business, weren't you? A. How?

Q. You were employed? You had business somewhere? A. Well, I was a salesman.

20 Q. And what time did you usually go to work? A. Seven o'clock every morning.

Q. From the hours of 5 to 7 what did you usually do? A. Work around the kitchen in the house.

Q. Let me ask you something, Mr. Levy; was this a bright morning that you saw this girl? A. It was a bright morning; yes, sir.

Q. Sun was high at that hour of the morning? A. Yes, sir.

30 Q. October 20th—you don't know what date? A. I didn't say the date. I don't know what day it was.

Q. You didn't speak to the girl, did you? A. No, sir.

Q. Didn't say good morning to her? A. No, sir.

Q. Nor she to you either. A. No, sir.

Q. Did you ask anybody in the house about the crying girl that came out? A. No, sir.

*Samuel Levy—for State—Cross.*

Q. Didn't say anything to Swiller about it when you saw him, did you? A. No.

Q. Nor anybody else? A. No, sir; not a word.

Q. And you are sure you went to bed at 10 o'clock that night? A. Yes, sir.

Q. What time did you come into the house that night? A. Nine-thirty. 10

Q. How do you fix the time as 9:30, Mr. Levy?  
A. Well, sometimes I didn't get home until 9. Sometimes I get home at 8.

Q. But this night you were home at 9:30? A. Yes.

Q. Do you know what day of the week it was?  
A. I couldn't say. I don't remember what date.

Q. Do you know what part of the month it was you saw this girl? A. October. 20

Q. You don't know whether it was the first, second, third, fifteenth, thirtieth, or what? A. No. Month of October. I couldn't say the date.

Q. Why do you fix the month of October? A. Because I knew it was that month.

Q. Why do you know it is the month? A. Well, I know it was that month in October.

Q. How do you know it is the month of October?  
A. Well, I couldn't say just how I know the month. Was that month. There is no use of me going to say it is in July or September. 30

Q. What is it that impresses upon your mind that it was the month of October? A. That is the month I know it was.

Q. I know, but what was there about that particular month that made an impression upon you?  
A. Because I knew at that time it was. I knew at the time.

*Samuel Levy—for State—Cross.*

Q. When that girl came out of that house? A. Yes.

Q. You didn't know that she had been outraged, did you? A. I beg your pardon.

10 Q. You didn't know, when you saw that girl coming out of the house at 6 o'clock in the morning, that she had been assaulted by anybody, did you? A. No, I did not.

Q. And you never knew about it until about a year afterwards? A. Until I see her coming down the stairs, and that is the time I knew about it.

Q. Did you know when she was coming downstairs that she had been raped, or assaulted? A. No, sir.

Q. You didn't know that? A. No, sir.

20 Q. And the first time that you knew that anything had happened to that girl was about a year, or fourteen months after, isn't that true? A. I couldn't say anything at all about that. I don't know at all what was.

Q. It was a considerable length of time when you learned that Max Swiller was charged with having assaulted the girl? A. I couldn't tell you that at all. I only know that she came downstairs.

30 Q. What else happened in October besides this girl coming out of the house, that you remember? A. I don't know.

Q. What legal holiday was there in that month? A. I don't remember.

Q. Is there any legal holiday in the month of October that you know of? A. Not as I know of.

Q. And the only answer that you can give is that it is the month of October? A. Yes, sir.

Q. And not November or July or August? A. No.

*Samuel Levy—for State—Cross.*

Q. But you can't tell why it is that that month has impressed itself upon your mind? A. Yes.

Q. Isn't it true, Mr. Levy, that you were in the habit of opening that store at 5 o'clock in the morning? A. I don't open the store in the morning.

Q. Well, isn't that store opened at 5 o'clock in the morning? A. No, sir. 10

Q. Wasn't it open? A. No, sir.

Q. In the year 1913? A. No, sir.

Q. Now, who lived with you in that house at that time? A. My wife and family.

Q. And what does your family consist of besides your wife? Any children? A. Yes, sir.

Q. How many children? A. Six.

Q. Were they grown children at that time, or were they small children? A. Grown up. 20

Q. How old is the oldest? A. The oldest was twenty-one.

Q. How old was the youngest? A. The youngest now at the present time?

Q. Well, I presume—— A. The youngest is five years old.

Q. That was the youngest? A. That was the youngest.

Q. Were all these children up at this time? A. 30  
No. All the children up in bed?

Q. Yes? A. I couldn't remember.

Q. Was your wife up at this hour of the morning? A. No, she ain't up.

Q. Was she up on this particular morning? When you saw this girl come out of the house?

A. No, she wasn't up at all, no.

*Samuel Levy—for State—Cross.*  
*Harry M. Hammersla—for State—Direct.*

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Q. Did your brother live there with you at this time? A. Brother?

Q. Yes? A. No, sir.

MR. STRICKER: That is all.

10 MR. STREITWOLF: That is all.

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HARRY M. HAMMERSLA, a witness produced on behalf of the State, being duly sworn on his oath, according to law, saith:

*Direct Examination by Mr. Streitwolf:*

20 Q. Mr. Hammersla, your full name? A. Harry M. Hammersla.

Q. Your business? A. I am a detective officer, connected with the police department of Baltimore City.

Q. Were you such in April, 1914? A. I was.

Q. Do you recall of seeing Tillie Esakov? A. I do.

Q. Where did you see her? A. I saw her at our office at room 20 in the New Court House.

30 Q. Who was present? A. Her father, herself, Detective Hogan, Captain McGovern, and myself.

Q. Did she make a complaint at that time?

MR. STRICKER: I object.

THE COURT: I will allow it.

MR. STRICKER: On the ground it is leading.

THE COURT: Well, it is leading. Of course, if that is the ground of your objection, it is in the discretion of the Court.

*Harry M. Hammersla—for State—Direct.*

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MR. STRICKER: Then if you are going to permit that question, why not get it all down and connect the defendant up with it in some way? She might have made a dozen complaints.

THE COURT: I naturally assume from the form of the question that this will be followed up. If it is not, it does not harm anybody. 10

*By the Court:*

Q. Did she make any complaint at that time? A. Yes, sir.

*By Mr. Streitwolf:*

Q. What was it? 20

THE COURT: Not the details, but the kind of complaint that was made.

A. She complained of having been assaulted, criminally assaulted.

Q. By whom? A. By a man name of Swiller, Max Swiller.

MR. STRICKER: I object.

THE COURT: I will sustain that objection, but I will permit a question where—so that there will not be any question that it was the same complaint this girl has made. 30

*By the Court:*

Q. Assaulted where? A. At New Brunswick, New Jersey.

*Harry M. Hammersla—for State—Direct.*

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MR. STREITWOLF:

Q. What did your office do by reason of that complaint?

MR. STRICKER: I object.

10 THE COURT: I will sustain that objection.

Q. Do you know whether that complain was communicated to the criminal authorities of Middlesex County?

MR. STRICKER: I object to that.

THE COURT: Why?

20 MR. STRICKER: Because it is entirely irrelevant whether it was or whether it was not. As I understand it, the purpose of this testimony is in order to permit the State to establish the fact that a complaint had been made. Now, if we are permitted in this case to allow testimony to go in that a person went down to Baltimore to complain of a crime that was committed in Middlesex County, not, mind you, under the supervision of ignorant people, but under the supervision of lawyers, because  
30 there was an army of lawyers in this case at sometime or other, according to the testimony of the young woman. Now, are we to account for the delay of this complaint, or in the making of the complaint to the authorities in the City of New Brunswick

*Harry M. Hammersla—for State—Direct.*

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by something which this man might testify? And what difference does it make what became of the complaint after these people got hold of it? We have it here now that a complaint was made. Whether or not that was transmitted, we do not know, and what good would it do if it had been transmitted? It would have been an absolutely nugatory procedure, it was of absolutely no value whether they transmitted that complaint, or whether they did not, because the only effective means of causing this man's apprehension was the physical appearance of this Prosecuting witness, or somebody for her, in the County of Middlesex.

THE COURT: On what ground do you offer this?

MR. STREITWOLF: Upon one ground particularly that the young lady was not guilty of laches. Secondly, there has been an innuendo here that an effort was made to commercialize a situation of this character. And further, that the police department in the City of Baltimore is a part of the police organization of the United States, and she was then a resident of the City—

THE COURT: There is no such thing as a police organization—

MR. STREITWOLF: I mean it is an institution for the punishment—

THE COURT: What is the object of this testimony? That is what I want to know.

*Harry M. Hammersla—for State—Direct.*

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MR. STREITWOLF: Particularly that the young girl was not guilty of laches in making the accusation against Max Swiller.

10 THE COURT: Well, that you have proved that she made this complaint to this man, in the presence of other officers, members of the police of the City of Baltimore. Now, you are asking if that complaint was communicated to the authorities in Middlesex County. For what? What weight, or what pertinency, and of it has any pertinency, what weight can such testimony as that have? The question of whether or not a complaint was made does not go to the very heart of this

20 complaint. It is simply allowed in these cases, because, as Chief Justice Beasley stated in one of the principal cases, that it is the most natural thing for a woman to make a complaint if she has been ravished, and it is an exception to the ordinary rule, but human experience shows that women are so built that if they have been ravished, if they have been outraged, that it is the experience of ordinary human nature, that

30 they will make a complaint, and make it promptly, especially to certain persons like a mother, and that if the natural thing has not been done, that is, to make a complaint, and make it promptly, it is an element to be considered by the jury as to the probability of the act itself having been committed. Now then, why do we go so far afield? This girl swears that she told her mother. that she told her mother as soon as she re-

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*Harry M. Hammersla—for State—Direct.*  
*Ida Esakov—for State—Direct.*

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turned. Then she moved to Baltimore where her father was. When she got there, at this time that this gentleman speaks about she made a complaint to the police authorities there. Now, I thought that the reason why you were asking this question was to identify the same complaint that she had made there in Baltimore with the same complaint that was made here. 10

Mr. STREITWOLF: No, sir. I will withdraw the question then.

Q. Was the father present on that occasion? A. He was.

MR. STREITWOLF: That is all. 20

MR. STRICKER: No questions.

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

*Direct Examination by Mr. Streitwolf:*

Q. Your full name? A. Ida Esakov. 30

Q. Where do you live? A. 1 East Montgomery Street, Baltimore, Maryland.

Q. You are the sister of Tillie Esakov? A. Yes.

Q. Are you older or younger? A. Older.

Q. How much older? A. Just about three years.

Q. Do you recognize the gentleman sitting in that chair? A. Yes, sir.

*Ida Esakov—for State—Direct.*

Q. Point to the defendant? A. Right there; yes, sir.

Q. Were you at his office at any time during 1914? A. Yes, sir.

Q. When in 1914? A. December.

10 Q. Who was with you? A. My sister Tillie and the baby.

Q. Do you recall what part of December, 1914?

A. The early part of December.

Q. Did you have a conversation? A. Yes, sir.

MR. BURTON: Now, I object to that. It is leading so far as you have asked it.

THE COURT: She said, "Yes, sir."

20 Q. Give us the conversation.

THE COURT: Now, do you object?

MR. BURTON: No, sir.

THE COURT: Conversation with whom?

MR. STREITWOLF: I have not finished my question. I had no finished it.

30 Q. Give me the conversation, and in giving it tell me which one of the parties are making the statements that you are referring to, so we can have it exactly as you recall it. A. Which one of the parties?

Q. Yes. There were three of you present? A. Yes.

Q. There were you and Tillie and this defendant, Mr. Swiller? A. And the baby.

Q. Give us the conversation? A. We left Baltimore.

Q. Give me the conversation. You are down in the store now. A. Tillie and I arrived at the

*Ida Esakov—for State—Direct.*

store, and we went to the office and we met Mr. Swiller there, Mr. Max Swiller, and some old gentleman sitting in there. As we come in he said, "Hello, girls, how are you?" We said, "All right." He said, "Put your suit case down," which we did, and then he says, "Take off your coats." We did not do that. Then after a while we heard somebody say, "Mr. Swiller," and this other gentleman got up and walked out, and this Max Swiller was left. Then he says, "How is your sister Lena?" We said, "All right." "Does she still worry about me?" We said, "No." "I heard she was married?" We said, "Yes." "Did she marry a rich fellow?" We said, "No, she married a fellow she loved, and not for his money." Then a little while after he walked out in the store to walk back and forth from the front door to the middle of the store. After he walked out Tillie and I got up with the baby and walked right out after him, and Tillie said, "Mr. Swiller, what do you intend to do for your child?" He says, "Don't talk so loud, don't let everybody hear." She said, again, "Mr. Swiller, what do you intend to do for your child?" He said, "Don't let everybody hear." He said, "S-sh." I said, "What do you mean? Can't she talk?" He said, "No, I don't want everybody to hear." He said, "Just a minute," and he went into the office just as his bookkeeper came in, Mr. Shapiro, and he says, "Mike, take care of the office, I will be right back." And it was raining that day, and he says, "Come up to my home on Schureman Street."

Q. Let me interrupt you. At that time did he say anything in answer to her statement about the child? A. Yes.

*Ida Esakov—for State—Direct.*

Q. What did he say? A. When Tillie says, "What do you intend to do for your child?" he said, "It is not my child." Tillie says, "How can you say it is not your child? When I come here to tell you to come for the corn, you told me that your mother and brother Abe were upstairs, and you took me up there, after getting up there there was a very dim light, you locked the door and put the key in your pocket and after a bit you told me you were going to have a good time and you had connections with me. How can you say that?" He said, "Don't say no more, we are going up to my home, we will talk everything over up there and it will be all right." So we took an umbrella, which he had, and all three of us walked down Burnet Street, up Schureman Street, with the baby. Tillie was carrying him. When we got there the hall door was open. He walked up first, unlocked the door and let us in there. It was a kitchen. And he took chairs and told us to be seated, which we did, and the door was left just a little open, and after Tillie said again, "Well, Mr. Swiller, what do you intend to do for your child now?" He said, "Not so loud," and he got up and closed the door. And when he got up and closed the door he took a chair and sat right between my sister and I. Tillie had the baby. She said, again, "What do you intend to do for your child?" He said, "Wait, I will tell you." He said, "Give me the child," he said, "I will take it and I will place it," he said, "where you won't get it, and I won't neither. We will expose of the child, that is what we will do." And Tillie says, "No, I won't do this, it is my child as well as yours. I am going to keep it." He says,

*Ida Esakov—for State—Direct.*

"All right, then. I will give you one dollar and  
 a half a week, I will sent it to you every week in  
 Baltimore." We didn't agree to this. Then he  
 says, "I will give you three dollars a week and  
 send it every week to Baltimore for the support  
 of the child." We didn't agree to this, either. 10  
 Then after a bit he says, "What do you want?"  
 Tillie says, "Marry me, give the child and me a  
 name." He says, "I can't marry you now for  
 no sum of money in this world." I said, "Why?"  
 He said, "There is no reason why," but he said,  
 "I will tell you one thing. Will you do as I say?"  
 and he took out a roll of money out of his pocket.  
 "Do you need money?" We said, "No. Papa  
 has given us as much as he had, and if we need  
 any more, if he hasn't got it, he will borrow it." 20  
 He took out this roll of money and placed it on  
 the table which was left there. Offered me to take  
 it, go to New York and get a room and write him  
 where we were at, and that he would come over  
 and fix this up, that is, if everything would be all  
 right. We did not agree to this, either. Then he  
 asked us why we didn't take the money, and we  
 told him we didn't want his money. Then he says,  
 "Are you going to New York?" We said, "No."  
 He said, "Where are you going?" I said, "It is 30  
 none of your affairs, we may go back to Balti-  
 more." And after that I said that, he said, "You  
 are not going to go to New York and write me?"  
 Said, "No." He said, "If you go to New York,"  
 he said, "and get the room, I will come over  
 there," he said, "and I will live with your sister  
 Tillie for one whole year, and if your sister Tillie  
 proves to be decent by the end of the year I will  
 marry her." He said, "But if I don't want to 40

*Ida Esakov—for State—Direct.*

live with her I can get a divorce in the next twenty-four hours." Then at that time he said—

Q. Anything said about resemblance? A. That was said a little later, just before we started to go out. He said he would get a woman to take  
 10 care of this child in New York, and if Tillie wanted to work she could, and if she didn't want to she didn't have to, it would be all right, that he would come to see her there every day for a year. Just as we said, "No," he said, "Where are you going?" I didn't tell him. I said, "None of your affairs." And he said, if I went any further—  
 2) first he said—he was looking on the floor. I said, "Look, Mr. Swiller, look at that child. Doesn't that child resemble you?" At first he was looking on the floor, and then he looked at the child. He said, "Yes, that the child resembles me, it is my child, didn't I offer you support, but you didn't want to take it." Tillie said, "I am not after that," and again he asked, "What do you want?" Tillie said, "Marry me and give the child and me a name." He said, again, "No." After a bit, then, when we were just about to go  
 30 he said, that if we weren't willing to go to New York or anything else. I said, "Well, if you are not willing to marry that way, we will have to see another way." He said, "If you take it to court you are going to make it worse." He said, "I could get plenty false Christian boys to swear falsely for me that they were with Tillie on that morning, I can get out of it easy." I said, "What did you deny in the store for that it wasn't your child and now you say it is?" He says, "Well, everybody tries to get out of it, if they can."

*Ida Esakov—for State—Direct—Cross.*

Q. How long were you at this house? A. We were at this house—we arrived, I think, here in New Brunswick from two-thirty, and then went to his office, and, of course, was busy talking there and told us to sit down.

Q. How long were you at his house? A. Up in his home about an hour, I think. 10

Q. That conversation lasted about an hour? A. Yes.

Q. And when you left had you agreed upon anything? A. No.

Q. And did he give you any money when you left? A. He offered it to us and I wouldn't take it.

Q. Did Tillie take any? A. No, sir.

*Cross-Examination by Mr. Stricker:*

20

Q. And you had seen a lawyer before you came to New Brunswick, hadn't you? A. Before?

Q. Yes. A. No, sir; I haven't seen any lawyer from here. We had a lawyer from Baltimore. First we had one from here, but I didn't see him, and then we had two from Baltimore. They didn't do anything for my father in the case.

Q. Now, you were advised, that is, you and your sister, to go and see Max, isn't that correct? A. By who? 30

Q. By the lawyer? A. No, sir. My father told me to go. I went on my father's request to see what he would do.

Q. And when do you say that was? A. That we went to Mr. Swiller's?

Q. That you went to see Swiller? A. In December, early part.

40

*Ida Esakov—for State—Cross.*

Q. Is that the only time you came? A. No. We came the following month; January, 1915, at the request of our attorney, Mr. Streitwolf, we came to the Mansion House.

Q. You didn't see Swiller there? A. Well, I called him up across the phone several times.

10 Q. You didn't see him, did you? A. No, didn't see him.

Q. Have you been living in Baltimore ever since your father went there? A. Yes, sir.

Q. Were you living on that farm at the time when this alleged assault took place? A. No, sir.

Q. Where were you living then? A. I was in Baltimore.

20 Q. Were you there in October, 1913? A. In Metuchen?

Q. No. Baltimore? A. Yes, sir.

Q. When did you first go to Baltimore? A. August 13th, I think it was, 1913.

Q. Who was present besides you and your sister, and Swiller in this store on Burnet Street? A. No one else but a man, but he went out.

Q. So that while this conversation was going on Swiller was alone and you were with your sister? A. Yes, sir.

30 Q. And nobody else there? A. No one else.

Q. You practically went through the same conversation with Swiller as your sister? A. Yes, sir.

Q. After your sister got through with her entreaties for him to do something for the child and her, and went through the history of the whole assault he said he wouldn't do anything for her, then you started in? A. Well, I didn't exactly then start, but maybe it is true while she was

*Ida Esakov—for State—Cross.*

talking, when he said she couldn't talk so loud, and he said, "S-sh," I said, "What do you mean, why couldn't she talk?"

Q. You wanted everybody to know it, didn't you? A. No, not exactly. I went to Mr. Swiller's office at the store on Burnet Street.

Q. After you got to the house you insisted on talking loud enough so as to let everybody know about it? A. No, sir; I did not. 10

Q. And then when Swiller asked you to keep quiet and not talk so loud, you saw no reason why you shouldn't talk loud, did you? A. I exactly didn't talk loud, but he had the door open, and he had it closed, and we all talked.

Q. And when your sister got all through making those charges, you started and you went all over it again, didn't you? A. No, not all over. She said all those things in my presence, and then while she was doing those things I had something to say in it, too. 20

Q. You haven't talked to anybody about this case? A. Yes, sir.

Q. To whom do you mean? A. Well, to anybody? Outside of our attorney?

Q. Yes, outside of your attorney. A. No.

Q. And you have talked with your attorney about this case? A. Of course. 30

Q. And you have read your testimony in the last civil trial too, haven't you? A. Yes.

Q. How recently? A. When I arrived.

Q. When did you arrive? A. I don't know what time it was.

Q. To-day? A. No.

Q. Yesterday? A. Saturday evening and Sunday I read it.

*Ida Esakov—for State—Cross.*

Q. Sunday evening you read your testimony?

A. Yes, sir.

Q. And the testimony as you are giving it to-day is as you recollect it from the book that you read? A. It may not be the same words. I can't

10 speak the same as I did then.

Q. But the substance is the same, isn't it? A. Yes.

20 THE COURT: Now, what is the effect of that testimony on the way the questions are put? That she is testifying now not according to what actually happened, but according to her recollection of what she read in the book on Sunday evening? Do you want it to go that way? I do not know, but my own impression is that the witness meant nothing of the kind.

*By the Court:*

Q. Do you mean to say that the testimony that you have been giving here to-day is simply what you remember from the reading of the book? A. No, indeed.

30 Q. Well, what do you mean? A. It is what I know myself. I only read this testimony over to see——

*By Mr. Stricker:*

Q. Why did you read that testimony? A. I just wanted to read it.

Q. Why? A. Just to see what I have said last time. That is all. I asked to see it.

Q. You didn't feel competent to go on without

*Ida Esakov—for State—Cross.*

it? A. Of course, I did, but I really liked to see it and read it.

Q. Idle curiosity, that is all? You were just curious? A. Well, not exactly curious, but I just thought I wanted to see.

Q. Didn't you want to prepare yourself for to-day? A. No, sir; I knew everything I wanted to say. 10

Q. Then why did you insist on seeing that on Sunday night?

THE COURT: She did not say that she insisted.

Q. Why did you want to see that testimony on Sunday night, then? A. I exactly didn't want to see it, but I asked could I read it over. 20

Q. It was forced on you, wasn't it? A. It was not forced on me. I asked for it myself.

Q. Was it you or your sister that said to Swiller at that time, "Didn't I come into the house, and wasn't the light turned low, and didn't you take me into the room" and all of that, was it you said that or your sister? A. My sister Tillie said all that.

Q. You never said anything of that kind? A. No, but I was present there while she said it to him. 30

Q. This money that you are talking about, was that counted? A. No. It was in a roll.

Q. Nobody—you don't know how much was in it? A. I don't.

Q. And nobody undertook to open that roll? A. No. He asked us to take it and we refused and it was left on the table.

*Ida Esakov—for State—Cross.*

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Q. You came there for the purpose of asking this man to marry the girl? A. Yes.

Q. You did ask him, didn't you? A. Yes.

Q. And he refused? A. He refused.

Q. Did it require an hour to get at his refusal?

A. Sir?

10 Q. Did it require an hour to get at his refusal?

A. Well, Tillie had to bring out facts. It was about an hour. She had to bring out facts what occurred when he locked the door and took her there to the bed and everything. I was right there. It took a little while.

Q. She had to bring out all the facts? A. Well, when he denied it, she said, "How can you deny it?" and then she told him what it was.

20 Q. And you were there listening to it all? A. I was there.

Q. And that was impressed upon your mind right then and there so you can never forget it?

A. Yes, sir. I will never forget it.

Q. So that when Swiller refused to marry the girl she started in with the history of the whole case and kept on repeating it over and over again?

A. No, sir; not then.

30 Q. Starting with the fact that she had been sent by her mother to ask him to buy corn, and with him taking her in the room where the light wasn't turned on full, and the locking of the door, and ravishing her with great detail, she went all over that? A. She didn't exactly go all over it. When he merely denied it, she said, "How can you deny it, Mr. Swiller? You know when I come here to sell corn that you told me that your brother and mother were upstairs." He said it was untrue.

*Ida Esakov—for State—Cross.*

Q. You don't have to go into the whole detail of that again. A. Well, she said that.

Q. I am asking you whether she did not detail all that after he had refused to marry her? A. Yes, she did. Not after he refused.

Q. You stayed there all the time to hear it, didn't you? 10

*By Mr. Streitwolf:*

Q. Let me have your answer? A. Not after he refused. It was before he refused to marry her. Just as we were going out.

*By Mr. Stricker:*

Q. He had first refused? A. No, he had after refused. 20

Q. What was the first thing she said when she got into the house? A. "What do you intend to do for your child?"

Q. And he said nothing? A. He didn't say nothing.

Q. What did he say? A. He said, "Give the child to me, I will expose of the child. I won't know"——

Q. You will do what with the child? A. "I will expose." 30

*By the Court:*

Q. Dispose, do you mean? A. Dispose. Beg your pardon. Put it away where nobody will know where it is at. Tillie said, no, it is my child as well as yours. Then he offered the money, one dollar and a half, and then three dollars.

*Ida Esakov—for State—Cross.*

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*By Mr. Stricker:*

Q. You have repeated three or four times what he had said and what she had said. Did that take any longer at that house than it has taken you to tell it here? A. Well, I will tell you, we weren't  
10 asked questions over there. We just merely talked. He talked and Tillie talked.

Q. There wasn't any Judge to restrain you there? A. No.

Q. No lawyers to ask you questions? A. No.

Q. Did it take any longer to tell this whole story then by you and your sister, than it has taken you to tell it here. A. I don't recall the time if it did or not.

Q. I beg pardon? A. I don't recall the time if  
20 it did or not.

Q. You don't know whether you were up there twenty minutes or an hour and a half? A. Yes, we were up there over twenty minutes.

Q. Were you up there over an hour? A. I don't know about an hour, but I think it was pretty near an hour if it was anything at all. I just can't recall the time.

Q. And during that hour you and your sister did most of the talking, didn't you? A. My sister  
30 done all the talking. She and Mr. Swiller.

Q. And you went there with your sister to hear what Swiller had to say? A. No. I didn't go for that. I just merely went there to see if Mr. Swiller wouldn't marry Tillie and give the child and her a name.

Q. What did you do? What could you have done to bring about that marriage? A. Nothing at all. I just merely went along to accompany  
40 Tillie. I couldn't let Tillie go alone.

*Ida Esakov—for State—Cross.*

Q. Came all the way from Baltimore? A. Yes, sir.

Q. Why didn't your father come with Tillie? A. My father has to make a living for nine children, and he had to keep a store open.

Q. Was there anybody else in the family but you that could come with Tillie? A. No one else. 10

Q. Tillie came to Baltimore alone? Didn't she? A. Alone? No.

Q. Were you afraid that Tillie couldn't come alone with the child? A. Well, I just—my father and I just didn't feel safe to leave Tillie go on the train with herself.

Q. Didn't you come along on the advice of someone in order to be a witness? A. No, sir.

Q. As to what Mak Swilled had to say? A. No, sir. 20

Q. So that you could come into Court and testify in corroboration of your sister? A. No, sir; never knew I would have to go to Court with this.

Q. You never dreamed of that when you started out with your sister, did you? A. No.

Q. And you never dreamed that there was going to be a trial of any kind? A. I never did.

Q. How many lawyers had you been to then, or your family? A. I haven't been to any. My father had one in Brunswick and two in Baltimore. 30

Q. And when you came on with your sister, you never dreamed that this case would ever be tried or that you would be called upon to testify as to what Swiller said to your sister? A. Well, the lawyers didn't do anything, so I came on with my sister to see what Mr. Swiller would do.

Q. You didn't think then— A. I did. 40

*Ida Esakov—for State—Cross.*  
*William Esakov—for State—Direct.*

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THE COURT: She said she did not.

