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New Jersey Court of Errors and Appeals

THE STATE OF NEW JERSEY, *Defendant in Error,* *vs.* CHARLES D. MANDEVILLE, *Plaintiff in Error.*	*On Writ of Error to Supreme Court.*

Brief for Plaintiff in Error.

Abstract of the Case.

The indictment in this case contains two counts:

1. Charges that the defendant on September 15, 1912, maliciously and without lawful justification and with intent to cause and procure the miscarriage of one Goldie Smith, a woman then pregnant with child, did direct the said Goldie Smith to take divers drugs, to wit, ergotine, cotton root extract, oil and extract of savin contained in divers pills, known as emmenagogue pills, which pills, he, the said Charles D. Mandeville, did give to the said Goldie Smith, contrary to the form of the statute in such case made and provided, etc.

2. Charges that the defendant on September 15, 1912, maliciously and without lawful justification, and with intent to cause and procure the miscarriage of one Goldie Smith, a woman then pregnant with child, did advise the said Goldie Smith to take divers drugs, to wit, ergotine, cotton root extract, oil and extract of savin, contained in divers pills known as emmenagogue pills, which pills, he, the said Charles D. Mandeville, did give to the said Goldie Smith, contrary to the form of the statute, etc.

The statute upon which the indictment is intended to be based, is section 119, Comp. Stat., Vol. 2, p. 1784, under the general title (p. 1779):

CRIMES WHICH INVOLVE PRIVATE INJURY TO THE PERSONS OF INDIVIDUALS.

The statute reads as follows:

> "Any person who maliciously or without lawful justification with intent to cause or procure the miscarriage of a woman then pregnant with child, shall administer to her, prescribe for her, or advise or direct her to take or swallow any poison, drug or medicine or noxious thing, or who maliciously or without lawful justification, shall use any instrument or means whatever, with the like intent, shall be guilty of a high misdemeanor, and punished accordingly; and if the woman or child die in consequence thereof, be punished by fine not exceeding five thousand dollars or imprisonment at hard labor not exceeding fifteen years, or both."

A motion was made to quash the indictment, upon the ground that it does not charge any criminal offense. *The defect in the indictment, is deemed to be the omission of any allegation that the divers drugs given by the defendant, were noxious.*

The argument in support of the motion will be found on page 10, *et seq.*, of the printed case.

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

Goldie Smith, a young woman seventeen years of age, went to the office of Dr. Mandeville in Newark, the 29th or 30th of July, 1912, and told him that she believed she was in the family way, and was sent to him to give her something, or to do something that would bring on a miscarriage.

Defendant told her it would cost seventy-five dollars, and she said that she could get the money. She went away and returned to his office again in about four or five days, at which time she gave the defendant sixty-five dollars, and he gave her some pills, and that the pills were in a box. On her direct examination she testified that he gave her five or six boxes altogether, but on her cross examination, *she admitted that she had testified in another trial that he gave her a couple of boxes of pills* (p. 25). In about three days after that, she called on the defendant again, and he gave her some more pills. She was permitted to testify over objection, that on this last occasion, the defendant used needles (p. 17). She did not mention any specific visits after that, but testified that she went to see the defendant thirty or forty times altogether. She also testified that on August 24th she went away and did not return until September 6th, and that she went to see the defendant twice, but he was out, and on the third occasion, she went with Dr. Tippett, but did not see the defendant.

It appeared that the defendant's office was closed on Thursdays, Fridays, Saturdays and Sundays during the month of August, *so that it was quite improbable that the girl made so many visits, as she stated.* She gave birth to a healthy child on February 6, 1913. There is no evidence which tends to show any physical defect in the child, or that it was prematurely born.

On March 20, 1914, two boxes containing pills were given to one of the prosecutor's detectives by Goldie Smith. One box contained four pills and the other twenty. In one box, there was a small tablet, which the testimony shows was a charcoal tablet. *Some pills had disintegrated,* and the outside covering was off. The most of the pills, however, especially those in the box containing twenty,

were in an apparently perfect condition, and did not appear to have been exposed to atmospheric action. A chemist was permitted to testify, although the defendant objected to him as not being qualified, as he did not show any special knowledge (p. 38) that he had analyzed the pills and found in them traces of ergotine, cotton root extract and oil and extract of savin, but that he could not ascertain the quantity of each ingredient. He found some iron also, but no aloes and no helibore.

Dr. Tippett testified (p. 49) that he is a dentist, and that he went to the defendant's office some time in the summer or fall of 1912, and asked him if Miss Smith had been there and if she was in trouble of any kind, *and that the defendant said he hadn't given her a personal examination, but had given her some pills, and that he didn't know whether she was in trouble or not.*

Dr. Washington testified (pp. 51 and 52) that the action of all three drugs ergot, cotton root and oil of savin is on the uterus, and that they produce a contraction of the muscular tissue and are used mostly in some forms of hemorrhage. He was permitted to testify over objection as to the effect of these drugs generally, *the question asked, not being based upon the actual evidence* (pp. 53, 54) and he stated that the action of any one of them singly or in combination, *if given in sufficient doses and the patient was susceptible enough to the influence of the drugs,* would tend to empty the womb and bring on an abortion.

The evidence on the part of the defendant was, that *he did not agree to procure a miscarriage and did not attempt to do so and did not use any needles or instruments.* That he used a speculum to make a physical examination, *and that he believed that the woman had gonorrhea, and treated her for gonorrhea.* He produced a bottle of pills

labelled gonorrhea pills and the ingredients were stated in the label, and the pills in appearance were very similar to the pills produced by the State. He testified, that he gave the girl some charcoal tablets when she first came to him, and that he charged her each time she visited him $2.00, and that she paid him $10.00 covering five visits, and still owed him for two visits. He testified that it was impossible to tell in his opinion at that time whether she was pregnant, *and there was a difference of opinion between him and Dr. Washington, as to when pregnancy could be determined by physical examination.* He testified that he did not believe she was pregnant, and thought she had gonorrhea and treated her for that disease. He also testified *that he had no emmenagogue pills in his laboratory and never had any.* He was corroborated by Linda Wenz, who was familiar with his laboratory, and who testified that there were no emmenagogue pills in the laboratory.

The defendant also testified *that when Goldie Smith came back to his office in September, she then told him that she was in the family way and wanted him to help her, and he refused to do so, and she then threatened to get even with him, and he was corroborated by Miss Wenz.*

Specification of Errors.

1. The denial of the motion to quash the indictment and the affirmance of such denial.

Assignment of Error No. 1, in Supreme Court.
Specification of Causes No. 13, in Supreme Court.
Assignment of Error No. 1 in this court.

2. Admission of the testimony of Goldie Smith that needles were used, and the affirmance of such admission.

Assignment of Error No. 2, in Supreme Court.

Specification of Causes No. 1, in Supreme Court.
Assignment of Error No. 2 in this court.

3. Denial of the motion to strike out the testimony tending to show that the pills were noxious, and the affirmance of such denial.

Assignment of Error No. 12, in Supreme Court.
Specification of Causes No. 10, in Supreme Court.
Assignment of Error No. 3 in this court.

4. Admission of the testimony of Dr. Washington in contradiction of the defendant indicated in the questions set forth in assignment of error No. 4 in this court, and the affirmance of such admission.

Assignments of Error No. 13 and 14, in Supreme Court.
Specification of Causes No. 14 and 15, in Supreme Court.
Assignment of Error No. 4 in this court.

5. Denial of the motion to direct an acquittal at the close of the whole case, and the affirmance of such denial.

Assignment of Error No. 15, in Supreme Court.
Specification of Causes No. 13, in Supreme Court.
Assignment of Error No. 5 in this court.

6. The charge of the Court, that it was testified to by Dr. Washington, that "these singly or in combination, have a tendency to produce a contraction of the muscles of the womb and to expel the foetus," and the affirmance of such charge.

Assignment of Error No. 21, in Supreme Court.
Assignment of Error No. 6 in this court.

7. The charge of the Court, as set forth in assignment of error No. 7 in this court, and the affirmance of such charge, and particularly, the charge as follows: "And in that connection you have a right to consider the very great interest

of this defendant in any verdict which the jury may render, and whether or not that interest will have any effect upon the story he tells upon the witness stand.

Assignments of Error No. 22, 23 and 24, in Supreme Court.

Assignment of Error No. 7 in this court.

8. The affirmance of the judgment of the Essex County Court of Quarter Sessions.

Assignment of Error No. 8 in this court.

Brief of Argument.

The errors relied upon will be taken up in the numerical order in which they are stated in the specification of errors.

POINT 1.

THE INDICTMENT DOES NOT CHARGE ANY CRIMINAL OFFENSE.

It was not criminal at common law to cause or procure an abortion before the child is quick.

State v. *Cooper,* 22 Law, 2 Zab., 52, 1849.

The offense at common law would have been assault and battery upon the woman if done without her consent. By statute 43 George, 3 C. 58, sect. 2, it was made a criminal offense to administer to any woman not being or not being proved to be then quick with child, or cause to be taken by her any medicine or other thing with intent to procure her miscarriage. An indictment founded on that statute, charged that the prisoner did administer to * * * a large quantity of a certain drug called oil of savin, with intent to procure a miscarriage, she the said * * * being with child, but not quick with child. It was held, that if it appears that the woman was not with child at all, the prisoner must be acquitted, although it

appear that the prisoner thought that she was with child, and gave her the drug with an intent to destroy such child.

Rex. v. *Scudder,* 3 C. & P., 605, 1828.

In a subsequent case under the statute, 9 Geo. 4, C. 31, S. 13, which repealed the former statute, the prisoner was indicted for administering saffron with intent to procure an abortion. The defendant's counsel was cross examining as to the innocuous nature of that article and Vaughan, *B.,* said: "Does that signify? It is with the intention that the jury have to do; and if the prisoner administered a bit of bread merely with intent to procure abortion, it is sufficient to constitute the offense contemplated by the Act of Parliament."

Rex v. *Coe,* 6 C. & P., 403, 1834.

It will be observed that the statute in both of the above cases used the words "*Any medicine or other thing.*"

By statute 24 and 25 Vict., C. 100, S. 59, there was a change made in the language and the words are: "*Any poison or other noxious thing.*" And in a case under that statute, the indictment charged the giving of "a large quantity of a certain noxious thing to the jurors unknown."

On a case being reserved, it was held that the thing supplied with intent to procure the miscarriage, must be noxious in its nature.

Pollock, *C. B.,* said:

> "*A mere guilty intention is not sufficient to constitute a crime.* There must be an intent coupled with an overt act tending to the perpetration of the crime. *The administration of pure water is no offense within the section under which this prisoner was indicted.*"
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> *Reg* v. *Isaacs,* Leigh and Caves Crown Cases, 222, 1862.
>
> *S. C.,* 9 Coxe C. C., 228.
>
> See also The Jurist, Vol. 9, Part 1, p. 212.

In a subsequent case the indictment charged the administering of a certain drug and noxious thing, to wit, cantharides, and it was held that to constitute the offense, *the thing administered must be noxious in itself and not merely when taken in excess,* and that *although it may have been administered with intent to injure or annoy.* The case was under a different statute, but is applicable.

Reg v. *Hennah,* 13 Coxe C. C., 547.

The last two cited cases are also cited by Justice Scudder in *State* v. *Gedicke* hereinafter referred to. Another case under the statute 24 and 25 Vic., is *The Queen* v. *Cramp,* 5 Q. B. D., 307, 1880, in which the defendant was convicted on an indictment which alleged that he "feloniously did unlawfully cause to be taken by one E. E. V. *a certain noxious thing,* to wit, a large quantity, to wit, half an ounce of oil of juniper, with intent to procure the miscarriage of said E. E. V., etc." The proof was that he gave her a bottle containing one ounce of the oil and told her to take it in two doses, half the bottle each time. She took one dose, which caused violent sickness. The evidence was, *that the oil of juniper in small quantities was commonly used, but in that in doses of half an ounce or more,* it was a violent purgative, etc., and would cause injury.

It was contended that there was no evidence, *that the defendant had caused a noxious thing to be taken, and that the evidence only showed that the oil of juniper would be noxious when taken in excess.* There was no authority cited at the trial, but afterwards the court stated the case for consideration by the appellate court. *The question reserved was, whether there was evidence that the half ounce of oil of juniper was a noxious thing within the meaning of the statute.*

The words of the statute are: "Poison or other noxious thing." Lord Coleridge, *C. J.*, said:

> "A poison is not necessarily noxious in all cases, it may be harmless if administered in minute quantities." Stephen, *J.*, said: "A thing may become noxious simply by being administered in excess. *The statute does not make it an offense to administer with the forbidden intent, harmless substances, even in excessive doses. The offense is administering a thing in itself noxious.*"

It was held that the oil of juniper as administered was noxious. This case distinguishes *Reg* v. *Isaacs,* in which the drug was not shown to be capable of doing harm, and *Reg* v. *Perry* (2 Coxe, C. C., 223), in which the quantity was so small as to be innocuous, and also *Reg* v. *Hennah,* in which the thing taken was not noxious in the form taken.

The ordinary form of indictments charges *"certain noxious and destructive thing."*

Chitty Criminal Law, Vol. 3, p. 797.

> "The thing supplied with intent to procure abortion *must be noxious in its nature, according to the form, quality or frequency with which it is administered.*"
>
> *Russell Crimes,* 7 Eng. Ed., 829.

The statute in this State was passed in 1849. In an early case, *State* v. *Murphy,* 27 Law, 3 Dutch., 112, 1858, it was held that it was not necessary to aver that the poison, drug, medicine, or noxious thing advised to be taken, was actually taken or swallowed, and that it was not necessary to prove it at the trial.

In *State* v. *Murphy,* Chief Justice Green, at page 114, uses this language:

> *"The design of the statute was not to prevent the procuring of abortions so much as*

to guard the health and life of the mother against the consequences of such attempts. But under the statute, the defendant's guilt is complete by giving the advice with the intent specified in the act, and it is immaterial whether the advice be followed or not."

Green, *C. J., State* v. *Murphy,* p. 115.

In *State* v. *Gedicke,* 43 Law, 14 Vr., 86, Scudder, *J.,* said:

"*The thing administered or prescribed to procure the miscarriage of a woman then pregnant with child, must be noxious in its nature,* but it is not necessary to prove that it will produce a miscarriage."

In the opinion of Justice Scudder, the English cases are cited and commented upon, that I have cited, except *Queen* v. *Cramp.*

If it is necessary under the statute to prove that the poison or medicine or other thing administered or advised or directed, must be noxious, then it was necessary to allege in the indictment that it was noxious; because the indictment must set out every element of crime which enters into the punishment, since otherwise it does not set out fully the offense. *The crime proscribed by the statute, is the advising a pregnant woman to take something that will be harmful to her if she does take it, and this advice must be given with intent to procure a miscarriage.*

The crime consists of two essential elements—*the specific intent to cause a miscarriage; and the criminal act of advising the taking of the harmful substance.*

It is conceded in the opinion of the Supreme Court, that if the indictment alleged the advising to take a drug, the name of which is unknown to the Grand Jury, and did not allege that the drug was noxious, the indictment would be bad. The

Supreme Court held, however, that this indictment is good, because it names the specific drugs. If the Supreme Court is right, it must be because the court will take judicial notice of the noxious character of the drugs named, and that the defendant is bound to take notice. In other words, if "everybody knows" that these specific drugs are noxious, then the naming of them in the indictment is equivalent to an allegation that they are noxious.

A drug, as defined in Century Dictionary is "any vegetable, animal or mineral substance used in the composition or preparation of medicines." Medicine (the same authority) is—"A substance used as a remedy for disease; a substance having or supposed to have curative properties; hence figuratively, anything that has a curative or remedial effect."

There is nothing in the definition of either a drug or medicine to indicate that either is noxious in character; so that it cannot be inferred that any particular drug is noxious in character. Indeed, it may be said that everybody knows that some drugs are poisonous if taken in any quantity, and that some drugs are only poisonous if taken in excessive quantities; but the names of those drugs are not generally known.

I contend that the naming of the drugs is not notice to the defendant that they are noxious, and the court will not take judicial notice that they are noxious.

The indictment does not allege that the drug was noxious, or that it was given in such quantities as to make it noxious; therefore, the indictment fails to allege a criminal act, which is one of the essentials of the crime. The Supreme Court reviewed this question, and it is reviewable here.

State v. *Pisaniello,* 96 At. 89.

It is, therefore, contended that the indictment should either have been quashed, or that the motion to direct an acquittal at the close of the whole case should have been granted.

POINT 2.

EVIDENCE OF THE USE OF NEEDLES, WAS INCOMPETENT.

The statute prohibits not only the use of noxious things, but also the use of any instrument. The criminal act is the use of an instrument. The indictment does not charge that any instrument was used. The court admitted evidence of such use (bottom of p. 17) as competent on the question of intent.

It appears that the girl, according to her testimony, made the agreement with the defendant on her first visit, and on the second visit, the defendant gave her some pills, *and it was not until the third visit that he used the needles;* if he had formed an intent to cause a miscarriage, he did so on the first visit of the girl, and proposed to carry out that intent with the use of the pills. What occurred subsequently, did not tend to prove the intent which had been fully conceived at the time the bargain was made. *The specific intent to cause a miscarriage cannot be inferred from the criminal act of advising or directing the woman to take the drugs, or from the criminal act of using instruments.*

People v. *Platt,* 100 N. Y. 590, 3 N. E. 790.

Therefore, the evidence was not admissible on the question of specific intent. The opinion of the Supreme Court holds that it was admissible, upon the principle laid down in *State* v. *Deliso*, 76 Law, 46 Vr. 808.

That case would be applicable, if there was any logical connection between the two criminal acts,

the one of advising or directing the woman to take the drugs, and the other, the use of instruments. There is not only no such logical connection, but no attempt was made by the State to prove any connection between the use of needles and the giving of the drugs.

I contend that the evidence ought not to have been admitted, because it could not be used to prove the specific intent, and the use of the needles was not shown to be in any way connected with the use of the drugs, and it naturally led the jury to believe that the use of the needles proved the intent to cause a miscarriage.