Q. (continued) —that you would be called upon at some time or other to testify as to what Swiller said to your sister on this particular occasion. A.  
 10 No, I didn't.

MR. STRICKER: That is all.

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WILLIAM ESAKOV, a witness produced on behalf of the State, being duly sworn on his oath, according to law saith:

*Direct Examination by Mr. Streitwolf:*

20

Q. Where do you live? A. Baltimore.

Q. You are the father of the two preceding young ladies that testified? A. Yes, sir.

Q. Your daughters live with you at Baltimore now? A. Yes, sir.

Q. Were you present at—where were you living in 1898? A. 1898 in Brooklyn.

THE COURT: 1898?

MR. STREITWOLF: Yes, sir.

30

MR. STRICKER: Isn't that pretty remote to 1913?

MR. STREITWOLF: I will withdraw that question.

Q. When was Tillie born, Mr. Esakov? A. 1898.

Q. When? A. October twenty-seventh.

Q. Where were you living at that time? A. Sixty-seven Bond street, New York.

40 Q. Were you home on the day of her birth? A. Yes, sir.

*William Esakov—for State—Direct.*

Q. When did you first know of Tillie's pregnant condition? A. The later part of March.

Q. What year? A. 1913. No, it was 1914.

Q. Following that, what did you do? A. Well, I took the girl up to a doctor.

Q. Doctor who? A. Doctor Herch, Linden Avenue, and I had her examined, how long the child is in that case. 10

Q. Did you see any other doctor? A. Yes. Dr. Collenberg.

Q. How soon after did you see the second doctor? A. Well, I went a couple of weeks after.

Q. Did you come to New Brunswick? A. Yes.

Q. When? A. In 1914.

Q. When? What month? A. It was the later part of March. It was in April. No, it was in April when I came here. 20

Q. Who came with you? A. My daughter Tillie, and my brother-in-law and Dawyer Reese from Baltimore met me here in the station.

Q. Who did you see when you got here at New Brunswick? A. Lawyer Schenk.

THE COURT: Now is this competent?

MR. STREITWOLF: I do not want to take up Your Honor's time if you do not think it is important. 30

Q. Do you remember when Tillie's baby was born? A. The 25th of July.

Q. What year? A. 1914.

Q. Where was the child born? A. In John Hopkins Hospital.

Q. And Tillie is still living with you? A. Yes, sir.

Q. And the baby is living with you? A. Yes, sir. 40

*William Esakov—for State—Cross.**Cross-Examination by Mr. Stricker:*

Q. You are not living with your wife, are you?

A. No, sir.

Q. And haven't been since 1913? A. She is away since 1913? A. She is away since 1914.

Q. Been away since 1914? A. Yes, sir.

10 Q. Do you know where she is? A. No, sir.

THE COURT: This is not cross-examination. He has not made any reference to his wife.

Q. Did you come on here to make a complaint in this case with your daughter? A. I did.

Q. Get your daughter to make the complaint?

A. I and my daughter right here.

20 Q. That is, you got her to make the complaint?

A. I went to lawyer Schenck.

Q. No, no. I know you went to him. You got your daughter to make the complaint in this case, didn't you?

MR. STREITWOLF: I do not think that that is material, whether he did, or whether I did, or whether somebody else did.

30 THE COURT: There are only two facts that this witness testified to, as I remember it, that his daughter complained to him about the condition, and that the child was born on a certain date.

MR. STRICKER: Does not this go to his interest?

THE COURT: Well, if you want to throw that door wide open.

MR. STRICKER: No, I don't want to throw it wide open. I am simply asking

*William Esakov—for State—Cross.*

him whether he got his daughter to make this complaint.

THE COURT: Has he testified on his direct examination that the daughter did make a complaint?

MR. STRICKER: No, he has not.

THE COURT: Then it is not cross examination to ask him anything about a complaint. 10

(Direct examination of this witness read by stenographer.)

Q. I understand you to say that you first found out about this assault in April?

THE COURT: He has not said he was ever told there was an an assault. 20

MR. STRICKER: He said he knew the girl was pregnant.

THE COURT: Yes. Simply in a sense that they are charged—

Q. You found that your girl was pregnant in April, 1914? A. Yes, sir.

Q. That is right, isn't it? A. Yes.

Q. And did you know at that time the cause of the pregnancy? A. No. Just the girl told me. 30

Q. And the girl told you, of course, that Max Swiller was responsible? A. Yes, sir, that is what she old me.

Q. She told you that? A. Yes, sir.

Q. And told you how he had committed an assault on her against her will? A. Yes, sir.

Q. Told you all of that? A. Yes.

Q. Now( can you explain why it is that if you got this information in April, 19154, that no crim- 40

*William Esakov—for State—Cross.*

inal complaint was made against this man until May, 1915? A. Because I didn't have the right lawyer.

10 Q. Is that your full examination? A. Yes, sir. The lawyers was taking my money, but that was all. It was squeezed down from the other side every time.

Q. But between the time that you had learned of your daughter's condition in April, 1914, and the day of the making of the criminal complaint, in 1915, you had started a civil suit against Swiller and got the same ended, or brought it to a termination? A. What do you mean? That I don't understand.

20 Q. You started and finished a civil suit, yourself? A. Yes.

Q. Against Swiller, in the meanwhile, didn't you? A. I did.

Q. You got lawyers that would do that, didn't you? A. Sure, I got an honest lawyer.

Q. And when did you get that honest lawyer, in what month? A. In January.

Q. Of what year? A. In 1915.

Q. Did you? A. I think so.

30 Q. You got an honest lawyer in January, 1915? A. Yes, sir; I got an honest lawyer now, and God knows that, too.

Q. Well, we all know it. A. I am glad of it.

Q. Will you kindly explain that why it was that if you had the benefit of an honest lawyer, whom God knows is honest, as you say, and we all concede it, that no criminal complaint was made in this case until five months afterwards, and until after your civil suit against Swiller had ended?

*William Esakov—for State—Cross.*

*By the Court:*

Q. Do you understand that question? A. I don't understand.

THE COURT: Read the question .

(Question repeated by the stenographer.) A. 10  
That I don't understand.

*By Mr. Stricker:*

Q. All right. I will analyze it. You got your honest lawyer in January, 1915? A. Yes, sir.

Q. The suit against Swiller, that is, your suit for damages was then started? A. Yes, sir.

Q. That is correct, isn't it? A. Yes.

Q. And it was ended in May of 1915? A. Yes, 20  
sir.

Q. Now, what I want to know is why you and the honest lawyer together, or yourself, or he himself, didn't have Swiller arrested between January and May, and why it was that you waited until you go through with your civil suit? Do you understand me? A. Why, I took my lawyer's advice, by the way he was—he knowed more the law as I did, how to go on that other case, because I had some other lawyers before, and not one of 3)  
them took—

THE COURT: Never mind what you had before. You simply followed your lawyer's advice? Is that your answer?

A. Yes, sir.

THE COURT: Proceed.

*William Esakov—for State—Cross.*

Q. You were so advised by a lawyer? You got that advice from him, did you? A. Sure I got the advice from him.

Q. To wait until you got through with the civil suit? A. Yes, sir.

10 Q. Or didn't you care whether Swiller was arrested or not?

MR. STREITWOLF: I object to that.

A. What do you mean by that?

Q. Prosecuted criminally? A. That I don't understand.

Q. You know the difference between this case and the case you had, don't you? You know the difference, don't you? A. I don't.

20 Q. Don't you? A. No, sir.

Q. Well, you brought a suit against Swiller last year, didn't you? A. Yes, sir.

Q. For damages? A. Yes.

Q. You know what that is, don't you? A. Yes.

Q. You knew that when you started that suit, that if you won your case you would get some money, didn't you? A. No, I didn't go after the money.

30 Q. You got some money, though, didn't you?  
A. I did. I was after justice for myself.

THE COURT: How can you bring that case into this case?

MR. STRICKER: This witness says he does not know the difference between this case and that case.

THE COURT: You cannot bring that case in, even if he does say so. We want nothing to do with the civil suit at all, ex-

*William Esakov—for State—Cross.*

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cepting insofar as it might be legitimately used in testing a man's veracity or accuracy of his statement made now as contrasted with what he made then.

MR. STRICKER: No. Am I to be bound by this man's blunt denial that he does not know the difference between this proceeding and the civil proceeding in which he himself was a party? 10

THE COURT: If that were relevant, no, you would not be bound by it, but it is not relevant, and it has been brought out by cross-examination that should not have been conducted. It does not make any difference in the proper disposition of this case whether this man knows the difference between a criminal and civil case or not. Now, you were going along the line of questioning as to why this man did not make a criminal complaint between January and May. That is perfectly proper probing under cross-examination. But it is developing into a collateral matter now. 20

MR. STRICKER: Well, if your Honor please, it comes through this man's answer. It is not through my question. My questions are not responsible for this, and I can't be bound by this witness' blunt denial of the thing. 30

Q. You know what I mean by a criminal charge, don't you? A. No, tell you the truth, I don't understand the meaning of it. I know it is a criminal case, but what the meaning is I couldn't answer.

*William Esakov—for State—Cross.*

Q. Do you know what will happen to this man if he is convicted in this case?

MR. STREITWOLF: I object.

THE COURT: No, nor you don't, nor I don't nor anybody else.

10 MR. STRICKER: I do not mean it in the sense your Honor suggests.

A. I don't know——

THE COURT: It has been objected to and the objection sustained.

Q. Do you know what this trial is about? A. I know it is about my daughter and Swiller.

20 Q. You know that he is accused of wronging her, don't you? A. Well, that is what he did.

Q. And you know that this is a question to decide his guilt or innocence, don't you? A. Well, I know that.

Q. Well, was that the same kind of a case you had, or was that the same kind of a case you brought against Swiller in January, 1915?

MR. STREITWOLF: I object.

30 A. I don't understand that.

MR. STREITWOLF: I object. That action they refer to is an action by a father against this man for loss of of services. Here is the young lady herself makes the charge. Upon that charge an indictment is returned. Those two things are entirely distinct. The complaining parties are different. I object.

*William Esakov—for State—Cross.*

THE COURT: I will allow the question.  
(Question repeated by the stenographer.)

MR. STREITWOLF: Answer if you can.

A. I don't understand, I will tell you the truth.

Q. You don't understand my question, do you? 10

A. No, I don't.

Q. And you don't understand the difference you had that Mr. Streitwolf speaks of, and this one, do you? A. No, I don't. I never had any law suits before in my life.

Q. Do you expect to get a verdict in this case?

MR. STREITWOLF: I object.

THE COURT: Objection sustained.

Q. Do you know a man by the name of Louis Schatzman? A. No, sir. 20

Q. Do you know a man by the name of Meyer Teretsky? A. No.

Q. Do you know that man? A. Yes, sir. I have sold him some cows. That is the same two men I sold the cows to get away.

Q. You know them, do you? A. Yes, sir.

Q. Do you remember speaking with those two men in July, 1913? A. No, sir. I only speak with mine business selling the cows. 30

Q. I am asking you whether you remember speaking to them in the month of July, 1913? A. I remember I sold them some cows.

Q. Will you kindly answer the question? A. I don't remember whether I was speaking about that time. I know I sold five cows. And you rode on a wagon with them? A. I believe I did.

William Esakov—for State—Cross—Re-Direct.

Q. From New Brunswick to Metuchen? A. Yes.

Q. Didn't you on that occasion say to these two men, Schatzman and Teretsky, that you were going after Swiller? A. No, sir.

Q. Max Swiller? A. No, sir.

10 Q. And that you were going to get his money?  
A. No, sir.

Q. And that if you didn't do it in that year, 1913, that you would do it later? A. No, sir.

Q. And that you would ruin him? A. No, sir.

Q. Or words to that effect? A. Never did.

MR. STRICKER: That is all.

THE COURT: You fixed that for July, didn't you?

MR. STRICKER: 1913; yes, sir.

20

*By Mr. Stricker:*

Q. But you did have business with them and did talk to them in July, 1913? A. Yes, sir; I sold them some cows, yes, after—to get away from the place.

*By the Court:*

Q. What month was it that you sold the cows?

30 A. That was in July, Judge.

Q. 1913? A. Yes, sir.

*Re-direct Examination by Mr. Streitwolf:*

Q. Is that the only time you had anything to do with those two men? A. That is the only time I ever see them. Never see them before and never see them afterwards.

40

*William Esakov—for State—Re-Direct.*

Q. Was the name of Max Swiller mentioned at that conversation? A. No, sir; never did.

Q. Was there any occasion connected with your business transacted to bring in the name of Max Swiller?

MR. STRICKER: I object.

10

THE COURT: Objection sustained.

MR. STREITWOLF: I desire to offer in evidence, a document, a certified copy of a document on file with the State Board of Health of New York.

THE COURT: Show it to Mr. Stricker.

MR. STRICKER: What do you want to do with this? I object to this.

MR. STRICKER: On the ground that it is not the kind of evidence that is received in this State. 20

MR. STREITWOLF: I will withdraw it if there is any objection to the offer. That is the State's case.

Adjourned until to-morrow morning, November 30th, 1915, at ten o'clock.

MR. STREITWOLF: I want to ask leave to recall Tillie just to ask her a few question that I think are important to the State's case. 30

THE COURT: You might inform counsel for the defendant just what line you intend to follow. The State's case was closed.

MR. STREITWOLF: I brought Tillie right down to October 21st. I didn't go into some important preliminaries. 40

*Tillie Esakov—for State—Recalled—Direct.*

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THE COURT: You take it up with Mr. Stricker and see if it is in the discretion of the Court. It may take them by surprise, or something of that kind.

MR. STRICKER: I will admit what he wants to prove by her.

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THE COURT: We had better have the formal proof.

STATE'S CASE RE-OPENED.

TILLIE ESAKOV, recalled.

*Direct Examination by Mr. Streitwolf:*

Q. Referring to the day that you went down to Mr. Swiller's place of business, in October, 1913, what was the condition of the corn on the farm?

20

A. Already husked, ready to take away.

THE COURT: That has already been in.

MR. STREITWOLF: No, I didn't ask anything preceding the day she went down. I brought her right down to the date.

MR. BURTON: That was brought out on cross-examination. Part of our case.

Q. When had you finished husking the corn? A. The same day I was sent to Mr. Swiller.

30

Q. After October 21st did you see Mr. Swiller at the farm?

MR. STRICKER: I object to that. I was perfectly willing to admit this—

MR. STREITWOLF: All right. I will withdraw that question.

Q. After October 21st, 1913, to whom was that corn delivered?

40

*William Esakov—for State—Re-Direct.*

MR. STRICKER: I object to that. I agreed to admit that that corn was husked at the time that Mr. Streitwolf undertakes to prove. I do not think it is very material in this case, but I do object to the protracted examination of this witness at this time.

10

THE COURT: I will allow that question.

(Question repeated by the stenographer.)

A. Mr. Swiller.

Q. At the farm? A. No. Through his store on Burnet street; 279 Burnet street.

Q. Under what circumstance was it delivered that you saw?

20

MR. STRICKER: I object to that.

THE COURT: What is the object of this? Where is its pertinency?

MR. STREITWOLF: Its pertinency is here, Your Honor: the defense will show, as far as I know, Your Honor, that if Tillie was there, it was on an occasion preceding October 7th, and the corn was not husked, and I will show that this corn was husked and delivered to this man following this girl's visit to that store.

30

THE COURT: If they raise that question you certainly can put your witness on in rebuttal. Why should it be part of your direct examination? I do not see that it goes to the heart of this case at all.

MR. STREITWOLF: It is important. She went down and delivered this message

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*Tillie Esakov—for State—Recalled—Direct.*

and in consequence of that message he called and gets the corn.

THE COURT: I cannot see its significance at this time.

MR. STREITWOLF: All right, that is all.

10 MR. STRICKER: Is that the case then?

MR. STREITWOLF: That is the State's case.

State Rests.

Mr. Stricker open the case for the defendant.

MR. STRICKER: Before this defendant testifies, I would like to read the testimony taken last evening.

20 THE COURT: Would that be your witness in the ordinary course of events?

MR. STRICKER: I think she would yes.

THE COURT: Then you read your testimony, and Mr. Streitwolf will read his. Follow each other.

30 MR. STRICKER: I am about to read the testimony of the mother of this girl taken in New York last evening. I think my adversary will agree with me that she was in no condition to come here. I guess that is admitted.

(Testimony read by Mr. Stricker and Mr. Streitwolf.)

*Anna Esakov—fö r Defendant—Direct.*

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MIDDLESEX COURT QUARTER SESSIONS.

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THE STATE OF NEW JERSEY,

vs.

MAX SWILLER.

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10

TESTIMONY.

Testimony taken before Anthony Silzer, Notary Public for the State of New Jersey, at the office of August Streitwolf, Esquire, Woolworth Building, New York City, November 29th, 1915. at 7.30 p. m.

APPEARANCES:

MR. AUGUST C. STREITWOLF, for the State of New Jersey.

20

MR. JOSEPH E. STRICKER, *for the Defendant.*

*By Mr. Stricker:*

Q. What is your name? A. Anna Esakov.

Q. You are the mother of Tillie Esakov? A. Yes, sir.

Q. Where do you live? A. No. 58 Scannel Street, New York City.

Q. Where were you living during the year, 1913. A. On the farm in Metuchen.

30

Q. Do you remember the time you sent your daughter Tillie to New Brunswick to Swiller Bros. about some corn? A. Yes, sir.

Q. How much money did you give your daughter for car fare? A. I gave her fifty cents.

Q. What time did she go? A. In the morning sometime, something like 11 o'clock; between 11 and 12, I guess. I don't remember.

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*Anna Esakov—for Defendant—Direct.*

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Q. What time did she come back? A. In the afternoon; before night.

Q. When she came back did she bring you a paper with two five dollar bills in it? A. No.

Q. Did she bring anything back to you? A. No. Nothing.

10 Q. Was she away from home that night? A. Not that night.

Q. Was she away from home any night when you sent her to Swiller Brothers? A. She told me that they did not want to buy the corn, he said until September and got the corn husked.

Q. Did you beat her or strike her before you sent her to Swillers? Did you lick her that day? A. I don't remember.

20 Q. Did you or did you not? A. I did not beat her. I don't know why it is for.

Q. She claims that when you gave her seven cents to go over to Swillers she did not want to go and that you made her go by beating her? Is that true? A. No.

Q. She asked you for more money, and that you told her she was to stay at Swiller's over night? A. No.

30 Q. Did she tell you when she got back from Swiller's that day that Max Swiller had done anything to her? A. No.

Q. That he had forced her to have sexual intercourse with him in a room on Schureman street, or anywhere else? A. No. She didn't say anything.

Q. Did she ever tell you that Max Swiller had had connection with her? A. No.

*Anna Esakov—for Defendant—Cross.**Cross-Examination by Mr. Streitwolf:*

Q. Mrs. Esakov, you have been living away from your husanb since April, 1914, have you not?

A. I don't remember how long it is.

Q. Well, shortly after Lena's wedding? A. Yes. Easter time.

10

Q. The reason for that was on account of a quarrel you and your husband had on account of Tillie's condition, was it not?

Objected to by Mr. Stricker, as irrelevant and not cross-examination.

MR. STRICKER: I object.

THE COURT: Objection sustained.

A. I had quarrels before.

20

By Mr. Streitwolf: I move to strike out the answer as not responsive.

MR. STREITWOLF: I will withdraw the objection.

MR. STRICKER: No, he cannot withdraw the objection if the answer is in.

THE COURT: The answer is in, and he allows the answer to stay in and withdraws his objection.

30

Q. Mrs. Esakov, is it not true that you are living in a state of separation from your husband on account of Tillie's condition as it was made known in April, 1914? A. We had quarrels before.

Mr. Streitwolf moved to strike out the answer as not responsive.

40

*Anna Esakov—for Defendant—Cross.*

Q. You and your husband had a quarrel on account of Tillie's condition? A. I don't remember it was that time. We had quarrels all the time.

Q. Didn't you testify at the civil trial in New Brunswick that you and your husband had a quarrel on account of Tillie's condition? Did you so testify? A. I don't remember.

Q. And that the doors of his home had been closed to you ever since? Didn't you so testify? That the doors of his house were closed so that you could not enter, ever since the quarrel? A. I don't understand the question.

Q. You and your husband have not been living together since April, 1914, have you? A. No.

Q. Now, after you left the farm, and before you returned to Baltimore, where did you go? A. I went to Baltimore.

Q. Before you went to Baltimore, where did you go?

Objected to by Mr. Stricker as irrelevant and not cross-examination.

MR. STRICKER: That is objected to.

THE COURT: The objection is overruled.

30 A. No.

Q. Didn't you go to the home of Max Swiller, 5 Schureman Street, and take with you Sammy and Morris?

Objected to by Mr. Stricker on the same grounds.

MR. STRICKER: That is objected to.

THE COURT: Objection overruled.

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*Anna Esakov—for Defendant—Cross.*

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A. No.

Q. Were you in New Brunswick at the home of Max Swiller with Sammy and Morris after you left the farm in 1913, and before you went to Baltimore?

Same objection interposed by Mr. Stricker. 10

MR. STRICKER: Same objection.

THE COURT: That objection is overruled.

MR. STRICKER: Prays exception.

THE COURT: Yes.

Exception allowed, sealed accordingly.

PETER F. DALY,

*Judge.*

(Seal) 20

A. No, sir.

Q. Mrs. Esakov, I show you this letter and ask if that is your signature at the bottom? A. I don't remember it.

Letter offered by Mr. Streitwolf and marked P-1 for identification.

Q. I now show you a letter marked P-1 for identification, and ask you whether that is your signature? 30

Mr. Stricker offers the same objection.

MR. STRICKER: That is objected to.

THE COURT: That objection is overruled.

*Anna Esakov—for Defendant—Cross.*

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A. I don't know.

Q. I now ask you if you did not testify at the civil trial that the letter I show you, being P-1 for identification, was your signature? Did you so testify, Mrs. Esakov? A. I don't remember.

10 *By Mr. Stricker:*

Q. Mrs. Esakov, what is the matter with you? What is wrong with you? A. I got cold in my throat, headache, in my ear and everything. I have to go under operation for tumor (indicating region of stomach). When I swallow I feel so sore (referring to her throat).

20 MR. STRICKER: Now, there is the testimony of Florence Esakov, a daughter of this woman, that I would not have called in this turn, but if there is no objection I will read that testimony.

THE COURT: Well, was there any arrangement that anybody else's testimony excepting this woman's was to be taken?

30 MR. STRICKER: We anticipated to bring the daughter over here, to have her here in New Brunswick, and the mother's condition is such that the daughter would not leave her, and so testified in her deposition. No objection to taking that testimony by Mr. Streitwolf. He was there. I asked his consent and obtained it. He saw the conditions.

THE COURT: Well, what has the State to say about that?

MR. STREITWOLF: I have not any objection to her testimony being read.

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*Florence Esakov—for Defendant—Direct.*

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THE COURT: Proceed.

(Testimony of Florence Esakov read by Mr. Stricker.)

FLORENCE ESAKOV.

*By Mr. Stricker:*

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Q. Could you have come to court to-morrow in New Brunswick? A. I could not leave her alone.

Q. When you say her, whom do you mean? A. My mother.

Q. Why not? A. She is so sick with a heavy cold, sore throat, headache and earache.

Q. Anything else the matter with her? A. She is supposed to go under the operation to-morrow.

Q. At what hospital? A. Gouvenor.

20

Q. Has she been going to any other hospital? A. Beth Israel.

Q. Why isn't she going to be operated on there?

A. The doctor has been transferred from there.

Q. Directing your attention to an occasion in October, 1913, when you say Tillie was sent to New Brunswick, do you remember that occasion?

A. Yes, sir.

Q. Were you present when your mother sent your sister? A. Yes. I was supposed to go, but she said she is dressed, she said you can run over in a couple of hours.

30

Q. When did your sister return after the trip?

A. After dinner. About one o'clock, after one.

Q. What time did she start? A. About ten or eleven o'clock in the morning.

Q. When she did return, was there anything unusual about her appearance? A. No, sir.

Q. How old are you? A. I am twenty-one.

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*Florence Esakov—for Defendant—Direct.*

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Q. Did you notice before she started out, whether your mother gave her any money? A. Yes, sir.

Q. Did you see the money she gave her? A. Yes, sir.

Q. How much was it? A. Fifty cents.

10 Q. Was she out any night away from home? A. No.

Q. And when she did return, did she say anything to you? A. She came in front of four of us, me and Mr. Connor and Mr. Montgomery and myself and my mother, and she says, my mother asked what did he say about the corn, he said he wanted the corn husked and would not buy it now until the sale, something like that.

20 Q. Before she started that day, did your mother beat her? A. No, sir.

Q. Did your mother tell her she was to stay at Swiller's all night? A. No.

Q. When she returned, was any complaint made by her that you heard, to her mother? A. No.

Q. How long did she remain in Metuchen with the family after that? A. How long after that day did she remain in Metuchen?

Q. Yes. A. Until we moved to Baltimore.

30 Q. How long was it after the day she was sent to New Brunswick that she remained with you in Metuchen on that farm? A. It must have been about three weeks. Two weeks or so, I don't remember just how long it was.

Q. Did she tell you at any time that Max Swiller had assaulted her? A. No, sir.

Q. When she returned that day, did you see her hand your mother a paper or package? A. No.

Florence Esakov—for Defendant—Direct—Cross.

Q. Was that package opened by your mother, or the papers, and did it contain two five-dollar bills? A. No.

Q. And did your mother thereupon take the two five-dollar bills and shove them down in her bosom? A. No.

10

*Cross-Examination by Mr. Streitwolf:*

Q. You are very friendly to Max Swiller, are you not? A. No.

Q. I hand you a letter and ask you to look at the writing, being letter, for identification P-1, and ask you is not that in your writing?

Objected to by Mr. Stricker as not proper cross-examination.

MR. STRICKER: I object.

20

THE COURT: Objection overruled.

A. I did not write this letter.

Q. You deny that this is in your handwriting?

A. I remember writing a letter, but this don't look like a letter I wrote.

Q. I ask you if that letter is in your handwriting? A. No.

Q. Are you positive?

30

Objected to by Mr. Stricker as being incompetent.

MR. STRICKER: I object.

THE COURT: Objection overruled. It is of no significance so far unless it is introduced in evidence.

MR. STRICKER: My purpose in objecting to that letter was that even under the condition of it being marked for identifica-

40

Florence Esakov—for Defendant—Cross.

tion I could not see the connection between anything she wrote and—

10 THE COURT: You have a perfect right to make the objection. I am overruling it now because I do not regard it of any evidential value, the mere fact of the recognition of the letter, unless it is admitted in evidence.

Q. Did you not write this letter, Exhibit P-1 in April, 1914? A. No, sir.

Q. I direct your attention to a letter marked, for identification, P. 1, which I now show you, and ask you if that is not a letter that you wrote your sister Lena?

20 Objected by Mr. Stricker on the ground that the question is incompetent, irrelevant and immaterial to the issue, and not cross examination.

MR. STRICKER: I enter the same objection.

THE COURT: That objection is overruled.

30 MR. STRICKER: That was objected to on the ground that it was not cross examination. I might state to Your Honor now that my examination was limited to proof as to what had occurred at the occasion of this girl starting and returning to that farm.

THE COURT: Was that the ground of your objection to these letters?

MR. STRICKER: Yes, sir; that was the ground of my objection.

*Florence Esakov—for Defendant—Cross.*

THE COURT: How about the question of interest, of motive, of relationship between the defendant and this witness, as might be indicated by those letters?

MR. STRICKER: That I could not tell because I did not see the letter. They were not shown to me. 10

THE COURT: Well, there is no answer to that question?

MR. BURTON: There is an answer to it; yes, sir.

MR. STRICKER: There certainly could not be any interest in that question.

THE COURT: No, certainly not.

MR. STRICKER: And my direct examination did not go into that. 20

THE COURT: Even so, she was a witness called by you, she could not be here, and there is more latitude allowed in cross examination, under such circumstances than there would be if she had been in Court. I cannot see its particular significance anyhow. I cannot see that it adds any weight to the thing. It is admitted that the corn was husked, by Mrs. Esakov, isn't it? Anyhow there is no dispute. I 30  
I will allow it.

A. I remember writing to her.

Q. I now ask you if you did not admit at the civil trial in New Brunswick, in May, 1915, that the letter I am now showing you, identification P 2, was written by you to your sister Lena? A. I told them I sent a few letter and did not receive any answers. Witness nods head no. 40

*Florence Esakov—for Defendant—Cross.*

Q. I ask you again if you did not admit at the civil trial held in New Brunswick in May, 1915, that the letter I now show you, exhibit P 2 for identification, was written by you to your sister Lena? A. I don't know about that.

10 Q. Did you or did you not, admit that at the civil trial? A. I don't remember what I said at that time.

Q. Is that your letter? A. No.

Q. I now show you a letter marked exhibit P 3 for identification, and ask you if that is a letter you wrote to your sister Lena? A. I don't know.

20 Q. I now ask you if you did not admit at the civil trial in New Brunswick, held in May, 1915, that the letter I now show you, marked identification P 3, was a letter written by you to your sister Lena?

Mr. Stricker entered the same objection to the question.

MR. STRICKER: Objected to on the same grounds.

THE COURT: That objection is overruled.

A. No.

30 Q. Was the corn husked on the farm?

Objected to by Mr. Stricker as not being cross-examination.

A. At the time she went to ask—

Q. I did not place any time, I ask you if the corn growing on that farm in 1913, was husked?

Objected to by Mr. Stricker on the same grounds.

40

*Florence Esakov—for Defendant—Cross.*

A. It was not all.

Q. Do you know who bought the corn?

Objected to by Mr. Stricker as not being cross-examination.

MR. STRICKER: Objected to as not being cross-examination.

10

THE COURT: I will sustain that objection.

MR. STRICKER: This is in connection with that objection, because this question is predicated upon the answer to the other questions.

THE COURT: I do not think it affects one way or the other whether the corn was sold or not, Mr. Stricker. Proceed.

20

A. It was sold in the sale.

Q. Sold at the sale? A. Yes, sir.

Q. Do you know who bought it?

The same objection entered by Mr. Stricker.

MR. STRICKER: Same objection.

THE COURT: The trouble is you are not fixing the time of the cutting of the cor corn there.

30

MR. STREITWOLF: At the sale, referring to the sale. I am referring to a preceding question. She said it was sold at the sale and I asked her who bought it.

MR. STRICKER: And that answer came to a question which Your Honor has overruled.

THE COURT: I understand.

MR. STREITWOLF: The sale, I under-

40

*Florence Esakov—for Defendant—Cross.*

stand the evidence is, we all agree was October 7th, 1913. No dispute about that.

THE COURT: The sale was?

MR. STREITWOLF: Yes. I guess we all agree on that, don't we, Mr. Stricker?

10 MR. STRICKER: I don't know. I have not kept track of that sale.

MR. STREITWOLF: That is the evidence.

THE COURT: Let me look at the answer and then I will pass on it. I will allow it.

A. I do not remember.

20 Q. After you went to Baltimore with the family, which was about November, was it not, you remained there how long before you went to New York?

The same objection offered by Mr. Stricker.

MR. STRICKER: Same objection.

THE COURT: I will allow that.

A. Three months.

30 Q. You remained at Baltimore three months before you went to New York?

The same objection offered by Mr. Stricker.

MR. STRICKER: Same objection.

THE COURT: I will allow that.

A. I don't remember just how many months it was.

40 Q. Didn't you go to Baltimore the next month, in December?

Florence Esakov—for Defendant—Cross.

The same objection offered by Mr. Stricker.

THE COURT: I will allow that.

A. When?

Q. In December, 1913?

Same objection offered by Mr. Stricker.

10

THE COURT: I will allow that.

A. I do not remember.

Q. How long were you living over in Tenth street?

Same objection offered by Mr. Stricker.

THE COURT: I will allow it.

A. I do not remember how long it was.

20

Q. You were living there sometime between the first day of January and the first day of April, 1914, were you not?

Same objection offered by Mr. Stricker.

THE COURT: I will allow it.

A. No, sir.

Q. I ask you now, if you did not say at the civil trial, in answer to the question. "How long did you stay there?" and you answered, "Until the latter part of December." 30

"Q. Where did you go then?

A. New York.

Q. New York City?

A. Yes, sir.

Q. Who went with you?

A. Nobody." Was not that the answers to the question at the civil trial?

40

*Florence Esakov—for Defendant—Cross.*

Mr. Stricker entered the same objection.

MR. STRICKER: Same objection.

THE COURT: I will allow it.

A. I do not remember, it is so long ago that I don't keep it in my mind at all.

10 Q. Is it not true that Max Swiller visited you at your room on Tenth street, New York, between January 1st and April 1st, 1914?

Mr. Stricker entered the same objection.

MR. STRICKER: Same objection.

THE COURT: I will allow it.

A. I never saw him.

20 Q. Is it not true that Max Swiller visited you at your room in Tenth Street between January 1st and April 1st, 1914, on an occasion when your mother and your brother Sammy were present?

Mr. Stricker entered the same objection.

MR. STRICKER: Same objection.

THE COURT: I will allow it.

A. I never saw him. He was never there.

30 Q. What time of the day did you say Tillie came back from Max Swiller's? A. In the afternoon.

Q. At what time? A. I don't remember just the time, in the afternoon sometime.

Q. You said a moment ago, about o'clock? A. Sometime after dinner. I know it was broad daylight, the sun was shining.

Q. I now ask you if on May 16th, 1914, you did not write a letter in the post office at Baltimore to Max Swiller?

*Florence Esakov—for Defendant—Cross.*

Mr. Stricker entered the same objection, and further objected on the ground that the letter ought to be produced.

THE COURT: I will allow it.

A. I do not remember ever writing a letter to him. 10

Q. I direct your attention to an envelope, marked identification P 4, and ask you if that is not in your handwriting? A. I never wrote any letter to Max Swiller.

Q. Is that in your handwriting? A. It don't look like it.

Q. Is it, or is it not? A. I don't know.

Q. Do you deny that it is in your handwriting?

A. I don't know. It happened years ago. 20

Witness nods her head "no."

*By Mr. Stricker:*

Q. How far is the house in Scannel Street, where you live with your mother, to this building?

A. I don't know.

Q. How long does it take you to get there? A. I don't know.

Q. How long did it take you to get here to-night? A. Fifteen minutes. 30

THE COURT: Now, then, gentlemen, it is agreed that those depositions are in evidence and embodied as part of the record of this trial, is that true?

MR. STRICKER: Yes, sir.

MR. STREITWOLF: Yes, sir.

THE COURT: Subject, of course, to all the objections and rulings.

*Florence Esakov—for Defendant—Cross.*

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MR. STRICKER: I desire to get the benefit of any exception that I am entitled to to your Honor's rulings on this record.

10 THE COURT: The stenographer has that. The point is that the depositions, together with the rulings made by the Court during their reading, are now part of the record of this case, that is agreed to by both the State and the counsel for the defendant.

(Depositions entered in evidence and marked Exhibit D-2.)

MR. STRICKER: I desire to offer in evidence at this time the complaint made in this case. Dated May 110th, 1915.

THE COURT: Any objection?

20 MR. STREITWOLF: I can't see the relevancy?

THE COURT: What is the purpose of the offer?

30 MR. STRICKER: The purpose of this offer is that no criminal charge against this man, the defendant in this case, was made until the tenth day of May, 1915, and we shall insist that that is germane to this issue, inasmuch as the civil trial which has been alluded to so many times in this case, was instituted five or six months prior to May tenth.

MR. STREITWOLF: On reflection, the fact that the matter is now brought to the attention of the jury, I can't see any harm in letting it go in.

THE COURT: That is not the point about it. The question is whether it is competent evidence. If the complaint it-

*Max Swiller—for Defendant—Direct.*

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self had gone into any details, I would not permit it.

MR. STRICKER: We do not offer it for that purpose.

THE COURT: I know why it is offered, but still if it did contain that I would not let it go to the jury, because they would have it. But it simply makes the charge in general language that this girl had been assaulted, and does not go into details, and it is now offered for the purpose of showing the time when the actual criminal complaint was made officially to the authorities. 10

MR. STRICKER: That is the idea exactly. 20

MR. STREITWOLF: That is conceded by the State.

THE COURT: And for that purpose of showing the date, and the date alone, this is admitted in evidence. To show the date that the complaint was made by Tillie Esakov, before a Justice of the Peace in this city. It is admitted for that purpose alone.

(Complaint heretofore marked D-1 for identification entered in evidence and marked Exhibit D-1.) 30

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MAX SWILLER, the defendant, being duly sworn according to law, on his oath, saith:

*Direct Examination by Mr. Stricker:*

Q. Mr. Swiller, where do you live? A. 5 Schureman Street. 40

*Florence Esakov—for Defendant—Cross.*

Q. What is your business? A. We have a feed store.

Q. Are you in business with your brother? A. Yes, sir.

Q. How long have you been in that feed business? A. About eight years.

10 Q. How old are you? A. Thirty-five.

Q. Do you know the complaining witness in this case, Tillie Esakov? A. Yes.

Q. How long have you known her? A. About five or six years.

*By the Court:*

Q. Five or six years back from now? A. I think so. Something like that.

20

*By Mr. Stricker:*

Q. Do you know her parents? A. Yes.

Q. Did you ever in your life have sexual intercourse with this girl? A. Never.

Q. Did you have connection with her either with her will or against her will at any time? A. Never.

30 Q. Did you on the twenty-first day of October, 1913, or at any other time, have connection with her in an apartment at Number 5 Schureman Street in the City of New Brunswick? A. No.

Q. Did you at that time or any other time take her to that apartment, or any other place? A. No.

Q. And did you at any time or place have connection with her? A. No.

40 Q. Did you at any time after having such connection, keep her in an apartment at 5 Schureman Street, or any other place, and release her in the morning? A. No.

*Max Swiller—for Defendant—Direct.*

Q. And did you at any time give her a package or paper with two five-dollar bills, with the request that she should deliver that to her mother?

A. Never.

Q. Do you remember a time during the month of October, 1913, when Tillie came to your place of business on Burnet Street? A. No. I don't see her. 10

Q. I don't think you understand my question.

THE COURT: I suppose he meant I did not see her. He said I don't see her.

Q. Do you recall the time she came to your place of business to ask about some corn? A. That was September.

Q. What time of the day was that? A. That was about between before dinner. 20

Q. And where did she come to? A. Come right to the store. I see her in the store.

Q. And who was in the store? A. I was, Abe Swiller, and Mike Shapiro.

Q. A little slower and a little louder. A. And Schulman.

Q. What did she say? A. She asked if I want to buy corn.

Q. What did you say? A. No. 30

Q. Then what did she do? A. She went out.

Q. Did she come back again that day? A. No.

Q. Did she ever come back after that? A. I don't see her.

Q. Where were you living at that time? A. 5 Schureman Street.

Q. And who were you living with? A. With Abe Swiller and my sister-in-law.

Q. Who is Abe Swiller? A. Mine brother. 40

*Max Swiller—for Defendant—Direct.*

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Q. And your partner? A. Yes, sir.

Q. Where did you sleep in that house? A. In the bed room.

Q. And did you sleep alone, or did anybody sleep with you? A. No, Abe Swiller.

Q. Your brother? A. Yes, sir.

10 Q. And did you sleep in the same bed with him? A. Yes, sir.

Q. During the month of September, 1913? A. Yes, sir.

Q. And during the month of October, 1913? A. Yes, sir.

Q. Until when? A. Until he is married.

Q. And when was that? A. That was on the fourteenth of June, I think.

20 Q. Of what year? A. 1914.

Q. Do you live there now? A. Yes, sir.

Q. And got a room in the same apartment? A. Yes, sir.

Q. Has there any change been made in that apartment— A. No.

Q. (Continued) —since September, 1913? A. No.

Q. Have any of the doors in that apartment a Yale lock? A. Was a Yale lock put on—

30 Q. No. Is there a Yale lock there now? A. Yes.

Q. When was that Yale lock put on that door? A. A couple of days before mine brother was married.

Q. And on which door is it? A. That is on the front door to the stairs.

Q. Who put that Yale lock on? A. Carpenter.

Q. Which carpenter? A. Schwartz.

40 Q. A local man, a man lives here? A. man lives here.

*Max Swiller—for Defendant—Direct.*

THE COURT: What is the signification of this?

MR. STRICKER: The signification of this is the girl claimed that there was a Yale lock which she had to snap as she went out. She was told to bang it hard. The significance is to show that Yale lock wasn't there at all at that time, and wasn't put on until a couple of days before his brother was married. 10

THE COURT: We do not know when his brother was married.

MR. STRICKER: June 14th, 1914.

THE COURT: I remember that piece of testimony, Mr. Stricker, and I will confess that I did not know whether the girl had reference to the door upstairs or the door downstairs, when she said that she was directed to slam it so that it would lock. However, that is a matter for the jury. 20

Q. Did you take that girl to 5 Schureman Street at all? A. No.

Q. And did you take her in a room and did she ask you where your mother and where your brother was? A. She never was there.

Q. Did you then take hold of her and put your hand over her mouth and carry her on a bed in the front room, or any other room? A. No. 30

Q. And did you then and there tell her that you were going to have a good time with her? A. No.

Q. Did you tell her not to be afraid that her mother and sister did the same thing? A. I didn't tell her nothing at all.

Q. Or anything like that take place at all? A. No. 40

*Max Swiller—for Defendant—Direct.*

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Q. Now, do you remember an occasion in 1914, when Tillie and her sister came to your store?

A. Yes.

Q. Who was there? A. Mike Shapiro, and my father and I.

10 Q. Anybody else? A. Someone else, but I don't remember.

Q. Did you go to your house with those two girls? A. No.

Q. Did Tillie then say to you, "This is your child and I want to know what you are going to do for me"? Did she say anything like that?

A. No.

20 Q. And did you say to her, "I will give you one dollar and a half a week and we will dispose of the child and I will marry you, that is, if you are decent for a year"? Was anything like that said?

A. No.

Q. And did you say that you could get some Christian boys, or Gentile boys, to swear that it wasn't your child, or anything like that? A. No.

Q. Did you take out a bundle of money and lay it on the table and ask them to take it? A. No. If she believe anybody put money and they wouldn't take it?

30 MR. STREITWOLF: I move to strike that out as not responsive.

THE COURT: It is stricken out.

MR. STRICKER: I consent that it be stricken out.

Q. Have you seen the girls since December, 1914? A. No.

40 Q. Have you seen her father? A. I seen her father in the court. I didn't see him at all.

*Max Swiller—for Defendant—Direct.*

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Q. Has anybody, since May 10th, 1915, seen you about this case?

MR. STREITWOLF: I do not see the relevancy of this, your Honor.

A. No.

10

THE COURT: He says "No."

Q. Has anyone tried to get any money out of you? A. Yes, sir.

Q. Connected with this case? A. Yes, sir.

Q. How much money? A. Three thousand dollars.

MR. STREITWOLF: I object. He has not said who. He asked him the question. He said previously nobody saw him. 20

THE COURT: Objection sustained. Strike out that answer.

MR. STRICKER: Well, if your Honor please—

THE COURT: Suppose someone living in Timbuctoo had asked him for it, what particular significance has that in the trial of this case?

MR. STRICKER: I do not intend to show it was anyone as remote as all that, but if I can show that somebody has undertaken to get three thousand dollars, or any other sum for that matter— 30

THE COURT: Somebody?

MR. STREITWOLF: I object.

THE COURT: Objection sustained, and the objection is to making any kind of an address like that before the jury.

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*Max Swiller—for Defendant—Direct.*

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MR. SREITWOLF: I never had a conversation with that man in my life.

MR. BURTON: Nobody has mentioned your name yet.

10 MR. STREITWOLF: There is an inference there from Mr. Stricker's remarks and this witness' remarks.

20 THE COURT: There is no inference there. If you have any questions along this line, Mr. Stricker, you may make it known to the Court at the side bar, in the presence of the Prosecutor, and I will let you know whether I will admit them or not. If I do not admit it, you can get your exceptions on the record. Certainly it is entirely incompetent in its present shape to say that you intend to show that somebody made an offer, or made a demand on this man for money. If you could connect it with these other persons in this particular cause, that is another matter. That is the point.

30 MR. STRICKER: That is the point exactly, and I am perfectly willing to follow your Honor's suggestion and intimate to your Honor what I consider is my theory on which this testimony is admissible.

(Conference held between the Court and counsel.)

MR. STRICKER: Am I to understand that this line of examination is to be excluded?

40 THE COURT: Oh, no, Mr. Stricker. Simply that question an answer. Because it might be simply hearsay on his part.

*Max Swiller—for Defendant—Direct.*

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Did anyone offer you yourself a proposition? That is what I mean.

MR. STRICKER: I think I can reach that in another way. Cross-examine.

THE COURT: If that other admission is to be made, I do not see why it would not be better to bring it out affirmatively than it would be to bring it out as though it was brought out on cross-examination. 10

MR. STRICKER: Do you mean on the part of this defendant?

THE COURT: Yes. I think you ought to put that other question so that he gets the benefit of the testimony that he had knowledge without going into details.

*By the Court:*

Q. Was an offer ever made to settle this prosecution against you upon your payment of money? Say yes or no. A. I can't understand what you mean. 20

Q. Was an offer ever made to you that if you would pay a sum of money that this prosecution or this case against you would stop? A. Yes, sir.

Q. By whom was it made? A. By Mr. Streitwolf.

Q. To you direct? A. To you direct? 30

Q. To you personally? A. Yes, sir.

THE COURT: Proceed.

MR. STRICKER: I am through.

A. That was three thousand dollars.

*By Mr. Stricker:*

Q. Was that before you were arrested on this charge or after? A. Two days after the civil suit was. 40

*Max Swiller—for Defendant—Direct.*

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Q. When was the civil suit? A. I think that was in May.

Q. That was the trial of the suit? A. Yes.

Q. And when was that civil suit started? A. I think it is the fifth or the sixth, something like that. I don't remember.

10 Q. Of what year? The fifth or sixth of what month? A. 1911.

Q. When did that suit begin? When were you served with the papers? A. In May.

Q. When were you served with the papers in that suit? A. I think it was in May.

Q. No, that was the day of your trial. But when were you arrested in the civil suit? A. I don't remember.

20 Q. Well, how long before May? A. I think it is about a month or something, maybe more.

MR. STRICKER: Can we agree that suit was started in January?

MR. STREITWOLF: That suit was started in January, 1915.

Q. And that suit in May resulted in a verdict against you, didn't it? A. Yes.

Q. How much was that verdict? A. I think it  
30 is five hundred dollars.

Q. Did anybody else beside Mr. Streitwolf talk about a settlement to you of this case? A. I don't remember that.

Q. Did you ever speak with your brother Abe about it? A. Yes.

MR. STRICKER: Cross-examine.

*Max Swiller—for Defendant—Cross.**Cross Examination by Mr. Streitwolf:*

Q. I ask you if you recognize that lady in the fourth settee with the brown coat on? Do you know her?

MR. STREITWOLF: Stand up.

10

Q. Do you know her? A. I think so now.

Q. What is her name? A. I don't know her name.

Q. Where does she live? A. She was living on the farm sometime ago.

Q. On what farm? A. Near Dayton.

Q. Did you send that woman to Baltimore last week— A. No.

Q. One moment until I finish my question. (Continued): with instructions to say that you were willing to convey to Tillie Esakov your two farms in settlement of this suit? A. No. 20

Q. Did you send that woman to Baltimore? A. No.

Q. Did you ever see that woman before this morning? A. Before this morning? No.

Q. You never saw her before this morning? A. No.

Q. How do you know she lived at Dayton? A. I know from years ago, maybe five years ago, maybe ten years ago. 30

Q. Then you did see her before this morning? A. No. I see you in tunnel—

Q. One moment—you will see me a little further.

THE COURT: Never mind this comment.

Q. Now, you said that—

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*Max Swiller—for Defendant—Cross.*

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10 THE COURT: In all fairness I do not think this witness understood with exactitude that question. He has already admitted he knows this woman, and you asked him if he had seen this woman before this morning. He may mean this very morning.

MR. STREITWOLF: I will go further in that.

Q. Is that woman married? A. I don't know.

Q. What is her name? A. I don't know.

Q. You say she lived at Dayton on a farm? Where at Dayton on a farm? A. I don't know exactly where, in what place, but I know she had a farm near Dayton some place.

20 Q. How long ago was it that you saw her before to-day? A. I don't remember.

Q. Did you see her within the last month? A. No, I don't think so.

Q. Now, you say that I talked settlement with you two days after the civil suit, is that right? A. Yes.

Q. Sure about that? A. Yes, sir.

Q. Two days after the civil suit— A. Two days or three days. I think between that.

30 Q. After the civil suit was ended? A. Yes, sir.

Q. The civil suit then had terminated and the jury had brought in a verdict, it was after the jury had brought in a verdict that I talked settlement to you? A. Yes, sir.

Q. Two or three days? A. Yes.

Q. You are positive? A. Yes, sir.

40 Q. Where did I talk with you? A. You seen me in Jersey city tunnel about between 11 and 12 o'clock in the night. Do you remember that?

*Max Swiller—for Defendant—Cross.*

Q. Go ahead. A. Did you see me there? Answer.

MR. STRICKER: Do not ask him any questions.

A. Well, he has got to answer, don't he? 10

MR. STRICKER: No, you are to do the answering.

Q. Now, Mr. Swiller, don't you know— A. Did you see me there and I was talking to you?

Q. Don't you know that the complaint in this case was made against you the day that the jury brought in a verdict? A. No.

Q. You don't know that? A. No. 20

MR. STREITWOLF: Well, Your Honor, the record shows that.

THE COURT: That is not right to make that statement. It has got to be put in some other way. Proceed.

Q. Were you arrested after my conversation with you? A. Why, I can't understand what you mean.

Q. You say you recall an occasion when I had a conversation with you. Were you arrested before or after? A. After that. 30

Q. After that. Now, Mr. Swiller, to get into the merits of this controversy, did you buy that corn on the Esakov farm in 1913? A. Yes.

Q. And you called there with your wagon, received the corn, and in coming back you brought with you, did you not, Sammy and Morris Esakov? A. I never was there. 40

*Max Swiller—for Defendant—Cross.*

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Q. You were never on the farm? A. I was a year before to collect some money that was owed me, one hundred and forty dollars.

MR. STREITWOLF: I object and move to strike it out as not responsive.

10 THE COURT: You asked him if he was never on the farm, and he told you that he was a year before.

MR. STREITWOLF: He was adding a little more to it.

Q. Were you there on the farm in 1913 at all?  
A. I was in July.

Q. You were not there in October? A. No, sir.

Q. You were not there in September? A. No.

20 Q. You are positive about that? A. Yes.

Q. You were at the sale, were you not? A. No.

Q. Do you know when the sale was held? A. What?

Q. Do you know when the sale was held at the farm? A. I can't understand what you mean.

Q. Do you know what day when the sale was?

A. I know there was a sale, my brother was out there.

30 Q. Now, is it not true that before Mrs. Esakov, Sammy and Morris returned to Baltimore to the home of her husband, she was living a week with you at 5 Schureman street? A. No.

Q. That is not true? A. No.

Q. Did she, that is, Mrs. Esakov, and the two boys, Sammy and Morris Esakov live with you at 5 Schureman street in the fall of 1913? A. There was two boys there over night, over two nights, I don't remember exactly was a night or two.

*Max Swiller—for Defendant—Cross.*

Q. Sammy and Morris Esakov? A. I don't know their names.

MR. STREITWOLF: Stand up.

Q. And I point to Sammy Esakov and ask you if he— A. I don't remember. I didn't see him there. 10

Q. I ask you if that boy was there? A. No, I don't know.

Q. Do you mean to tell me, and want this jury to believe that you don't know whether the boy stayed in your home in the fall of 1913? A. No.

Q. You don't? A. Because I come in 11 o'clock to sleep and I go up five. I am four or five hours in the house. How can I know what goes on there? Do you understand now? 20

Q. But you do know two of the Esakov boys did stay there. A. They asked me shall they stay over night, because everything was packed up, and to leave them stay over night. I will tell them all right.

Q. Did the mother stay with them? A. No.

Q. Sure of that. Now, after that in December, the latter part of December, 1913, didn't you call and visit with Florence Esakov at her furnished room apartment or furnished room on Tenth street, New York? A. No. 30

MR. STRICKER: One moment. I object to that.

THE COURT: Why?

MR. STRICKER: That is irrelevant. What difference does it make whether he did or not?

THE COURT: Why?

MR. STRICKER: That is irrelevant. 40

*Max Swiller—for Defendant—Cross.*

What difference does it make whether he did or not?

THE COURT: What is the name?

MR. STREITWOLF: Florence. She testified here in her deposition.

10 THE COURT: Well, he has answered it. It is before the jury.

Q. I ask you if in the latter part of December, 1913, whether you visited Florence Esakov on Tenth street, New York, on an occasion when Samuel Esakov was present and the mother, Anna Esakov?

MR. STRICKER: I object to that.

THE COURT: I will allow that.

20

A. I never was there.

Q. You never was there? A. No.

Q. Or anywheres in New York in the latter part of December, 1913?

MR. STRICKER: I object to that.

THE COURT: Objection sustained.

30 Q. Did you see Florence in New York at any time after the occasion that Tillie was down to your house in October. A. No.

Q. You don't buy corn unless it is husked, do you?

MR. STRICKER: I object to that.

THE COURT: I do not know. It is simply preliminary, Mr. Stricker. I do not know what it will lead up to. Standing by itself, of course, it is irrelevant. I will allow it, however.

40

*Max Swiller—for Defendant—Cross.*

Q. You don't buy corn, unless it is husked, do you? A. Yes.

Q. You have bought corn?—

MR. STRICKER: I object to that. Are we to go into this man's business career and the motive of his doing business?

10

MR. STREITWOLF: I will withdraw the question.

Q. When was it that Tillie called upon you in reference to this corn? A. In September. The last part of September.

Q. How do you fix the date? A. What do you mean by that?

Q. What date

20

*By the Court:*

Q. How do you remember it was the last part of September? A. Because that was before the sale. I told her I wouldn't buy the corn. I be in the sale for that purpose and the sale was in October. For that purpose I remember that it was before the sale.

*By Mr. Streitwolf:*

Q. Were you at the sale? A. No.

30

Q. Corn is not husked in September? A. No. Some farmers yes,—

MR. STRICKER: I object to this.

THE COURT: He is under cross-examination.

MR. STRICKER: I know, but whether corn is husked in September or not sometimes depends on conditions.

40

*Max Swiller—for Defendant—Cross.*

THE COURT: I know, but he can say that, and he has already said that, that sometimes farmers, and he was not allowed to say. What were you going to say, Mr. Swiller? Say it.

10 *By the Court:*

Q. Sometimes farmers husk corn before September, is that what you mean? A. In September. The last part of September sometimes the farmers husk and sometimes aint.

*By Mr. Streitwolf:*

Q. When Ida and Tillie and the baby came on in December you saw them? A. Yes.

20 Q. At your store. Had Ida ever been in your apartment at 5 Schureman Street, before that time A. No.

Q. And you and Tillie and the baby had the conversation at the store, did you not? A. Yes.

Q. And it was in reference to the baby, was that not so? A. What do you mean in reference to the baby?

Q. You were talking about the baby? A. No.

Q. Said nothing about the baby at all?

30 *By the Court:*

Q. Did they talk about the baby that day they were there in September? A. She told me that Tillie had a baby. Tillie don't talk at all. Only Ida.