POINT 3.

THE DENIAL OF THE MOTION TO STRIKE OUT THE TESTIMONY OF DR. WASHINGTON, INSOFAR AS IT TENDED TO SHOW THAT THE PILLS WERE NOXIOUS.

When the motion was made to quash the indictment (bottom of p. 13) counsel contended that it would be necessary to prove in this case that the pills were harmful, and that such proof would be objected to upon the ground that it is not charged in the indictment. When the evidence was offered, counsel, through inadvertence, did not make any formal objection. At the close of the defendant's case (p. 28) a motion was made that the Court permit an objection to go on the record, so that the defendant could have the benefit of it, or that the Court would strike out the testimony which tended to show that the specific drugs contained in the pills were noxious, the point being that such testimony was not admissible under the indictment. It is quite apparent that the failure to make an objection was unintentional.

The whole case rested on the testimony of Dr. Washington, and the vital question was whether

the evidence was competent under this indictment. If it was not competent, it ought to have been stricken out; or the Court ought to have entered an objection and allowed an exception.

As the indictment stands, I contend that the evidence was not competent, because the indictment does not charge that the substances were noxious, and indeed, there was no direct evidence that any of the ingredients of the pills are drugs.

No possible harm could have been done to the State by putting the objection on record, as there had been no effort made on the part of the defendant to show that the drugs were not noxious. This point is properly before the court, and if the objection to the testimony is valid, the motion should have been granted.

State v. *Murphy,* 87 Law, 515.

POINT 4.

THE TESTIMONY OF DR. WASHINGTON IN REBUTTAL CONTRADICTING THAT OF THE DEFENDANT AS TO HIS DIAGNOSIS OF THE CONDITION OF THE WOMAN, WAS INCOMPETENT.

The defendant had testified as to what he actually saw. Dr. Washington was asked to testify what his diagnosis would have been. The Supreme Court concedes that the evidence is very slight, but that it was admissible to discredit the defendant. *It was not a contradiction of him in respect of any relevant fact that he had testified to.* The questions did not include all the facts described by the defendant, and they were, therefore, not proper hypothetical questions.

The Court assumed in disposing of the objection (p. 91) that it was competent to contradict the defendant, and made the announcement in the presence of the jury that the defendant could not

be allowed to testify to his diagnosis and not be contradicted.

The particular objection to Dr. Washington's testimony is, *that the defendant was asked on cross examination if gonorrhea could be diagnosed without the use of a microscope* (p. 86), and he said that it could. This was a collateral matter, as to which he could not be contradicted.

The force of Dr. Washington's testimony was, that the symptoms could not be diagnosed as those of gonorrhea, because gonorrhea could not be detected except by the use of a microscope. It appears, therefore, that the testimony of Dr. Washington in that respect, was in direct contradiction of the defendant and consequently was erroneously admitted.

POINT 5.

As to the motion to direct an acquittal.

The several grounds stated in the motion to direct an acquittal at p. 95, have been discussed in the motion to quash the indictment under Point 1, and the motion to strike out the testimony of Dr. Washington under Point 3. Manifestly, if the indictment is bad, the defendant is not presented and is not legally tried on an indictment which charges a criminal offense. If the testimony of Dr. Washington had been stricken out, there would have been no proofs that the drugs were noxious. *The evidence did not prove that the drugs in the doses advised to be taken would have been noxious; therefore the State failed to prove that the drugs were noxious.* An exception was taken to the denial of this motion, and the motion is also before the court on a certificate of the entire record and the specification of causes for reversal.

POINT 6.

THE CHARGE OF THE COURT AS TO THE TESTIMONY OF DR. WASHINGTON RELATING TO THE NOXIOUS CHARACTER OF THE PILLS, WAS ERRONEOUS.

The Court charged the jury that Dr. Washington had testified that these (meaning the drugs) singly or in combination, have a tendency to produce a contraction of the muscles of the womb and to expel the foetus. This was a misstatement of the facts. Dr. Washington was very guarded in his testimony, and qualified his statement by saying: that the drugs would have a tendency to produce such a contraction of the muscles of the womb and to expel the foetus, *if given in sufficient doses, and the patient was susceptible enough to the influence of the drugs* (p. 54).

This was very material, because the authorities show that the substance given may only become noxious if given in excessive quantities. It is not a question of the ignorance or want of skill or knowledge of the defendant. If the substance given was necessarily noxious, or if it was noxious because it was given in excessive quantities, it is of no consequence whether it would or would not cause a miscarriage.

The design of the statute was to prevent the giving of actually harmful drugs or medicine to a pregnant woman without legal justification. That is the criminal act prescribed by the statute. It was the right of the Court to comment upon the testimony, but it was not the right of the Court to make such a material misstatement of the evidence. Objection was made at the trial and an exception taken.

The cases are collected in *State* v. *Lovell,* 96 At., p. 38.

POINT 7.

THE CHARGE OF THE COURT AS TO THE VERY GREAT INTEREST OF THE DEFENDANT IN ANY VERDICT, WAS ERRONEOUS.

The charge is fully set forth in the printed case, and the particular portions objected to are stated in assignment of error No. 7 in this court.

The vital question in the case was, whether the woman was telling the truth, or the defendant was telling the truth. A critical examination of the woman's testimony will, I think, satisfy the Court that she was evading some of the questions. She was uncertain about the second box of pills and said, "I believe" (p. 24 bottom)—"I am not positive" (p. 25 top). The box containing twenty pills, apparently fresh new pills, looked in itself very suspicious. She had threatened to get even with the defendant for not helping her out. There was no direct evidence that she had carried out such a threat, but manifestly someone must have started criminal proceedings, and she must have given the information which led to the indictment of the defendant.

The defense made on the merits is a reasonable one, and it is difficult to conceive that a physician who had been practicing for so many years and making a specialty of venereal diseases, could have been mistaken in his diagnosis. Was he mistaken, or did he testify falsely? The Court commented upon the testimony of the woman and intimated to the jury that she had no reason for being untruthful, and that Dr. Washington had no reason for testifying untruthfully; and therefore, the jury could believe both of those witnesses; but when he came to the testimony of the defendant, he said—"Then, you have a right to consider the interest of the defendant, because he was a witness and took the stand in testifying, *in what effect, if*

any, his interest would have had upon his testimony upon the stand, and in that connection, you have a right to consider the very great interest of the defendant in any verdict which the jury may render, and whether or not that interest would have any effect upon the story he tells, upon the witness stand."

How could there be in the face of that charge any other verdict than guilty?

The jury evidently discredited the testimony of the defendant. If he had not gone on the witness stand, his failure to do so could have been commented upon. If he does go on the witness stand, the jury, if this charge is correct, may be told that the very fact of his testifying is to be taken into consideration against him.

I contend that this charge is erroneous, and that the exception taken to it, and the assignment of error made thereon should be sustained. Exception (p. 107).

There are cases upon the subject which show a conflict of opinion in the several jurisdictions, but I think that the weight of authority is against such an instruction to the jury.

In *Hicks* v. *United States,* 150 U. S. 442 Law Ed. Book 37, 1137 (1893) the charge was: "That there was or might be a conflict as to material facts between the statements of the accused testifying in his own behalf, and the statements of the other witnesses who are telling the truth"—and that "then you would have a contradiction that would weigh against the statements of the defendants as coming from such witnesses," and such charge was held objectionable in the assumption that the other witnesses were telling the truth. The Court says:

> *"The wise and humane provision of the law, that the person charged shall, at his own*

request, but not otherwise, be a competent witness should not be defeated by hostile comments of the trial judge on the testimony of the accused."

And at p. 42, the Court further says, speaking of the right of the accused to testify:

"Such a privilege would be a vain one, if the judge to whose lightest word, the jury properly enough give a great weight, should intimate that the dreadful condition in which the accused finds himself, should deprive his testimony of probability."

See also *Allison* v. *United States,* 160 U. S. 203, Law Ed. Book 40-395, in which the opinion is by Chief Justice Fuller, citing cases from Massachusetts, Illinois and Indiana and following *Hicks* v. *United States.*

The cases to the same effect in Illinois, are *People* v. *Barkas,* 255 Ill. 516, 99 N. E. Rep. 698 (1912).

People v. *Gerold,* 265 Ill. 448, 107 N. E. Rep. 165 (1914).

The cases are collected in *People* v. *Gerold.*

The law is settled in Illinois that *the testimony of a witness cannot be disregarded unless he has knowingly and willfully testified falsely on material matters.*

State v. *Thome,* 83 N. J. L. 799, Court of Errors 1912, sustains a charge in which the judge commented upon the impossibility of believing that a witness for the State and the defendant were both telling the truth, and held that it was proper argument and comment.

The opinion in the Supreme Court is per curiam and also in this court. It does not appear that the objection to the charge was fully argued and the authorities presented to the court.

State v. *Dugan,* 84 N. J. L. 713 affirmed at 86 N. J. L. 730, sustains a charge in which the judge used the language that "one of the best ways of ascertaining the truth of statements, is to ascertain the interest of the witness." The material objection to this charge in this case is the use of the words: *"the very great interest of this defendant"* in comparing his interest with the interest of the witnesses for the State.

In *People* v. *Gerdvine,* 104 N. E. Rep. 129, N. Y. Court of Appeals, 1914, it was held that:

> "A disinterested witness is not necessarily entitled to any more credit than an interested witness, but the whole question of his credibility is for the jury, *and in a criminal prosecution, it is improper to charge that accused being an interested witness, is not entitled to as much credence as an uninterested witness."*

The Court did not expressly charge that he was not entitled to as much credence as the uninterested witnesses, but the language plainly leads to that inference.

I contend that the charge is erroneous, and deprived the defendant entirely of his meritorious defense.

POINT 8.

This point is made upon the theory that the assignment of error that the Supreme Court erroneously adjudged that the judgment of the Essex County Court of Quarter Sessions should be affirmed, might be sufficient to bring the whole case before this court for review upon the assignments of error and specification of causes for reversal submitted to the Supreme Court.

I respectfully submit that the judgment of the Supreme Court should be reversed, and also that of the Essex County Court of Quarter Sessions, to the end that the defendant may have a new trial; and that if this Court is of the opinion that the indictment is insufficient, the conviction should be quashed.

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New Jersey Court of Errors and Appeals

THE STATE OF NEW JERSEY, *Defendant in Error,* *vs.* CHARLES D. MANDEVILLE, *Plaintiff in Error.*	*On Writ of Error to Supreme Court.*

Brief for Defendant in Error.

The indictment in this case contains two counts. There is an error in the printing in the second count of the indictment as it appears on page 5 of the State of the Case. The words, "Of this court, maliciously, and without lawful justification," being omitted after the word, "jurisdiction" in line 23. No reference to this omission is made in the brief for the plaintiff in error, and no point of it is made.

Point I.

The question presented under the first contention of the brief for the plaintiff in error is, whether the indictment should have been quashed, because it uses the word "drug" without the qualifying adjective "noxious." This raises a mere question of pleading, to wit: whether the description "divers drugs, to wit, ergotine, cottonroot extract, oil and extract of savin, contained in divers pills known as emmenagogue pills" is a sufficient description under the statute.

The cases cited in the plaintiff's brief do not bear directly on the issue. *Rex* vs. *Scudder* and *Rex* vs.

Coe, concerned a statute which did not use the word "noxious," the language being, "Any medicine or other thing." *Reg.* vs. *Isaacs,* and *Reg.* vs. *Hennah,* were decided under a statute which used the words, "Any poison or other noxious thing," and concerned themselves with what constitutes a noxious thing, the latter case dealing more directly with the proposition under the following words used in the indictment, "drug and noxious thing," which was merely an amplification of the "noxious thing" spoken of in the statute, "Any poison or other noxious thing." Likewise *Queen* vs. *Cramp,* considers what constitutes "a noxious thing" under the last named statute.

In *State* vs. *Gedicke,* the question came before the court on an exception to the judge's charge, and not as a matter of pleading.

The brief for the plaintiff in error is therefore devoid of any authority that as a matter of pleading the language of the indictment is insufficient.

Assuming that *State* vs. *Gedicke* controls, and that one is guilty of the offense only if the drug administered be noxious, is the indictment under consideration defective, so that it ought to have been quashed?

It is a well established rule of pleading, that where the statute defines the offense, pleading it in the words of the statute is good.

State vs. *Stimson,* 4 Zab., 9.
State vs. *Thatcher,* 6 Vr., 445.
State vs. *Bartholemew,* 40 Vr., 160.

The books speak of some exceptions to this rule *e. g.* that in false pretense the acts must have been done knowingly, though the statute does not say knowingly, &c., &c., but these are not really exceptions, because after all the statute fails to define the crime.

Our statute speaks of "Any poison, drug, or medicine or noxious thing." It is in the alternative so that the prohibited act may involve any one or more of the specified means, without the inclusion of all of them.

State vs. *Drake,* 1 Vr., 422.

Applying these rules, the indictment is proper in form, even though the word "noxious" does not itself appear in it.

a. If there are drugs which are noxious, then clearly the generic term drugs includes both those which are and those which are not noxious. The language employed is therefore broad enough to permit proof that the drugs used were in fact noxious. And if the word employed is broad enough to include the prohibited substance, can it be said that the elements of the crime are not sufficiently set out in the indictment?

b. If the word drugs as used in the statute is limited to noxious "drugs," and the pleader employs the identical word of the statute, does he not employ it in its limited sense, as used in the statute? In the *Gedicke case* the language of the indictment follows the language of the statute, without prefixing the qualifying adjective "noxious" to "poison" or "drug" or "medicine." Without quarreling with the amplification of the maxim "*copulatio verborum indicat acceptationem in eodem sensu,*" as applied in the *Gedicke case,* it nevertheless can not transpose "noxious" to a place before poison, or drug or medicine. It merely indicates the sense in which these words are used in the statute, and it is not to be assumed that the pleader used them in any different sense.

c. The language of the indictment is "drugs, to wit: ergotine, cottonroot extract, oil and extract of savin, contained in divers pills called emmena-

gogue pills." The primary object of pleading is to acquaint the accused fully as to the nature of the charge against him. In this respect the indictment gives fuller information than the indictment in the *Gedicke case,* and perhaps greater than is generally required under the decisions. It is common knowledge that emmenagogue pills are used for the purpose of creating a miscarriage. Such were the means employed in the *Gedicke case,* and there found to be noxious. These means were proven to be noxious in this case. Now, one does not have to plead a statute in its words. A circumlocution, which means the same thing, is good pleading. *State* vs. *Startup,* 10 Vr., 423. The pleading therefore in fact shows noxious drugs, and the kind of drugs specified in the act, as judicially interpreted.

d. In the *Gardner case,* the court lays down the principle that the signification of a statutory word used in an indictment setting out the offense in the language of the statute, is to be determined in connection with other words in the indictment, to wit: "contrary to the form of the statute," &c.

The court says:

> "The word 'steal' or 'stealing' in a criminal statute, when unqualified by the context, signifies a taking which at common law would have been denominated felonious, and imports the common law offense of larceny. In an indictment setting out the offense in the language of the statute, and concluding 'contrary to the form of the statute,' these words have in common understanding the same signification. The indictment charges that the accused 'unlawfully did steal, take and carry away' the goods and chattels, &c., 'contrary to the form of the statute,' &c. We think the indictment sufficient."

Gardner vs. *State,* 26 Vr., at p. 24.

The charge in this indictment is, that he advised and directed the taking of "drugs, &c.," "*contrary* to the form of the statute." That is, that he advised and directed the taking of the kind of drugs prohibited by the statute, otherwise his act would not be "*contrary* to the form of the statute." Therefore, we respectfully submit, the word "drugs," as used in the indictment, setting out the offense in the language of the statute, has the same signification it has in the statute, and imports the kind of drugs specified in the statute.

The opinion of the Supreme Court in this case states the rule as follows:

> "Where the indictment specifies the particular drug or combination of drugs advised to be taken, the absence or presence of an averment that it or they are of a noxious nature, is entirely immaterial. If such be the fact, the averment is unnecessary. If the fact be otherwise, the averment will be unavailing."

Point II.

Goldie Smith testified (page 16) that on her first visit to the plaintiff in error she told him she was in the family way, and that she was sent there to have him give her something, or do something, that would bring on a miscarriage. She says that he told her it would cost her $75, and asked her if she could get the money, and she says on page 17, that on her second visit she gave him $65 and he gave her some pills; and she says that the third time she saw him, he used instruments. And she says on page 18 that he told her that he used them to open the womb.

While it is true that the indictment does not charge an instrumental abortion, this evidence was competent because it was part of the *res gestae* of the principal offense, the instrument being used for the purpose of opening the womb.

The general rule is that upon the trial of a person for one crime, evidence that he has been guilty of other crimes is irrelevant, but there are well understood exceptions to this general rule. Among them are those where the extraneous crime grows out of the *res gestae* of the principal offense.

State vs. *Hendreck,* 41 Vr., at p. 46.
State vs. *Deliso,* 46 Vr., 808.

The girl testifies (page 23, line 30) that on her first visit, the doctor told her that she was in the family way.

Inasmuch as he had received the $65, and had told her that she was pregnant, before he used the instrument, the fact that he did use the instrument had a direct bearing on the question of the intent with which he administered the pills. The defendant himself testified (page 85) that he put her on an operating chair, and used an instrument on her.

Point III.

This objection is based on the admission of the testimony of Dr. Washington that the drugs given the girl were harmful or noxious. If the indictment is good, then, of course, it was necessary for the State to prove that the drugs were noxious.

Dr. Washington testified (page 52): "That the action of the three drugs is especially on the uterus." At line 20, page 54, he testified: "The action of any one of them singly or in combination, if given in sufficient doses, and the patient was susceptible enough to the influence of the drugs, would tend to empty the womb and bring on an abortion."

> "Where the miscarriage is not produced the burden must be on the prosecution to show that the thing used was noxious in its character —nothing more. As a rule of evidence this

can make but little practical difficulty, for if pregnancy be shown, as it must be, under the statute, and the person charged, supposing it to exist, administers anything to affect it, very slight proof of the character of the thing administered will be required. Such things are usually known, or their effects are apparent. In this case an unmarried woman went to the defendant's drug store to learn of him, as she says, whether she was in the family way, being well assured of the fact herself, for she further says, 'I told him I wanted to see if I could get clear of the child.' He prescribed for her, or gave her Dr. Clarke's female periodical pills. He had studied medicine, and knew that the medicine given her was an emmenagogue. She gave him $10, said she would probably come again; did go afterwards, and he examined her with a catheter, or something like it, in a manner dangerous to a woman in her supposed condition, according to the testimony of physicians who were examined in the cause. These were her statements, and they illustrate the kind of evidence that is commonly attainable, even when the miscarriage is not accomplished, as it was not in this case. But if the difficulty of obtaining proof in these cases were greater, yet the statute will admit of no other construction than that the thing administered must be noxious or hurtful in some degree, though it does not require, by its terms, that the thing should be capable of producing a miscarriage."

State vs. *Gedicke,* 14 Vr., at p. 91.

The testimony of Dr. Washington clearly establishes "that the thing used was noxious in its character."

The facts on which the *Gedicke case* rests are so on all fours with the facts of this case, that the

rule there laid down must surely apply here, and, as we have shown, *supra,* that on her first visit to the doctor, the girl told him that she was in the family way, and said she had been sent there for him to do something to produce a miscarriage; that he examined her, and told her she was in the family way, and that he would charge her $75; that on her second visit she paid him $65 and he gave her pills, the jury could not determine what his intent was when he gave her the pills without knowing what the effect and character of the pills was.

> "It was not necessary that the medicine, drug, or noxious thing advised to be taken, administered to or prescribed for her should be capable of procuring a miscarriage, because that would be graduating the guilt of the defendant by the success or failure of the attempt, when the statute makes the attempt a crime regardless of the success."
>
> *State* vs. *Gedicke, supra.*

Point IV.

The plaintiff in error testified, at the bottom of page 85 and top of page 86, what the physical conditions of the girl were when he examined her, and he said that from these conditions he concluded that she was suffering from a disease which he named.

Dr. Washington was called in rebuttal, and was asked the hypothetical question to be found at the top of page 90. This question embodies the physical symptoms that Dr. Mandeville said he found. The answer to the question will be found at the bottom of page 90, and at the top of page 91.

The second question put to Dr. Washington to which objection is taken, will be found on page 91, line 8, and the answer will be found on page 92, line 8.

The first question was proper for the purpose of affecting the credibility of the defendant; the second question was proper, because it had relation to one of the essential elements of the crime, namely, pregnancy.

> "It is not necessary that hypothetical questions should embody all the facts exhibited by the evidence. It is sufficient, on the contrary, that they embody such a state of facts fairly within the range of the evidence as counsel propounding them deem to have been proved."
>
> *Daggett* vs. *North Jersey R'way Co.*, 46 Vr., at 637.

Point V.

These objections are based on the refusal of the court to direct a verdict; first, at the close of the State's case, and second, at the close of the entire case.

Counsel concedes that the first motion was addressed to the discretion of the court, and as to the second motion, it is enough to say that the testimony raised a jury question as to the intent with which the doctor gave the pills.

Point VI.

This point relates to the portion of the charge found on page 103, line 10, as follows:

> "And as the court remembers it, and it was testified to by Dr. Washington, that those, singly or in combination, have a tendency to produce a *contraction of the muscles of the womb* and to expel the fetus, which as the State claims, constitutes an abortion."

Dr. Washington testified as follows (page 52):

> "Q Well, then, Doctor, will you tell us what the action of these drugs are? A The action

> of all three of them are especially on the uterus. Primarily the action of ergot is on the muscular tissue. The same only in a milder degree with cottonroot, and the same with oil of savin. *They produce a contraction of the muscular tissue.*"

And again (page 54, line 22), the Doctor says:

> "Well, the action of any one of them, singly or in combination, if given in sufficient doses and the patient was susceptible enough to the influence of the drug, would tend to empty the womb—bring on an abortion."

Dr. Washington's testimony then was, that the action of these drugs was primarily on the muscular tissue, and if given in sufficient doses and the patient was susceptible enough to the influence of the drugs, they would tend to empty the womb, and bring on an abortion.

We respectfully submit that this testimony justified, and sustained the charge.

This point rests on the twenty-first assignment of error. The exception on which this assignment is based will be found at the bottom of page 106. The exception is as follows:

> "Defendant's counsel also prays exception to that part of the charge wherein the court said in reference to Dr. Washington's testimony that ergot, oil of savin and cottonroot have a tendency to produce a contraction of the womb and expel the fetus."

It will be observed that under the language of this exception, the court was not in any way appraised that there was an alleged misstatement of fact in the instruction, nor was any alleged misstatement of fact in the charge in any way called to the attention of the court at the trial.

The court had charged the jury (page 97) that they were the sole judges of the facts, and that "if

the court err in the statement of any evidence the jury is to rely upon its recollection and not upon the recollection of the court."

In the *Kroll* case, the Court of Errors and Appeals says:

> "A misstatement of fact in the instruction, not in any way binding on the jury, cannot for the first time be objected to in the Supreme Court."
>
> *State* vs. *Kroll,* 93 Atl., 571.

In the *Lovell* case the Court of Errors and Appeals says:

> "This court has also held that a misstatement of fact in the instruction by the trial court not in any way binding on the jury cannot for the first time be objected to in the Supreme Court. *State* vs. *Kroll,* 93 Atl., 571. In fairness to the court, and in justice to the accused, any alleged misstatement of fact by the trial court in the charge should be called to the attention of the court at the trial."
>
> *State* vs. *Lovell,* 96 Atl., 38.

We respectfully submit, therefore, that the plaintiff in error cannot, under the authority of the cases above cited, raise the question as to the alleged misstatement of fact in the charge for the first time in the Supreme Court, because he did not, at the trial, in any way appraise the court of the fact that such a misstatement had been made.

Point VII.

This point is based on the seventh assignment of error (page 127), which is as follows:

"Seventh. Because the Supreme Court sustained the charge of the trial court, as follows:

> "Now if this testimony is believed, it would seem to be sufficient upon which for the State

properly to claim that this defendant should be found guilty of the charge made against him;" and in connection therewith, the following charge:

"You have any way the right to consider her interest in testifying, but in that connection you may remember the fact from September, 1912, until April, 1914, Miss Goldie Smith, so far as the record is concerned, does not seem to have taken any steps whatever to have endeavored to get even with the defendant;" and also in that connection, the following charge: "Then you have a right to consider the interest of the defendant, because he was a witness and took the stand, in testifying, in what effect, if any, his interest would have had upon his testimony upon the stand, and in that connection, you have a right to consider the very great interest of this defendant in any verdict which the jury may render, and whether or not that interest would have any effect upon the story he tells upon the witness stand."

The portion of the charge here objected to is made up of three separate excerpts from different portions of the charge.

The first excerpt will be found on page 103, at line 15.

The second excerpt will be found on page 104, at line 28.

The third excerpt will be found on page 104, at line 36.

The sentence immediately following the second excerpt and preceeding the third excerpt is as follows:

"There doesn't seem to be any evidence upon that, but of course, that is a question for you to consider. (Page 104, Line 25)."

As to the first excerpt, we say:

The court had charged the jury (page 97) that they were the sole judges of the facts, weight of testimony, credibility of witnesses, inferences to be drawn from the evidence, and the conclusions to be reached on all the facts; and had expressly told them that if the court erred in any statement of the evidence, the jury was to rely upon its own recollection and not upon the recollection of the court.

As to the second excerpt, and the pertinent context immediately preceeding it, we say, that Linda Wenz, a witness produced on behalf of the defendant testified (page 60, line 36) that Goldie, the complaining witness, said to Dr. Mandeville that if he didn't help her out of her trouble, she would get square with him.

The language of the charge immediately preceding the second excerpt, is as follows:

> "What interest has Goldie Smith? I believe it was suggested in the testimony that she said that if the doctor wouldn't help her that she proposed to get even. Now, if you believe that, you have a right to consider her interest."

Then follows the second excerpt:

We respectfully submit that this portion of the charge is based on the testimony and was proper judicial comment.

As to that portion of the charge where the court informs the jury that they have a right to consider the interests of the defendant in the outcome of the trial, we respectfully submit that this portion of the charge was proper and in accord with the law of this State.

In the *Dugan* case the court says:

> "While it is true that the law lays down no specific tests for the ascertainment of the truth or falsity of a witness, yet there are well rec-

ognized conditions of which the law takes notice as affording a means of ascertaining to what extent, if any, credit may be given a witness, a conspicuous example of which is the interest that a witness has in the case in which he is testifying."

State vs *Dugan,* 55 Vr., 604.

"That interest in the result of a suit is about to produce bias on the part of a witness may be shown for the purpose of discrediting him, is elementary law."

Haver vs. *Central R. R.,* 35 Vr., 312.

It certainly is true that the defendant had a "very great interest" in any verdict which the jury might render. The court did not in its charge intimate an opinion as to how much, or how little, credence should be given the testimony of the defendant, although we think the court might properly have done so, "provided, always, the ultimate decision of matters of fact is left for the jury to decide."

State vs. *Overton,* 56 Vr., 287, at p. 294.

All the court did was to charge a principle of law, and left it to the jury to determine whether or not that interest would have any effect upon the credence they gave to the story he tells upon the witness stand.

There are some other matters made the basis of assignments of error, but inasmuch as they are not referred to in the "Brief of Argument" of counsel for plaintiff in error, they are to be considered as abandoned.

Marten vs. *Brown,* 52 Vr., 509.

We respectfully submit that there is no error in the record, and that the judgment of the Supreme Court should be affirmed.

Respectfully submitted,

FREDERICK F. GUILD,
Prosecutor of the Pleas.

WILBUR A. MOTT,
Assistant Prosecutor.

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TESTIMONY FOR THE STATE.

REBUTTAL FOR STATE.

TESTIMONY FOR DEFENDANT.

Writ of Error.

Filed January 7, 1916.

NEW JERSEY: *ss*:

THE STATE OF NEW JERSEY TO OUR JUS-
(L. S.) TICES OF THE SUPREME COURT—GREET-
ING:

Because in the record and proceedings and also in the giving of judgment upon a certain indictment in the name of the State of New Jersey against Charles D. Mandeville for causing a miscarriage, in the City of Newark in the County of Essex, heard and determined by the said Supreme Court of the State of New Jersey on writ of error to the Court of Quarter Sessions in and for the County of Essex, manifest error hath intervened to the great damage of the said Charles D. Mandeville as from his complaint we have received information; we being willing in this behalf to correct the error in due manner, if any there shall be, and that speedy justice be done to him the said Charles D. Mandeville, do command you that if judgment be thereon given, then that you distinctly and openly send the record and proceedings aforesaid with all things touching the same, to our Judges of our Court of Errors and Appeals in the last resort in all causes under your seal of the said Supreme Court, together with this writ, so that we may have the same before our Judges of our Court of Errors and Appeals at Trenton, on the 26th day of January, 1916, that inspecting the record and proceedings aforesaid we may further do thereupon for correcting that error what of right and according to law ought to be done.

Return.

Witness Edwin Robert Walker, Esq., our Chancellor and President Judge of our Court of Errors and Appeals, at Trenton, this seventh day of January in the year Nineteen hundred and sixteen.

THOMAS F. MARTIN,
Clerk.

FRANK E. BRADNER,
Attorney for Plaintiff in Error.

Return.

The answer of the Justices of the Supreme Court of the State of New Jersey within named. The record and proceedings whereof mention is within made with all things touching and concerning the same, we do certify to the Court of Errors and Appeals of said State in a certain schedule to this writ annexed as within we are commanded.

WM. S. GUMMERE,
Chief Justice.

Writ of Error.

NEW JERSEY, *ss.*

(L. S.) THE STATE OF NEW JERSEY to the JUDGE OF THE INFERIOR COURT OF COMMON PLEAS, constituting the Court of Quarter Sessions in and for the County of Essex; GREETING:

Because in the record and proceedings, and also, in the giving of judgment upon a certain indictment in the name of the State of New Jersey against Charles D. Mandeville for causing a miscarriage, in the City of Newark in said County of Essex, heard and determined by our Court of Quarter Sessions in and for the County of Essex, manifest error hath intervened to the great damage of the said Charles D. Mandeville as from his complaint, we have received information; we being willing in this behalf to correct the error in due manner if any shall be, and that speedy justice be done to him, the said Charles D. Mandeville, DO COMMAND YOU that if judgment be thereon given, then that you do distinctly and openly send under your seal the record and proceedings aforesaid with all things touching the same, to our Supreme Court to be held at Trenton, on the thirtieth day of December, 1914, and this writ, that the record and proceedings aforesaid being inspected, we may further cause to be done thereupon for correcting that error, what of right and according to the laws and customs of New Jersey ought to be done.

Witness, William S. Gummere, Esquire, Chief Justice of our said Supreme Court at Trenton, the

tenth day of December in the year Nineteen hundred and fourteen.

WM. C. GEBHARDT,
Clerk.

FRANK E. BRADNER,
Attorney.

Presented to me in open court this tenth day of December A. D. 1914.

WM. P. MARTIN,
President Judge.

Return.

Return.

STATE OF NEW JERSEY,
COUNTY OF ESSEX. } *ss.*

I, William P. Martin, Judge of the Court of Common Pleas, and Judge of the Court of Quarter Sessions, holden at Newark in and for Essex County, New Jersey, do hereby certify and return to the Supreme Court of Judicature of the State of New Jersey, the judgment, record and proceedings, together with all things touching and concerning the same and the entire record as by the within writ to me directed I am commanded.

IN WITNESS WHEREOF I have hereunto set my hand and the seal of the said Court and County, at Newark, New Jersey, this 6th day of Jan. A. D. 1915.

WM. P. MARTIN,

(L. S.) *Judge.*

Return.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX. } *ss.*

BE IT REMEMBERED, that at a Court of Oyer and Terminer, holden in Newark, in and for the County of Essex on the first Tuesday in April, in the year of our Lord, one thousand nine hundred and fourteen, by the Honorable William S. Gummere, Chief Justice of the Supreme Court of Judicature, of the State of New Jersey, and holding the said Court of Oyer and Terminer, in and for the County of Essex, New Jersey, by the oath of James P. Logan, Abraham Finkelstein, Joseph C. Froehlich, Michael Harris, Daniel H. Dunham, Harry D. Wethling, Charles Landmesser, Joseph Goetz, Benedict Prieth, Fred C. Strebinger, Alexander Milne, W. W. Trimpi, S. H. M. Agens, Irving C. Cannon, Augustus Hamburg, Moses Plaut, Robert W. Brown, Thomas J. McNally, Edward J. O'Brien, Eugene F. McCabe, Thomas J. Callan, George E. Neubarth, Christopher O'Brien, good and lawful men of the said County of Essex, duly commissioned and then and there duly sworn and charged to enquire in behalf of the State of New Jersey, in and for the said County of Essex, it is presented in manner and form following, to wit:

ESSEX OYER AND TERMINER.

April Term, A. D. 1914.

ESSEX COUNTY, to wit: The Grand Jurors of the State of New Jersey, in and for the body of the County of Essex, upon their oath PRESENT, that Charles H. Mandeville, amended Charles D. Mandeville, late of the City of Newark, in the County of Essex aforesaid, on the 15th day of September, in the year of our Lord one thousand nine hundred and twelve, with force and arms at the City aforesaid, in the County aforesaid, and within the jurisdiction

of this Court, maliciously and without lawful justification and with intent to cause and procure the miscarriage of one Goldie Smith, a woman then pregnant with child, did direct the said Goldie Smith to take divers drugs, to wit: ergotine, cotton root extract, oil and extract of savin contained in divers pills known as emmenagogues pills which pills he the said Charles D. Mandeville did give to the said Goldie Smith, contrary to the form of the statute in such case made and provided, and against the peace of this State, the government and dignity of the same.

And the Grand Jurors of the State of New Jersey, in and for the body of the County of Essex upon their oath aforesaid, do further PRESENT that the said Charles D. Mandeville, late of the City of Newark, in the County of Essex aforesaid, on the 15th day of September, in the year of our Lord one thousand nine hundred and twelve, with force and arms at the City aforesaid, in the County aforesaid, and within the jurisdiction and with intent to cause and procure the miscarriage of one Goldie Smith, a woman then pregnant with child, did advise the said Goldie Smith to take divers drugs, to wit: ergotine, cotton root extract, oil and extract of savin contained in divers pills known as emmenagogues pills, which pills he, the said Charles D. Mandeville, did give to the said Goldie Smith, 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.

LOUIS HOOD,
Prosecutor of the Pleas.

On the twenty-seventh day of June A. D., Nineteen hundred and fourteen, on which day the said Indictment was presented by the Grand Jury aforesaid, to the said Court of Oyer and Terminer, and the said Justice did then and there order the said

indictment to be handed down to the Court of General Quarter Sessions, and to be delivered to the Clerk of the Court of General Quarter Sessions, in and for said County of Essex, and then and there the said indictment was duly delivered and duly filed by the Clerk of said Court and an entry of such order and delivery and filing was there and then made in the minutes of said Court at the same time pursuant to the statute in such case made and provided.

And afterwards, that is to say, on the third day of July A. D., Nineteen hundred and fourteen, at a Court of General Quarter Sessions, holden in Newark, in and for the County of Essex, before the Honorable William P. Martin, presiding Judge of the Court of Common Pleas, Charles D. Mandeville, in the custody of John F. Monahan, Sheriff of the County of Essex aforesaid, and the said Charles D. Mandeville, being brought before the bar in his own proper person and forthwith being demanded of and concerning the premises in the above indictment specified and charged upon him, how he would acquit himself thereof, say that he is Not Guilty thereof, and therefore for good and evil he puts himself upon the country, &c., Frederick F. Guild, Prosecutor of the Pleas of said State, for said County of Essex in this behalf doth the like.