*By Mr. Streitwolf:*

Q. Didn't you deny at that time that you were the father of that child? A. No.

*Max Swiller—for Defendant—Cross.**By Mr. Stricker:*

Q. Do you understand that question? A. He means if I said that baby is mine?

Q. Yes. A. I said no. She don't ask me and I don't say nothing.

*By Mr. Streitwolf:*

10

Q. She didn't even ask you? She didn't say to you, rather, that you were the father of that child?

A. No.

Q. She made no reference at all to your being the father of that child? A. No.

Q. How much did you agree to pay at that time for the support of that child? A. I had no conversation for that. I didn't ever speak for that.

20

Q. Nothing was said at all? A. Nothing at all.

Q. About providing for the baby? A. Nothing at all.

Q. What was said at that time about the child resembling you? A. Nobody said that.

Q. Wasn't there some remark, something said at that time about resemblance between you and the child? A. No.

Q. Sure of that? A. Yes, sir.

Q. Did you at that time say anything to Tillie that you were willing to marry her? A. No. She don't ask for it and I don't—I didn't say yes or no.

30

Q. Didn't ask you to marry her? A. No, sir.

Q. She just wanted to come down and say, "Hello, Max"?

THE COURT: Do you object to that?

MR. STRICKER: Yes, we object to that.

THE COURT: Sustained.

40

*Max Swiller—for Defendant—Cross.*

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Q. What did she come down to see you about, Max?

MR. STRICKER: I object to that.

*By the Court:*

10 Q. Do you know what she came down to see you about? A. No.

MR. STRICKER: I suggest what was said is the thing.

THE COURT: I know, but at the same time he may know. I do not see how he could, but it is possible. Unless she told him.

20 *By the Court:*

Q. Did you ask her why she called? A. She don't talk at all. Like the same thing like that table.

Q. Did you ask her sister why she was there? A. Her sister said, you heard from accident. I said what is it. She said Tillie had a baby. I said I am sorry. She said, can't you help us out. I said, how you come to New Brunswick? She said, my father sent me shall blame you. I said, 30 take yourself and get out. She was out. That is all. I didn't see her no more.

*By Mr. Streitwolf:*

Q. Didn't Tillie say to you on that occasion something in reference to what had happened between you and her previously? A. Tillie, she don't talk at all, not a word.

Q. Tillie don't say a word? A. Not a word.

*Max Swiller—for Defendant—Cross.*

Q. Ida does all the talking? A. Ida said a couple of words and she was out.

Q. And didn't Ida on that occasion say to you something about the relations between you and Tillie previously? A. No.

Q. Nothing at all? A. Nothing at all.

Q. At the time that Tillie called upon you, you knew that her father, William Esakov, was in Baltimore, did you not? A. What do you mean by that? 10

Q. At the time Tillie called upon you in reference to the corn, you knew that her father was in Baltimore, did you not?

MR. STRICKER: I object to that. I cannot see the relevancy of this question.

THE COURT: What do you mean by "at that time"? What time? 20

MR. STREITWOLF: He fixes it as September. We fix it as October.

THE COURT: I know, but he said he didn't see her in October. Objection sustained. No reason for the objection, but the Court overrules the question for the reason that it is not properly formed.

Q. At the time that you testified that Tillie called upon you, you knew, did you not, that Mr. Esakov, the father, was in Baltimore? 30

MR. STRICKER: I renew my objection, and I submit that this certainly has not any relevancy in this issue.

THE COURT: I do not know whether it has or not. I will allow the question.

*Max Swiller—for Defendant—Cross.*

Q. What is your answer? A. I don't remember.

Q. You don't remember? I ask you now if you didn't testify in the civil suit, in answer to my question, "When Tillie came down to your store to do business with you, you knew the father was in Baltimore, didn't you, Max?" and your answer was "Yes." Isn't that so? A. Maybe. I don't remember now.

Q. You deny that you so testified?

THE COURT: No, he does not say that he denies.

MR. STREITWOLF: I want an answer.

THE COURT: He says maybe, I don't remember now, I may have said that, but I don't remember now, is the effect of his answer.

Q. And you testified truthfully at the civil trial?

MR. STRICKER: I object to that.

THE COURT: Why?

MR. STRICKER: Of course he testified truthfully.

THE COURT: Not necessarily of course. I will allow that question.

30

*By the Court:*

Q. The testimony you gave at the civil trial was the truth, was it not? A. I don't remember what I did.

Q. And if you did so testify that you knew that the father was in Baltimore at the time that Tillie came down to your store, to do business with you, when you told the truth then, didn't you? A. Yes.

40

*Max Swiller—for Defendant—Cross.*

Q. On this occasion, that is the occasion that Tillie called upon you at the store, you were engaged to marry one of the Esakov girls, were you not?

MR. STRICKER: I object to that question.

10

THE COURT: I will allow it.

MR. STRICKER: Prays Exception.

THE COURT: Exception will be entered.

Exception allowed, sealed accordingly.

PETER F. DALY,

*Judge.*

(Seal)

MR. STRICKER: I would like to state my reason for objecting is that this question is irrelevant to this issue and is not cross-examination.

20

THE COURT: Proceed. I have ruled.

(Question repeated by the stenographer.) A. That time it was broked off.

Q. What daughter was that?

MR. STRICKER: I object to that on the same grounds.

THE COURT: I will allow it.

30

A. Lena Asakov.

MR. STREITWOLF: That is all.

*By the Court:*

Q. You stated that Mr. Streitwolf had an interview with you two or three times about a settlement of this case. Is that true? A. Yes, sir. He was three times in the house to try out the case.

40

*Max Swiller—for Defendant—Cross.*

THE COURT: Strike it out.

Q. And the first time that he had an interview with you was within two or three days after a verdict was rendered against you in the civil suit, and it took place between eleven and twelve  
10 o'clock at night in the tunnel from New York to Jersey City, is that right? A. Yes, sir.

Q. What did Mr. Streitwolf say to you? A. I met him there in the tube.

Q. (Repeated) What did Mr. Streitwolf say to you? A. He called me up on the side, he said—

Q. In the car or in the station? A. That was in depot I saw him and after the train comes around to Manhattan Transfer. I was with my  
20 sister-in-law and my father and he was there, and we talk over there, and after he called me down to the side and said, don't you go to New Brunswick. I said, yes, because my brother called me up that you got to give bail and I am going to give bail. He said, if you give me three thousand dollars you go back to New York and you don't have to give no bail, and I will throw out the case. I said, nothing doing. I want to prove the truth, and that is what is. Well, he said, all right, and  
30 he took the train, and come to New Brunswick, I and him and my father and my sister-in-law, and walk up and down to George Street. He was out to George Street and I was out to Albany.

Q. When was the next time? A. The next time I don't remember.

Q. Where was it? A. I don't remember.

Q. How long after the first time, about? A. I think it was a couple of weeks or about a month or something like that.

*Max Swiller—for Defendant—Cross.*

Q. Was it in New Brunswick or where was it?  
A. I think it was in New Brunswick.

Q. Was it in your store or where was it? A.  
No, in my store he sent me——

Q. Never mind. You are simply to testify to  
your own direct knowledge, you understand that.

10

MR. STRICKER: What you know your-  
self.

Q. What you know yourself. Where was the  
second interview that you claim to have had with  
Mr. Streitwolf? A. I don't remember that.

Q. Was it in the street? A. I don't took notice  
of that.

Q. What did he say the second time? A. He  
said I will give him three thousand dollars and he  
will throw up the case, and if I wouldn't give him  
the three thousand dollars, he said, I will make  
two charges after that, two cases, one, he said,  
for white slavery, and the other said, he will sue  
me for ten thousand dollars because Mrs. Esakov  
don't stay with her husband; and he said he will  
throw everything out from the bottom, he said,  
and try to prove that I give three thousand dol-  
lars. I was in to my lawyer and I told him all  
about it; my lawyer get mad at me, and said, you  
don't have to tell nobody, you will do no——

20

30

THE COURT: Never mind what you  
told your lawyer.

Q. How is it you don't remember when and  
where this was? A. Because I don't took in my  
head.

Q. It was very important to you, wasn't it?  
A. He sent me maybe twenty-five people.

40

*Max Swiller—for Defendant—Cross.*

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Q. I ask you wasn't it very important to you?

A. No. He called my brother in New York.

Q. Never mind what he did with your brother. I am asking what he did with you directly. A. I in the tunnel I remember and the other one I don't remember. He was call me, because I didn't have  
10 in mine head that, you know.

Q. And you don't know when or where this interview was? A. No.

Q. Was there anybody present? Was there anybody there at the time that Mr. Streitwolf spoke to you, the second time that he spoke to you? A. No, because he was out so nobody shall hear it.

Q. Where was it now, if he was out? A. I don't  
20 remember.

Q. If he were out so nobody could hear it, then you must know where he was. Where was it? A. I don't remember that.

Q. Well, how do you know he was out so that nobody could hear it? A. I know, because the only time he talks to me so nobody shall hear it.

Q. When was the third time? A. He made one time appointment with me, that was Sunday, and soon that was Monday was holiday. I don't re-  
30 member what month was it. About two months ago.

Q. I don't care how many appointments he made with you. That is not the question. Where and when did the third interview take place? A. I don't remember that.

Q. Was there a third interview? A. He was couple of times.

Q. Not three times? A. I don't remember  
40 exactly.

Max Swiller—for Defendant—Cross—Re-Direct.

Q. Did you ever make an offer to settle?  
A. No.

Q. To no one? A. To nobody.

Q. Did you ever agree to marry this girl?  
A. No.

Q. You never agreed to marry this girl?  
A. No. 10

Q. Did you ever authorize anyone to say for you that you would marry this girl? A. No.

MR. STRICKER: I do not think the witness understands the question.

THE COURT: I suggested to you that you might bring that out before, but since you did not, I am bringing it out myself.

MR. STRICKER: I did not have an opportunity to. 20

THE COURT: I have finished. Now you can try to make him understand, if you think he did not understand me.

*Re-Direct Examination by Mr. Stricker:*

Q. You are willing to marry the girl, aren't you? A. Yes.

Q. And have been willing for how long?

MR. STREITWOLF: That is leading. 30

THE COURT: I will allow such a leading question.

Q. How long have you been willing to marry the girl? A. Before the civil suit was on.

Q. And didn't you tell me that you would be willing to marry the girl? A. Yes, sir. And I told you what for.

*Max Swiller—for Defendant—Re-Direct.*

Q. What did you mean when the Judge asked you?

THE COURT: I think he misunderstood the question.

A. He asked—

10 Q. If you had promised to marry the girl before? A. Yes.

Q. That is, before she made the charge against you? A. Yes.

THE COURT: He may not have understood the word did he ever authorize anybody to say it. He was about to say that the reason why he did it.

20 Q. And since this charge was made against you, you also told Mr. Burton that you were willing to marry the girl? A. Yes.

MR. STREITWOLF: That last question is absolutely irrelevant, what he told Mr. Burton. As his counsel he might tell him anything. How is that relevant? Communications between him and Mr. Burton certainly is not relevant.

30 THE COURT: It is certainly the highest kind of evidence to show that a man charged with an offense like this has admitted that he was willing to marry the girl.

A. He wants three thousand dollars—

THE COURT: Never mind that now. On what theory is that objectionable?

MR. STREITWOLF: I will withdraw the objection.

*Max Swiller—for Defendant—Re-Direct—  
Re-Cross.*

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*By Mr. Stricker:*

Q. You started in to say that you were willing to marry the girl after this charge was made. A. Because I don't want to have any trouble, because can't get no result, because they take, you know, too much trouble, and I don't want to have so much trouble in my head, and she said she want to marry here. I said I will marry her. No, she said. I want money. All right. 10

Mr. Stricker: That is all I have.

*Re-Cross Examination by Mr. Streitwolf:*

Q. You never had any conversation with Tillie direct, after December, 1914, did you? A. No.

Q. When you said she wanted money, you didn't mean that Tillie said that? A. That is what you said. Ain't you? You said you want money or you will call her from Baltimore. 20

THE COURT: One minute. Just answer the question. The question is this, Mr. Swiller: did Tillie ever say to you directly that she wanted money? A. No.

Q. Now, I understood you to say that the day you saw me in the train it was the next day that you pleaded here to an indictment, is that right? 30

MR. STRICKER: I do not think he said anything of the sort. I object.

THE COURT: Objection sustained. He said within two or three days after the verdict of the jury in the civil case.

MR. STREITWOLF: I understood him to say the next morning he pleaded the indictment. 40

*Max Swiller—for Defendant—Re-Cross.*

MR. STRICKER: No.

THE COURT: Well, you may ask whether he did say that or not.

10 Q. Didn't you say that the day after you saw me you were in this Court, or in court, and pleaded to the indictment? A. Two or three days after. After that civil suit was.

Q. But I mean now, didn't you say that the day after you saw me that you pleaded to an indictment here? Didn't you say that? A. I don't mean—I don't understand what you mean.

Q. You were in Court here.

*By the Court:*

20 Q. What did you do the next day after you had seen Mr. Streitwolf, as you say you did? A. I was give bail.

*By Mr. Streitwolf:*

Q. You gave bail in this matter here we are trying to-day? A. Yes.

*By the Court:*

30 Q. In other words, the day before you gave bail in this case was the day that you saw Mr. Streitwolf? A. Yes, sir. Not day I saw him. The night between 11 and 12.

Q. The night before between 11 and 12? A. Yes.

Q. And right that very next day was when you gave bail? A. Yes, sir.

Q. When you got home the next morning you gave bail? A. Yes, sir. He told to mine brother——

*Max Swiller—for Defendant—Re-Cross.*

THE COURT: Never mind what he told your brother. That you cannot testify to.

*By Mr. Streitwolf:*

Q. The Judge has asked you and I would be anxious to know were was the next occasion you saw me? A. I don't remember that. 10

Q. In New York was it? A. I don't remember.

Q. New Brunswick? A. I don't remember that.

Q. Philadelphia? A. I don't remember.

Q. On any other occasion except the one you speak of did you have a conversation with me? Did you ever have a conversation with me now after you pleaded to that indictment?

MR. STREITWOLF: I object to the witness using that note book. 20

THE COURT: You cannot look at that book.

Q. Did you ever have any conversation with me after you were in this Court and gave bail?

MR. BURTON: May I object to that for just a minute and state that there is going to be confusion in both the minds of the court and the jury I think regarding the question of giving bail. This gentleman, 30 as we have seen by the complaint, was arrested on the warrant of Judge Sedam. Now, the bail that he refers to was given the next day, or two days following his conversation with Mr. Streitwolf, is that bail, and not the bail that was given in this Court after a plea to the indictment, because the indictment was not found until considerable time had elapsed between the time of his arrest and his pleading. 40

*Max Swiller—for Defendant—Re-Cross.*

10 THE COURT: The plain fact is, and the only essential fact is, I mean to say, in connection with this particular portion of his testimony, that the very day after the night between 11 and 12 o'clock when he claims to have seen Mr. Streitwolf, he gave bail. Whether the bail was given here, or some other place, just what difference does that make?

MR. BURTON: I think it is important for this particular: that he may be contradicted as to the time of this conversation, the date which he pled here and gave bail is fixed.

20 THE COURT: Has he framed his question as to that?

MR. BURTON: I think he should frame his question particularly designating which bail he is referring to. That is my objection.

(Question repeated by the stenographer.)

THE COURT: Objection sustained. Reframe the question.

30 Q. At any time after the occasion that you saw me on the train, did you have a conversation with me? A. I think yes.

Q. Where? A. I don't remember.

Q. Who was present? A. I think it is nobody. That you were in thirty-five Bleecker Street.

Q. What? A. That you was in 35 Bleecker Street.

Q. I was in 35 Bleecker street? A. Yes.

40 Q. And is that where we had this conversation?  
A. You was there.

*Max Swiller—for Defendant—Re-Cross.*

Q. I was at 35 Bleecker street? A. Yes.

Q. I don't understand you, sir. A. Can I look on my book?

MR. STREITWOLF: No, I object.

MR. STRICKER: If he has anything in his book whereby he can refresh his memory. I submit he ought to be permitted to consult it. 10

THE COURT: Depends a good deal on when it was made, doesn't it?

MR. STRICKER: Yes.

THE COURT: You can ask when it was made.

*By Mr. Stricker:*

Q. What is that book you have there? A. I got marked there Mr. Stricker was over there with Florence— 20

Q. Never mind. Whatever is written in that book, when did you write into that book? A. That time, you know, when he was there in Bleecker street.

Q. The same day? A. No, two days after or three days after.

Q. No. When did you put the memorandum in the book that you want to look at, that is what I want to know. A. Three or four days after he was there. 30

Q. And is that the day when you say that you saw him in the tunnel? A. No. That is about a month after, about a month and a half or something like that.

Q. Why did you write into that book his having been at Bleecker Street, why did you do that? A. 40

*Max Swiller—for Defendant—Re-Cross.*

I tell you why, I was willing to take a warrant and arrest, because was offer my witness fifty dollars to go against me.

THE COURT: Strike that out.

10 MR. STREITWOLF: I was examining this witness.

THE COURT: You objected to this book and Mr. Stricker claimed that he had a right to use that book to refresh his memory, and so he does, if the book was made at the proper time. This witness was asked when the memoranda was made in the book, and he started off on something else.

20 MR. STRICKER: He did testify it was made two or three days after the occurrence.

THE COURT: Three or four days, he said.

MR. STRICKER: I submit that is evidence.

MR. STREITWOLF: I might be permitted to cross-examine him about that book?

30 *By Mr. Streitwolf:*

Q. Let me look at the book.

MR. STRICKER: Let him take the book.

A. He can understand nothing.

MR. STRICKER: That is his business. It is not yours. He may. You cannot tell.

*Max Swiller—for Defendant—Re-Cross.*

*By Mr. Streitwolf:*

Q. How long have you had that book, Mr. Swiller? A. About a year.

Q. When did you write the memorandum on the first page? A. I don't remember that.

Q. The memorandum on the fourth page, when did you write that? A. I don't remember that. 10

Q. Or the memorandum on the last page?

THE COURT: You do not need to go into that. There is too much uncertainty for that to be used for the purpose of refreshing his memory.

Q. Now, you say you saw me in Bleecker street?

A. Do you remember you was there?

Q. You say you saw me in Bleecker street? A. I didn't see you there, but you see somebody else there, didn't you? 20

Q. Do you say you didn't see me there? A. No.

Q. Now, did you see me in Bleecker street? A. I did not. But you see somebody there?

MR. STREITWOLF: I ask this witness be made to respond.

THE COURT: Do not ask questions.

Q. Who lives at 35 Bleecker street? A. I don't know. Manufacture man there. 30

Q. You told me, you gave me Bleecker street in answer to a question I asked you what other occasion except that on the railroad train did you ever see or talk to me, and you said Bleecker Street.

*Max Swiller—for Defendant—Re-Cross.*  
*Abe Swiller—for Defendant—Direct.*

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MR. STRICKER: I object.

10 THE COURT: I do not think that is his testimony. He did refer to Bleecker Street, but he didn't say that he met you at Bleecker street. He has repeatedly said that as to the second interview which he alleges, that does not know when nor where it occurred.

MR. STREITWOLF: That is all.

M. R. STRICKER: That is all.

20 ABE SWILLER. a witness produced on behalf of the defendant, being duly sworn on his oath, according to law, saith:

*Direct Examination by Mr. Stricker:*

Q. Mr. Swiller where do you live? A. Five Schureman.

Q. Are you married? A. Yes, sir.

Q. Keep house there? A. Yes.

Q. And you are in the feed business, and in partnership with your brother? A. Yes, sir.

30 Q. How long have you lived at 5 Schureman street? A. Since the house is built.

Q. Well the Court, Jury and myself don't know when that is.

A. Well, I guess about four or five years.

Q. When were you married? A. Last year, 1914.

Q. And were you living during the summer and fall of 1913? A. Yes, sir.

40 Q. What floor did you live on? A. Second floor.

*Abe Swiller—for Defendant—Direct.*

Q. And after you got married in 1914, you continued to live in it? A. Yes, sir.

Q. Have there any changes been made in that apartment? A. No, sir; except the front was changed, but not the rooms.

Q. Speaking of the rooms, the apartment, are there any changes? A. No. 10

Q. Have the doors, windows, or locks been changed? A. No, sir. One lock was changed.

Q. Was it changed or was it added? A. Put a new lock on.

Q. What kind of a lock? A. Yale lock.

Q. And when was that yale lock put on? A. Well, it is about couple of days before my wedding.

Q. You say that was in June, 1914? A. Yes. 20

Q. Then outside of the putting of that new lock? A. Yes.

Q. The apartment is in identically the same shape as it was in the year 1913? A. Yes, sir.

Q. Who lived with you in that apartment? A. Mine brother Max.

Q. The defendant here? A. Yes, sir.

Q. And during the month of September, 1913, was he living there with you? A. Yes, sir.

Q. Was he there during the month of October, 1913? A. Yes, sir. 30

Q. Where did you sleep in that apartment? A. Bed room.

Q. And where did he sleep? A. Same bed. We always used to sleep in same bed, but since I got married—

Q. Did you and he occupy the same bed during the months, during the month of September and the month of October? A. Yes.

*Abe Swiller—for Defendant—Direct.*

---

Q. 1913? A. Yes.

Q. Was there any time during those two months that your brother was not sleeping with you? A. No, sir. Always sleep with me.

Q. Did you see Tillie Esakov at that place at any time, the girl that is making a charge against Max? A. I see her one time in the store, she come in and ask—

Q. No. I am asking about the apartment? A. No, sir.

Q. Did you ever see her at the store, and if so, when? A. Yes, I saw her in the store.

Q. When? A. I don't remember exactly the date.

Q. Well, was it in the summer or was it in the fall of the year? A. Right in the fall of the year.

Q. What was she doing at the store? A. Well, she come in and ask us if we will buy corn.

Q. Yes? A. Well, my brother told her we are buying corn all husked, not in the stalks. Well, she was staying there and she went out.

Q. Did she come back again? A. No, sir.

Q. Who was in the store at that time besides you and your brother? A. Well, was Mike Shapiro, the bookkeeper; Morris Schulman, the man keeps across the way a dry goods store.

Q. Since this criminal charge has been made? A. Yes, sir.

Q. May 10th, 1915, has anybody spoken with you in reference to the dropping of this prosecution? A. Yes, sir.

Q. Who?

MR. STREITWOLF: I object.

A. Lawyer Streitwolf.

*Abe Swiller—for Defendant—Direct.*

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MR. STREITWOLF: I object.

THE COURT: Why?

MR. STREITWOLF: I will withdraw the objection.

Q. What did he say to you? A. Well, I will tell you the first time. 10

Q. In the first place, how many times—was there more than once that he spoke with you? A. Well, he speak to me about six or seven times.

Q. Where? A. Well, one time I met him—one time he called me up he wants to see me.

Q. Called you up how? A. Telephone.

Q. Yes. Now, when was that? A. Well, I guess was couple of months ago.

Q. Yes. Now, what did he say? A. Well, he says, wouldn't you better be satisfied if your brother settled that case. I said, how is it could you settle it? He said, if you pay me five thousand dollars for the girl, and two thousand dollars for myself, and three dollars a week for the baby, four dollars a week until ten years, and four dollars a week until eighteen years. I said, I ain't got so much money. He said, if you ain't so much money I ain't got nothing to say. 20

Q. Well, when did you see him again? 30

MR. STREITWOLF: He said that was over the telephone.

Q. Was this over the telephone or did you go to see him? A. I went to see him.

Q. Did you go to see him when he called you up? A. Yes, sir.

Q. Where did you see him? A. Up at his office.

Q. Where? A. On George Viehman's Building. 40

*Abe Swiller—for Defendant—Direct.*

Q. Did you see him at any other time? A. Yes, sir. Then I have to pay the fine.

Q. What fine? A. Well, the five hundred dollars, the verdict.

10 Q. Do you mean the judgment against your brother? A. Yes. Well, I said, Mr. Streitwolf, ain't got the money to pay that judgment. He says, I couldn't help that. Well, he says, you pay the judgment, everything will be all right. Everything will be all right if you will pay the judgment. Pay the judgment, well, he says, now I will make an appointment, Tillie and Ida and her father and bring her down to New Brunswick on Sunday. He said, you come to the office on Sunday.

20 Q. When was this? A. Well, was couple of months ago, after the verdict was paid. Well, you come up, he says, you and your brother Phil down to my office, he said, I wouldn't talk nothing to Max, he said. He said, you come around with your brother Phil, we will talk it over. Well, mine brother Phil couldn't come from New York. And I went mineself. Was about three or four o'clock in the afternoon, Sunday.

Q. Where? A. Down to Streitwolf's office.

30 Q. Yes. A. Well, Streitwolf says, well, what do you think to do. I said, why the reasons the girl, she don't want anything, you always got to talk.

*By the Court:*

Q. Which girl? What girl was there? A. The two of them was there.

40 Q. Which two? A. Sitting right there, Ida and Tillie.

*Abe Swiller—for Defendant—Direct.*

Q. When was this? A. Was on Sunday.

Q. What month? A. Well, I don't remember exactly the month. Was right in the office Sunday afternoon when they come from Baltimore.

Q. How long ago? A. Well, it is couple of months ago.

10

THE COURT: Proceed.

A. Well, he says to me—I said, why the reason the girl don't talk, you got all the talking. He said, I am her counsellor. Well, I said to Mr. Streitwolf, couldn't I talk to Mr. Esakov himself, what he want.

*By the Court:*

Q. Was he there? A. Yes, sir.

20

Q. Mr. Esakov was there? A. Yes, sir. And Streitwolf says no. Well, I said, what do you think to do, Mr. Streitwolf, now. He says, if you wouldn't settle that case—

*By Mr. Stricker:*

Q. Which case? A. That criminal case right here now.

Q. Yes. A. Well, he says, I going—if he will be indicted here, he says, and if they won't pay nothing I will take him away off in some State where they lynch him at. He says, I will take him up there. He said, I will take him to Baltimore and then I will take him up there, he says, before I will find all about it. Well, I said, we got a God. He said—I said I hope to God he said he wouldn't be there. Then I couldn't do nothing with him that day. After that I met Mr. Lukacs.

20

*Abe Swiller—for Defendant—Direct.*

Q. No, don't talk about anybody else. Just yourself. A. Well, I have to tell you how I met then.

Q. All right, go ahead. A. Then I met Mr. Lukacs on the train.

10 Q. Who is Mr. Lukacs? A. Man lives on Peace Street, New Brunswick.

Q. Yes. A. Well, he said to me—

Q. Never mind what he said to you. As the result of what he said, what did you do? A. Well, Mr. Lukacs came up to me—

Q. Don't give us any conversation of what Lukacs said. What did you do after you talked to Lukacs? A. Well, Lukacs said—

20 THE COURT: You were told not to tell what Lukacs said. We do not care what Lukacs said.

A. Lukacs came up to me and says, I made appointment—

MR. STREITWOLF: I object.

30 Q. As the result of what he said, what did you do? A. Well, he said, I got appointment with Streitwolf, I went up to Streitwolf's office, I did not find him. The office was closed.

Q. How long ago was this? A. About four weeks ago. Then Lukacs seen me again, he says, I got appointment—

Q. Never mind what Lukacs told you.

THE COURT: He can go that far.

A. Lukacs said, I got appointment with Streitwolf right in his house.

40

*Abe Swiller—for Defendant—Direct.*

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Q. Who is Lukaacs, who is he? A. Man lives on Peace Street.

Q. Is he a friend of yours? A. No friend of mine. No, no relation to me. Well, he says, I got appointment at Streitwolf's house, he said, going to make a settlement before the twenty-eighth—before the twenty-fourth. He said, after the twenty-fourth that he wouldn't do anything. 10

Q. Twenty-fourth of what? A. Of this month.

Q. Go ahead. A. Well, then I get there, I was talking to Streitwolf; Streitwolf says, I wouldn't have no less than three thousand dollars.

*By the Court:*

Q. When was this and where was it? A. That was Mr. Streitwolf's house on 52, I guess, Livingston Avenue. 20

Q. How long ago? A. About two weeks or three weeks ago, Friday night.

THE COURT: Go on.