Therefore, let a Jury thereupon come before the Court of General Quarter Sessions, to be holden at Newark, in and for the County of Essex on the seventh day of October A. D. Nineteen hundred and fourteen, then next ensuing twelve free and lawful men, each of whom shall be a citizen of this State and resident within the County of Essex aforesaid, above the age of twenty-one years and under the age of sixty-five years, by whom the truth of the matter may be better known and who are not of kin to the said Charles D. Mandeville, to recognize

upon their oath whether the said Charles D. Mandeville is Guilty of the premises in the said indictment specified or Not Guilty, because the said Frederick F. Guild, Esquire, Prosecutor, &c., as the said Charles D. Mandeville puts himself upon the jury and the same time is given to the parties aforesaid at the same place.

On the sixteenth day of November A. D., Nineteen hundred and fourteen, that being the day the case was set down for trial, the defendant's counsel made application to the Court to allow the defendant at the bar to withdraw his plea, so that he could make a motion to quash the indictment. The Court after hearing the motion to quash the indictment, denied the motion.

And afterwards, that is to say, at the same session of the Court of General Quarter Sessions, holden before the Honorable William P. Martin, Judge of the Court of Common Pleas, comes the said Frederick F. Guild, who prosecutes as aforesaid, and the said Charles D. Mandeville and the jury of whom mention is before made, and by John F. Monahan, Sheriff of the County of Essex, for this purpose empanelled and returned to wit, William J. Taylor, Thomas J. Tracy, Frederick E. Townley, Frank C. Oelkers, George Nichols, Martin Bender, Albert M. Sieb, John Dempsey, Charles W. Romaine, Nelson T. Beach, William Gilroy and Andrew Kuna, being called were sworn upon that jury who to speak the truth of and concerning the premises and thereupon the trial of said issue was commenced and continued until the seventeenth day of November, 1914, when the jury returned into court in charge of the officer sworn to attend them, and then and there in the presence of the Prosecutor, defendant and Court do say upon their oath, they find the said de-

Verdict.

fendant Charles D. Mandeville Guilty with recommendation to mercy and so they say all.

Judgment signed

November 17, 1914.

WM. P. MARTIN,

Judge.

Whereupon, all and singular, the premises being seen and by the Court now here fully understood, it is on this tenth day of December, A. D., Nineteen hundred and fourteen, ORDERED and adjudged that the said Charles D. Mandeville be committed to the County Penitentiary for the term of one year at hard labor and to pay a fine of Two thousand dollars and stand committed until the fine and costs are paid, which said costs are taxed by the Clerk at the sum of Fifty-six dollars and sixty-four cents.

Rule Extending Time.

Filed December 29, 1914.

New Jersey Supreme Court.

THE STATE OF NEW JERSEY, *Deft. in Error.* vs. CHARLES D. MANDEVILLE, *Pltff. in Error.*	On Error to Essex Quarter Sessions. Rule extending time.

For good cause shown, it is ordered that plaintiff in error may have ten days further time from Dec. 30, 1914, to have the writ of error in this cause returned into Court.

Dated Dec. 29, 1914.

Let this rule be entered in the Minutes of the Court.

SAMUEL KALISCH,
J. S. C.

Entered Dec. 29, 1914.

On motion of FRANK E. BRADNER,
Atty. of Pltff. in Error.

A true copy,
WM C. GEBHARDT,
Clerk.

ESSEX COUNTY GENERAL QUARTER SESSIONS COURT.

November Term, 1914.

STATE
vs.
CHARLES D. MANDEVILLE.
} Indictment No. 52.
Causing Miscarriage.

Transcript of shorthand notes of testimony taken in the above entitled cause before his Honor William P. Martin, Judge, and a jury, at the Court House, in the City of Newark, New Jersey, in the presence of Wilbur A. Mott, Esq., Assistant Prosecutor of the Pleas, for the State, and Frank E. Bradner, Esq., for defendant.

Mr. Bradner. I desire to move to quash the indictment.

The Court. You may withdraw your plea.

Mr. Bradner. I withdraw the plea of not guilty and make a motion to quash the indictment. The statute upon which this indictment is supposed to be founded is section 119 of the Crimes Act and reads as follows: "Any person who maliciously or without lawful justification, with intent to cause or procure the miscarriage of a woman then pregnant with child, shall administer to her, shall prescribe for her or advise or direct her to take or swallow any poison, drug or medicine or noxious thing, or who maliciously or without lawful justification shall use any instruments or means whatever with like intent, shall be guilty of a high misdemeanor and punished accordingly." The indictment in this case charges in one count that the defendant "maliciously and without lawful justification and with intent to cause and procure the miscarriage of one Goldie Smith, a woman then pregnant with child, did direct

the said Goldie Smith to take divers drugs, to wit, ergotine, cotton root extract, oil and extract of savin contained in divers pills known as emmenagogue pills, which pills he, the said Charles E. Mandeville did give to the said Goldie Smith." The other count is precisely the same with the exception that instead of using the word "direct" it uses the word "advise." My motion is to quash the indictment upon the ground that it does not charge that the drug was noxious, and I rely upon the case of the *State* vs. *Gedicke,* 43 Law—14 Vroom., at page 86.

Mr. Mott. Pardon me. You say that the drug was not noxious. You go further than that, don't you?

Mr. Bradner. It doesn't charge that any noxious thing was given whatever. Not only that the drug was not noxious but it doesn't charge that any noxious thing was given. The indictment is capable of an innocent meaning. For instance, suppose that it charged that he gave her a glass of water with intent to procure a miscarriage. That would not do her any harm. Or sugar pill or bread pill or something of that kind. The point is that it must appear on the face of the indictment that what was given to the woman was something that would be harmful to her. The statute is not intended so much to prevent the crime of abortion as to prevent harm being done to a woman in that condition, or a woman believed to be in that condition. The form of indictments in this county has been strictly in compliance with the statute. I have before me a copy of the indictment in the case of the *State* vs. *Wilson,* in which I appeared, and that charged that he did administer to and prescribe for the said Marian Marshan, and advise and direct her, the said Marian Marshan to take and swallow a certain poison, drug, medicine and noxious thing, and in the case of *State*

vs *Gedicke,* to which I have referred your Honor, the indictment also charged that he did administer, prescribe for, advise and direct one S. S. then and there being pregnant with child to take and swallow certain poison, drug, medicine and noxious things with intent to then and there cause and procure the miscarriage of the said S. S., contrary to the form of the statute &c., and that case went up from this county and the present Judge Kalisch appeared at the trial and took a writ of error. The conviction was set aside upon another ground, but one of the two points made in the argument in the Supreme Court was that there was error in the charge of the Court in which the Court charged as follows: "That it was not necessary that the medicine, drug, or noxious thing advised to be taken, administered to or prescribed for her should be capable of procuring a miscarriage because that would be graduating the guilt of the defendant by the success or failure of the attempt when the statute makes the attempt a crime regardless of the success. Then Justice Scudder proceeds: "The collocation of the words in this statute requires that the thing used to effect a miscarriage should be noxious—that is, hurtful." That is the precise statement "the collocation of the words in the statute requires that the thing used to effect the miscarriage should be noxious—that is, hurtful. The words 'poison, drug, medicine or noxious thing' indicate the character of the means that must be used. The rule, *copulatio verborum indicat acceptationem* in *eodem sensu,* and the *maximum noscitur a sociis,* govern the construction of these words as they stand connected in this statute. The poison, drug, medicine, or other thing must be noxious, or hurtful; if it possesses this quality, and is administered, prescribed, advised or directed to be taken with the intent to cause or procure a miscarriage when the woman is then preg-

nant with child, the crime is complete, whether in the opinion of others it is capable of producing that result or not. It is dangerous to the life and health of the mother and to the existence of the child to experiment with any drug, medicine or noxious thing to produce a miscarriage. The ignorance of the operator may lead him to select something that will not have the effect he designs, but if it be noxious in any degree, though in the judgment of others who have greater knowledge, it cannot produce the effect intended, it is within the statute. The words defining the means to be used were brought into our statutes by the act of March 1st, 1849. It was passed to remedy an adjudged defect in our law, that to cause or procure abortion before the child is quick was not a criminal offense at common law or by any statute of our state. As soon as the question was raised and the doubt suggested, this act was passed to punish the offense. The design of the statute was not so much to prevent the procuring of abortions, however offensive these may be to morals and decency, as to guard the health and life of the female against the consequences of such attempts. The guilt of the defendant is not determined by the success or failure of the attempt; but the measure of his punishment is graduated by the fact whether the woman lives or dies." Now, in that case the point was not made at the trial that there was no proof of the noxious thing,—or what was given being noxious. There was no objection to the evidence that was introduced as to what the pills were, and that point was not distinctly made, but objection was taken to the charge of the Court. The Court charged that it was not necessary to prove that what was given would effect the purpose for which it was given and that I think was right. It is not necessary to prove that but it is necessary to prove and it will be necessary to prove in this case that these

emmenagogue pills were harmful, and the moment that proof is offered it will be objected to, and I think properly and legally objected to because it is not charged in the indictment, and the result will be that if that evidence is ruled out there will be no case and the Court will be obliged to direct a verdict of acquittal. Now, I think, instead of coming to that we could pass upon this on the face of this indictment itself. It is not charged what, under that statute, the State will have to prove, and the indictment in its present condition will make it impossible for the State to prove what it will have to prove under the statute. The indictment being defective, and I think it is defective in substance, I ask your Honor to quash it.

The Court. What is the language of the indictment?

Mr. Mott. Did direct the said Goldie Smith to take divers drugs, to wit, ergotine, cotton root extract, oil and extract of savin contained in divers pills. The statute, your Honor will observe, prohibits the giving of drugs or medicine or noxious thing, enumerating several things; first poison, then drugs, then medicine or noxious thing. I take it that these words "noxious things" are a generic term under which you could allege something that was not a poison, something that was not a drug and something that was not a medicine but if it were noxious and did not fall within either one of those other three classes it would be good provided your indictment had alleged that he had given a noxious thing, to wit, whatever it was. Now, the indictment does in terms charge that he gave a drug. The insistment of counsel, as I understand it, is, that there must be an allegation that the drug was noxious. I do not follow that reasoning. It is sufficient if the drug, the poison, the medicine is mentioned, then, as our statutes frequently do, close with the generic term,

or noxious thing. This statute does not say a noxious drug or a noxious poison or a noxious medicine, but any medicine given with intent. Therefore, it seems to me that this indictment complies with the statute.

The Court. The argument of the defendant is based upon the theory that the sole purpose of the statute in question was to save the life of the woman and to prevent injury to her health. This is not the sole object of the statute. The statute is passed not only to preserve the life of the female and protect her health, but it is also for the purpose of preventing abortion, and it is now very well understood that the crime of abortion is one of the most serious that can be committed and it is a great wrong and injury upon society and the statute is intended to prevent the aiding, advising, directing, counseling, procuring or other assistance rendered to any person for that purpose. The motion is denied.

Defendant's counsel prays an exception to this ruling of the Court, the same is allowed and it is sealed accordingly.

WM. P. MARTIN, *Judge.* (L. S.).

The Court. Let the defendant plead over.

(The defendant then pleaded not guilty.)

Mr. Mott. I would like to ask the jurors if there are any of them personally acquainted with the defendant.

The Court. Did you answer, No. 6?

The Juror. Yes, sir.

The Court. What did you answer?

The Juror. That I was.

Juror No. 6 was then excused by the State and his placed filled by another juror.

Mr. Mott opened for the State.

GOLDIE SMITH sworn for the State.

DIRECT EXAMINATION by *Mr. Mott.*

Q. Miss Smith, where do you live now? A. 39 Liberty Street, West Orange.

Q. How old are you? A. Nineteen.

Q. With whom do you live? A. My aunt, Mrs. Armstrong.

Q. Is your mother living? A. Yes, sir.

Q. Do you know the defendant, Dr. Mandeville? A. Yes, sir; I do.

Q. Did you ever go to see him? A. Yes, sir.

Q. When did you go to see him? A. In July, 1912. I made about between thirty and forty visits altogether to Dr. Mandeville.

Mr. Bradner. I object to the latter part of the answer.

Q. How many times did you go to see him? A. Between thirty and forty times.

Q. Where did you see him? A. Where? In the Wiss Building on the seventh floor, at his office.

Q. Wiss Building on Broad Street? A. Yes, sir; on Broad Street.

Q. Do you recall the first day you went to see him? A. Yes, sir; I do.

Q. Did you go alone or in company with someone on that occasion? A. I went alone.

Q. About what time of day was it? A. It was in the evening between seven and nine.

Q. And you saw the doctor that day? A. Yes, sir; I did.

Q. Well, will you tell just what occurred between you and the doctor that day? A. Why, I told the doctor I believed I was in the family-way and I was sent there for him to give me something or do something that would bring on a miscarriage.

Q. What did he say? A. He said it would cost me $75 and asked me if I could get the money. I said

I thought I could; he said I should come down when I got the money again.

Q. Did you go down again? A. Yes, sir; I did.

Q. How soon after the first visit? A. About four or five days.

Q. What occurred on the second visit? A. I gave him money and he gave me some pills—$65.

Q. How much money did you give him? A. $65.

Q. Now, about when was it that you were there the second time? A. About the first of August, or 2d, or something like that, 1912.

Q. What were the pills in? A. Box.

Q. How many boxes of pills did he give you? A. About five or six altogether.

Q. When did you go and see him again? How soon after that, about? A. About three days.

Q. What occurred at that time? A. Gave me some more pills.

Q. And did you see him again? A. Yes, sir.

Q. And what occurred? A. Why, he used needles.

Mr Bradner. Wait a moment. I object.

The Court. On what grounds?

Mr. Bradner. On the ground—of course I could not anticipate what she was going to say—"what occurred?" I supposed it would be confined to the giving of the pills that is charged, that he gave pills. She started to tell about something else. That I object to.

The Court. The question is proper. Objection overruled.

Mr. Mott. Your Honor heard the answer?

Mr. Bradner. She got an answer in there.

The Court. No. I haven't heard the answer.

(Answer read.)

Mr. Bradner. I couldn't anticipate that. She started to say it and then I objected.

The Court. Why, isn't that proper on the question of intent.

Mr. Bradner. He had already given her pills, according to the testimony.

The Court. It is a question of intent, isn't it?

Mr. Bradner. That makes two distinct offenses, one prescribing, advising or directing drugs to be taken and the other is using mechanical means. If they want to charge mechanical means it ought to be charged in the indictment.

The Court. Why cannot all their relations be shown, and be shown on the theory of showing the intent with which the defendant acted?

Mr. Bradner. You cannot infer the intent from the act itself.

The Court. I will deny the motion to strike it out.

Defendant's counsel prays an exception to this ruling of the Court, the same is allowed and it is sealed accordingly.

WM. P. MARTIN, *Judge.* (L. S.).

Q. You say he used a needle? A. Yes, sir.

Q. What use did he make of the needle? How did he use it? Do you understand me? A. Yes, sir; I don't know just how to explain it to you.

Q. Tell the jurors where he used the needle? A He said to open the womb.

Q. On these various occasions when you went to see him did he make a physical examination of you? A. Yes, sir.

Q. Did he ever do anything on more than this one occasion to open the womb? A. Yes, sir; on several occasions.

Mr. Bradner. I object. That calls for a conclusion.

The Court. Objection sustained. The answer will go out.

Q. Well, did he ever do anything to you on any other occasion beside this?

Mr. Bradner. I object to it as leading.

The Court. Objection sustained.

Witness. On several occasions.

The Court. Do not answer when the objection is sustained.

Witness. I beg pardon.

Q. Well, what occurred on the other visits that you made to him?

Mr. Bradner. I object if the Court pleases, to any occurrences—anything that transpired between these parties except the giving of pills to her. Everything else I object to except conversations, and I object upon the ground that whatever he may have done, even to including the act of giving pills, cannot legally lead to an inference that he intended to commit an abortion.

The Court. Even though the giving of the drugs was part of the general plan to bring about an abortion? Is that your position?

Mr. Bradner. My position is that the act alone of giving the drugs does not lead to an inference of intent, because they might have been given for perfectly proper purposes.

The Court. The objection is to the question, which is, "What occurred on these visits?"

Mr. Bradner. Yes, sir.

The Court. Objection overruled.

Defendant's counsel prays an exception to this ruling of the Court, the same is allowed and it is sealed accordingly.

WM. P. MARTIN, *Judge.* (L. S.).

A. Several times he gave me pills. He used needles and other times he gave me pills. Another

time he told me to get quinine. I don't remember how many grains myself.

Q. Was anything said on the other occasion by him when he used the needles, as you state? A. He told me to come again the next day.

Q. What did you do with the pills he gave you? A. I took them, most of them.

Two boxes marked Exs. S1 and S2, for identification.

Q. I show you two boxes, being S1 and S2 for identification, and ask you if you have ever seen them before? A. Yes, sir.

Q. Where did you first see those boxes? A. Dr. Mandeville gave them to me.

Q. Look at the contents and see whether—what was in those boxes when Dr. Mandeville gave them to you? A. Pills.

Q. And are those the same pills that were in there when Dr. Mandeville gave them to you? A. Yes, sir.

Q. And did you ever take any pills out of those particular boxes? A. Yes, sir; I did. They were full when he gave them to me.

Q. Did you receive any directions as to how many of these pills you were to take and how you were to take them? A. Three every four hours, I believe.

Q. And did you take them? A. Yes, sir; I did.

Q. In that way? On any of the visits that you made to Dr. Mandeville were you ever accompanied by anybody down there? A. One time Dr. Tippett went with me.

Q. (Please stand up, Doctor.) Do you mean this gentleman? A. Yes, sir; I do.

Q. When was it, if you recall, Miss Smith, that Dr. Tippett went down there with you? A. It was about the second week in September, 1912.

Q. Dr. Tippett is a dentist? A. Yes, sir.

Q. Well, do you know whether he is or not? A. Yes, sir.

Mr. Bradner. I object to telling the witness what he is and then asking her.

(Question read.)

Mr. Bradner. I object to the form of the question and also on the ground that it is not material what Dr. Tippett is—has no bearing on this case, and won't help the jury the least bit; has no reasonable tendency to prove anything in this case, the fact that he is a dentist or is not a dentist, or that he is even a doctor. It is going in the case for the purpose of prejudicing the defendant in some way.

Mr. Mott. The witness stated in answer to my question whether she had ever been accompained by anybody there that she had been accompanied by Dr. Tippett. I want to know from the witness whether she knows what kind of a doctor he is.

The Court. This is an objection to the question. Objection overruled.

Q. Did you and Dr. Tippett leave Dr. Mandeville at the same time? A. Yes, sir.

Mr. Bradner. I object to the form of the question.

The Court. Objection sustained. Strike out the answer.

Q. Who left Dr. Mandeville's first that night, you or Dr. Tippett?

Mr. Bradner. I object.

The Court. Objection sustained.

CROSS-EXAMINATION by *Mr. Bradner.*

Q. How old did you say you are? A. Nineteen.

Q. When were you nineteen? A. Last January, the 22d.

Q. And in the summer of 1912, you were just seventeen,—about seventeen and a half, weren't you? A. Yes, sir.

Q. Where did you live in July, 1912? A. 180 First street, Newark, New Jersey.

Q. With your aunt? A. With my grandmother.

Q. Were you boarding there? A. I always lived with my grandmother, since I was three years old.

Q. Where was your mother? A. In Newark.

Q. Where was your father? A. Father is dead.

Q. Who was supporting you? A. I worked and supported myself.

Q. Where did you work? A. In the telephone company in East Orange.

Q. What was your position there? A. Telephone operator.

Q. You mean at the central office? A. Yes, sir.

Q. Where they have a number of girls to make the connection? A. Yes, sir.

Q. How long had you been working there? A. Two years and three months almost. When I left it was two years and three months.

The Court. You haven't been there since when?

Witness. Since October, 1912.

Q. You went to see Dr. Mandeville in the latter part of July, 1912? A. Yes, sir.

Q. Your sickness hadn't come on that month, had it? A. No, sir.

Q. When was it due? A. 15th of July.

Q. About the 15th of July? A. Yes, sir.

Q. And for how many years had you been sick every month? A. I don't know.

Q. What is that? A. Three or four.

Q. And had you been quite regular? A. Yes, sir.

Q. And were you sick in June, 1912? A. Yes, sir.

Q. On time? A. Yes, sir; I was.

Q. Did something happen after that in June, 1912? A. Yes, sir.

Q. You were out with some man, weren't you? Is that so? A. Yes, sir.

Q. Dr. Tippett? A. Dr. Tippett; yes, sir.

Q. Then when your sickness didn't come on in July you were a little worried about it, is that so? A. Yes, sir.

Q. When did you meet Dr. Tippett, in July? A. No; I met him in May.

Q. And when was it you went out with him somewhere? A. In June.

Q. Latter part of June? A. Yes, sir.

Q. That was the first time that you had been with him? A. Yes, sir.

Q. And you and he were intimate, were you? A. Yes, sir.

Q. When you went to see Dr. Mandeville the first time did he examine you? A. Yes, sir; he did.

Q. You sat on an operating chair or laid down on an operating table, didn't you? A. Yes, sir.

Q. Are you quite sure that he examined you then? A. Yes, sir; he did.

Q. You told him that you wanted to find out whether you were in the family-way, didn't you? A. Yes, sir.

Q. Did he tell you then that he couldn't tell? A. He said I was.

Q. He said you were? A. Yes, sir.

Q. You mean the first time you went there? A. Yes, sir.

Q. Told you then that you were in the family-way? Sure about that? A. Yes; he did.

Q. Did you see what kind of an instrument that he used then? A. No, sir.

Q. Did you see it? A. Yes, sir; I saw it, but I didn't pay much attention to it.

Q. You did see it. Is that it? (Showing witness article). A. I don't remember.

Q. You saw something like that in his hand? A. Yes, sir; something like that.

Q. That is what you saw that he used?

The Court. Showing witness what?

Mr. Bradner. I am showing the witness a speculum.

Q. That is what you saw. And on that first occasion did the doctor give you some pills? A. No; he did not.

Q. Did he give you some tablets? A. No, sir; not on the first occasion. He didn't give me anything.

Q. Didn't give you anything? Did you pay him any money then? A. Not the first time; no.

Q. How soon after that did you go to see him. A. About three or four days.

Q. And did he use this same instrument again? A. Gave me the pills then.

Q. And didn't use any instrument? A. He didn't use any instrument then; no, sir.

Q. Have you got the first box that he gave you? A. No; I have not.

Q. What did you do with that? A. Threw it away.

Q. Have you got the second box that he gave you? A. No, sir.

Q. And neither one of these two boxes is either the first or second box of pills that he gave you? A. No, sir.

Q. And were the pills in the first box pink or black or brown? A. Brown.

Q. Brown pills? A. The same as some in that one.

Q. What is that? A. The same as some that I have there in the box.

Q. The same as these broken up ones? The same as those (indicating)? A. Yes; the brown ones; yes, sir.

Mr. Mott. Which is S1 for identification.

Q. And the same kind in the second box? A. Black ones, I believe.

Q. You believe? A. I am not positive.

Q. You are not positive? A. Sometimes he gave me brown and sometimes—

Q. I am talking about the first and second box. The first box was brown ones? A. Yes, sir.

Q. The second box you are not sure whether they were brown ones or not? A. No, sir.

Q. The doctor told you that you had gonorrhoea? A. Did he tell me what?

Q. That you had gonorrhoea? A. I don't get that question.

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

Q. Did he tell you that you had something the matter with you? A. Yes, sir; he said I was pregnant.

Q. Did he tell you that you had gonorrhoea? A. I don't know what you mean.

Q. You don't understand that. Did he tell you that you had leucorrhoea? A. No, sir.

Q. Did he tell you that you were in a very bad condition? A. No, sir; he did not.

Q. Simply gave you some pills and told you to take them? A. Yes, sir.

Q. Now, you were here as a witness before, weren't you, in another case? A. Yes, sir.

Q. Last February—on the 18th of February? A. Yes, sir.

Q. I call your attention to this question, you were asked on that trial, "What did Mandeville do for you?" and you answered, "At first he gave me a couple of boxes of pills of some kind." Do you recall saying that? A. Yes, sir.

Q. You didn't on that occasion say anything more than the two boxes of pills,—"Couple of boxes of pills," did you? A. I don't remember saying it.

Q. And since that trial have you talked with anybody about your visit to Dr. Mandeville?

Mr. Mott. I object to that question because, "that trial"—we don't know what trial you refer to.

Q. That I just called your attention to, in which you testified? A. No, sir.

Q. Have you talked with Mr. Hargan, the detective, here? A. Oh, yes; Mr. Hargan.

Q. Have you talked with Mr. Mott? This gentleman (indicating)? A. Not since the trial, I don't think.

Q. Where did you have your talk with Mr. Hargan? A. In the office,—in his office.

Q. Here in the Court-house? A. Yes, sir.

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

Q. Well, before you went to the Grand Jury? A. Yes; I believe it was.

Q. How long did you and he talk together? A. I don't remember.

Q. Half an hour? A. I don't know.

Q. Have you talked with him more than once? A. About a couple of weeks ago I believe I came down and changed the date of my subpoena, that is all.

Q. Now, when you talked with Mr. Hargan, the prosecutor's detective, you knew him to be a detective, didn't you? A. Yes, sir.

Q. And you supposed then that you would have to tell him everything he asked of you? A. Yes, sir.

Q. Did you at that time give him these two boxes that have been shown to you? A. Yes, sir. I think Mr. Hargan called for them at my house.

Q. When did he call for them? A. I don't remember the date.

Q. He asked you to let him have the two boxes of pills that you had spoken about in your testimony? A. He didn't say "two." He asked me if I had any pills at all. I gave him all that I had.

Q. You gave him these two boxes? A. Yes, sir.

Q. You are quite sure that these are the two boxes? A. Yes, sir.

Q. Well, take this small box (referring to S1 and S2 for identification) take the smaller box, marked S2 for identification. Is that in just the same condition it was when you gave it to him? A. I believe there were twenty pills in this box.

Q. There were twenty pills in the one box? A. Yes, sir.

Q. Of these dark pills—black pills? A. Yes, sir; I guess it was black.

Q. You think there were twenty pills—black pills? A. Yes, sir.

Q. And there are now, two four—we will agree on how many there are—five, six, seven, eight, nine, ten; ten pills and a half one and something else that looks like a tablet? A. That is another kind he gave me.

Q. That is another kind? A. Yes, sir.

Q. That little tablet in that box wasn't in the box when you got it from Dr. Mandeville, was it? A. I had another box that had all the same kind.

Q. You had another box of tablets? A. Yes, sir.

Q. They were charcoal tablets, weren't they? A. I don't know what they are.

Q. Didn't he tell you they were charcoal tablets? A. No, sir; he didn't tell me.

Q. Is that what he gave you first, the tablets? A. These here (indicating)?

Q. Yes. A. No, sir.

Q. He gave you the brown ones first? A. Yes, sir.

Q. Now, you take the box marked S1 for identification? A. There were four in that box.

Q. There were four pills in that box when you gave it to Mr. Hargan? A. Yes, sir.

Q. And there are two in there now, isn't there? A. Yes, sir.

Q. And a broken one. You went away on a vacation, didn't you, in the summer of 1912? A. Yes, sir.

Q. When? A. Not on a vacation. The telephone people sent me.

Q. When? A. 24th of August and I stayed until the 6th of September, 1912.

Q. You didn't go until the 24th of August? A. No, sir.

Q. And I understood you to say that you went to Dr. Mandeville the last part of July. Now, can you fix the date? A. No; about the 29th.

Q. About the 29th or 30th? A. About the 29th.

Q. 29th of July you went there the first time. Then you didn't go for three days? A. No, sir.

Q. And then you went how many times, thirty or forty times? A. Yes, sir.

Q. Up until the 24th of August, is that right? A. I went after I came back from Syracuse.

Q. I am not asking you about that. I am asking you up to the 24th of August, how many times did you go? A. I went almost every day.

Q. You don't know whether you went thirty or forty times? Did you go there after the 15th of August in August? A. 15th of August?

Q. Yes. Did you go there on any Saturday in August? Did you answer the last question? A. No, sir.

Q. Go back to that. Did you go there after the 15th of August in that month? A. I don't remember.

Q. Did you go there on any Saturday in August? A. I am not sure.

Q. Did you go there on any Sunday in August? A. No; I never went on Sunday. He wasn't there, he said.

Q. Did you go on any Friday in August? A. I don't know just what days I went on.

Q. Did you go on any Thursday in August? A. Yes, sir; I did, I believe.

Q. Are you sure about that? A. I am not sure what days they were.

Q. Don't you know that his office was closed on Thursdays, Fridays, Saturdays and Sundays all through the month of August? Don't you know that? A. I went whenever he told me to come. I don't remember—

Q. That is all you can say, you went whenever he told you to come. Then you went away up to Syracuse and you were gone two weeks or more, weren't you? A. Yes, sir.

Q. And when you came back you went to Dr. Mandeville's office with Dr. Tippett, didn't you? A. Yes. I went alone a couple of times and he wasn't there.

Q. Please answer my question.

Mr. Bradner. I move to strike out the answer.

A. Yes, sir.

Q. You went with Dr. Tippett? A. Yes, sir.

The Court. You are asking her whether she went with Dr. Tippett as if it was the first time. She says "No; I went two or three times myself and then afterwards I went with Dr. Tippett." That is a perfectly responsive answer.

Mr. Bradner. I beg your Honor's pardon. I asked her if she went with Dr. Tippett when she came back from Syracuse.

The Court. She says, "No; I went there two or three times alone and then I went with Dr. Tippett." That is a perfectly responsive answer.

Mr. Bradner. I ask your Honor to strike it out.

The Court. Motion denied.

Defendant's counsel prays an exception to this ruling of the Court, the same is allowed and it is sealed accordingly.

WM. P. MARTIN, *Judge.* (L. S.).

Q. Did you go to Dr. Mandeville with Dr. Tippett after you came back from Syracuse? A. Yes, sir; I did.

Q. And Dr. Tippett went in to see him alone, didn't he? A. Yes, sir.

Q. And where did you wait? A. In his office.

Q. Yes. And then Dr. Tippett went out and went away, didn't he? A. He went out when I went out. He went out with me. Went out together.

Q. Went out together. On that occasion did Dr. Tippett say to you that Dr. Mandeville said that you had only given him ten dollars? A. Yes, sir; he did.

Q. Yes. After that did you go back again to see Dr. Mandeville? A. No, sir; I did not.

Q. Never went there again? A. No, sir.

Q. Did you see Dr. Mandeville alone on that occasion? A. No; I did not.

Q. Did you go to see Dr. Mandeville when you came back from Syracuse alone? A. Yes, sir.

Q. Did you go in there and beg of him to help you out of your trouble? A. No; I did not.

Q. Didn't you go there in his private room and beg him to help you out of your trouble? A. No, sir; I did not.

Q. Didn't you say to him, "If you don't help me out of this I will get square with you"? A. No, sir; I did not.

Q. Or "even with you"? A. No, sir; I did not.

Q. Do you remember seeing a doorway with a curtain hanging over it? A. I don't remember.

Q. Out from his private room? A. I don't remember.

Q. Did you notice where he went when he went into some place to get the pills—the first box of pills that he brought out to you? A. He had some shelves on the side, maybe.

Q. Did you notice him go in behind a curtain and bring them out? A. I don't remember whether there was a curtain there or not.

Q. Did you ever see anybody in there, in behind that curtain? A. No; I did not.

Q. You didn't know whether there was anybody back there or not, did you? A. I could see when I went out the door that he made me go out. I didn't go out the same door I came in.

Q. You went out another way. You didn't go back through the waiting room, did you? A. No, sir.

Q. But I am talking about the room where you had your conference with Dr. Mandeville alone. Did you notice a doorway there with a curtain hanging over it? A. I don't remember whether there was a curtain there or not.

Q. But you could see in there sometimes and saw shelves with bottles on? A. When I went out the door I could.

REDIRECT:

Q. Did you give birth to a child shortly after this?

Mr. Bradner. I object to the form of the question, "shortly after this."

Q. Well, sometime after. Subsequent then. Subsequent to your visit to Dr. Mandeville?

Mr. Bradner. I think, if it is competent at all, the exact date of the birth should be shown.

The Court. Then you object to it as leading?

Mr. Bradner. I suppose so.

A. Yes, sir; on the 6th of February, 1913.

Q. You say you gave these two boxes to a detective from the Prosecutor's office, did you? A. I believe he called for them at my home.

Q. Do you see the gentleman here that called? A. Mr. Hargan. Yes, sir.

Q. Well, which is Mr. Hargen? A. Right here. The first one at the table.

Q. The first one. (Stand up, Mr. Hargan.) Now, was it Mr. Hargan or Mr. Godfrey. This gentleman standing up is Mr. Godfrey.

Mr. Bradner. I object. I think she has already identified Mr. Hargan as sitting here at the desk. Let her pick out the man, not stand him up and say is that the man. That is no identification.

The Court. She has been asked twice if she is sure and she has answered the question. I think you have a right to correct the situation if counsel is informed that she is wrong. Objection overruled.

Defendant's counsel prays an exception to this ruling of the Court, the same is allowed and it is sealed accordingly.

WM. P. MARTIN, *Judge.* (L. S.).

Q. Are you sure which one of these two men you gave the box to? A. I am quite sure it was Mr. Hargan.

Q. And you mean the first man? That is what you said. When was it you gave them to the detective? A. I don't remember the date.

Q. Well, I mean about how long? A. I don't know.

Q. Where did you give them to him? A. At my home.

Q. He came for them? A. Yes, sir.

Q. And what was in the boxes when you gave them to the gentleman that called? A. Pills.

Q. And what pills? A. Pills that you have there.

Q. And they were pills that you had obtained where? A. At Dr. Mandeville's.

WALTER GODFREY sworn for the State.

DIRECT EXAMINATION by *Mr. Mott.*

Q. Mr. Godfrey, you are a detective in the Prosecutor's office? A. Yes, sir.

Q. I show you Exs. No. 1 and 2 for identification and ask you if you have seen them before? A. Yes, sir.

Q. Where did you first see them? A. Miss Smith gave them to me in our office, sir, in the Court-house.

Q. When was that? A. On the 20th of March, 1914.

Q. And what did you do with them? A. Placed them in an envelope and marked the envelope, and afterwards turned them over to Mr. Hargan; also saw Miss Smith in my presence sign her initial and mark the number of pills in each box.

Q. The words "G. S." on these boxes? A. Supposed to be Miss Smith's initials.

Q. Did you see her write them? A. I did, sir, I said, in my presence.

Q. And do you know what the figures twenty there are? A. Number of pills in the box.

Q. Whose handwriting is that? A. In mine.

Q. And the four? A. In mine, sir.

Q. There were that number of pills in the box? A. In each box, yes, sir; and I put them in an envelope and turned them over to Mr. Hargan.

Mr. Bradner. I would like to ask whether this witness was called, and I assume he was, for the purpose of tracing up those pills as part of the State's case?

Mr. Mott. Yes.

Mr. Bradner. For that purpose only?

Mr. Mott. Yes.

Mr. Bradner. And his testimony cannot be used to explain the cross-examination of Goldie Smith?

Mr. Mott. I have got to trace these pills into the hands of the chemist.

Mr. Bradner. It is only for that purpose. If it is not for that purpose I move to strike it out because I do not think the State can call a witness to explain away her cross-examination.

Mr. Mott. I am not explaining anything.

The Court. If the testimony is relevant it is relevant, and it is competent and in evidence. It cannot be stricken out.

ALFRED J. HARGAN sworn for the State.

DIRECT EXAMINATION by *Mr. Mott.*

Q. You are a detective in the Prosecutor's office, are you, Mr. Hargan? A. Yes, sir.

Q. Look at Exs. S1 and 2 for identification and tell me whether you have ever seen them before.? A. I have.

Q. Where did you first see those? A. I first saw those boxes in my office in the Prosecutor's office. They were handed to me by Sergeant Godfrey.