A. I come up there and he told me the same old story.

*By Mr. Stricker:*

Q. No. Tell us what he told you. A. He said, I wouldn't take no less than three thousand dollars; I want three dollars a week for the baby until ten years and four dollars a week until eighteen years. Well, I said, how would it do if I ain't got the money; I said, by thunders, I wish I would have ten thousand or one hundred thousand dollars; he said, if you had one hundred thousand dollars it will cost you more money. 30

40

*Abe Swiller—for Defendant—Direct.*

Q. Did you see him after that? A. Well, no, I said, Mr. Streitwolf, well, how you could arrange to get money if the girl ain't here. I says, you bring on the girl, we will talk over the whole, she may be satisfied to get married without any money. He said, that is my business. Then I  
 10 ask him if it is a criminal case, how are you going to settle. He said, the Prosecutor knows all about it. I told the Prosecutor all about it. Then I went to the Prosecutor with Lukacs and I explained to the Prosecutor the whole shooting match. I asked the Prosecutor what to do. Prosecutor said to me, you have to go to court. He didn't answer nothing else. The Prosecutor answered I have to go right to court. Didn't  
 20 answer nothing else.

Q. Have you ever seen the father of this girl since this criminal charge has been made? A. No, sir.

*By the Court:*

Q. You said on a Sunday about two months ago both the girls and father were there in Mr. Streitwolf's office? A. Yes, I see him when they have—

30 Q. Is that true? A. I see him, yes.

*By Mr. Stricker:*

Q. I mean, did you speak with him? A. No, Mr. Streitwolf wouldn't let me do it.

Q. Well, did you speak with the father any other place than Mr. Streitwolf's office? A. No.

Q. Since this criminal charge has been made? A. No.

MR. STRICKER: Cross-examine.

*Abe Swiller—for Defendant—Cross.**Cross-Examination by Mr. Streitwolf:*

Q. The first occasion you referred to you say was at my office, is that right? A. Yes, sir.

Q. The second occasion when you referred to the payment of the judgment and everything would be all right? A. Yes, sir.

10

Q. Where was that conversation? A. It come right to your house.

Q. And the occasion of Sunday when Tillie and the father were present, where was that conversation? A. At your office. Smoking a cigarette at that time, me and you.

Q. The fourth conversation with Mr. Lukacs? A. Up to your house.

Q. Mr. Swiller, do you know that lady's name (indicating) A. Yes, sir.

20

Q. What is her name? A. Mrs. Kamy.

Q. Where does she live? A. She lives Perth Amboy.

Q. Does she live there now? A. I guess so.

Q. How long have you known her? A. I know her about ten years, eight years.

Q. When did you see her before to-day? A. Before to-day?

Q. Yes. A. I didn't see her about three or four weeks.

30

Q. You did, then, see her three or four weeks? Where did you see her? A. Down in New Brunswick.

Q. Did you send for her? A. No, sir.

Q. Where did you see her? A. On George Street.

Q. Have a conversation with her? A. Yes, sir.

Q. As the result of that conversation did she go to Baltimore for you? A. No, sir.

40

*Abe Swiller—for Defendant—Cross.*

Q. Did you know of her being in Baltimore last week? A. No, sir.

Q. Coming back to this controversy, when was it that Tillie called at the store in reference to corn? A. Around the fall of the year.

10 Q. Is that your best answer? A. Fall of the year.

ADJOURNED UNTIL TWO P. M.

Afternoon Session, Two P. M.

ABE SWILLER (Resumed):

*By the Court:*

Q. Did your brother know that you were to have these different interviews with Mr. Streitwolf? A. I told him.

20 Q. You told him that. In any of those interviews that you had with Mr. Streitwolf, was anything said about marriage, between your brother and this girl? A. Yes.

Q. What was said? A. Mr. Streitwolf said, let him get married, but after two years they will divorce and have nothing to do with her.

Q. When was that said? A. Well, said couple of times.

30 Q. What did you say? A. I said, no. I say, will marry her, let them keep house. Mr. Streitwolf said, no, after two years, let him divorce her.

Q. You say you told your brother those conversations. Did you tell him about the marriage proposition? A. Yes, sir.

Q. What did he say to you? A. He said he don't like that. If he will marry her, let her keep house. Streitwolf said he wouldn't let her do that.

40

THE COURT: That is all.

*Meyer Teretsky—for Defendant—Direct.*

MEYER TERETSKY, a witness produced on behalf of the defendant, being duly sworn on his oath, according to law, saith:

*Direct Examination by Mr. Stricker:*

Q. Mr. Teretsky, where do you live? A. I live 10  
7 Morris Street.

Q. In the city of New Brunswick? A. Yes, sir.

Q. What is your business? A. Butcher business.

Q. Do you know Mr. Esakov, the father of—  
Mr. William Esakov, the father of Tillie Esakov?  
A. Yes, sir; I know him. I bought cows from him.

Q. Do you remember an occasion during the  
summer of 1913 when you spoke with him? A.  
Yes, sir. 20

Q. Where? A. Well, I speak with him, he  
come—

Q. Tell me where it was that you spoke with  
him? A. About the child.

Q. Where, where? A. Over there on the farm.

Q. Whose farm? A. His farm.

Q. State whether or not on that occasion he  
said to you that he was going to get some money  
out of Swiller? 30

MR. STREITWOLF: I object. I ask for  
the conversation.

A. Yes, sir.

MR. STRICKER: This is contradic-  
tion—

THE COURT: Objection sustained.

MR. STRICKER: There was a founda-  
tion laid for this in the cross-examination 40

*Meyer Teretsky—for Defendant—Direct.*

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of the witness William Esakov, and the direct question was asked him whether or not he didn't say certain things to this man and another man and he denied it. Now, my purpose is to contradict that.

10 THE COURT: I do not think that you exactly quote the language that you put to Esakov. I am not sustaining it on the ground of the objection that was made.

(Question repeated by the stenographer.)

MR. STRICKER: I think I can reframe that.

20 THE COURT: I am not sustaining it on the ground of the objection. Of course, you can recite the conversation, because you laid the foundation for contradiction.

Q. Did he, on that occasion, say to you that he was going to ruin Swiller? A. Yes, sir.

Q. If not at that time, inside of a year or a year from that time, or words to that effect? A. Yes, sir.

30 THE COURT: I think that was the conversation. That was substantially it.

MR. STRICKER: Yes.

Q. Who was with you at the time? A. Luise Schatzman, partner to me.

Q. Your partner, Louis Schatzman? A. Yes, sir.

*Meyer Teretsky—for Defendant—Cross—Re—Direct.*

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*Cross-Examination by Mr. Streitwolf:*

Q. Did he use the word "ruin"? Do you know what the word "ruined" means? A. What do you man?

Q. Do you know what the word "ruined" means? A. I don't know what is. 10

Q. You don't know what it means? A. I don't know what it is.

Q. Then when you say that man used that word, it is not so? When you say Mr. Esakov used the word "ruined" in that expression you just gave, it is not so? Did he use the word "ruined"? A. I don't know what he used.

Q. Did you ever meet Mr. Esakov before that time? A. Never. 20

MR. STREITWOLF: That is all.

*Re-Direct Examination by Mr. Striker:*

Q. What language did he speak to you in? A. Well, he speak in Jewish.

Q. What word in Jewish did he use? A. Well, he say, well, boys—what do you mean, you want to tell you in Jewish?

Q. You were asked whether he used the word "ruined," and you said no. Now, I want to know what language he spoke in, when you say Jewish. A. He speak Jewish. 30

Q. What word in Jewish did he use, that is what I want to know? A. Do you want me to talk English now, or in Jewish?

Q. I want to know which word he used in Jewish. A. Well, he will say I am going to sell the cows now. 40

*Meyer Teretsky—for Defendant—Re-Direct—  
Re-Cross.*

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Q. No, no, I don't care anything about the cows. I want to know what, if anything, he said he was going to ruin Swiller. A. Well, he say, boys---

10 Q. I want you to get right down to what he said about Swiller. A. Well he say, you will see by a year later what I am going to do with Max Swiller.

*By the Court:*

Q. When was this? A. Well, it was in July, 1913.

Q. Is that all he said? A. Yes, sir; that is what he said.

20 Q. Had you ever met Esakov before? A. No, sir.

Q. Did you ever meet him afterward? A. Never. Afterward he sold the cows, he is going away, I guess to Baltimore, I hear about it.

*By Mr. Stricker:*

Q. How did you come to talk about Swiller? How did Swiller's name come into the conversation? A. Well, I don't know. He used to think  
30 talking about Swiller. I never speak about Swiller with him.

Q. Who started the conversation about Swiller? A. Well, himself, Mr. Esakov.

MR. STRICKER: That is all.

*Re-cross Examidation by Mr. Streitwolf:*

40 Q. Did he say anything in that conversation about Swiller and his daughter Lena having been previously at the National Hotel in New York? A. No.

*Meyer Teretsky—for Defendant—Re-Cross.*

Q. Did he mention the name National Hotel? A. No, sir.

Q. Did he mention his daughter Lena? A. No, sir.

Q. Didn't you ask him, what is the trouble with Swiller? A. I never ask him. It is not mine business. 10

Q. So for without any reason for it— A. I never asked him.

Q. (Continued): —he said, I am going to get satisfaction, is that the word, satisfaction with Swiller?

THE COURT: "Boys, you will see what I will do with Swiller."

A. Yes, sir. He say he will take all the money what he can from him. That is what he told me. 20

Q. Didn't you testify in the civil case, when you were asked, what did he say about Swiller, didn't you say, "he will see a little later, I will take satisfaction from Max Swiller," didn't you use those words? A. Well, I don't remember. Maybe I say this.

Q. Well, now, which is correct, the words you give to-day or the words you gave at the civil trial? A. Well, he will say he will get all the money what he can. 30

Q. Get all the money he can? A. Yes, sir.

Q. Now, we have gotten three different expressions. Now, which one of the three is correct, what you said at the civil trial, what you said a moment ago, or what you have just said? A. Well, all the money what he can.

Q. Then what you said at the civil trial, that is not true, is it? A. Well, I don't remember. 40

*Meyer Teretsky—for Defendant—Re-Cross.*  
*Louis Schatzman—for Defendant—Direct.*

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Q. If you said at the civil trial that he used these words, "he will see a little later I will take satisfaction from Max Swiller," that is not true, he didn't use these words, did he? A. Maybe I say this, I didn't remember.

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MR. STRIETWOLF: That is all.

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LOUIS SCHATZMAN, a witness produced on behalf of the defendant, being duly sworn on his oath, according to law, saith:

*Direct Examination by Mr. Stricker:*

20 Q. Mr. Schatzman, what is your business? A. Cattle dealer.

Q. And where do you live? A. Forty-three John.

Q. Is this gentleman who was just on the stand a partner of yours? A. Yes, sir.

Q. Where were you living in July, 1913? A. Forty-three John.

30 Q. During that month did you see William Esakov? A. 1913, the month July was come up—

Q. Wait a minute. Did you see him? A. Yes, sir.

Q. On this occasion did Esakov say anything about Max Swiller? A. Yes, he say right—

Q. Wait a minute. Did he on that occasion say that he would ruin Max Swiller, if not at that time, inside of a year, or words to that effect? A. Yes, sir.

40

*Louis Schatzman—for Defendant—Direct—Cross.*

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MR. STREITWOLF: I object, "words to that effect." I think we are entitled to the expression.

THE COURT: Yes, you can bring that out on cross-examination. "Words to that effect," very much qualifies the testimony.

MR. STRICKER: The foundation was laid that way. 10

THE COURT: All right, it is in.

MR. STRICKER: The usual way of laying a foundation, using that language.

THE COURT: Go on, I have allowed it.

Q. Where was this said? Where were you at the time when Esakov said this? A. It was on mine wagon, right before Highland Park Bridge. 20

Q. And who was in the wagon with you? A. Ida and Tillie and Meyer Teretsky and Mr. Eskovitz.

*Cross Examination by Mr. Streitwolf:*

Q. Do you know what the word "ruin" means?  
A. Yes.

Q. What does it mean? A. It means he ruins him with his business and he takes away the money from him, you know, and then ruins from his business. 30

Q. Did he speak in Hebrew? A. What say?

Q. Was this conversation in English? A. No, he speak in Jewish.

Q. Who did you say was present when this was had? A. Was Meyer Teretsky, mine partner, you know, and was Tillie and Ida in the wagon.

Q. Then when the gentleman who preceded you on the stand said that the conversation was at the farm, he was mistaken? A. What do you mean? 40

*Louis Schatzman—for Defendant—Cross.*

MR. STRICKER: I object to that.

THE COURT: The objection is well founded. You cannot characterize another witness' testimony in that way. You can put the question, "it was not at the farm."

10 Q. The conversation was not at the farm? A. No. It was in mine wagon.

Q. Now, the civil trial— A. Yes, sir.

Q. (Continued): —you testified, didn't you? A. Yes, sir.

Q. You were asked to give this conversation? A. I don't know what you mean. I beg your pardon, what you mean conversation? I don't know that.

20 Q. You were asked to tell what Eskav said about Swiller at that time. A. Yes, sir.

Q. And when you testified at that time you told the truth? A. Yes, sir.

Q. When you were asked, "what did he say about Max Swiller," didn't you say, "after he told me he was going to leave them out, he going to leave the town with the two girls." A. Yes, sir.

30 Q. "And then you remember a little time later I going to fix up Max Swiller, I am going to fix up Max Swiller." A. Well, I tell you—

Q. You didn't say it there—then you added on there, "that is all he told me." One moment. You didn't say there, did you, anything about ruin? A. I will tell you if you want to know everything I say there, you know. I could tell.

THE COURT: You will tell what you are asked to tell and what you are allowed to tell.

*Louis Schatzman—for Defendant—Cross.*

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A. All right. I don't know what he means.

Q. At that civil trial, you didn't use the words "ruin"?

THE COURT: Did you use the word "ruin?"

Q. Did you use the word "ruin?" A. I couldn't remember that. 10

Q. I asked you on cross examination there, "he said he was going to fix Max Swiller?" "A. Max Swiller; yes, sir." A. He told—

Q. One moment. In that conversation you gave at the civil trial your memory was a little better as to that conversation, than it is to-day, was it not? A. What do you mean?

Q. Six months ago the details of the conversation had in 1913— A. Yes. 20

Q. (Continued): —was clearer in your mind than it is to-day? A. Same thing.

Q. Now, why don't you use the word "ruin," in the conversation at the civil trial, when you were asked to give the conversation? A. Well, I tell you, if the Honor Judge let me tell. I tell you. If you don't tell me which is catch point like this, I don't understand you. That is the way.

Q. Something must have been said about Max Swiller that led up to this conversation? A. Yes. He told me he going to fix Swiller. I ask him, what you mean fix Swiller. Well he say, I going to take away the money and he wouldn't keep no more feed store. He said he going to fix Swiller. I say, what you mean, going to fix Swiller. He said, going to take away the money and he have no more feed store, and I hear later he told me that. 30 40

*Louis Schatzman—for Defendant—Cross.*  
*Michael Shapiro—for Defendant—Direct.*

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Q. You didn't testify to that at the civil trial?

A. That is the same in civil trial but he didn't let me talk. Same thing there.

10 Q. Had Mr. Swiller at that time said anything about his daughter Lena that led up to that conversation? A. No, sir; I never was speaking with him about that.

Q. Did he speak about the National Hotel that led up to that conversation? A. No, sir; never speak to Mr. Swiller about that.

MR. STREITWOLF: That is all.

MR. STRICKER: That is all.

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20 MICHAEL SHAPIRO, a witness produced on behalf of the defendant, being duly sworn on his oath, according to law, saith:

*Direct Examination by Mr. Stricker:*

Q. Mr. Shapiro, where do you live? A. 32 Hiram Street.

Q. And where are you employed? A. By Swiller Brothers.

30 Q. How long have you been employed by Swiller Brothers? A. About five years.

Q. Were you employed in Swiller Brothers during the fall of 1913, that is, were you present at your work? A. Yes, sir.

Q. Do you remember an occasion during the month of September or October when Tillie Esakov came to your establishment in reference to the purchase of some corn? A. Yes, sir.

40 Q. That is, the sale of corn on the part of her people? What time in the day did she call? A.

*Michael Shapiro—for Defendant—Direct.*

Why, it was before noon. Between the hour of eleven and twelve, somewhere through that time.

Q. You say it was between eleven and twelve o'clock? A. Yes.

Q. Who was at the store when she came? A. Why, it was Max and Abe and Mr. Schulman and myself.

10

Q. And what, if anything, did the girl say? A. The girl walked in and asked if we would buy their corn. Mr. Swiller, Max Swiller, said that the sale is so near that he will wait until the sale comes.

Q. What did the girl do then? A. Walked out.

Q. Did she come back again that day? A. I haven't seen her.

Q. Were you in that store all that day? A. Yes, sir.

20

Q. Until what time? A. Until about seven o'clock.

Q. And during the time that you were there did you see her? A. No, sir; not after she left.

Q. Did you ever see the girl afterwards? A. I see her afterwards; yes, sir.

Q. How long afterwards? A. Two or three months.

Q. Where? A. At the store.

30

Q. Was she alone or was somebody with her? A. Someone with her.

Q. Who was with her? A. Her sister.

Q. And what happened there? A. Why, she come in the office and Max Swiller had a customer, so she went out. Then they went outside, and I haven't seen them afterwards.

*Michael Shapiro—for Defendant—Cross—Re-Direct.*

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*By the Court:*

Q. You say that that was two or three months after the time that she was there about the corn?

A. Yes, sir; I don't exactly remember.

10 Q. When did she go there about the corn? A. The latter part of September.

THE COURT: Proceed.

*Cross-Examination by Mr. Streitwolf:*

Q. The occasion when Tillie and Ida called?

A. Yes, sir.

Q. They had the baby with them? A. Yes, sir.

20 Q. Your memory is just as clear as to the conversation that she had there in September, 1913, as to the events that you have testified to? In other words, the events you have testified to are just as clear in your mind as the conversation you heard in that store in September when Tillie came down about the corn, is that right? A. Yes, sir.

Q. Tillie and Ida and the baby came down. Did you hear the conversation? A. No, sir.

MR. STREITWOLF: I think that is all.

30 *Re-Direct Examination by Mr. Stricker:*

Q. You say it was two or three months after when those girls came with the baby, Mr. Shapiro?

THE COURT: That is what he said.

MR. STRICKER: I desire permission to ask him again.

THE COURT: Surely, to test him.

*Michael Shapiro—for Defendant—Re-Direct.*  
*Morris Schulman—for Defendant—Direct.*

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A. I think it was, but I can't say sure, because I don't exactly remember. I remember seeing them, but what month it was—

Q. What year did those girls come there with the baby? A. I think it was about 1914.

Q. And what year was it that the girl came there with the corn proposition? A. I think that was about 1913. Pardon me, that is about a year. A year and over.

MR. STRICKER: That is all.

MR. STREITWOLF: That is all.

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MORRIS SCHULMAN, a witness produced on behalf of the defendant, being duly sworn on his oath, according to law, saith: 20

*Direct Examination by Mr. Stricker:*

Q. Mr. Schulman, what is your business A. I had a clothing store.

Q. You have a clothing store? A. Yes.

Q. Now? A. No, not now.

Q. What is your business now? A. Now I am a peddler. 30

Q. And where do you live? A. I live 280 Burnet Street.

Q. And where did you live in the year 1913? A. 280 Burnet Street.

Q. And how near is that to the feed store of Swiller Brothers? A. It is only across the street.

Q. Were you in the habit of going into that store while you were living there? A. Yes, I go in there all the time. 40

*Morris Schulman—for Defendant—Direct—Cross.*

Q. I am asking you a simple question, Mr. Schulman. Were you in the habit of going into that place while you lived there, yes or no? A. Yes, I used to go in there.

10 Q. Were you in that store during the latter part of September, or any time during the month of October, 1913, on an occasion when Tillie Esakov called there for the purpose of offering for sale some corn? A. Yes, sir; I was there that day.

Q. Who else was there? A. It was Max Swiller and Abe Swiller and Mike Shapiro.

Q. The gentleman that just left the stand? A. Yes.

Q. What time of the day was it that the girl called? A. It was before dinner.

20 Q. How much before dinner? A. About eleven, after eleven, before eleven, I couldn't tell you that, but it was before dinner.

Q. What did she say? A. She said did Mr. Swiller want to buy some corn. And Mr. Swiller said he wouldn't buy any corn now. And she leave the office, she was out.

Q. Anybody go out with her? A. No.

Q. Did you see her again around there that day? A. No.

30 MR. STRICKER: That is all.

*Cross-Examination by Mr. Streitwolf:*

Q. You were at the Esakov sale, were you not? A. I was in the sale.

Q. Was this conversation before or after the sale? A. What?

Q. When Tillie came down to the store? A. The sale was after.

40

*Morris Schulman—for Defendant—Cross.*

Q. I ask you whether the conversation of Tillie was before or after the sale. A. Tillie was before the sale.

Q. Before the sale? A. Before the sale.

Q. Are you clear about that? A. Yes, sir; I am sure.

Q. Sure about it? A. I am sure, because I was with Mr. Abe Swiller at the sale. 19

Q. At the sale? A. Yes, sir.

Q. There isn't any doubt about it in your mind at all? A. No.

Q. You testified at the civil trial, didn't you? A. Yes.

Q. "Q. Was it before the day that Tillie was in the store, or was it after that, referring to the sale?" "A. No, it was a couple of days later." "Q. Some days later?" "A. Yes." Didn't you so testify? A. The sale was a couple of days later. I don't remember how long it was, but the sale was later. I couldn't tell you exactly how many days, but it was later, after the girl come to the store. 20

Q. Then when you testified at the civil trial that it was some days later, you were mistaken, is that right? A. I guess I am not mistaken. It was a couple of days later, or a couple of weeks. I can't tell you now, I don't remember. 21

MR. STREITWOLF: All right.

MR. STRICKER: That is all.

**Motion for Jury to View Premises.**

10 MR. STRICKER: Now, I presume we are going to finish this case to-day. I am about to call three or four short character witnesses and then the case will be at an end, and I desire to make a motion to have the jury view the premises where this alleged assault is said to have taken place. The trip to the house can very easily be made in five minutes, and the return trip ought not to take any longer, and I dare say that it would not consume any more than twenty minutes of the Court's time. I appreciate that time is very valuable, but I think it would be of great help to the Court and jury if this motion were granted. The reason why I make the application at this time, in order that it might be done while we have the benefit of daylight.

20 THE COURT: Where is the necessity for the jury to do that?

30 MR. STRICKER: The testimony here shows that those premises are in identically the same condition as they were on the day when this affair is alleged to have taken place, and I think that the jury have a right to know just exactly what the means of communication were in that apartment; what opportunity, if any, the prosecuting witness had to open a window, or to make her outcries, or to make her resistance effective, if any she offered, and I think in that particular it is most valuable. Otherwise I might have to put witnesses on to describe this place, and make certain measurements, which, of course, would consume more time and the jury would not get

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*Motion for Jury to View Premises.*

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it as intelligently as they would by a physical inspection. And if it involved the consuming of an abnormal quantity of time I should not impose upon the Court with this motion, but I submit in the final analysis we will save a great deal of time and we will be able to decide this case more intelligently if the motion is granted. 10

MR. FLORENCE: I cannot see how this jury could go to these premises now, two years and over after this event took place, notwithstanding one of the defendant's witnesses testified that the house is in the same condition to-day. And the nature of this case is not such as to require a view. The time absorbed in this, and it is out of the ordinary in the trial of cases of this kind that the jury should be asked to go and view the premises at this time. There is nothing to be learned that could be testified in this case by competent witnesses. 20

MR. STRICKER: Have you seen the premises?

MR. FLORENCE: The State objects. I have not.

MR. STRICKER: I have seen the premises, I have inspected them personally and it is the personal inspection that prompts me in making this motion. 30

MR. FLORENCE: Did you inspect these premises in 1913?

MR. STRICKER: No, sir.

MR. FLORENCE: That is when this crime took place.

*Motion for Jury to View Premises.*

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THE COURT: I have no recollection of any testimony that in my judgment make an inspection of these premises necessary. I do not know of any salient facts to which the condition of the premises are particularly pertinent.

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MR. STRICKER: May I be permitted to direct your Honor's attention to that testimony?

THE COURT: Yes.

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MR. STRICKER: It appeared in the testimony of the prosecuting witness that there was a window in the bath room which was so high that she could not reach. She testified that there was a window in the kitchen and that there was a table there and that table made it impossible to reach this window. A physical inspection of those premises will show the contrary.

THE COURT: Will show what?

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MR. STRICKER: It will show in the first place that the window was not too high, in the bath room, that the same condition existed with the kitchen window, that even though the table was there—there was a table there when I inspected the premises—that it was very easy to open the window. That there was nothing about those windows that indicates, even at this time, that it was not possible to open them. Now, why my friend the Prosecutor should object to the inspection of these premises I don't know.

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THE COURT: It is not so much a question of why he objects, as it is why you

*Motion for Jury to View Premises.*

make an offer that is so unusual as this in a criminal case; and I cannot see any need of it. Take, for example, the question of the table. How do we know what size table was there at that time? Now, the jury have the evidence of this girl for all it is worth. She says that she could not open the window. The defendant says that anyone could open the window, that is substantially what he says, now, this girl was—

MR. STRICKER: Why, no, there is no evidence on the part of the defendant, so far as I recall.

THE COURT: Why, he told about the rooms, and the arrangement of the rooms.

MR. STRICKER: I do not recall any testimony about any window.

THE COURT: If there was not any testimony about the window, then you should have brought it out. You cannot bring it out as a matter of right by getting the jury to go down and look at it for themselves.

MR. STRICKER: Certainly not, but if the jury goes down there and views those premises, I do not think it is necessary for me to bring it out. If they are satisfied that the premises are in identically the same condition, structurally as they were at that time. There is another feature about this: I found a door there, that is, there is a door that opens on an open porch, that has not been described by this girl.

THE COURT: Where is the pertinency of all that? That may be a matter of argument. Suppose you could show that

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*Motion for Jury to View Premises.*

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10 girl could have easily gotten away from there, here is a girl that was six days less than fifteen years of age at the time this assault, she alleges, occurred. Of course, this is a very important case. Involves one of the most serious crimes known to our criminal calendar. This is the second time an application has ever been made to me for a view of the premises, and I do not believe in it as a matter of arriving at a true determination of the issue in the general line of cases, and I cannot see where there is sufficient reason for sending the jury down there to look at the place. Then it would bring open the question as to whether it is in the same physical condition

20 now as it was then. I believe there is some testimony that it is in the same physical condition now, with the exception of a lock. And in a case like this, a structure, it is something of a permanent nature, there is not any likelihood of there being any change in the general physical structure of the building. What do the jury think about that?

30 NINTH JUROR: I think it is wholly unnecessary.

MR. FLORENCE: There is another feature: there may be a location of the furniture in those rooms that might prejudice the mind of the jury.

THE COURT: Certainly, there is that. And the furniture has been all changed, according to Abe, since he married. He has added furniture there, and there is too

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*Motion for Jury to View Premises.*

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much danger of there being confusion in the minds of the jury. They have the evidence on the one side and the other, and if that is not sufficient, you can bring witnesses. I do not think that is going to have much weight, that is my own judgment, with the jury in the determination of the specific issue or issues involved under this indictment. Proceed with the ordinary testimony. 10

MR. STRICKER: May I pray an exception?

THE COURT: If it is exceptionable. I do not grant the exception, but the exception is entered. The motion is denied, and the exception is prayed for.

MR. STRICKER: I do not pray an exception to Your Honor's denying my motion, but the comments that Your Honor made in denying it. 20

THE COURT: What do you mean by that?

MR. STRICKER: Why, Your Honor's declaration, that in your opinion such inspection or such jury view is not necessary.

THE COURT: Don't I have to give it? 30

MR. STRICKER: Oh, yes.

THE COURT: A matter that is addressed to my discretion and you argue it and I give you my reason why I do not think it is necessary. And I say to the jury right now that my reason has no influence whatever upon them in the determination of the facts. The matter is ad-

*Abe Swiller—Recalled—Direct.*

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dressed to my discretion. I do not want to sit here, and have it thought I am arbitrarily deciding against you without giving my reason. But that is not to sway the jury and the jury will understand that.