Q. And what did you do with them? A. I kept them in my possession for some time and then handed them over to Mr. Edel, for the purpose of making an analysis.

Q. You mean this Mr. Edel (indicating)? A. Yes, sir.

Q. Where did you give them to Mr. Edel. A. In our office.

NO CROSS-EXAMINATION.

Mr. Mott. I now offer the two boxes and their contents in evidence.

Mr. Bradner. I object because it appears from the evidence that they have been tampered with and they are not the same boxes that

came from Goldie Smith—or the contents the same.

The Court. Repeat that, will you, counsellor.

Mr. Mott. There is no proof that they are the same boxes?

Mr. Bradner. That the contents are not the same. The boxes themselves do not count. The contents are not the same as they were when she gave them to Mr. Godfrey.

The Court. If there is any doubt about what Miss Smith said it better be cleared up.

Mr. Mott. You mean the number is not the same?

Mr. Bradner. They are not now the same as they were when she gave them to the detective.

The Court. Do you mean that the pills now in the box as shown by her testimony, if it is believed, are not the same pills as she got from Dr. Mandeville?

Mr. Bradner. That is a stronger ground than the one I stated. It doesn't appear—

The Court. Is there any question as to whether she testified to that or not? She better be recalled and ask her about it.

Mr. Mott. The last words she said on the witness stand were that she turned these over to Mr. Hargan; she said that they contained pills and that the pills were the pills that she got from Dr. Mandeville.

The Court. Turn to it, Mr. Stenographer. (Testimony read.) Objection overruled. They will be admitted in evidence as Exs. 1 and 2 by striking out the words "for identification."

ALBERT E. EDEL sworn for the State.

DIRECT EXAMINATION by *Mr. Mott.*

Q. Mr. Edel, where do you live? A. Arlington, New Jersey.

Q. What is your business? A. I am a chemist and pharmacist.

Q. What experience have you had? A. I studied six years chemistry in Europe; teached chemistry in the University of the State of New Jersey for one year as instructor and two years as professor.

Q. What do you mean by the University of the State of New Jersey? A. It is an institution of the State of New Jersey located in Jersey City.

Q. What sort of institution is it? A. Teaching chemistry, pharmacy and used to teach law and dentistry.

Q. What experience—have you had any practical experience as a chemist? A. I was doing examination for the Hudson County Courts for several years, and specially on analytical work. I teached the same subject.

Q. What is your employment now? A. I got an laboratory in Arlington, New Jersey. I got my own laboratory in Arlington, New Jersey, and do work for E. R. Petty.

Q. What kind of work do you do for E. R. Petty? A. Expert work—expert pharmaceutical work.

Q. Of what kind? A. If anything contained—isn't made right—then I got to see what it is.

Q. Do you mean you analyzed it? A. To analyze.

Q. And have you ever testified in Court? A. I did in Jersey City several times.

Mr. Mott. You can cross-examine him if you wish as to his capacity as an expert.

By *Mr. Bradner.*

Q. You are a chemist? A. Yes, sir.

Q. And that is all you pretend to be? A. Chemist and pharmacist. That is all not a medical man.

Q. What is the difference between chemistry—being a chemist and a pharmacist. A. There is a very big difference between. A chemist is analyzing stuff, breaking up compounds, and a pharmacist is producing compounds.

Q. Putting them together? A. Yes, sir.

Q. So in making an analysis of a compound you analyze. By analyze you mean both quantitive and qualitive? A. Quantitive and qualitive, yes, sir.

Q. And by compounding you mean— A. Putting it together.

Q. —the same thing— A. Yes, sir.

Q. —just the reverse of it? A. Yes, sir.

Q. And what have you done in the way of making any analysis of any compounds? A. Well, I did it from the beginning to the end. I teached that subject for two years and mix it and have it analyzed. While I teach I mix and analyze too.

The Court. Did you say that the students made compounds and you analyzed them?

Witness. Students made compounds and I analyzed them with the students.

Q. Have you ever made any analysis to be used in the trial of a law suit? A. Yes, sir.

Q. Where? A. In Jersey City.

Q. What kind of a case? A. Well, burglar case was one.

Q. Burglar? A. Yes, sir; and I—mostly narcotics I used to get, cocaine, for the Prosecutor's office in Hudson County.

Q. You have a laboratory in Arlington? A. Arlington, New Jersey.

Q. Have you ever analyzed any pills except in this case? I presume you are called for that purpose in this case? A. Yes, sir; I did analyze some.

Q. When? A. I analyzed some here for the Prosecutor's office in January, February and March.

Q. This last year? A. This year.

Q. This year? A. Yes, sir.

Q. Ever before that? A. No, sir.

Q. Never analyzed pills before that? A. No, sir. And there is no difference in pills or in anything else. Pills will be pounded up and then extracted. There is no difference if it is a pill or what it is.

Q. And you had no experience in making an analysis of pills except in this particular case? A. Except in this particular case. And I don't examine the pill, I examine the contents of the pill.

Mr. Bradner. I object to the witness. He doesn't show any special knowledge in that line.

The Court. Objection overruled.

Defendant's counsel prays an exception to this ruling of the Court, the same is allowed and it is sealed accordingly.

WM. P. MARTIN, *Judge.* (L. S.)

The Court. I think you ought to renew your objection after the first question so as to make the record clear.

FURTHER DIRECT:

Q. I show you Exs. S1 and 2 and ask you if you have seen them before? A. Yes, sir; I did.

Q. Where did you first see those? A. I received them from Mr. Hargan.

Q. And where were you when you got them from Mr. Hargan? A. I think I was in his office. I can't recollect exact.

Q. And after you got them what did you do with them? A. I received them on—

Q. Now, what have you got there? A. Just the date. I can't recollect that. Here is the date. I received them on April 30th.

Q. Of this year? A. This year; yes, sir.

Q. And you took them where? A. Up to my laboratory in Arlington, New Jersey.

Q. Then you did what with them? A. I first powdered them and extracted them first with water.

Mr. Bradner. One moment. If the Court please, I want to put on record an objection to the testimony of this witness as to what he did with these boxes of pills, or with the pills, for this reason. The defendant in this case has not been given any opportunity to analyze these pills. I, on his behalf, have asked on two occasions to see the pills and have not seen them until they were produced here today. It possibly is the law in some jurisdictions, perhaps in most of them, that testimony of this kind will be received and that an objection that the defendant is not confronted with the evidence may not be sustained, but I think it is the policy of the law in this State to give the defendant an equal opportunity with the State, and in all fairness to the defendant, when it was proposed to have these pills examined, he either ought to have had his expert with this man or samples given to him to give to his experts to be analyzed, and your Honor knows that the food and drug act provides for just that very thing, that a sample should be given to each side, and I object to his testimony for that reason, that we have no way of verifying or contradicting what he has done and the only way that we can be absolutely safe would be to have the analysis made right here in the presence of the jury.

The Court. The testimony is that these pills were given by the defendant to Miss Goldie Smith. Objection overruled.

Defendant's counsel prays an exception to this ruling of the Court, the same is allowed and it is sealed accordingly.

WM. P. MARTIN, *Judge.* (L. S.)

Q. Go on and tell us what you did with those pills or with the contents of those boxes? A. I powdered it up and extracted it with water and the soluble parts with ether and examined for iron, ergot, cotton root bark, savin, hellebore.

Mr. Bradner. On that answer I request the Court to permit me to further cross-examine this witness before he goes into the result of this analysis.

The Court. For what purpose?

Mr. Bradner. For the purpose of ascertaining whether he was told what was supposed to be in these pills.

The Court. Objection overruled and application denied.

Defendant's counsel prays an exception to this ruling of the Court, the same is allowed and it is sealed accordingly.

WM. P. MARTIN, *Judge.* (L. S.)

Mr. Bradner. He says there he examined for certain things.

The Court. You may bring all that out on your cross-examination.

Q. Well, go on and describe your methods as far as you think essential and tell us what you found? A. I got an iron precipitate with ammonia water. Reprecipitated—redissolved it, the precipitate, in

hydrochloric water—with hydrochloric acid with a drop of nitric acid and tested with potassium, sulphate of cyanide. Got a red coloration, showing iron.

Mr. Bradner. Which box did you take those out of?

Witness. Either one showed it—both showed it.

Q. Does your testimony so far apply to both boxes? A. Both boxes.

Q. Distinguish now. A. Yes, sir; both boxes.

Mr. Bradner. Permit me. Every kind of pill in both boxes? There are three different kinds, aren't there?

Witness. Only two pills examined. The other one is a tablet. The one that is only a tablet —I didn't examine any tablet.

Mr. Bradner. Didn't examine that tablet?

Witness. No sir; there was only one in it, so I left it in because they could contradict me right away on that testimony so I left it in. Acid radical. Tested it with barium chloride and the precipitate showing to be the sulphate ergot or ergotin, second ergot or ergotin. Sulphuric acid gave first a red, then violet and then green coloration, showing ergot is present. Physical examination throwing on top the water solution a certain oil with a terebinthinous odor—turpentine. Oil of savin. The brown precipitate treated with sulphuric acid turned dark chestnut; cotton root.

Q. Cotton root? A. Cotton root; yes, sir. Extract of savin, a green mass insoluble in water, soluble in ether. A distinct odor. Hellebore I could not find.

Q. What is that? A. Hellebore I could not found —could not find in the compound. In the pills I could not find it.

Q. Did you make a quantitative analysis at all? A. No quantitative. It is impossible to make a quantitative analysis out of two pills.

Q. In making this analysis how many pills did you use? A. I used on one two and the other one I used about four.

Q. Now, wait a minute. You used from— A. In the one I used two.

Q. Which one did you use two from? A. No. 4.

Q. That is S1. S1 you used two? A. S2 I used five of them.

CROSS-EXAMINATION by *Mr. Bradner.*

Q. Why did you look for ergot? A. I broke it up —I broke a pill up and I got the odor of savin right away.

Q. Yes. A. And I would know what most pills contain which are made with savin. Oil of savin is one component—one article.

Q. When you got these pills from Mr. Hargan did he tell you where he got them? A. He didn't tell me anything. I simply got an envelope—where it come from? Yes. It is on the envelope, but I didn't know any case or anything else. Here is the envelope just how I received it. (Witness produced an envelope from his pocket.)

Q. What are all these things in the envelope? A. That is my own papers; that belongs to me.

Q. Take those out. This is the envelope in which you got the two boxes of pills? A. Yes, sir.

Q. And this envelope (if you haven't any objection, Mr. Prosecutor, I will read it).

Mr. Mott. If you want it in evidence I have no objection.

Mr. Bradner. I do.

Q. This is the envelope you got from Mr. Hargan? A. Yes, sir.

Q. Sealed up with two boxes of pills in it? A. Yes, sir; both boxes of pills in it but not sealed up. Closed with a rubber band.

Q. It wasn't sealed up? A. No; closed with a rubber band.

Q. Did Mr. Hargan tell you what was in the envelope? A. I wasn't interested in it and he didn't tell me. He said there was pills in it and said he would like to know what it was.

Q. Did he tell you why he wanted to know? A. No; not the first time. I seen him after I was through with the analysis.

Q. Then he told you? A. Then he told me; yes, sir.

Q. How many times did you see him before you made the analysis? A. Oh, I seen him dozens of times on other cases I have in Court.

Q. You knew they were for some case that was coming up? A. Certainly I did know that.

Q. You knew it was for some indictment? A. Well, certainly, I did know that too.

Q. You didn't know whether it was a murder case or what kind, did you? A. That isn't interesting to me anyhow, I make the analysis and I report on the analysis.

Q. Now, this envelope has printed on it "Office of the Prosecutor of the Pleas of Essex County, Newark, N. J." and written "Miss Goldie Smith," "given to Sergeant Godfrey at the Court-house March 20, 1914, 2:10 P. M., counted pills and marked boxes." That is just the way it was handed to you? A. Yes, sir; just the same as it was handed to me.

Q. Well, then when you commenced to test these pills you looked first for iron, did you? A. After I got that odor of savin—oil of savin—I looked first for iron, to get iron out, yes, out of the water solution.

Q. Why did you look for iron? A. That is mostly —it is mostly one of the articles found in emmenagogue pills.

Q. Then you expected that these were emmenagogue pills? A. I did. That gave me the first idea, the odor of the oil of savin.

Q. Which kind did you break up? A. I broke both. I broke one first and then the other one.

Q. Well, here in Ex. S1, that is rather a brownish pill, isn't it? A. Well, you know the coating is gone. Here is the coating (indicating). You can't see if it is brown or what it is. You see here it is mostly gone (indicating).

Q. What is the coating on it? A. Mostly gelatine. This coating, it is gelatine.

Q. The coating on these pills is gelatine? A. Yes, sir.

Q. You broke that off or dissolved it off? A. No, sir; broke it mostly. Like here, you can see it goes off alone. It acts like a capsule.

Q. What is the chemical name for iron? A. Ferrum.

Q. Ferrous sulphate? A. Ferrous sulphate, yes, sir; ferrous. We have ferric and ferrous. Ferrous iron and ferric iron we have, and that is ferrous iron.

Q. You didn't find any alloes, did you? A. I didn't find any alloes either. I looked for it but I didn't find any.

Q. But you found ergot? A. Yes, sir; I did; soluble ergot.

Q. And you found traces of hellebore? A. No, sir; I didn't find any hellebore. Look my testimony over you will see I couldn't find. I was looking for that but I couldn't find it. It was probably a trace in it but I didn't find it.

Q. And you found iron? A. I found iron; yes, sir.

Q. And oil of savin? A. Oil of savin, and I found ergot and cotton root bark.

Q. Now, you are a pharmacist too? A. Yes, sir; I am.

Q. And you sell emmenagogue pills, don't you? A. Yes, sir.

Q. Emmenagogue pills come in bottles; 100 in a bottle? A. Yes, sir; but I don't sell any. I am no counter man. I don't stay on the counter.

Q. But you have seen them? A. I have seen them.

Q. I show you a bottle purporting to contain pills, purporting to be manufactured by Parke, Davis & Company? A. Yes, sir.

Q. Do you know that concern? A. Yes, sir.

Q. Is that a reliable—

Mr. Mott. One minute. I object. This isn't cross-examination.

The Court. Do you want to make him your witness?

Mr. Bradner. I am going to show just what are in the emmenagogue pills from reliable concerns.

Mr. Mott. I should object to that, your Honor. We are only concerned as to what are in these pills.

Mr. Bradner. These are not emmenagogue pills unless—

Mr. Mott. They may not be.

Mr. Bradner. My contention will be that they are not emmenagogue pills according to this analysis. They do not come within two points of it. Most of the materials that are in emmenagogue pills are not in here.

The Court. Aren't you going outside of the scope of proper examination?

Mr. Bradner. I would like to ask the witness these questions for the purpose of showing

his knowledge of what is in an emmenagogue pill—of what is commonly known to be emmenagogue pills. I might make him my witness for that purpose, if I may.

Q. That bottle comes from Parke, Davis & Company, does it not? A. Yes, sir.

Q. Reliable concern? A. Yes, sir.

Q. And it has printed right on the face of it the contents? A. Yes, sir.

Q. And what is the formula? A. Ergotine—you want to know how much of each?

The Court. You can take it right off the bottle.

Witness. Purified aloes.

Mr. Mott. I object on the theory that this is incompetent.

The Court. Objection sustained. You can prove it another way.

Q. The formula of the pills in that bottle is printed right on the face of it? A. Yes, sir.

Q. Have you looked at it? A. Yes, sir; I did.

Q. To your knowledge is that a formula of emmenagogue pills? A. A fairly good one.

Mr. Bradner. I offer it for identification and also the envelope.

Envelope marked Ex. D1 for identification.

Bottle marked Ex. D2 for identification.

RECESS.

Q. I show you a bottle which appears to be manufactured by Parke, Davis & Company, No. 270. A. Yes, sir.

Q. I think you said they were a reliable house? A. Yes, sir.

Q. And there is on the label of that bottle a formula of emmenagogue pills? A. Yes, sir.

Mr. Bradner. I would like to have that marked.

Bottle marked Ex. D3 for identification.

Q. I show you another bottle which is labelled 100 pills of emmenagogue with extract of cotton root, No. 4, manufactured by Eli Lilly & Company. Do you know that house? A. I do.

Q. Responsible house? A. Yes, sir.

Q. That contains a formula also of emmenagogue pills? A. Yes, sir.

Mr. Bradner. I would like to have that marked.

Bottle marked Ex. D4 for identification.

Q. I show you another bottle labelled 100 pills of emmenagogue improved Eli Lilly & Company? A. Yes, sir.

Q. Does that also contain a formula of emmenagogue pills? A. Yes, sir; it does.

Bottle offered and marked Ex. D5 for identification.

Q. All of these formulas of emmenagogue pills contains aloes, does it not? A. Most of them do.

Q. And hellebore? A. Not all of them do. We have for instance Dr. Mathew's formula. That doesn't contain hellebore.

Q. Hellebore? A. Yes, sir. Dr. Mathew's formula don't contain any hellebore and there is a good many that don't contain hellebore.

Q. Do you know of any emmenagogue pills that do not contain aloes or something that would have the same action as aloes?

Mr. Mott. That question I object to.

Mr. Bradner. Question withdrawn.

Q. Do you know of any emmenagogue pills that do not contain aloes? A. I do, sir; that do not contain aloes but only contain extract of ergot and savin.

Q. Alone? A. Yes, sir; all come under the same heading as emmenagogue.

Q. Do you know what the purpose of putting aloes in these pills is? A. Yes, sir; I do know that.

Q. I don't ask you what it is for. In the examination and analysis of the pills that you had I understood you to say that you broke one open and there was an odor of turpentine? A. No; an odor of savin.

Q. You said something about turpentine, didn't you? A. Terebinthinous odor.

Q. And what is that of? Any relation to turpentine? A. The savin belongs to the turpentine class.

Q. So that it was an odor of turpentine? A. No; it is a terebinthinous odor. You have got different grades in there.

Q. What would it be to an ordinary person? What would it smell like to him? A. It would smell to him like oil of savin—like savin tablets, to an ordinary person.

Q. If you didn't know anything about oil of savin it would smell like turpentine? A. Very hardly. It is a terebinthinous odor produced by all herbs of that group.

Q. Well, you did find some iron, too, didn't you? A. Yes, sir; I did find.

Q. I show you now another bottle which is labelled gonorrhoea No. 2. A. Yes, sir.

Q. Manufactured by the National Drug Company, Philadelphia, Pennsylvania? A. Yes, sir.

Q. Do you know that concern? A. I do not.

Q. Is there a label on there showing the formula of the pills? A. Yes, sir; it has.

Mr. Bradner. I would like to have that marked.

Bottle marked Ex. D6 for identification.

Q. You didn't ascertain the quantity— A. No; it is impossible.

Q. Of each ingredient? A. I did not.

REDIRECT:

Q. Did you state what form the savin was in? A. In one I only found oil. In the other one I found oil and extract of savin.

Q. In which one did you find the oil of savin? A. You have my report there. I can't recollect that.

Q. I have what? A. You must have my report, I sent it to the office. I sent a report of the analysis.

Q. In the pills in one of these boxes you found oil of savin? A. Only.

Q. Only, and in the other one you found the oil and the extract? A. The oil and the extract.

Q. You have used both the term ergot and ergotine. What is the difference between them? A. Ergot and ergotine is just the same. The extract of ergot—the ergotine is mostly used for extract of ergot. It is the same drug.

RECROSS:

Q. There is a fluid extract also? A. Yes, sir; but I said ergotine is ergot all the same.

Dr. JAMES H. TIPPETT sworn for the State.

DIRECT EXAMINATION by *Mr. Mott.*

Q. What is your business? A. A dentist.

Q. In East Orange? A. Yes, sir.

Q. Do you know Goldie Smith? A. Yes, sir.

Q. Do you know the defendant, Dr. Mandeville? A. I have met him once or twice.

Q. Did you ever go to his office to see him? A. I went there once.

Q. When was that? A. I just can't recollect the time.

Q. Well, about when? A. Sometime in the summer of 1912, I think; summer or fall. I am not sure.

Q. Did you at that time have any conversation with him? A. Yes, sir.

Q. With reference to what? A. With reference to Miss Smith.

Q. Will you state what that conversation was?

Mr. Bradner. That is very general. I can't tell what is coming, and I want to preserve my

rights to have it ruled out. I don't want to take the chances. The conversation might have been about her and not any relation to the subject matter of this case at all. I object to it.

The Court. Objection overruled.

Defendant's counsel prays an exception to this ruling of the Court, the same is allowed and it is sealed accordingly.

WM. P. MARTIN, *Judge.* (L. S.)

Mr. Mott. I will withdraw that question with the Court's permission and put it in another form.

Q. Did you have any conversation with regard to anything he may have done for Miss Smith?

Mr. Bradner. I object to the question as leading.

Q. State what your conversation with the doctor was.

Mr. Bradner. I object on the ground that it doesn't appear what the witness will testify to would be relevant to this issue. He may have had a conversation with him on any subject.

The Court. Objection overruled.

A. Well, the reason I went there—

The Court. Do not state what the reason was, Doctor. The conversation is what you said to Dr. Mandeville and what he said to you, if anything. Now state that.

Witness. I don't know just how to lead up to it. I went there to see the doctor and to see if Miss Smith had been there.

Mr. Bradner. I object to it and move to strike it out.

The Court. Motion granted.

Q. Did you ask him that? A. Yes, sir; I did.

The Court. Tell us what you said to him and what he said to you, and if you don't remember exactly, tell us your best recollection of it.

Witness. The best I recollect—I asked him if she was there; he said yes; I asked him if he knew that she was in trouble of any kind; he said he hadn't given her a personal examination, but he had given her some pills; he said he didn't know whether she was in trouble or not.

No Cross Examination.

DR. WALTER S. WASHINGTON sworn for the State.

DIRECT EXAMINATION by *Mr. Mott.*

Q. Doctor, your profession is what? A. Medicine and surgery.

Q. And how long have you been practicing in this county? A. Nearly thirty years.

Q. You are familiar with the drug ergot? A. I am.

Q. And cotton root? A. I am.

Q. And the extract and oil of savin? A. Well, I know the action of oil of savin. I am not personally familiar with it. Don't remember ever having used it.

Q. Are you familiar with the action of ergot? A. I am.

Q. And cotton root? A. Yes, sir.

Q. Will you please state to the Court and jury what the actions of these drugs are?

Mr. Bradner. One moment, please. I would like to examine the doctor as to his qualifications.

BY MR. BRADNER.

Q. Doctor, have you had special knowledge of the action of ergot? A. No; nobody has.

Q. Nobody has? A. Nobody has. Everybody that practices medicine—general medicine—has a fairly accurate knowledge of the use of ergot because it is continually in use.

Q. Well, do you— A. Cotton root the same way.

Q. Do you know from actually using it what its action is? A. Oh, yes. Frequently—

Q. You have used ergot in your practice? A. Many, many times.

Q. And it is a drug that is commonly used? A. Very commonly used.

Q. What is the other one? A. Cotton root.

Q. Cotton root? A. Yes, sir.

Q. Is that used also? A. Yes, sir; very often.

Q. And you know from the actual use of it? A. I do. Many years' experience and it is used in many, many cases.

Q. And as to the other one, the savin, you don't know about that? A. I don't know about savin except as I was taught and as I have read. I don't remember now that I ever used it in any case.

FURTHER DIRECT.

Q. Well, then, Doctor, will you tell us what the action of these drugs are? A. The action of all three of them are especially on the uterus. Primarily the action of ergot is on the muscular tissue. The same, only in a milder degree, with cotton root, and the same with the oil of savin. They produce a contraction of the muscular tissue and are used mostly in some forms of hemorrhage. They are used in fact—or have been used in a good many hemorrhages of one kind or another, but the particular location of the hemorrhage for which they are used is in the

Q. In a woman in a pregnant condition that contraction would produce what result?

Mr. Bradner. I object on the ground that the question does not state the period of pregnancy and in this case it appears that the young woman had expected to have her menstrual period the 15th of July, and she was then, when she went to the doctor, about two weeks behind time, and she had intercourse with Dr. Tippett after her menstrual period in June, so I think—

The Court. The child was born in February.

Mr. Mott. April, wasn't it, you Honor?

Mr. Bradner. I am taking the actual evidence in the case. I think the question ought to be limited to that.

The Court. She said the child was born in February.

Mr. Bradner. February 6th. That was eight months after June, the date she said. That would not be an impossibility. The evidence in this case shows that she had her menstruation in June, on her regular time, and she had always been regular, and she didn't have it again in July and then she went to the doctor for help. I think the hypothetical question, or the question calling for an expert's opinion, should be based upon the facts proven in the case.

The Court. Would it have any effect upon a woman pregnant. I thought the word "pregnant" was used.

Mr. Mott. It was.

(Question read.)

The Court. It seems to me you are asking the Court to determine whether or not there is a difference between a pregnancy of three or four weeks or two weeks and nine months.

Isn't that a matter for the expert to tell us about.

Mr. Bradner. We contend that there is a very great difference; that we cannot go outside of the evidence of this case.

The Court. So far as the question is concerned it says, "when pregnant." Now, if it will produce an effect upon any woman who is pregnant at any stage of the pregnancy then the prosecutor might very properly argue that it would have some effect on this woman who was then only three or four weeks pregnant. Objection overruled.

Defendant's counsel prays an exception to this ruling of the Court, the same is allowed and it is sealed accordingly.

WM. P. MARTIN, *Judge.* (L. S.)

A. The action—did you say of ergot alone?

Q. Well, taking them up one by one or together, as you deem best. A. Well, the action of any one of them singly or in combination if given in sufficient doses and the patient was susceptible enough to the influence of the drugs, would tend to empty the womb —bring on an abortion.

Q. Do you know what emmenagogue pills are? A. Yes, sir.

Q. What are they? A. They are pills that are used, or supposed to be used, to bring on the menstrual flow when it has ceased to exist from some cause or other.

CROSS EXAMINATION by *Mr. Bradner.*

Q. It can be bought in the drug stores? A. I don't know, Mr. Bradner, whether they can or not. I suppose you mean by a layman or laywoman.

Q. Yes; layman or woman. A. I don't know what the law is in that respect in this State. I don't know anything about it.

Q. Do you know what the fact is? A. No; I don't know anything about it.

Q. And emmenagogue pill without any aloes, what would be the effect of that? A. The effect without the aloes?

Q. Yes. A. Why the particular action on the woman is produced by the other ingredients, not by the aloes.

Q. What is the purpose of aloes in those pills? A. Well, I don't believe I ever knew absolutely what it was. Aloes has a special action. It is a physic, of course—purgative—and it has a special action on the rectum, and I also suppose, without knowing definitely, that it increased probably the action of the other drug, or acted somewhat as an irritant to the uterus, which lay almost in direct relation with the rectum. You see these drugs are put up by manufacturing chemists, and not always with consultation with physicians and we don't know why they put these things in, lots of them. Some of them are quite useless. But I suppose in a general way that is the reason, without ever having expressed to me any direct explanation.

Q. Ergot is generally given at the time of childbirth, is it not? A. It is very frequently given immediately after childbirth.

Q. Isn't it given sometimes just before to overcome to some extent unduly prolonged labor? A. No. No; not for that purpose.

Q. You don't know of it being done? A. It is sometimes given in this way, Mr. Bradner. After the first and second stages of labor are over or the second stage is about to be completed, where the head of the child has passed through the mouth of the womb and is resting down on the perineum, and that pretty well delayed—if then the symptomatic pains should cease and there should be inertia of the uterus, it might be given then to bring on the pains, but I think most every physician is exceedingly chary about giving ergot until the womb is empty. I have

never done such a thing myself and I don't think physicians as a rule do.

Q. Have you ever given ergot in any case to a woman who was not pregnant? A. Yes, sir.

Q. In case of suppressed menstruation? A. Not—in suppressed menstruation?

Q. Yes. A. I assume then the woman is pregnant. I wouldn't give her ergot under those circumstances.

Q. Suppose you had reason to believe that the menstruation was suppressed from some other cause than pregnancy? A. Yes.

Q. Then you wouldn't give her ergot? A. No; I wouldn't give her ergot. I wouldn't give her ergot at all if she had suppressed menses, or any of the other drugs.

Q. But it might be given by other physicians? Be a question of judgment? A. Yes. I think it would be bad judgment, but they might do so.

Q. You think it would be bad judgment? A. Yes, sir. I don't know what another physician would do under those circumstances.

REDIRECT.

Q. Why wouldn't you give her ergot in the case of suppressed menstruation?

Mr. Bradner. I object.

Mr. Mott. He has said that in that case he would not give it. Now, I am asking him why.

The Court. Answer the question.

A. In the first place in suppressed menstruation there are quite a variety of causes, or supposed to be, and the one that almost invariably appeals to a physician is the fact that the woman is pregnant. She may not be telling you the truth, and as the action of ergot is to produce an abortion, the same with cotton root or savin or any of those drugs, why I should absolutely refuse to give it. Besides in order to bring on anything of the kind it would have to be

given in large doses—doses large enough probably to be unsafe and dangerous.

Q. You have also said that you would be chary about giving ergot until the womb is empty? A. Yes, sir.

Q. Why? A. Because it will empty the womb. You mean in reference to the confinement?

Q. Yes. A. Because ergot may bring on very strong contractions which would force the child down so rapidly as to tear the womb. That is the danger in giving it under those circumstances.

Q. And do you say the same thing of a savin oil and cotton root? A. Yes, sir; but they are practically never used under those circumstances. Ergot is the one drug that is relied on under those circumstances by physicians, although the actions of the others is of the same general character.

Q. Well, would you give savin or cotton root in cases of suppressed menstruation? A. Oh, no; and for the same reason.

Q. For the same reason you gave in regard to ergot? A. Yes, sir.

RECROSS:

Q. Would you give ergot in the case of profuse menstruation? A. Yes, sir.

Q. Hemorrhage? A. Yes, sir.

Q. You would give it then? A. Yes, sir; in some cases.

Q. At any stage of pregnancy? A. Don't mean during pregnancy? Of course not. You mean after pregnancy or during an intervening period?

Q. Yes. A. Yes; ergot and cotton root are the two remedies that are probably most given and most effective for the suppression of certain forms of hemorrhage. Of course if you determine just what causes the hemorrhage and it requires an operation, why the operation would be performed. Sometimes you don't think the operation is necessary and it is

simply necessary to contract down the womb and control the hemorrhage. In that case you would give cotton root or ergot. Cotton root is the most commonly given now for that purpose.

Q. When you speak of giving ergot after the womb is empty, you mean after childbirth? A. Yes, sir; or sometimes after an abortion too.

Q. After abortion? A. Yes, sir, or premature birth.

Q. There might be an abortion that you thought was necessary to bring on——. A. Never use ergot for it.

Q. Wouldn't you use that? A. Oh, no.

Q. Suppose a woman has aborted and then had hemorrhage, you would use ergot then, to stop the hemorrhage, wouldn't you? A. Now, you have to designate there. It depends on the age of the fetus at that time. Say at two months or three months or four months, or somewhere along there, if the womb is emptied there is no danger of hemorrhage whatever. If it went up to seven months or eight months then there might be the same danger of hemorrhage that there would be after a full term. Then you would use ergot.

Q. When can you tell positively that a woman is pregnant—at what period of pregnancy? A. Well, now, myself personally, I would be extremely uncertain inside of three or four months. Some people who are more skillful at diagnosis of pregnancy might be able to determine it earlier than that, but I am willing to confess that I do not think, myself, I could be sure under three or four months, and then I might be wrong. It is a very difficult thing sometimes to determine.

STATE RESTS.

Mr. Bradner. Of course I am fully aware that a motion at this time is addressed purely to the discretion of the Court. I make a motion now that the Court direct a verdict of acquittal upon the ground that the State has failed to prove that the drug given to this woman was noxious.

The Court. Motion denied.

Mr. Bradner. I cannot take an exception.

Mr. Bradner opened for the defendant.

LINDA WENZ sworn for the Defendant.

DIRECT EXAMINATION by *Mr. Bradner.*

Q. Miss Wenz, you live in the City of Newark? A. Yes, sir.

Q. And how long have you lived here? A. All my life.

Q. Are you familiar with the drug business? A. I am.

Q. And how long have you been such? A. Since I was eight years old.

Q. Your father was a druggist? A. My father was a druggist.

Q. Do you know Dr. Mandeville? A. I do.

Q. When he had his office in the Wiss Building, did you have an office there? A. Right alongside of him.

Q. Do you know whether he had a laboratory? A. I do.

Q. And did you ever have any opportunity to visit that laboratory? A. Very often.

Q. For what purpose? A. I assisted him in his laboratory by putting up pills for him different times.

Q. How could you get in the laboratory from the hall? A. How could I?

Q. Yes. A. By a separate door, around——my office is like this. It is like an "L," and around the

sides there was a door that he let his patients out. That is the door I went in.

Q. Did you see this young girl, Goldie Smith, on the stand here this morning? A. I did.

Q. Did you ever see her before anywhere? A. In the doctor's office.

Q. And do you recall just when that was? A. Around the first day of September. Just the date I do not remember.

Q. Was there anything that happened at the time you saw her that has placed it in your mind in any way? A. That I was in the laboratory putting up the pills——or was going out——and I heard this lady in his office pleading with him to help her.

Mr. Mott. I ask that that be stricken out.

The Court. Tell us what she said or he said.

Q. What she said. Tell the very words.

The Court. We do not want your opinion of what was said. We want you to state to us your best recollection of what each said to the other. You can't characterize it.

Q. The words that she used, if you can recall it. A. Begged him to help her out of her trouble.

Q. What did he say? A. He wouldn't——.

Mr. Mott. One minute. I ask to have that stricken out, your Honor.

The Court. The word "begged" will go out.

Q. Now, Miss Wenz, what the law requires here is that you shall state not what you thought she meant, but what she actually said. The language she used. What did she say to him? A. That he would help her. I don't know just what word to put it. Just asked if he would help her out and if he didn't she would get square with him. She said that as she went out.

Q. Where were you? A. Back of the curtains in his laboratory.

Q. And after hearing that what did you do? A. Stood still until she went out.

The Court. You didn't see her?

Witness. Through the curtain as she passed out.

Q. For how long a time prior to that time had you known anything about the doctor's laboratory? A. Since I have known him.

Q. How long has that been? A. Nearly ten years.

Q. And how familiar were you with his laboratory so as to speak as to what was in there? A. Going in and out and putting up pills. When boxes came I would open them and box these pills and put them in his laboratory.

Q. Do you know what emmenagogue pills are? A. Do I know?

Q. Yes. A. If I know? Yes.

Q. Have you ever seen bottles of emmenagogue pills with labels on? A. Have I?

Q. Yes. A. Yes, sir.

Q. Have you ever seen in Dr. Mandeville's laboratory any pills with emmenagogue labels on?

Mr. Mott. I object on the ground that the evidence is immaterial, as to what she has seen—what she hasn't seen.

The Court. You are going to claim that these are emmenagogue pills, are you not?

Mr. Mott. Yes.

The Court. The defense is going to claim that they were a regular product on the market and could be easily secured, and that she did not see any of those particular pills there with the label on. Suppose she said she did? I don't know what the answer is going to be yet.

Mr. Mott. I know from counsel's opening, that is all.

The Court. What difference does it make whether she saw them there or not?

Mr. Bradner. My reason is this, that it wouldn't be likely that a man would keep pills there in the laboratory without any labels on, and go get them blindly and put them in boxes. The testimony is that he got these pills and brought them to her in a little box—in all probability got them out of a labelled bottle and a labelled bottle there would be something she would be very apt to see because she was in there so often.

The Court. Aren't you assuming that these pills must have come out of a labelled bottle?

Mr. Bradner. I am arguing that they probably did come out of labelled bottles if they came from any source.