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ABE SWILLER, re-called.

*Direct Examination by Mr. Stricker:*

Q. Mr. Swiller how many rooms are there in that apartment? A. Four.

Q. And as you come up the stairs, which is the room that you come into? A. The kitchen.

20 Q. And to the right of that kitchen is what? A. Dining-room.

Q. Where is the bath room in that? Does that connect with the kitchen or not? A. Yes, sir.

Q. And what other room is there there, or rooms? A. bed rooms, right from the kitchen, go right to the bed room this way, and on the right hand side is the dining-room and the parlor.

Q. How many doors are there leading out of that kitchen? A. Two.

30 Q. Where do those doors lead to? A. One goes to the front and one goes on the porch.

Q. And isn't there a third one that connects with the bath room? A. Bath room, yes.

Q. Is there a window in the kitchen? A. Yes, sir.

Q. And was there a table at that window? A. Yes.

Q. And how big was that table? A. Well, just as low as the window.

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*Abe Swiller—Recalled—Direct.*

Q. How wide? A. A kitchen table.

Q. How wide is it? A. Oh, I guess about two foot.

Q. Well, was it as wide as the window? A. Oh, just as wide as the window.

Q. And how high is the bottom of that window from the floor? A. Just up to the— 10

Q. That don't mean anything. The jury wants to know that Mr. Swiller. A. Just as high as that bar (indicating).

Q. And how high is it from the bottom of the window to the top of the first sash, that is one-half of the window? A. Well, I guess it is as high as that (indicating.)

& That is, from that rail? A. Yes.

Q. Would a girl of Tillie's size have any trouble in lifting that window? A. No. 20

Q. Now, is there a window in the bath room? A. Yes, sir.

Q. And how high is that window from the floor? A. A little higher than the kitchen window.

Q. How much higher? A. Not very much.

Q. Well. How much? A. Oh, I guess about six inches.

Q. And does that open up or down? A. Opens up sideways on a pair of hinges. 30

Q. What holds that in place? A. A little hook.

Q. Was there ever any lock on that window? A. No, sir.

Q. Or was there ever any lock on any of the windows in that house? A. No, sir.

Q. Isn't there a door—

MR. STRICKER: I think he has testified there was a door out of the kitchen, on to the back porch.

THE COURT: I do not know that. 40

*Abe Swiller—Recalled—Direct.*

Q. Is there a door there that goes onto the back porch? A. Goes out of the kitchen.

Q. Alongside of this window? A. Yes.

Q. And was that door there? A. Since the house was built.

10 Q. Was it there in 1913? A. Yes, sir.

MR. STRICKER: Take the witness.

MR. STREITWOLF: No questions.

*By the Court:*

Q. What did you mean when you say that the windows were not locked? What do you mean by locked? Locked with a lock and key? A. No, just a little turn. A latch.

20 Q. Were there latches on that window? A. Yes.

Q. The ordinary latch? Was it like the latch on that window there (indicating)? A. Yes.

Q. That is what you mean, it did not have any lock on, but just a latch like that? A. Yes.

THE COURT: That is all.

*By the Court:*

30 Q. You said that the table was long enough to cross the whole window, is that right? A. Yes.

Q. How wide was it the other way? A. I guess it is as wide as that bar, a little over twice.

Q. You do not mean the table? A. No.

MR. STRICKER: I think I can straighten out that for Your Honor. I have had the privilege of being there.

40 Q. How far from here, as an estimated point, was the table away from the window? A. About three planks like this.

*Abe Swiller—Recalled—Direct.*

Q. That would bring it about here (indicating) from the window? A. Yes.

Q. Could you reach from the floor over the table to the latch on the window? A. Yes, sir.

Q. How often had you seen this girl Tillie before September, 1913? A. She used to come with her mother in town. 10

Q. How much shorter was she then than she is now? A. Well, I guess ain't much shorter.

Q. Did you ever see Tillie in your house? A. No, sir.

Q. And you were the man who rented the house? A. Yes, sir.

Q. And you still rent it? A. Yes, sir.

Q. Is that table still in front of that window? A. Yess, sir. 20

Q. Same table? A. Yes, sir.

Q. Been there all the time since you have been there? A. Yes.

*By Mr. Stricker:*

Q. That window is about the same as I am in front of you? A. Yes.

Q. And the table stands out this way, doesn't it? A. Yes, sir.

Q. And here is the door alongside of the table, is that correct? A. Yes. 30

Q. So that a person wishing to open—put his hand on that window, can stand alongside of that table? A. Yes, sir.

Q. And reach—get the latch without any difficulty, isn't that correct? A. Could reach it right with his two fingers, reach it right up; very well.

Q. A person does not have to lean across the table to do that, they walk over to the door here? 40

*Abe Swiller—Recalled—Direct.*  
*Samuel Ratner—for Defendant—Direct.*

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A. They walk right up behind to this door and get the latch.

*By the Court:*

10 Q. Then the table does not go across the whole window, does it? A. The table goes right across the window.

Q. You mean after you get to the side of the table you can lean over that way? A. Yes. Not in front of the table. Sideways right by the door.

Q. The door jamb, or the door trimming and the window are together, aren't they? A. They are together.

20 Q. And the door is right alongside of the window? A. Right alongside of the window.

Q. This is the kitchen, is it? A. Yes.

*By Mr. Stricker:*

Q. And that door leads out on the back porch?  
 A. Back porch, yes, sir.

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30 SAMUEL RATNER, a witness produced on behalf of the defendant, being duly sworn on his oath, according to law, saith:

*Direct Examination by Mr. Stricker:*

Q. Mr. Ratner, you are a Rabbi of the local congregation here? A. Yes, sir.

Q. And have been here how long? A. Thirteen years.

40 Q. Do you know Max Swiller, the defendant here? A. Yes, sir.

Samuel Ratner—for Defendant—Direct—Cross.

Q. How long have you known him? A. Oh, nine or ten years.

Q. And do you have occasion to mingle with his friends and among the people? A. Yes, sir.

Q. Among whom he resides? A. Yes, sir.

Q. Do you know what his reputation is for morality and chastity? A. Well, I always heard of him good. 10

Q. Well, do you know what his reputation is? A. Good.

Q. You say it is good? A. Yes.

*Cross Examination by Mr. Streitwolf*

Q. Where do you live, Mr. Ratner? A. I live in Highland Park. Q. long have you been living in Highland Park? A. The last three years. 20

Q. Then when you testified to his reputation, you testified to his reputation in Highland Park? A. Well, reputation of New Brunswick where he lives, because I am here.

Q. How do you know—where is the synagogue in which you are the Rabbi? A. Richmond street.

Q. How often do you hold services? A. Twice a day.

Q. Every day? A. Yes, sir.

Q. So that you are pretty busy with your duties as Rabbi, your time is taken up pretty well? A. Well, not so well. 30

Q. How do you know that Mr. Swiller's reputation is good? A. Well, I never heard of anybody—

Q. For morality and chastity? A. I never heard of anybody talking in regards to morality or chastity against Mr. Swiller.

*Samuel Ratner—for Defendant—Cross.*  
*Louis J. Belloff—for Defendant—Direct.*

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Q. So you base your conclusion upon the fact that you never heard anybody say anything about it? A. I never heard anything against him.

MR. STREITWOLF: That is all.

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LOUIS J. BELLOFF, a witness produced on behalf of the defendant, being sworn on his oath, according to law, saith:

*Direct Examination by Mr. Stricker:*

Q. Doctor, where do you live? A. 222 George street.

20 Q. And what profession do you practice? A. Veterinary surgeon.

Q. And do you know Max Swiller, the defendant here? A. Yes, sir.

Q. How long have you known him? A. Why, ever since he came to New Brunswick. I can't the exact time, but I remember distinctly when he first came here.

Q. A number of years? A. A number of years.

30 Q. Your practice takes you into his neighborhood? A. Yes, sir.

Q. And throughout the entire city? A. Yes, sir.

Q. And do you know what his reputation is in the community in which he resides, as to his morality and chastity? A. Never heard anything against him up until this—

Q. Do you know what his reputation is, I am asking you? A. Well, it has always been all right as far as I know.

40

MR. STRICKER: Cross-examine.

*Louis J. Belloff—for Defendant—Cross.**Cross Examination by Mr. Streitwolf:*

Q. You base the conclusion upon the fact that you have never heard anything different, is that right, doctor? A. I didn't get that.

Q. You base your conclusion upon the fact that you never heard anybody say thing about him? A. 10  
No. I have had business dealing with him.

Q. So what you know about Max Swiller's reputation was through your personal association with him? A. That is in a business way.

Q. You have no occasion to have any social relations with his friends, social relations now, do you? A. That depends upon circumstances.

Q. And I will ask you what social friends you have relations with upon which you could predicate your conclusions? A. Well, I couldn't say, 20  
just his friends.

Q. You don't know who his friends are, you don't know who his acquaintances are, do you? Isn't it a mater of fact, doctor, that all you know is that you have never heard anything about Max Swiller's chastity or morality? A. I never heard anything about him, and I have had occasion of being called down there any time of the day and any time of the night, and whenever I came there, Mr. Swiller was in that office. 30

Q. Do you know what reputation means in the sense that it was asked of you? A. Well, I probably don't understand your question.

Q. Did you know what Mr. Stricker had reference to when he referred to the word "reputation?" (No answer.)

Q. If it was intended by you to give an expression as to how Mr. Swiller was held in general repute in the neighborhood where he resided, 40

*Louis J. Belloff—for Defendant—Cross.*  
*John Bernhardt—for Defendant—Direct.*

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do you think that you would be qualified to give an answer? A. Well, as far as I would know about him.

Q. Just based upon personal relations only? A. Exactly.

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MR. STREITWOLF: That is all.

MR. STRICKER: That is all, doctor.

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JOHN BERNHARDT, a witness produced on behalf of the defendant, being duly sworn on his oath, according to law, saith:

20 *Direct Examination by Mr. Stricker:*

Q. Mr. Bernhard where do you live? A. Ward Street, Lee Avenue.

Q. In the city of New Brunswick? A. In the city of New Brunswick.

Q. What is your business, Mr. Bernhardt? A. General contractor.

Q. How long have you lived in New Brunswick? A. All my life.

30 Q. How long have you known the defendant, Max Swiller. A. Oh, I suppose I wil about five or six years.

Q. And has he lived in New Brunswick during all that time to your knowledge? A. Yes, sir.

Q. Do you know what his reputation is for morality and chastity in the community where he resides, that is, in New Brunswick? A. No, sir.

MR. STRICKER: That is all.

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*John Bernhardt—for Defendant—Cross.*  
*George Bowne—for Defendant—Direct.*

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*Cross Examination by Mr. Florance:*

Q. What is your business, Mr. Bernhardt? A. General contractor.

Q. Have you ever worked for the Swiller's? A. Yes, sir.

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MR. STRICKER: This witness said he did not know his reputation.

MR. WLORANCE: Very well.

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GEORGE BOWNE, a witness produced on behalf of the defendant, being duly sworn on his oath, according to law, saith:

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*Direct Examination by Mr. Strickers*

Q. Mr. Bowne, where do you live? A. 121 French street, New Brunswick.

Q. What is your business? A. Well, at the present time I am head of the trucking firm of John Bowne and Sons.

Q. How long have you lived in New Brunswick? A. All my life.

Q. Do you know Max Swiller the defendant? A. Oh, yes, I know him.

30

Q. How long have you known him? A. Well, I should judge from about 1908.

Q. Up to the present day? A. Yes.

Q. Do you know what his reputation is in the community where he resides for morality and chastity? A. I should say very good.

MR. STRICKER: Cross-examine.

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*George Bowne—for Defendant—Cross.**Cross-Examination by Mr. Florence:*

Q. On what do you base that opinion, Mr. Bowne? A. Well, on the opinion of what the public and people in general thinks about a man.

10 Q. Have you ever discussed the reputation of Mr. Swiller with anyone? A. Well, I wouldn't—I don't know as I can answer that question just—

Q. Well, have you ever discussed the reputation for morality and chastity of Max Swiller with anybody? A. Well, I should say, yes.

Q. With whom did you discuss it? A. Well, I don't know. It was so long ago that I don't know as I could recall the name. It was when I was in the newspaper business.

20 Q. Then his reputation has been a matter of discussion in the newspaper world? A. Oh, no. It was only my own personal—

Q. On what do you base that opinion that you express of his reputation in the community for chastity and morality? A. Why, I base it on what—common knowledge, what people might think about him, or what they do think about him.

30 Q. Let us find out how you acquired that common knowledge. Whom did you converse with with regard to the reputation of Max Swiller for morality and chastity? Now, limit yourself to that.

THE COURT: And preceding October.

Q. And preceding October, 1913? A. Well, as I say, it is such a long time ago I don't know as I could specifically—

40 Q. You have a pretty good memory, Mr. Bowne? A. Well, I used to have.

*George Bowne—for Defendant—Cross.*

Q. That was while you were in the newspaper business? A. Exactly.

Q. And you have lost your memory since that time? A. Some of it, yes.

Q. As a matter of fact, you have never conversed with anybody about Max Swiller's reputation, have you, Mr. Bowne? A. Oh, yes. 10

Q. Now, who was that? A. Well, as I said before, I couldn't exactly say who it was, because it was possibly in 1909, 1910, when I started—or when I got interested in the trucking business.

Q. You were in the trucking business in 1909 and 1910? A. Yes.

Q. At the same time you were in the newspaper business? A. Exactly.

Q. And then did you ever do any work for the Swiller Brothers? A. No, sir; I did not. 20

Q. And what was the occasion for your ascertaining the reputation of Max Swiller for chastity and morality? A. Well, they wanted to do business with me and, of course, I wanted to know who I was doing business with.

Q. And did you do business with them? A. Oh, yes.

Q. You just said a moment ago you didn't do any business. A. I mean I didn't do any work. Possibly I didn't interrogate your question right. 30

Q. Then you distinguish between the words "work" and "business"? A. Oh, yes.

Q. What did you mean by business? A. Well, I mean if I ever did any contracting work, or hired teams to him, or something like that.

Q. As a matter of fact, then, you have done business with Swiller Brothers? A. Oh, yes, I have done business.

*George Bowne—for Defendant—Cross—Re-Direct.*

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Q. How long have you done business with them? A. Well, I should judge from about 1909.

Q. Right up to the present time? A. Yes, sir.

Q. Still working for them? A. Still doing business with them.

10 Q. And yet you can't say how you acquired your knowledge of their reputation for morality and chastity? Now, possibly integrity might be a different proposition. A. Exactly. Why, as I said, it is so long ago that I don't think I would be doing myself justice if I even attempted.

Q. As a matter of fact, you don't know anything about his reputation for morality and chastity, do you, Mr. Bowne? A. As I say, what common knowledge.

20 Q. Based upon what you can't say? A. Based upon what I have gathered from going around in the newspaper world.

MR. FLORANCE: That is all.

*Re-Direct Examination by Mr. Stricker:*

Q. How long were you in the newspaper business? A. From September until——

30 Q. Give us the number of years? A. From 1902 until June 29th, 1914.

Q. Eleven years? A. Yes. I have spent all my life in it up until these few months.

*By the Court:*

Q. Did you ever hear anyone discuss Max Swiller's relations from a sexual standpoint? A. Well——

*George Bowne—for Defendant—Re-Direct.*

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Q. Before October, 1913? A. I will say this, that I was always told that he was no friend of the ladies.

THE COURT: That is all.

MR. STRICKER: That is our case.

DEFENDANT RESTS.

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### STATE'S REBUTTAL TESTIMONY.

AUGUST C. STREITWOLF, a witness produced on behalf of the State, in rebuttal, being duly sworn according to law on his oath, saith:

A. August C. Streitwolf. I reside at Number 59 Livingston Avenue, New Brunswick; have an office at 40 Paterson Street, New Brunswick, New Jersey. Mr. Stricker, do you insist that I shall interrogate myself?

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MR. STRICKER: Could not the Prosecutor do that? It makes the work so much easier for us.

THE COURT: Put it in narrative form and then the Prosecutor can put the questions to you.

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A. The first conference with Tillie Esakov, and my first connection with the case, commenced about the early part of January, 1915. I advised a civil suit.

MR. STRICKER: Now, I do not want to impede Mr. Streitwolf's testimony, but I submit that—

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*August C. Streitwolf—for State—Rebuttal—  
Direct.*

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THE COURT: Do you object?

MR. STRICKER: I object to this.

THE COURT: Objection sustained. This is rebuttal.

10 MR. STRICKER: Exactly. I was going to suggest this be limited to rebuttal.

A. The only proposition of settlement that was presented to my attention—

*By the Court:*

Q. As I understand it, Mr. Streitwolf, you now go on the stand for the purpose of contradicting— A. Yes, sir.

20 Q. (Continued) —the specific allegations made by certain witnesses who asserted that a cash settlement was at different times proposed by you? A. Yes, sir.

Q. In consideration of the prosecutrix or her father or those who could influence her affecting an ending or termination of this criminal proceeding against the defendant? A. Yes.

30 Q. And that being so, I think that the proper way of meeting that is by taking up each one of those different interviews and confining yourself to what those different witnesses have said. And then you cannot only say, I never said so and so, but you can also state what you did say at that particular time. A. In reference to the conversation alleged to have been stated by Max Swiller on an occasion of having met me on a train the day before he gave bail, I never had any such conversation, or any conversation with him. It is true that I saw Mr. Swiller, his father and his

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*August C. Streitwolf—for State—Rebuttal—  
Direct.*

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sister-in-law at the Jersey City station of the Pennsylvania Railroad Company on the day prior to the time that he gave bail, on which occasion I was waiting for a tube train to take me to the Manhattan Transfer to make the train leaving New York at 10 o'clock, arriving in New Brunswick 11.11. I addressed no words of conversation to Mr. Swiller, to his father, or to his sister-in-law on that occasion, or on the occasion of arriving at New Brunswick, or on the train, or in fact, I never had a conversation with Mr. Swiller in my life. In reference to the statement, the four conversations that Mr. Abe Swiller testified to, the first in reference to the conversation at my office, it is true that he called at my office; he called at his request, not any emanating from me. He desired to know if it was not possible that this matter could be settled. I said, it may, it depended upon whether the Prosecutor of this county and the Judge of this court would approve of it. He then wanted to know what terms this case could be settled upon. I said, I am not permitted to discuss that, but there is one thing evident, it must be predicated upon a marriage.

MR. STRICKER: I object to this. This is not rebutting this testimony. This is giving Mr. Streitwolf's—

A. I deny the conversation as given by Mr. Abe Swiller on that occasion, when he says that I said the case could be settled for five thousand dollars to Tillie, two thousand dollars counsel fee, and a bond for the payment to the child of three dollars a week and four dollars a week. I used no such

*August C. Streitwolf—for State—Rebuttal—  
Direct.*

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10 words, or any words having that purport. What I did say was that I would see whether it would be permissible for us to enter into negotiations. In consequence of that conversation I did have a conversation with the Prosecutor of this county. My understanding with him was that nothing—

MR. STRICKER: I object to that.

THE COURT: Objection sustained.

A. On the occasion of the second conversation as testified to by Mr. Swiller, I deny all of that conversation.

*By the Court:*

20 Q. Is that the conversation, Mr. Streitwolf, at which he says both the girls and the father were there? A. No. That is the occasion when he said, if this money judgment was paid, everything would be all right, enter into negotiations for a settlement, or the case would be settled upon that understanding.

Q. Wasn't the second conversation that he referred to— A. That is the third, according—

30 Q. (Continued) —occurred on a Sunday two months— A. No. That was at my office. That is the third conversation.

Q. Proceed. A. The circumstances of that were this: That I had issued a writ of satisfaciendum out of the Circuit Court on the civil judgment—

MR. STRICKER: I object to this, although it is not harmful to us.

THE COURT: You cannot give what it was the result of.

*August C. Streitwolf—for State—Rebuttal—  
Direct.*

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A. I met this gentleman, that is, Mr. Abe Swiller, Mr. Philip Swiller, from New York, and Mr. Burton, at the office of Senator Van Cleef, at a time when the question of giving some bond in reference to the civil suit. That conversation was carried—

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MR. STRICKER: I object to this. I do not think any conversation at Senator Van Cleef's—

A. No conversation was there. That is the occasion of the testimony that he gave. It was carried over, or turned over to Mr. Burton's office when I was asked whether I would bring these people up from Baltimore, that is, Tillie and the father, for the purpose of seeing whether this matter could not be adjusted. At that time I said, I see no harm in bringing them up, that anything that was agreed upon that was satisfactory to them, was satisfactory to me, must be made first satisfactory to the Prosecutor of this county and to the Judge of this court. And we fixed a definite certain day and Mr. Esakov and Tillie Esakov and the baby came. Ida did not come. The meeting was at my office at two o'clock, or two-fifteen. They came on the train that got here close to two o'clock and I brought Mr. Esakov to my office, leaving Tillie there until I got my umbrella. It was raining. Mr. Phil Swiller from New York did not appear at the conference, nor did Max Swiller appear. Mr. Abram Swiller was there. There was nothing agreed upon. There was a discussion, but nothing agreed upon. I

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*August C. Streitwolf—for State—Rebuttal—  
Direct.*

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deny all that Mr. Abe Swiller said in reference to that discussion. The fundamental purpose of the appointment was to have——

MR. STRICKER: I object.

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THE COURT: Objection sustained.

A. The question of money, the question of marriage, the question of a bond, those features, or any of them, were not discussed on that occasion. The conversation was practically not held on account of the absence of Mr. Max Swiller and Phil Swiller. On the fourth occasion that has been testified to, Mr. Luckas, and Mr. Abram Swiller appeared at my house. I said on that  
20 occasion that I had not taken up this question with Tillie or the father, which is true, that anything first be subject to their approval, and would be subject to the further approval of Mr. Florance, the Prosecutor of this county, and Judge Daly, the Judge of this court, and that if an agreement could be arrived at, it would be pleasing to me on account of the fact of the girl and her child. I encouraged it at that conversation——

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MR. STRICKER: I object to that.

THE COURT: Objection sustained.

A. At that time I stated it should be borne in that we agreed upon, that was possible, would mind that Tillie had a civil suit for assault and that was one of these factors that was entering into my proposition which I made, subject to their approval, and subject to the approval of Mr. Florance and Judge Daly. At that time I did say that

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*August C. Streitwolf—for State—Rebuttal—  
Direct—Cross.*

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I thought it would be agreeable to all those interests if there was a marriage. That Tillie, I knew, would not live with him, that there would have to be a bond, with Abe and his father as surety, for the payment of three dollars a week for the support and maintenance of the child until the child became ten years of age, and four dollars a week from the age of ten to sixteen. I did say on that occasion that there should be, in addition to that, a payment of at least three thousand dollars for the injury to the girl herself. I said further that the marriage would have to be performed in New York to make the child legitimate. I find now I am in error in my expression of that law. I was in ignorance of a recent statute. I said further there would have to be a written acknowledgment by Mr. Max Swiller that he was the father of that child. I did all this in the interest of everybody concerned.

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*By Mr. Stricker:*

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

*Cross-Examination by Mr. Stricker:*

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Q. Mr. Streitwolf, the sum total of your negotiations were, that if Swiller married the girl and paid three thousand dollars, this prosecution would be abandoned? A. No, sir. At no time. I could not compound a felony under the law. I knew the law, Mr. Stricker. I have been practicing law fifteen years.

Q. Now, let us see: With the assistance of the Judge and the Prosecutor, a settlement of this

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*August C. Streitwolf—for State—Rebuttal—  
Cross.*

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kind would not be compounding a felony, would it? A. If the Court and the Prosecutor approved of it, predicated upon a marriage, in my estimation it is permissible. If I am in error, it is an error of law.

10 Q. What is compounding a felony, Mr. Streitwolf? A. Compounding a felony is where the immediate parties agree upon a money settlement for the purpose of defeating the ends of justice.

Q. Which usually is the abandonment of a criminal prosecution, isn't that so? Yes or no, Mr. Streitwolf? A. The abandonment?

20 Q. Yes, the abandonment of a criminal prosecution, the dropping of a criminal case? A. Without the consent of the Prosecutor. There can be no compounding a felony if it is with the consent of the Prosecutor.

30 Q. So, assuming that you and the Prosecutor of Salem County, for instance, got together for the purpose of abandoning a prosecution against Mr. Burton and myself for conspiracy, and the Prosecutor actually, mind you, I am speaking of the Prosecutor of Salem County, assented to it, would not that be compounding a felony? A. If the indictment was in Salem County and the Prosecutor of Salem County consented to it, it would not be compounding a felony.

Q. Had Swiller paid the three thousand dollars which you demanded— A. Yes.

Q. (Continued) —or which you requested? A. That is better.

Q. And the Prosecutor had assented? A. Yes.

40 Q. There would not have been any prosecution there, would there? A. I don't know. I would

*August C. Streitwolf—for State—Rebuttal—  
Cross.*

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have sent for the girl and her father and for Miss Loraine Rhinehart of Baltimore, Juvenile Probation Officer of Baltimore City. I will tell you what I would have done.

Q. I don't want to know what you would have done. Did you have authority from anybody at the time when you mentioned the sum of three thousand dollars? A. Positively not; I so stated it. 10

Q. So you made this request without conferring with the girl or without conferring with the father? A. And told them so at the time, that it was made subject to their approval, subject to the approval of the Prosecutor of this county and the Judge of this court. 20

Q. And all this time, Mr. Streitwolf— A. I didn't seek them. They sought me, Mr. Stricker. Don't get that idea in your mind.

Q. All this time, Mr. Streitwolf, you never consulted with Tillie or her father about these depending negotiations, did you? A. No, sir.

Q. And Tillie and her father were in entire ignorance of the fact that you were trying to settle this case? A. You are privileged to call them. I say no, sir. 30

Q. I don't want to call anybody. Are we to understand that, Mr. Streitwolf? A. I say—

Q. If you were bargaining or negotiating with Abe Swiller, or Max Swiller, for the suppression of this trial, or the abandonment of this case, call it whichever you choose—

THE COURT: There is such a great big difference between the two, do you think it

*August C. Streitwolf—for State—Rebuttal—  
Cross.*

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is right to put it, even under cross-examination, in that form?

MR. STRICKER: I do not know, your Honor, just which form to put it in.

10 THE COURT: There is a great big difference between the—it is objectionable to put a question of suppression or abandonment of this criminal prosecution, whichever way you wish to term it.

MR. STRICKER: All right, sir. I will withdraw that question.

Q. Are we to understand that these negotiations which were pending between you and Swiller, were without any authority whatsoever of your client? A. Yes, sir.

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Q. You never mentioned it to them? A. No, sir. I told them negotiations were under consideration. That is the extent of it.

Q. And you didn't mention any figures to them? A. No, sir.

Q. Nor the probable figures? A. No, sir.

Q. And did you think that you could—that you had control of this prosecution to an extent where you could name your own figure? A. No, sir. They were under control of Miss Loraine Rhinehart, the Juvenile Probation Officer of Baltimore City.

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Q. Did you think that you had the authority to mention this figure of three thousand dollars without consulting with your client? A. I know I not only thought that I did not have it, but I said I did not have it; I said it was subject to their approval and subject to the approval of the

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*August C. Streitwolf—for State—Rebuttal—  
Cross.*

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Prosecutor and Judge of this court.

Q. Wasn't there something said at some time since this prosecution commenced about ten thousand dollars? A. No, sir; at no time.

Q. Or eight thousand dollars? A. No, sir.

Q. Or six thousand dollars? A. They computed the payments what this three dollars and four dollars a week would have aggregated. I never computed it, and I think possibly that is where that may have arisen. I never computed it.

Q. What did that total up to? A. I never figured it.

Q. And three thousand dollars is the only sum that you ever suggested, Mr. Streitwolf? A. No. Before that Mr. Burton called at my home one night in May.

Q. As representing Mr. Swiller? A. Well, he was his attorney. I assumed he represented him. Mr. Burton and I had a talk. It was understood just my position, that I had no authority to speak. I was hoping to see a conclusion of this arrangement, if it could be, and that was on the lines we talked. He made no definite proposition, and I made none. We both understood the law. We could not do anything without subjecting ourselves to criminal liability, if it was not predicated upon the consent of the Prosecutor of this county and the Judge of this court. We understood it.

Q. No figures mentioned at that time? A. Yes.

Q. What figures? A. Well, I say there was a discussion there.

Q. I am asking you what figures were mentioned, Mr. Streitwolf? A. He offered three—I think my figures at that time were five thousand

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*August C. Streitwolf—for State—Rebuttal—  
Cross.*

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dollars and the bonds, and at that time he offered me thirty-five hundred dollars.

Q. And did you have any authority at that time— A. No, I never had any.

10 Q. One moment. Did you have any authority at that time, either from the prosecuting witness, or the father, to dispose of this matter for five thousand dollars? A. No, sir; at no time have I had any authority, Mr. Stricker.

20 Q. By what right did you undertake to negotiate for three thousand dollars? A. Just an instrument in the way of bringing about something that could be satisfactory to everybody, and when I say everybody, I mean as well Mr. Florance, Prosecutor of this county, and Judge Daly; and Mr. Burton, and I then suggested what was to be framed for the paper, in order that there might be a public announcement of it. If everything could be arranged, I have been actuated by good motives. My motives may have been mad. Particularity when I—

Q. Isn't it a matter of fact, Mr. Streitwolf, that your fee is tied up in that three thousand dollars?

30 A. No, sir. I don't want any fee, sir. There is no fee to be had from this case.

Q. Because there is no three thousand dollars? A. And if there was, Mr. Stricker, you could have made any disposition of that three thousand dollars, by a trust fund, or anything else.

MR. STRICKER: I object to this. That is all, Mr. Streitwolf.

THE COURT: I do know about that. There has never been any suggestion, ex-

*August C. Streitwolf—for State—Rebuttal—  
Cross.*

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cepting once, that he demanded any fee, and that is by Abe Swiller, and now you are asking him. I think he has full right to explain his attitude on that particular proposition, if he wants to.

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A. Thank you. I would say this, that the girl was a minor and could not—

MR. STRICKER: One moment, Mr. Streitwolf. I was only actuated by his voluntary statement what his motive in this whole thing was.

A. I will answer that.

MR. STRICKER: The highest motives. 20

A. The girl was an infant and she could not sign. The matter could have been provided for in trust; upon arriving at age she could have signed a release.

Q. Mr. Streitwolf, if the man married that girl, he became her legal guardian, didn't he? A. Yes.

Q. Would any trust be necessary under those circumstances? A. To place the money in her control. 30

THE COURT: Would he, as a matter of law, become her legal guardian?

A. No, sir.

THE COURT: He would become her natural guardian, but as such natural guardian he would not have been entitled to receive any money that belonged to her, 40

*August C. Streitwolf—for State—Rebuttal—  
Cross.*

*Leah Kahme—for State—Rebuttal—Direct.*

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10 unless he was first appointed her legal guardian, and he would not have been entitled to be appointed her legal guardian unless with her consent, if she was over fourteen years of age.

MR. STRICKER: Well, she was over that age.

THE COURT: Yes, and, of course, she could have nominated him. It may be the husband might have the right. There would have to be a bond before he could be guardian.

20 *By Mr. Stricker:*

Q. Would not he, as the father of that child, be legally obliged to support it? A. Yes. If the girl refused to live with him and lived home with her father with the child, there might be some question how far he would be obliged to support that child when the custody of it was in the mother's hands, and he demanded possession of it.

MR. STRICKER: That is all I have.

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LEAH KAHME, a witness produced on behalf of the State, in rebuttal, being duly sworn according to law on her oath, saith:

*Direct Examination by Mr. Streitwolf:*

Q. What is your name? A. Leah Kahme.

Q. Where do you live? A. Perth Amboy, New Jersey.

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*Leah Kahme—for State—Rebuttal—Direct.*

Q. Two weeks ago were you in Baltimore?

A. Yes, sir.

Q. Did you see Tillie Esakov, this girl? A. Yes, sir.

Q. Endeavored to purchase a stove from her?

MR. STRICKER: I object to this. I would like to have Mr. Streitwolf make an offer what he intends to rebut by this witness. 10

THE COURT: Yes. What is the offer?

MR. STREITWOLF: I want to find out if she was sent down by Mr. Swiller.

MR. STRICKER: All right then.

THE COURT: Answer the question.

(Question repeated by stenographer.) 20

THE COURT: I will allow it. Unless it is connected it does not amount to anything.

A. Speak to me plain, that I should be able to answer to your questions.

Q. Did you see Tillie in the store of her father?

A. I showed him—

MR. STRICKER: I object to this. There has been no foundation laid for anything of this kind. 30

THE COURT: Objection sustained.

*By the Court:*

Q. Why did you go to Baltimore? A. To my relations for a visit.

*Leah Kahme—for State—Rebuttal—Direct.*

*By Mr. Streitwolf:*

Q. Who are your relations? A. To my relations.

MR. STRICKER: I object to that. How is this rebuttal?

10 THE COURT: What is the offer? Is it the offer that either the defendant, or someone acting under him, sent her to see this girl?

MR. STREITWOLF: I want to show that, yes. There was an admission given down there and I want to know if it was with authority.

Q. Who sent you down there? A. Nobody.

20 Q. How long have you known Mr. Max Swiller?

MR. STRICKER: I object.

THE COURT: I will allow that.

A. Since I know Max Swiller? For several years.

Q. When did you see him before you went down there? A. I don't know. I couldn't remember. I didn't see him for a long time.

30 Q. When you were down there you suggested an offer to Tillie, did you not?

MR. STRICKER: I object to this. This is not rebuttal.

THE COURT: How is this competent, Mr. Streitwolf?

MR. STREITWOLF: It would be if I could connect the defendant with it. Otherwise not.

40 THE COURT: I know, but what was there brought out on the direct examina-

*Leah Kahme—for State—Rebuttal—Direct.*

tion, or the direct case, either through the direct examination or the cross-examination of Max Swiller, of anyone acting under his direction or domination that connects him with this woman. Max Swiller was asked the question whether he knew this woman. What further was he asked? 10

MR. STRICKER: Whether he had sent somebody down there. I do not know whether it was this woman.

MR. STREITWOLF: Whether he sent this woman down.

THE COURT: You can ask her plainly that question.

MR. STRICKER: He has asked her and she has denied it. She has answered it, rather. 20

Q. What relatives have you down there?

MR. STRICKER: I object to that.

THE COURT: Where is this leading?

MR. STREITWOLF: Cross-examination.

THE COURT: Cross-examination of your own witness?

MR. STREITWOLF: She is undoubtedly a hostile witness. 30

*By the Court:*

Q. Did Max Swiller send you to Baltimore?

A. No, sir.

*By Mr. Streitwolf:*

Q. Who did? A. I went myself to my relations for a visit.

Q. Why were you interested in this case?

*Samuel Esakov—for State—Rebuttal—Direct.*

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MR. STRICKER: I object on the ground this does not rebut anything.

THE COURT: No, it does not.

MR. STREITWOLF: I will withdraw the witness.

10 MR. STRICKER: That is all.

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SAMUEL ESAKOV, a witness produced on behalf of the State, in rebuttal, being duly sworn according to law on his oath, saith:

*Direct Examination by Mr. Streitwolf:*

Q. How old are you, Sammy? A. Twelve years.

20 *By the Court:*

Q. How old did you say you were? A. Twelve.

Q. Where were you born, Sammy? Do you understand that? A. Iselin, New Jersey.

Q. Do you go to school, Sammy? A. Yes, sir.

Q. Do you go to church, the synagogue? A. Yes, sir.

Q. Who is God? A. He rules the world.

30 Q. Do you know what an oath is, Sammy? A. Yes, sir.

Q. What is it? A. It means if you say it bad you go to Hell.

Q. And if you say it right you go to Heaven? A. Yes, sir.

Q. Then a little boy that puts his hand on the Bible there and tells an untruth, you feel that he will be sent to Hell by God, do you? A. Yes, sir.

40 THE COURT: Proceed with the witness.

*Samuel Esakov—for State—Rebuttal—Direct.*

*By Mr. Streitwolf:*

Q. Do you remember when you were living on the farm near Metuchen? A. Yes, sir.

Q. After you left the farm where did you go? A. Max Swiller's.

Q. Who was with you? A. My mother and my father. 10

Q. How long were you at Max Swiller's? A. About a week.

Q. From there where did you go? A. Baltimore.

Q. When you came to Max Swiller's, how did you get there? A. A wagon.

MR. STRICKER: I object to this. How is this rebuttal? 20

THE COURT: Max Swiller said this boy was never there.

MR. STRICKER: The boy said he was. What difference does it make how he got there?

THE COURT: In corroboration of the boy. Any detail in corroboration may be brought out.

MR. STRICKER: The means of getting to Max Swiller's was not put in issue. 30

THE COURT: I do not know. The witness simply saying yes, I was there, if he can give details——

MR. STRICKER: Max Swiller swore two boys were there for two nights. Now, the boy said he was there a week. And he denied the mother was there, and the boy said she was.

MR. STREITWOLF: The mother denied she was there.

THE COURT: You cannot go much further than that in rebuttal, Mr. Streitwolf. However, I will allow that last question.

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MR. STRICKER: I submit this is immaterial anyway. This is a contradiction on an immaterial point.

MR. STREITWOLF: This is rebuttal of the fact Mr. Swiller, as I recall it, denied that he brought the corn from there. The bringing of the corn, if I recall the circumstances right, is one circumstance.

THE COURT: I will allow it.

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MR. STRICKER: If I recall the rule of rebuttal testimony it is that you may contradict a witness on something material, but this is not a material part of the case at all.

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THE COURT: It is in evidence that this woman, the mother of this child, testified, and on a ground of showing the relationship, as to whether friendly or otherwise, with this defendant, it goes to the question of motive of her testimony, and as to the credibility to attach to her testimony. Now, the defendant denied that this woman was ever at his house. This boy says that that she was at this defendant's house. Now, I do not see that you can go into any further details as to that particular. Now then, what is there about the corn?

MR. STREITWOLF: Well, there is this: I do not know whether it exists, I

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*Samuel Esakov—for State—Rebuttal—Direct.*

imagine it does, by the boy's testimony, or I would not ask him——

MR. STRICKER: Then I object to his asking any questions that he does not know whether exist or not. This is not a fishing expedition at this point.

MR. STREITWOLF: I am not going on a fishing expedition. That this boy, the mother and another boy rode from the farm to Max Swiller's, and on that occasion the corn was brought in, and the corn was husked at the time.

MR. STRICKER: I object to that as not being rebuttal.

THE COURT: Has that been brought out on direct examination?

MR. STREITWOLF: Tillie says that the corn, as I recall her testimony, the corn was husked. I called her, you will remember, your Honor, to show that she was sent there after the corn was husked. Now, that is an important fact. After that event the wagon is there and Mr. Swiller was placed on the wagon—we will place him on the wagon and place the mother and the two boys on the wagon, and we have a ride from that farm in to New Brunswick, and they are stopping there one week. I think it is important, your Honor. I think it is very important.

MR. STRICKER: If that was an important fact, and if the other side saw fit to dignify it as an important fact, should it not have been brought out?

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*Samuel Esakov—for State—Rebuttal—Direct.*

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MR. STREITWOLF: I laid the basis for it on cross-examination all through.

MR. STRICKER: Yes, but you cannot lay a basis for a cross-examination for your entire case and substitute questions on cross-examination in lieu of those that you could have proven by direct evidence.

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MR. STREITWOLF: I did not see the relevancy on the direct case.

MR. STRICKER: Well, I submit that if it is to be argued, or if it is claimed in this case that by reason of the mother's relationship this visit was made, or for any reason, and it was deemed of sufficient importance, that that should have been made a part of the State's case.

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MR. STREITWOLF: If there is contradiction of it, which I have shown, am I not permitted now——

THE COURT: Did the defendant deny that he brought the corn in?

MR. STREITWOLF: Yes, sir.

THE COURT: Did he?

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MR. STRICKER: My recollection of the testimony is that he purchased the corn. That was admitted.

MR. STREITWOLF: He said he was not on the farm. I placed him right there and asked him about it and spoke about the wagon.

MR. STRICKER: My memory of the testimony is that as far as anybody went was to say that he purchased the corn. But these are all immaterial things. We cannot try a case of this character and split

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Samuel Esakov—for State—Rebuttal—Direct.

hairs on every little point or detail. This is getting away from the issue to a great extent.

THE COURT: I do not think it is straying away from the issue in this case. If this defendant said he never was on the farm, it is proper rebuttal to show that he was on that farm.

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MR. STRICKER: He did not say so.

MR. STREITWOLF: After July, 1913.

MR. STRICKER: I am certain that he never denied having been on that farm. Even then, that wasn't the place this alleged assault took place.

THE COURT: If it came out on cross-examination, and came out without objection, and it is in, it would be proper on rebuttal to show that he was not telling the truth under cross-examination, going to the question of the credibility that the jury is to accord to his testimony.

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MR. STRICKER: As I understand the rule, on something material.

Q. Who was in the wagon?

THE COURT: When?

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Q. After you left the farm you testified you went to Max Swiller's? A. Yes, sir.

THE COURT: When did he leave the farm?

Q. When did you leave the farm, do you remember? A. No, sir.

Q. You don't remember the year?

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Samuel Esakov—for State—Rebuttal—Direct.

MR. STRICKER: I object to that.

THE COURT: Why?

MR. STRICKER: He says he does not remember.

THE COURT: All right. A young boy.

10 Q. Do you remember the year? A. I don't remember.

Q. Do you remember the occasion of your leaving the farm? A. Yes, sir.

Q. And where did you go? A. Max Swiller's.

Q. Directly from the farm? A. Yes, sir.

Q. How did you go?

MR. STRICKER: One moment.

20 A. Wagon.

MR. STRICKER: One moment. I object to this. This certainly is not rebuttal.

THE COURT: Objection overruled.

Exception allowed, sealed accordingly.

PETER F. DALY,

Judge,

(Seal)

30 Q. Whose wagon was it? A. Max Swiller's.

Q. Who was in the wagon? A. My mother, my brother and myself and the man.

Q. Anybody else? A. No, sir.

*By the Court:*

Q. What man? A. Working man.

*By Mr. Streitwolf:*

40 Q. How long did you stay at Max Swiller's?

*Samuel Esakov—for State—Rebuttal—Direct.*

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MR. STRICKER: I object to that. That has been answered. He said about a week.

Q. After that where did you go? After you left Max Swiller's? A. Baltimore.

Q. And joined your father there, and the rest of the family? A. Yes, sir. 10

Q. After that at any time did you have occasion to go to New York? A. Yes, sir.

Q. Who with? A. My mother.

Q. When did you go to New York after you got to Baltimore?

MR. STRICKER: I object to this because it is not rebuttal.

THE COURT: Did not Max Swiller say that he never was with the mother in New York? 20

MR. STRICKER: Yes, he did say so. But why isn't this witness asked whether at any time in New York——

THE COURT: Yes, I think you can come to the point quicker than you are.

*By the Court:*

Q. Did you ever see Max Swiller with your mother in New York? A. Yes, sir. 30

Q. When? A. We went to New York.

Q. Where in New York? A. Tenth street.

*By Mr. Streitwolf:*

Q. Who lived there at the time? A. My sister.

Q. Sister who? A. Florence.

*Samuel Esakov—for State—Rebuttal—Direct—  
Cross.*

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Q. Did you see him on more than one occasion there? A. Yes, sir.

Q. How many? A. Two.

10 Q. Do you remember how long that was after you went to Baltimore that you went to New York?

MR. STRICKER: I object to that.

MR. STREITWOLF: I will withdraw the question.

Q. Was that before Lena's wedding that you went to Baltimore?

MR. STRICKER: I object to that.

20 A. I can't remember.

MR. STREITWOLF: I will withdraw the question. Your witness.

*Cross-Examination by Mr. Stricker:*

Q. How long since you have seen your mother, young man? A. What do you mean?

30 Q. Since the last time you saw your mother? How long ago? A. About two years.

Q. And since that time you have been living with your two sisters and your father down in Baltimore? A. Yes, sir.

MR. STRICKER: That is right. That is all.

*Ida Esakov—for State—Rebuttal—Direct.*

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IDA ESAKOV, recalled.

*Direct Examination by Mr. Streitwolf:*

Q. I hand you a letter marked Exhibit P-1 for identification, and ask you when you saw that letter, if ever.

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MR. STRICKER: I object to this.

THE COURT: Why?

MR. STRICKER: Because it is not rebuttal.

THE COURT: I will allow it.

MR. STRICKER: I submit Mr. Streitwolf ought to indicate to us what he intends to rebut.

THE COURT: Privately tell Mr. Stricker.

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MR. STRICKER: I object to it. She was asked if that was her letter and she denied it.

THE COURT: Suppose this girl can prove that it was her letter?

MR. STRICKER: I do not understand that is the purpose of this examination.

THE COURT: It cannot be any other purpose. If it is, it is not proper.

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Q. I hand you that letter marked P-1 for identification, and ask you when you saw that letter?

A. I saw this letter in April.

Q. What year? A. 1914, in the headquarters at Baltimore. This letter was taken from——

Q. Where? A. In headquarters, Baltimore City.

Q. Police headquarters? A. Yes, sir.

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*Ida Esakov—for State—Rebuttal—Direct.*

Q. Who was present on that occasion? A. My mother, sister Florence, father, sister Tillie, Captain McGovern, Miss Harvey, a police woman, Detective Hammersla, Detective Hogan and myself.

10 Q. First let me ask you if you know your sister's handwriting? A. I do.

Q. Have you ever seen her write? A. Yes, sir.

Q. At that time was that letter produced in your presence and in the presence of Florence?

MR. STRICKER: I object to that.

THE COURT: Objection sustained. I do not see the necessity of all these questions.

20 *By the Court:*

Q. Do you know whose letter that is? Do you know who wrote that letter? A. Florence.

Q. How do you know? A. Because this is a letter that was wrote in the post office, which was taken from my mother and my sister Florence—

MR. STRICKER: I object to this, and move it be stricken out. That is not a responsive answer.

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Q. Was it written in your presence? A. No. This was taken at the headquarters in my presence. This letter was obtained in front of all of us, and he asked Florence did she write this letter First she denied and then she said yes. My mother told me to.

MR. STRICKER: I move that be stricken out.

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*Ida Esakov—for State—Rebuttal—Direct.*

THE COURT: Why? There is an admission from this girl, according to this witness, that she had written that letter.

MR. STRICKER: That is all right. Supposing she had written that letter? This letter is written to "Dear Max." Where is there any evidence that the letter was ever sent? 10

THE COURT: We have not reached the point of admitting that in evidence yet. Simply now whose letter is it? I do not know what the contents are, and do not intend to admit it until I see what the contents are, and whether the defendant can be chargeable with it.

Q. I hand you this envelope and ask you if you ever saw that envelope before, Identification P-4 for reference? A. I did. 20

Q. On what occasion? A. This letter was inside of this envelope.

Q. On the occasion when Florence said that she wrote that letter, what did Florence say in reference to the writing of it?

MR. STRICKER: I object to that. The letter speaks for itself. And certainly this cannot be rebuttal. 30

THE COURT: Why not?

MR. STRICKER: Why, because he established one fact last night in the cross-examination of sister Florence. He asked her whether this was her letter, and she said it was not. Now, then he rebuts that by this witness by saying it is her letter. Can he go into any conversations down in 40

*Ida Esakov—for State—Rebuttal—Direct.*

10. Baltimore, and at this time; when I have no opportunity to meet this kind of testimony? And if those letters—I have not seen them—if they are of any evidential force whatsoever, I apprehend that they should have been made part of the State's case.

THE COURT: They should have been certainly—I do not know that they should be made part of the State's case, but certainly the defendant should have been taxed with these letters under cross-examination at least. And he has not been asked any questions, as I understand.

20. MR. STREITWOLF: The situation is this: That letter, I asked the mother last night if that was her signature. She denied it. I want to show that it is her signature. I also asked Florence if she didn't write that letter, and she denied she wrote that letter. I asked her if her relations with Mr. Swiller were not friendly. She denied that.

30. THE COURT: How are you going to prove that Max Swiller got this letter?

MR. STREITWOLF: I do not want to prove that circumstance. I want to contradict Florence and the mother.

THE COURT: Yes, but I am not going to let you contradict Florence on a matter that, if it is introduced, may tremendously prejudice the proper rights of the defendant himself.

MR. STREITWOLF: But it goes to the motives—

*Ida Esakov—for State—Rebuttal—Direct.*

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THE COURT: It may go to that. She denied she sent that letter. Now, if you can connect this defendant with that letter—suppose he had nothing to do with it whatever, and yet she wrote the letter and sent it to him, and it was against his will and against his mind? Do you think it would be proper to put that in as evidence against this defendant, even though it would indicate a lack of veracity upon the part of that particular witness? Unless you can connect that letter with this defendant and show that he received it, and willingly received it, and was a party to it, then I will not admit that letter.

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MR. STREITWOLF: Assuming for the purpose of argument that the mother and Florence testified to a certain set of facts which are injurious to the State's case, and this letter, assuming that it was signed by the mother, and written by the daughter, would put an entirely different aspect to the effect of their testimony, does it not go to the merits of this case?

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THE COURT: That is on the assumption that simply because a defendant is a defendant, that he is responsible for all the witnesses that he has to call. Now, that witness may have been prejudiced in favor of this defendant, she may have been hostile to the State, may have been called by the defendant's counsel at the suggestion of the defendant himself. Notwithstanding all those things, unless he is connected with so material a matter as this, I have

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*Ida Esakov—for State—Rebuttal—Direct.*

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10 read the letter, it would result in the depth of injustice to allow that to go in because of the extensive effect that it might have upon the jurors' minds as to the very heart of the offense itself. And there are many things that ordinarily are admissible in a collateral way that cannot be admitted in the just trial of a criminal case because of the danger of destroying the very res gestae of the case itself. And that is this situation.

20 MR. STREITWOLF: Yes, but the mother and daughter are witnesses to the res gestae of this case, in the sense they saw the girl left in September, in the morning, and came back in that afternoon, whereas we contend it happened on October 21st, and she remained there all night.

30 THE COURT: I do not want to go on and analyze that letter, because it would not be fair. Jurors are human, and no matter how hard they may try, those matters that are human in themselves, they have a most telling effect. This girl denied that she wrote that letter. Her sister says that is her letter. You connect that letter with Max Swiller, or I will not admit it.

MR. STREITWOLF: I cannot do it. I will withdraw the witness.

William Esakov—for State—Rebuttal—Direct.

WILLIAM ESAKOV, a witness produced on behalf of the State, in rebuttal, being duly sworn according to law on his oath, saith:

*Direct Examination by Mr. Streitwolf:*

Q. Mr. Esakov, did you ever tell Meyer Teret-sky that you would ruin Max Swiller? 10

MR. STRICKER: I object to that.

A. Never did.

MR. STRICKER: This question was asked on cross-examination.

THE COURT: Right.

MR. STRICKER: And foundation laid.

MR. STREITWOLF: Was there a foundation laid for all of that? 20

MR. STRICKER: Yes, sir. Denied on one hand and affirmed on the other. Your client denied that he ever said anything of the kind.

MR. STREITWOLF: That is, with all witnesses?

MR. STRICKER: Yes. I mentioned two witnesses.

THE COURT: As I understand it, this witness was asked under cross-examination if he did not say those things to those two men, and he absolutely denied it. 30

MR. STREITWOLF: That is all.

MR. STRICKER: I should like to know which of the two counts in the indictment the State relies on for conviction.

MR. FLORANCE: On the whole indictment.

William Esakov—for State—Rebuttal—Direct.

Mr. Streitwolf sums up the case for the State.

Mr. Stricker sums up the case for the Defendant.

Mr. Florance sums up the case for the State.

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**Charge to the Jury.**

Charge to the jury by HON. PETER F. DALY,  
Common Pleas Judge, as follows:

*Gentlemen of the Jury:*

20 You are about to pass upon the guilt or innocence of a man who has been charged with the commission of a serious crime, be it the crime denominated under the first count in the indictment, or the one named in the second count in the indictment. I know how difficult it must be for a full-blooded man, subject to the emotions that men have, to divest himself of the ordinary sympathies and prejudices that are naturally incident to every warm-hearted and normal man. But for  
30 men to be jurors, intelligent jurors, and honest jurors, they must do that very thing. We have no right to substitute our idea of what is right or wrong for what the law declares to be right or wrong. You have no right to interpose your sympathies, your bitternesses, your love or your prejudices in the make-up of the mental result as jurors. You must take the facts cold-bloodedly, dispassionately, and, recognizing your oaths of office as jurors, pass on those facts without fear  
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*Charge to the Jury.*

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or favor, without being influenced by any un-  
toward causes whatever. You men have to pass  
on the question of fact, that is a province that is  
entirely within your control and right. But you  
must apply those facts according to the law as  
the Court gives it to you. The Court indeed has  
a right, if not a duty, to give his own views as to  
the impressions the evidence has made upon him,  
but if he does, it is simply for the purpose of  
assisting you in a proper, correct, accurate and  
honest determination of the evidence. And it  
must always be done with the complete under-  
standing by you, forcibly expressed by the Court,  
that you can absolutely ignore any impression  
that you may think the Court has as to the guilt  
or innocence of a defendant, from the question of  
the standpoint of fact. At the same time, while  
you are the men to pass on the question of fact,  
you are false to your oaths of office, if you ignore  
the relevant facts in the case and attempt to allow  
your own individual judgment, as divested or  
divorced from all thought of the relevant evidence  
in the case, to go to the make-up of your verdict,  
be it that for guilt or for acquittal.

The Grand Jury of this county has indicted this  
man under three counts; one charges him with the  
crime of rape; that is the first; the second charges  
him with the crime of carnal abuse, and the third  
charges him with the crime of assault and battery.  
I say to you right now you may absolutely ignore  
the third count in the indictment, because if he  
is not guilty of either the first count or the second  
count, there would not be sufficient evidence in  
this case to justify a finding of guilty of the third  
count.

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*Charge to the Jury.*

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10 It is just as potent a force in the proper administration of justice to-day as it ever was. The full recognition of the principle that in the disposition of criminal cases you have no right to find a man guilty of any charge made against him unless you honestly think that he is guilty, and this without their being a reasonable doubt in your mind about it. That principle is just as keenly alive to-day, as I have suggested, as ever in the history of the administration of law; but it is not to be exerted by the cowardly juror for the purpose of balming his conscience through the creation of an artificial doubt to avoid his duty, be his duty either to acquit or convict, as a matter of right and as a matter of evidence, and  
20 as a matter of law. And the very word "reasonable" in itself is the best indication to the ordinary lay mind of what reasonable doubt means. What would you consider reasonable in the most important affairs of your own life? If you have not an abiding conviction, that is, a settled conviction, to a moral certainty of the guilt of the defendant, after a full consideration of all the relevant evidence in the case, then you have what the law knows to be a reasonable doubt. A settled  
30 conviction to a moral certainty, after a full consideration of all the relevant evidence in the case. That does not mean every doubt. It does not mean even a possible doubt. It does not mean an artificial or an imaginary doubt. Everything relating to human affairs is susceptible to a possible doubt. If it were that, there is a possible doubt, isn't there, to almost everything? It means a reasonable doubt.

*Charge to the Jury.*

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There is another principle of law, and that is, that it is the right of the accused to have all the relevant evidence, including that relating to his good repute, considered by the jury, and if on such consideration there exist reasonable doubt of his guilt, even though that doubt be engendered, that is, made merely by his good reputation, he is entitled to an acquittal. 10

There is another thing that I feel should be specifically called to your attention. It necessarily has come out in this case that this defendant had a judgment recovered against him in a civil suit, which civil suit involved practically the same transaction involved in the disposition of this indictment, and I want to charge you that the fact, which necessarily must have come to your consciousness, that such a verdict was rendered against this man cannot honestly or lawfully be applied by you to any degree in the determination of this case. 20

Another extraneous matter, and when I say extraneous, I mean it in the sense that it does not go to the vitals or heart of the thing, but still is competent evidence, that has been brought in this case, is the question that there have been offers of settlement made. That has been discussed quite comprehensively both by the counsel for the defendant and by the Prosecutor of the Pleas of this county. The only reason such evidence as that was admitted was for you to consider it as to whether or not it affected the weight that you were to give to the testimony of those who had expressed or exerted a desire to get money out of this case; whether that establishes to your mind a motive on their part to use the criminal 30

*Charge to the Jury.*

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10 machinery of the County of Middlesex for the purpose of working money out of the defendant. That claim that money was asked for in settlement, of course, could not bind the State; it could not bind the Court; it could not bind the jury. In all these cases it is not the individual that is the legal prosecuting party to the case. It is the State of New Jersey on one side, and it is the defendant on the other side, and the State is not even bound by the actions of these witnesses or complainant, but those outside matters may be brought in so that you may get at the motive, if they indicate motive, and so that you may properly gauge the credence that is to be given to their testimony. And in this case it must be remembered that there was always the individual injury there.

20 Much has been said about compounding a felony, and compounding a felony, to put it in language that will be within your complete comprehension, is this: that no man has a right to agree to the suppression or termination of the ordinary processes of law in a criminal matter, for a money consideration, or any other improper consideration. And yet to give a crude illustration, if a man should knock you down in the street and injure you, it would be your duty to make a complaint against him, not for the personal wrong done you, but because while it would be natural for you to be the particular man to do so, because there was a personal wrong done, yet it would not be because of personal wrong done you, but because the law of the State of New Jersey had been violated; yet you also would have every lawful right not only to sue for the injury that was done

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*Charge to the Jury.*

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to you personally, but to make a settlement for the injury that was done to you, as long as that settlement was not based upon a promise, or agreement, expressed or implied, to stop the criminal law from being properly exerted in seeing that the dignity and power of the law itself that had been outraged was fully recognized and satisfied. And so these people had the right to look for money for the support of this child, for example, and they certainly had the right to use every honest and lawful means, if this man was the father of that child, to legitimize that child through marriage, which fortunately now can be done under the statute of this State, and they had a right to use every lawful and honorable means in their power to see that this girl was given the name of wife, if she was the mother of a child by this defendant. But no matter what was done, even though their motive was base and they desired and intended to make these offers on the basis of getting the money itself, getting the marriage itself, and as the result of that they would keep away in Baltimore; yet the State is not estopped from proecuting a crime which has been committed against the laws of this State, and you must remember that. That evidence has been admitted simply for the purpose of going to the motives of these people, if it does go to their motives, and going to the credibility of these people.

The first count in the indictment is that of rape, one of the most heinous offences known to our law. And what is rape? To again put this to you in such practical every-day language that it will be completely within your comprehension: rape is

*Charge to the Jury.*

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the carnal knowledge of a woman forcibly and against her will. Carnal knowledge means sexual intercourse; and rape is the sexual intercourse of a woman forcibly and against her will. It is the duty of a woman to defend herself, or rather, put it this way: before there can be the crime of rape, it must be shown that the woman has exerted all the force reasonably within her power to prevent the intercourse, or there is no rape; or it must be shown that her will has been so subservient through fear, that she had no physical power of resistance, or that through that fear, considering that fear, she reasonably used all the power of resistance that was within her. And so it is when you come to measure what extent of resistance there should be, you naturally compare the man and the woman. You have a right to consider the irrespective ages; their respective physical build. You have a right to consider the age of the girl, her mental and her physical maturity from the standpoint of years, or from the standpoint of any natural causes. You have a right to consider whether a girl fifteen years of age has the power, or the same extent of power, that you would expect from a mature woman of twenty-five or thirty years of age. You have a right, as in this case to consider that this girl, at the time she was assaulted, if she was assaulted, was six day less than fifteen years of age, and that this man must have been about thirty-three years of age, because he testified on the stand he is thirty-five now. And so it is that you take those things into consideration. It must be also remembered in this case that this girl said that this man threatened to kill her. Was she put in such fear that

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*Charge to the Jury.*

she was practically supine, if I might use that term, that she had no power of resistance, simply could lie there? That is for you gentlemen to determine. Don't we know, as a matter of common observation that there may be many women that are so temperamentally and mentally built that they are easily frightened, and that ordinarily while they may be in good robust health, yet they go all to pieces, as that common expression is used? So you have to think of all those things, but while you are thinking of all those things and determining them, still remember that the law is there, before there can be rape you must believe beyond a reasonable doubt that under all the circumstances the girl who was assaulted, if she was assaulted, used all the physical power that she could be reasonably expected to use under the circumstances, the limit of her physical power under the circumstances, or else that the physical circumstances were so arranged through fear and through the physical surroundings, or rather through the fear her mind was so weakened and subverted, the power of resistance was practically gone, or at least that she used such physical power of resistance as her frightened condition would permit her to use.

There is a difference between the crime of carnal abuse and rape. Our statute provides—and I do not generally refer to this—our statute provides that in case of conviction of crime of rape there is a possible sentence of a maximum sentence of thirty years, and that is whether the rape is committed on a girl or a mature woman. Whereas, on the second count of the indictment, while inherently it may be just as heinous an of-

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*Charge to the Jury.*

fence, the maximum limit is fifteen years. What is the second count in the indictment? It is that which is commonly known as carnal abuse. If you believe that this man had sexual intercourse with this girl, forcibly and against her will, as I explained it to you, you have no right to then try to balm your conscience or ease your way by taking up a lesser count in the indictment. If you have that belief from all the relevant evidence in this case, and have such a belief beyond a reasonable doubt, then you would be false to your oath of office, and you would be false to your manhood to try and ease yourself, as I say, by taking up a count in the indictment that implies an offence with a less possible sentence in case of conviction.

I am not suggesting now what this man's sentence might be if he were convicted. You have nothing to do with that. That is a tremendous responsibility that is on me. You do not even have to worry about that part of it. If you live up to your oath of office, I do not see why you should have any further concern beyond your oaths, and that is to try the case intelligently, fairly, honestly, and impartially.

Carnal abuse: Any man who debauches a girl under the age of sixteen, he being over the age of sixteen—and this man admits he is thirty-five—is guilty of the crime of carnal abuse. And carnal abuse differs from rape in several very important essentials. The debauchery of the sexual organs of the female by the genital organs of the male is carnal abuse, where the limitation of ages exists. In rape there must be some penetration. Still to-day there must be some penetration in the case of rape, but if a man assaults with his pri-

*Charge to the Jury.*

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vates the privates of a girl under sixteen years of age, that is carnal abuse, even though there may be no actual peneration. This girl claims that there was penetration in whole or in part is not quite as important as is ordinarily necessary in order to distinguish in a case like this between rape and carnal abuse. And there is another important feature to it: it does not make any difference whether it was with or without the consent of the girl. Our statute calls the female, in relation to this statute, under the age of sixteen years, a woman child, and she is inviolable from the carnal abuse of her privates by any man over the age of sixteen years of age. And she may be a bad girl, and she may be a girl that walks right into it, and she may be a girl that yearns for it, and yet if she is under sixteen years of age, and the man is above the age limit, he is responsible under our statute. This is a case where the man is thirty-five years of age, and the girl at the time of this assault, if there was an assault, was, as I have said before, six days below fifteen years of age. And if you even believe that no force was necessary in order to accomplish this assault, if an assault was committed, if you believe that Max Swiller had sexual intercourse with the entire willing consent of this girl on that night, even though he did not use force, Max Swiller is guilty of carnal abuse, because Max Swiller was above the age of sixteen years. He was thirty-two or thirty-three years of age at the time, and this girl was below the age of sixteen, she was below fifteen at the time. She says that her mother sent her there. What did this girl have in her mind at the time that her mother sent her there? Did

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*Charge to the Jury.*

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10 she have any knowledge, because of the relationship that may have existed between her mother and Swiller, between her family, be it father or sisters or others and Swiller, that when she went to New Brunswick that she was expected to stay there all night at Swiller's house and she did not resist; that she went there and walked in the lion's jaw, if I might use that expression? Did she know all of that? Even if she did, and you gentlemen believe beyond a reasonable doubt that there was sexual intercourse, he is guilty of the second count of the indictment.

20 I am not going into any extensive detailing of the facts in this case. They have been comprehensively argued. I want to say to you that when you bring in your verdict you will say to me whether you find him guilty under the first count in the indictment, or the second count of the indictment. There is one reference to the fact I will make, and that is this: this girl said that this assault took place on October twenty-first; she was fifteen on October twenty-seventh, and on July twenty-fifth the child was born. Do you believe, beyond a reasonable doubt, that Max Swiller is the father of that child? If you have 30 no reasonable doubt about it, then under the evidence of this case he is guilty either of rape or carnal abuse, either under the first count in the indictment or the second.

Gentlemen of the Jury, I had the impression that during the girl's testimony she at one point said almost in an undertone, that among the other things Swiller said to her—I am not saying that he said it, but that she said he said to her that he would kill her. I think I am mistaken in that, 40

*Charge to the Jury.*

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and I have it confused with the fact that she said when she got back to her mother, her mother said that if she did or said anything, she would kill her.

NINTH JUROR: She said she would make it worse for her.

THE COURT: Well, eliminate consideration of that expression of "killing her," as referred to by the Court. 10

There has been a suggestion made, that should have been made before I started my charge, as I do not like to break in on it; it has been argued, and it is now requested that I make reference to the fact of a complaint being made. You know, there is a general rule against hearsay evidence, but there are exceptions. In cases of this kind it has been found that the natural course of events shows that if a woman is foully wronged, most always will she divulge that fact. It is regarded as being the natural thing for a woman to do. Why I have been asked to say this is because it has been argued that she did not then make a criminal complaint. You will remember the age of the girl. And remember also that she made a complaint, according to her own testimony, to her own mother, just as soon as she got back to the farm. 20

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*Writ of Error.***Writ of Error.**

*New Jersey, ss:*

*The State of New Jersey to our Justices of our  
Supreme Court, Greeting:*

Because in the record and process, and also in giving  
of judgment upon a certain indictment against Max  
10 Swiller, late of the City of New Brunswick, in the  
County of Middlesex and State of New Jersey, for  
carnally knowing a woman child, she not being of the  
age of sixteen years, pro ut the said indictment and  
several counts therein whereof before the Court of  
Quarter Sessions of the the County of Middlesex, he  
has been indicted and is thereof convicted by a certain  
jury of the County, taken between the State of New  
Jersey and said Max Swiller as is said, manifest error  
has intervened to the great damage of the said Max  
20 Swiller as from his complaint we have received infor-  
mation as well in the said indictment and the trial had  
thereon and all matters and things touching the same  
as in the judgment of our said Supreme Court upon a  
review before it of the trial and conviction of the said  
Max Swiller in the Middlesex Court of Quarter Ses-  
sions, upon a writ of error issued out of our Supreme  
Court and directed to the Court of Quarter Sessions of  
said Middlesex County affirming the judgment and  
conviction had before said Court of Quarter Sessions,  
30 we being willing in his behalf to correct the error in  
due manner, if any there shall be, and that speedy jus-  
tice be done to him the said Max Swiller, command you  
that if judgment be thereon given then that you dis-  
tinctly and openly send under your seal the record and  
proceedings aforesaid, with all things touching the same,  
to our Court of Errors and Appeals in the last resort

*Assignment of Error.*

in all causes of law to be held at Trenton on the 28th day of March next, and this writ, that the record and proceedings aforesaid being inspected we may further cause to be done thereupon for correcting that error what of right and according to the law and customs of New Jersey ought to be done.

Witness, Edwin Robert Walker, our Chancellor and President Judge of our said Court of Errors and Appeals, at Trenton, this eighth day of March, 1917. 10

THOMAS F. MARTIN,  
JOHN P. KIRKPATRICK, Clerk.  
Attorney.

**Assignment of Error.**

And now on this 8th day of March, 1917, before the Court of Errors and Appeals of the State of New Jersey, comes the said Max Swiller, plaintiff in error, by John P. Kirkpatrick, his attorney, and says that in the record and proceedings and also in the giving of judgment by the Supreme Court of the State of New Jersey, upon writ of error to review before it the record of the trial and conviction of the said Max Swiller in the Middlesex Court of Quarter Sessions, and the giving of judgment in said court upon the said indictment, and in the findings of the Supreme Court upon said review and in the bill of exceptions taken upon said trial there is manifest error in this: 20 30

1. The said Supreme Court in reviewing the records and proceedings of said trial and conviction should have granted the said defendant a new trial because of the manifest error in the record and proceedings of said trial in the following particulars:

*Assignment of Error.*

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A. That the said Court permitted the witness Tillie Esakov to answer the question on the part of the plaintiff, "That piece of paper folded that you say he told you to give to your mother, what did you do with that?" to which permission due and timely exception was taken by the plaintiff in error (pro ut the bill of exceptions).

10 B. And in this, that the said Court permitted the witness, Tillie Esakov, to answer the question on the part of the plaintiff, "As the result of the interview with your father did you consult a physician?" to which permission due and timely exception was taken by the plaintiff in error (pro ut the bill of exceptions).

20 C. And in this, that the said Court permitted the witness, Anna Esakov, to answer the question on the part of the defendant, "Were you in New Brunswick at the home of Max Swiller with Sammy and Morris after you left the farm in 1913 and before you went to Baltimore?" to which permission due and timely exception was taken by the plaintiff in error (pro ut the bill of exceptions).

30 D. And in this, that the said Court permitted the defendant, Max Swiller, to answer the question on the part of the defendant, "On this occasion, that is, the occasion that Tillie called upon you at the store, you were engaged to marry one of the Esakov girls, were you not?"—to which permission due and timely exception was taken by the plaintiff in error (pro ut the bill of exceptions).

E. And in this, that the said Court permitted the witness, Samuel Esakov, to answer the question on the part of the plaintiff, "How did you go?"—to which permission due and timely exception was taken by the plaintiff in error (pro ut the bill of exceptions).

*Joinder in Error.*

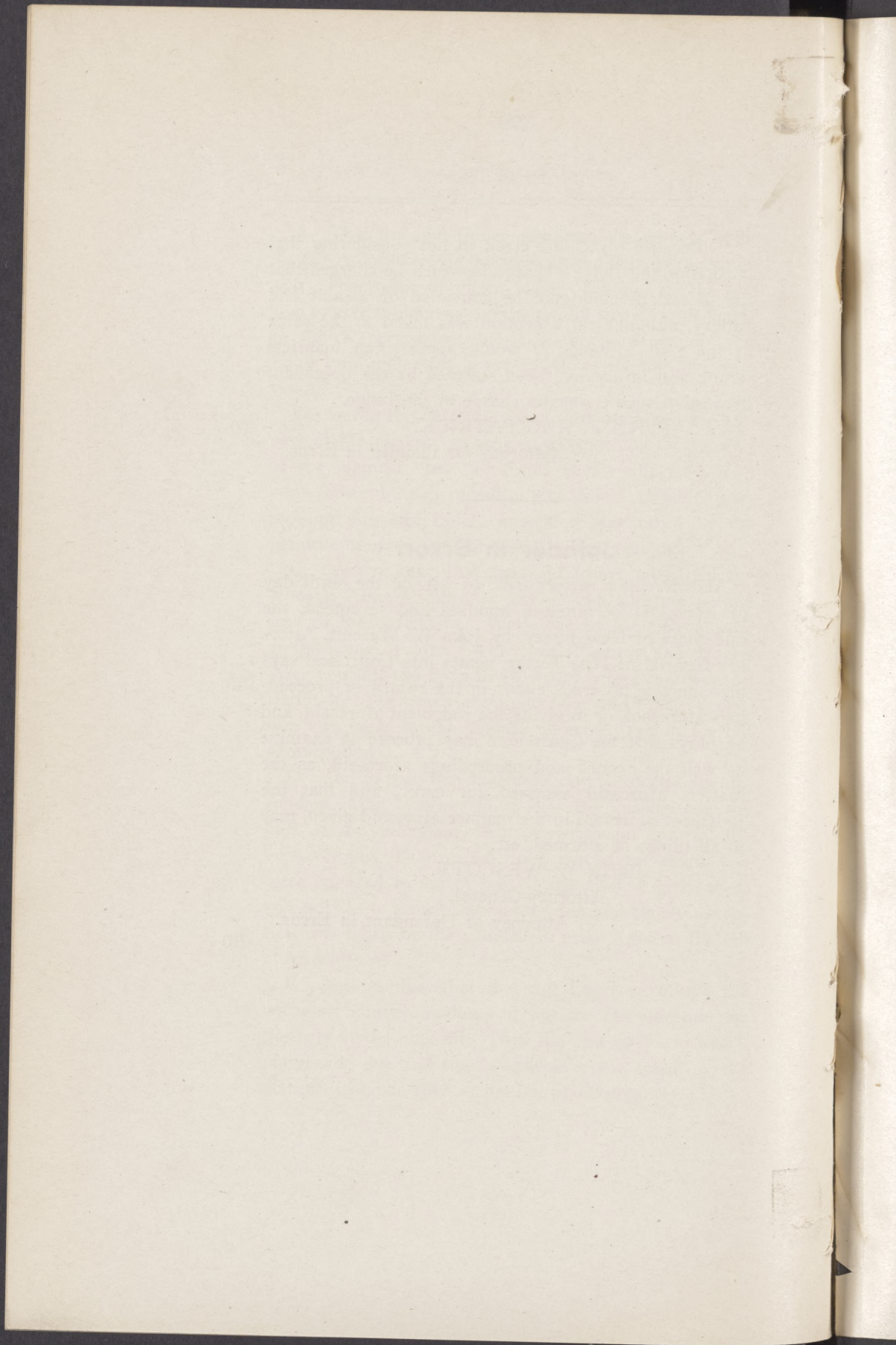
2. Because the Court erred in not considering that portion of the Judge's charge in which he charged that the defendant could not be convicted of assault and battery, although no exception was taken to the same at the trial, although it would appear that manifest wrong and injury had been suffered by the defendant because of such erroneous charge by the Judge.

JOHN P. KIRKPATRICK, 10  
Attorney for Plaintiff in Error.

**Joinder in Error.**

And hereupon, afterwards, to wit, on the sixth day of April, A. D. nineteen hundred and seventeen, the said State of New Jersey, by John W. Wescott, Attorney-General of New Jersey, comes into Court and says that there is no error either in the record or proceedings aforesaid, or in giving the judgment aforesaid, and he prays 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 the manner aforesaid given, may in all things be affirmed, etc. 20

JOHN W. WESCOTT,  
Attorney-General,  
Attorney of Defendant in Error. 30



# New Jersey Court of Errors and Appeals.

THE STATE OF NEW JERSEY,

*Respondent,*

vs.

MAX SWILLER,

*Appellant.*

On Writ of  
Error to  
Supreme  
Court.

Sat below: Gummere, Chief Justice, and Trenchard and  
Black, Justices.

## Brief for Appellant.

The appellant was convicted in the Middlesex Quarter Sessions of the crime of carnal abuse committed against one Tillie Esakov at the home of the appellant on October 21, 1913. On writ of error the Supreme Court sustained the conviction and thereupon the defendant took this writ.

The complaining witness, Tillie Esakov, was fifteen years of age, less seven days, at the time of the alleged carnal abuse. No criminal complaint was made by the complaining witness, or by any one for her, until almost two years after the wrong, and the indictment was not found until the April term, 1915. The indictment contained three counts: The first count charged rape; the

second count carnal abuse; and the third count assault and battery. By direction of the Judge who presided at the trial, the jury was instructed to disregard the third charge of the indictment (see Judge's Charge, page 265, lines 30-40), and the case was considered by them only in reference to the two crimes, carnal abuse and rape. The jury found the defendant guilty of the second count in the indictment.

The defendant, after his conviction, was first sentenced to a term of not more than fifteen years nor less than seven and one-half years and to pay a fine of two thousand dollars, but was subsequently resentenced by the Court to pay a fine of five hundred dollars and be imprisoned at hard labor in State's Prison for a maximum term of not more than fifteen years and a minimum term of not less than two years.

That portion of the Judge's charge which excluded from the consideration of the jury the third count in the indictment, assault and battery, has been held by the courts of this State to be improper. In the case of *State vs. Johnson*, 30 N. J. L. 185, a conviction of assault against one indicted for rape was sustained, and a similar result was sustained in the case of *State vs. Jackson*, 65 N. J. L. 105, where a defendant was indicted for carnal abuse and convicted of assault. The defendant at bar then was entitled to have the jury consider whether or not in this case he was guilty of assault rather than the two crimes charged in the first and second counts of the indictment. The Judge's exclusion from the consideration of the jury of this count was an improper exercise of judicial power, in that the Court interposed his own opinion as to the sufficiency of the evidence, which is, of course, the province of the jury.

The record shows that the complaining witness and others, notably the witness Hammersley (printed book, page 98, and pages 29-30-31), were permitted to testify

concerning complaints made by the complaining witness many months after the alleged assault, and clearly contrary to the purposes for which such testimony is proper as set forth in the case of the *State vs. Rodesky*, 86 N. J. L. 220.

If the record had been put in proper shape to have these matters properly before the Court, they might perhaps have more weight and be given greater consideration, but it is not the defendant's fault that the certificate required by Section 136 of the Criminal Procedure Act has not been supplied. He thought that his appeal was taken in such form that the Appellant Court would consider all matters of error in the record that tended to his manifest wrong and injury. The attorney who perfected the appeal thought that he had done everything required by that section of the act. Thinking as he did therefore, neither the attorney nor the defendant has made an election to waive the statutory privileges afforded by section 136. There can be no election unless the person making the election is clearly cognizant of the nature and the effect of his act.

If this defendant has not therefore been estopped by a voluntary choice between two remedies afforded him, but has thought that he did all that was required, however erroneous his thought might be, in order to obtain that relief, the Court should, if possible, remove the technical impediment to his obtaining that which the statute affords him, but which through a mistaken idea of technical procedure he has not placed himself in position to receive. In the case of *State vs. Plough*, 97 Atl. Rep. 265, the Court took this view, and considered matters in the record that were not properly before it by the judge's certificate.

And also in the civil cases of *Blonski vs. American Smelting & Ref. Co.* 76 N. J. L. 89, even though the rule to show cause was limited to two points, the Court in order to effect justice decided the case on an

entirely different point, and one not covered by the rule to show cause.

This defendant has married the complaining witness since the trial, and they are now living together and he is supporting her in a manner in keeping with the station in life which they enjoy. So that whatever of private wrong complaining witness has suffered has been redressed by the defendant as fully as it is possible for him to do so.

It seems to me therefore that the Court should afford this defendant the benefit of whatever relaxation may be made in the strict rules and that the record in this proceeding should be returned to the Court of Quarter Sessions for the purpose of having supplied the necessary certificate, if without it the Court can consider only matters brought up by the strict bill of exceptions, and that if more formal application than this memoranda is necessary, that the defendant be given an opportunity to present his petition to this Court praying for that relief, that is, that the record be returned to the Court of Quarter Sessions for amendment. There is ample authority and power in the Court to do this, as has been held in the following cases:

*American Popular Life Ins. Co. vs. Lay*, 39 N. J. L. 89.

*Herbert vs. Hardenberg*, 10 N. J. L. 222.

*Brown vs. Warden*, 44 N. J. L. 177.

*Robinson vs. Furman*, 47 N. J. Eq. 307.

No real public injury remains, and to deny the defendant the advantage of whatever may appear in the record that might be beneficial to him in his appeal might in effect be a blow at the institution of matrimony and at the complaining witness in this case, who would be thrown upon the mercy of charitably inclined friends or her own exertions if she was deprived of her husband's support while he was serving his term as

sentenced. If, however, a new trial is granted, it would then rest with the proper authorities to determine whether or not the public good required or would be substantially promoted by again placing defendant on trial. It seems to me that the marriage has not only repaired the private wrongs of the complaining witness, but has in a large measure, if not completely, satisfied the State, and that the State could not possibly suffer any injury by the defendant having a new trial.

The crime of which defendant stands convicted is similar in character to seduction under promise of marriage. They are both sexual crimes and the complaining witness is the chief one to suffer. Society at large suffers through the shock to its morals in both cases. In carnal abuse the complaining witness suffers because her body has been ravished against her consent, and in the other case because she has been deceived by false representations and promises. But in both cases the wrong is repaired in a large degree by marriage, legalizing the intercourse and the offspring resulting from it. The statute (see Comp. Statute, Vol. 2, p. 1761) provides that in seduction the defendant be discharged if he marry the complaining witness before trial, and that sentence be suspended if he marry her after sentence is imposed.

It seems to me a similar condition should prevail here and that defendant should have advantage of the same treatment.

The assignments of error disclose five exceptions noted in the record. All of these exceptions were directed toward testimony introduced by the State over the objection of the defendant.

The first question to which objection was entered and exceptions taken was the question, "That piece of paper folded that you say he told you to give to your mother, what did you do with that?" (see page 28, printed case). This question was clearly irrelevant to

the issue, it had no value in assisting the jury to determine either the guilt or innocence of the defendant, and because of its introduction, although it is the only testimony of that kind in the case, the jury might have inferred or received the erroneous impression that the carnal abuse, if any was committed, was the result of a prearranged plan between the mother of the complaining witness and the defendant. There was no other hint of such a thing in the case, and indeed the State did not argue that such was the fact, but nevertheless the defendant was entitled to have the Court exclude testimony not pertinent to the issue, which was, defendant's guilt or innocence of the crime charged. On error, reversal is required if it appears that illegal evidence *may* have been harmful.

*Ruckman vs. Bergholz*, 8 *Vroom*, 437-441.

*Ryan vs. State*, 60 *N. J. L.* 552, at bottom of page 555.

*Bell vs. Samuels*, 60 *N. J. L.* at top of page 372.

*State vs. Sprague*, 65 *N. J. L.* 419, at page 426.

*State vs. Hendrick*, 70 *N. J. L.* 47.

*State vs. Newman*, 74 *N. J. L.* 204.

*Feist vs. Jerolamon*, 75 *Atl. Rep.* 751.

It seems to me clear this question and answer were of such a character that defendant may have suffered harm. The jury might have inferred a conspiracy or agreement between defendant and Mrs. Esakov by which she was to profit from her daughter's dishonor. If the jury did entertain this view, being ordinary men they must have been prejudiced against defendant and not in proper mental poise to weigh the sufficiency of evidence offered to prove the crime alleged.

The second assignment of error (see printed book, page 29-30) is based upon objection to this question by State of complaining witness: "Q. As the result of your interview with your father did you consult a

physician?" This question is clearly illegal and has been held many times in this court to be so. If the State had in mind that consultation with a physician was similar in effect to the making of a complaint, then clearly the testimony related to something too far removed from the time of the crime to be permissible. She did not tell her father until March, five months after alleged assault (see printed book, page 29, line 19). On no other theory could it have been even considered relevant. The complaining witness had taken no legal means to have her wrongs remedied, and it was to forestall the damaging effect of such delay on her part that the State attempted to bolster up its weakness in this particular by these irrelevant side issues. Thus by irrelevant testimony they hope to fill up and supply the deficiencies of complaining witness's acts. The purpose of such evidence has been fully set forth in *State vs. Rodesky*, 86 N. J. L. 220.

This question and its evident purpose does not come within the rule as laid down in that case.

The third assignment of error (printed book, page 137) was to a question probably intended to show the friendly relations that existed between witness and defendant, but went beyond the point permitted, in that there had been no denial by the witness of her friendship with defendant, and therefore there was nothing that needed the calling of witness's attention to specific instances.

The fourth and fifth assignments of error do not appear to show anything harmful to the defendant.

Respectfully submitted,

JOHN P. KIRKPATRICK,  
Attorney for Appellant.