The Court. But your defense is that the pills in question are not emmenagogue pills.

Mr. Bradner. I haven't made any such defense.

The Court. You have made that statement to the Court and argued motions on the evidence, that you are going to show these pills are not emmenagogue pills, and could not be considered as having any of the important elements of emmenagogue pills, and the cross-examination of the expert produced by the State tended to show that the aloes and some other thing was left out.

Mr. Bradner. Your Honor misunderstood me if you thought that was a defense in the case on the part of the defendant. That may be an objection to the proof offered by the State, that the State has not made out a case because it does not appear that these are emmenagogue pills—these particular pills that I produce, but we do not admit—we deny that

we gave her these particular pills. We deny that.

BY THE COURT:

Q. Were you regularly employed, Miss Wenz, by Dr. Mandeville? A. No, sir.

Q. You were only casually in the laboratory? A. Yes, sir.

Q. You went there occasionally, not regularly? A. No, sir.

Q. Now, what do you mean when you say no, sir, when I have asked you an alternative question? A. It seemed to be limited to such a few words, I don't know hardly how to answer it.

Q. You can answer the question but you can't tell us your impressions about conversations. We want to know the facts about it. What we want to know is how frequently you went in to this place that you call the laboratory? A. Sometimes every day in the week and sometimes it would be only once or twice a week, as occasionally boxes of pills would come in that were wished to be put out. When they were sold out I would fill them up.

Q. Did you have any regular duty there to perform? A. You mean a hired duty?

Q. Yes. A. No, sir.

FURTHER DIRECT:

Q. How large was this room; the laboratory? A. The laboratory? About the size of this space that the Judge sits in, right from end to end. Square room.

Q. The Judge's bench. And how many shelves were there with pills on? A. Six or eight shelves one way and then divided around.

Q. Arranged like in a drug store? A. Yes, sir.

Q. With bottles with labels on? A. Right to your eye, with reading and everything.

Q. So that you could see all the labels plainly? A. Names and what they were for.

BY THE COURT:

Q. Were there any bottles in the room where the doctor saw the patient? A. No, sir.

Q. Were there any bottles behind a curtain in that room? A. The curtain divides the laboratory from the passage from the office that they came out to go into the hall. There is a portiere to protect the laboratory from the entrance where the people went in and out from the laboratory.

Q. Then this room that you call "laboratory" is really the same room that the doctor receives patients in, except there was a curtain dividing? A. Divided by—the lower part wood and upper part glass—open partition—glass to swing, then the curtain as you went out, as though the patient came out this way. They went out and that curtain was here (indicating). Here was the laboratory (indicating), you came out that way (indicating). I was back of that curtain and there (indicating) was where I saw the lady, and heard the conversation. Couldn't help but hearing it.

Q. You have just told us you didn't see her? A. I saw her as she went out, through the curtain. At least, I meant to say so.

Mr. Bradner. That is what she said before that she saw through the curtain as she went out.

The Court. Objection overruled.

FURTHER DIRECT:

A. No, sir; I never did.

Q. You have never seen any such bottle of pills? A. No, sir.

Q. Miss Wenz, have you recently at the request of Dr. Mandeville gone out to see whether you could purchase some emmenagogue pills?

Mr. Mott. I object.

The Court. How it that competent.

Mr. Bradner. I want to show that she did go out to purchase them and purchased these particular bottles that I have marked for identification.

The Court. You want to show where these bottles came from?

Mr. Bradner. I don't care so much about that, as to show that she purchased them and they are produced here by her. She bought them.

The Court. You can go that far but I do not see how you can generally prove certain articles are on sale in July, 1912, by showing that it was bought within two or three weeks of November 16, 1914.

Mr. Bradner. How do we know whether these pills that were put in this box were not bought a year and a half after this occurence?

The Court. The testimony by Miss Smith is that she got them from Dr. Mandeville and there hasn't yet been any contradiction of that in the testimony. Now you are trying to show that such pills as that can be bought upon the market and the best evidence would be to produce somebody who knows something about the market and let him so state. This lady is produced here and she says she went around recently, which I presume means a month or two, and if that be so how does that prove that that was the condition of the drug trade in September, 1912. If you can lay a foundation to show what are emmenagogue pills, then the testimony will be relevant on that theory.

Mr. Bradner. On both theories. If we can go out now and buy these pills it is very fair inference that they could be bought two years ago or six months ago.

The Court. The fact that Miss Smith could have put the pills in the box is something that is in the case but she says that she got them from Dr. Mandeville.

Mr. Bradner. I know she says so.

The Court. You are trying to show that these things can be got anywhere.

Mr. Bradner. Yes; in connection with the formula upon the emmenagogue pills that we have purchased, and we show that emmenagogue pills in the market and which we purchase from reliable houses are different formula and contain different ingredients from which the chemists testified to. That is the best we can do. We can't go back and put the world back two years and purchase something.

The Court. You can get somebody to testify as to his knowledge of the drug business and that these pills were purchasable at that time.

Q. (Question read).

The Court. Answer yes or no.

A. Yes, sir.

Q. Did you purchase any? A. Yes, sir.

Q. I show you four bottles now, marked Exs. D2, D3, D4 and D5 for indentification. Can you identify those? A. You mean from getting them and where I got them?

Q. No; can you identify them? A. Yes, sir; I got them.

Q. Did you purchase them? A. I did.

Q. When? A. Saturday.

The Court. What Saturday?

Witness. This Saturday.

The Court. Last Saturday.

Witness. Last Saturday.

Mr. Bradner. I offer the four bottles in evidence.

Mr. Mott. I object.

Mr. Bradner. I mean only as to the labels on them; that is all.

Mr. Mott. I object to them for any reason.

The Court. How can you prove it that way, counselor? What do you want to do? Do you want to show what is in the pills?

Mr. Bradner. I want to show what is in the pills as on labelled bottles that are purchasable in the market, and pills sent out by responsible—reliable houses.

Mr. Mott. May I make a suggestion, and it is this, that in the beginning of this examination of this witness, he attempted to show that she was an expert in the drug business, was entirely familiar with it and had been connected with it for a long time; that her father was a druggist. I say to counsel now that if this matter is of any importance I shall maintain that that disqualifies her as a representative of the lay element buying pills. It only shows that someone who is known in the business has been able to go out and buy the pills.

The Court. How can you prove the contents of the pills by the label on the bottles?

Mr. Bradner. I cannot.

The Court. Then how is your testimony competent then for that purpose?

Mr. Bradner. I prove a formula that is on a bottle marked by respectable and reputable manufacturing concerns "emmenagogue pills." That is the formula.

The Court. The law does not make any distinction between hearsay which is respectable and hearsay which is not respectable. It is still hearsay.

Mr. Bradner. The chemists testified that there was a formula on each of those bottles. I did

not go into that with him because it was cross-examination.

The Court. You made him your witness for that purpose, as I understood it.

Mr. Bradner. I didn't go that far.

The Court. You expressly stated in open court that you would make him your witness for that purpose.

Mr. Bradner. Yes. But I did not go into the ingredients in that formula with him because I thought I had to prove first where these bottles came from, and that they were purchased here in the city of Newark and just the other day. Now, I offer them in evidence. That doesn't preclude me from calling other witnesses to show what the formula is.

The Court. As the Court understands the offer it is to show by the label what the contents of the pills are and under those circumstances I do not think that it is competent. Offer overruled.

Defendant's counsel prays an exception to this ruling of the Court, the same is allowed and it is sealed accordingly.

WM. P. MARTIN, *Judge.* (L. S.)

Q. Did you make any other purchase besides those four bottles? A. Yes, sir.

Q. In the City of Newark? A. Yes, sir.

Q. And you had no prescription? A. No, sir.

CROSS-EXAMINATION by *Mr. Mott*:

Q. You say on the occasion when Goldie Smith was at the doctor's laboratory and offices you were behind the curtain? A. I was in the labratory back of the curtain.

Q. What was you doing there? A. Putting up the pills.

Q. How long had you been there when she came in? A. How long? I guess ten or fifteen minutes. Not very long.

Q. How long was she there? A. About a half-hour altogether.

Q. Is that the only occasion that you ever saw her there. A. Yes, sir.

Q. Well, what was the first thing you heard her say to the doctor? A. I don't remember the first thing she said. I wasn't interested until she started to say that she—when she begged—you said I shouldn't use the word.

Mr. Mott. I object.

Witness. How can I explain myself?

The Court. Madam, you have got to testify in accordance with the rules of evidence as prescribed by the Court, and you will not protest against them but you will conform to them. The word will be stricken out, and you go on and make your statement in answer to the question.

Q. What was the first thing she said that attracted your attention? A. "Will you help me out? Won't you help me out?"

Q. What did he say? A. He said, no, he wouldn't.

Q. Then what did she say? A. I can't remember her conversation, all. More asking if he would and he saying no.

Q. How long had she been there by the time she made—said these things? A. Three or four minutes, I guess.

Q. And what was said during the rest of the half-hour? A. I don't know how to—.

Q. Have you any recollection of what she said there that day? A. She asked him if he wouldn't help her out.

Q. Now, you say she was there half an hour and you say she said that in three or four minutes after she got there. Now, I am asking you what was said during the remaining twenty-five or twenty-six minutes. A. The repetition of the same—will I say what he said now?

Q. Yes. A. He said, "who did it?" He asked her if she had been with any one else besides this man and she said "Yes; with eight or nine others." And "Wasn't it unprincipled for to put it on one man;" she said, this man seemed most able to help her out and that's the reason she blamed it on him. That was what my idea—what I got out of her talk. Then when he refused she said after pleading and crying and going on, that she would get square with him, and that is why I looked out to see who it was. I couldn't see through the curtain. I had to part them to see when she went out. She couldn't see me.

Q. Now, then you recall, do you then—you recall distinctly that she said all that to the doctor? A. Yes, sir.

Q. And the doctor said that to her? A. Yes, sir.

Q. What did the doctor say when he refused? You say he refused. Perhaps he did and perhaps he didn't. What did he say? A. I don't know. He said to her the same thing over, I said.

Q. I ask you what the doctor said. You say he refused. I don't know whether he did or not. I am asking you what he said. A. He said he refused to help her out of her trouble.

Q. He said, "I refuse to help you out of your trouble," is that what he said? A. As near as I can—.

Q. As near as you can recollect it? A. Yes, sir.

Q. All right. And when was it she said that she would get even with him if he didn't? A. As she was going out from his office passing through the laboratory into the hall.

Q. And what did she say? A. After begging as she did, she said—.

Mr. Mott. I ask to have "begging" stricken out.
The Court. Motion granted.

Q. I ask you what she said. A. She would get square with him or even with him. I am not positive just which word she used. I think it was even with him.

Q. For what? Did she say what she would get even with him for? A. Because he refused to do anything for her.

Q. Is this what she said "Because you refused to do anything for me?" Is this what she said "Because you refuse to help me I will get even with you?" A. I don't remember her saying it in that way.

Q. Well, what did she say? A. Just "I will get even with you" or "I will get square with you." I can't remember if it was "even" or "square." Either of those two words.

Q. How long did she say that before she went out? I beg pardon. You said she said that as she was going out? A. Yes, sir.

Q. And you saw her then? A. Through the curtains as she was passing out.

Q. Did she have her hat on? A. Yes, sir.

Q. You have never seen her before? A. No.

Q. Have you seen her since before today? A. Have I?

Q. Yes. A. Only there at the office.

Q. I mean since that day? A. In between, no sir.

Q. Who told you who she was? A. Who told me?

Q. Yes. A. Well, I knew about this case. I didn't know her name at that time.

Q. Who told you what her name was? A. Why, Dr. Mandeville.

Q. When did Dr. Mandeville tell you what her name was? A. When this case was brought up about him.

Q. How did he come to tell you that? A. How did he come?

Q. Yes. How did Dr. Mandeville come to tell you what her name was? A. Why I don't know how he came to tell me. He just told me.

Q. Well, what did he say? A. Well, can I talk now?

Q. You can tell me what he said. A. Because, from being back of that curtain he knew I heard—.

Q. Wait a minute. I am not asking you what he knew. I am asking you what he said. A. Well, he said "You heard what that girl said when she went out?" I said, "Yes." Then he went on to say a few things about her being in there because I was in there and heard this.

Q. Did he tell you who the girl was? A. Her name?

Q. Yes. A. Not at that time.

Q. When did he tell you that? A. I don't remember when it was. In the course of conversation later.

Q. How do you know this is the girl? A. Only from the sight that I seen through the curtain.

Q. Only from seeing her once as she passed, through the curtain? A. Yes, sir.

Q. How thick a curtain is that? A. Portiere. I didn't see through the curtain. I parted the curtain so that I could see who it was that was doing the talking.

Q. Did you go up to the curtain and look out? A. Sure I did.

Q. Were you spying on Dr. Mandeville's patients? A. I was not.

Q. Well, why did you go to the curtain and open it and see who Dr. Mandeville's patient was? A.

Because I heard the talk of threats and I looked to see.

Q. You were interested, were you? A. No, I wasn't.

Q. Then why did you go and open the curtains to see who Dr. Mandeville's patient was? A. Because, I suppose, she threatened—the words she said—she would get square—and I wanted to see who it was.

Q. Well, when Dr. Mandeville spoke to you about this what else did he say about it? What did he say now?

Mr. Bradner. Is that cross-examination?

The Court. Yes; testing her recollection.

Q. Do you recall? A. I don't just know. Not enough for to say out.

Q. He did tell her what her name was, did he? A. Yes, sir.

Q. How did the doctor know you were behind the curtain? Did you tell him? A. He knew I was in there putting up pills.

Q. Yes; but did the doctor know that you had opened the curtain to see who his patient was? A. He didn't know it until after.

Q. Did you tell him? A. Sure, I did.

Q. When did you tell him that? A. Why, I told him I looked to see who it was made that remark?

Q. When? When did you tell him that? A. It was right after; during that afternoon sometime.

Q. Just shortly after the girl went out? A. Yes, sir.

Q. What did you say to him, do you recall? A. I don't recall just what I said.

Q. Did you say in substance this, "Doctor, I opened the curtain and looked at that girl—looked out to see who she was." Did you say that? A. I don't suppose in so many words. It amounted to that.

Q. I mean in substance? A. Yes, sir.

Q. And the doctor didn't say to you—didn't tell you who she was until after this indictment was found? A. No.

Q. Then he told you that her name was Goldie Smith? A. Yes, sir.

Q. He told you what sort of a looking girl she was, too? A. Didn't say anything about her looks. I saw her myself.

Q. Did he say anything about what had been said there that day by her? A. You mean in the office?

Q. Yes. A. He knew that I could hear it. If I was there I couldn't help hear it.

Q. Did he say anything about it? A. Did he repeat to me her conversation?

Q. Yes. A. He kind of alluded to one little thing that was said and then passed on.

Q. How did he come to tell you what her name was, do you know? A. I don't remember. In conversation he brought it out.

BY THE COURT:

Q. Did you work there in the daytime? A. Yes, sir.

Q. What was your business? A. Homeopathic pharmacy. I have—I carry on a homeopathic pharmacy.

Q. Are you there every night? A. Until eight o'clock. Sometimes later. My own place. I could stay as I wished.

Q. Did you in point of fact remain every evening? A. Yes, sir. My hours are until eight o'clock.

Q. Eight o'clock? A. Yes, sir.

Q. Now, when you looked into this room did you see the girl's face? A. I didn't look in any room. When I looked out the curtain, you mean?

Q. Yes. A. Sure, I saw her face.

Q. Did you see her full face or side face? A. I saw her full face.

Q. Did she have a hat on? A. Yes; she did.

Q. What kind of a hat was it? A. Summer hat.

Q. What kind of a summer hat? A. It was a dark hat. I don't remember the particulars of the hat. I was looking at the face.

Q. Was it a straw hat? A. Yes, sir.

Q. Don't ladies usually change their hats before September? A. Some do and some don't.

Q. And drop the straw hat? A. Few.

Q. And what color dress did she have on? A. She had on a dark coat and lightish skirt.

FURTHER CROSS:

Q. Did you say you were conducting a—what did you say you were conducting? A. I run a homeopathic pharmacy.

Q. Are you a pharmacist? A. Yes, sir.

Q. You have had a good deal of experience in it? A. Yes, sir.

Q. You are known around town as running a pharmacy I suppose? A. Yes, sir.

Q. Know various druggists? A. Do I know various druggists?

Q. Yes. A. I don't have dealings with druggists. Mine is a pharmacist. I get my drugs from New York.

Q. You are known to various people in Newark? A. Yes. C. E. Smith is about the only one that knows me personally. I don't go in places and make myself known, show my name and show who I am.

BY THE COURT:

Q. Are you a licensed pharmacist? A. Yes, sir; I am recorded up—.

Q. You are registered? A. Registered.

Q. When were you registered? A. I don't know. I didn't register.

Q. When were you registered. You say you are a pharmacist and you say you are not a licensed pharmacist but you are registered. Now, when were you registered? A. I don't know how to answer it.

Q. Where were you registered? A. This building.

Q. Well, about how long ago? A. About three years ago I guess, or two years.

CHARLES D. MANDEVILLE sworn in his own behalf.

DIRECT EXAMINATION by *Mr. Bradner.*

Q. How old are you, Doctor? A. Fifty-six the 16th of last September.

Q. Born in Newark? A. Yes, sir.

Q. Have you always lived here? A. I have. I have always claimed residence here except, of course, when I was in college.

Q. And you graduated at a medical college? A. Yes, sir.

Q. Where? A. Dartmouth Medical College, New Hampshire.

Q. When? A. 1887.

Q. Since that time you have been practicing medicine? A. Yes, sir.

Q. In the summer of 1912, were you practicing medicine in the City of Newark? A. Yes, sir.

Q. Did you have an office? A. Yes, sir.

Q. Where was your office? A. In the Wiss Building, 703 and 705 Broad street, seventh floor.

Q. Do you know Goldie Smith? A. Yes, sir.

Q. Did she come to you the latter part of July, 1912, and ask you to procure a miscarriage for her? A. No, sir.

Mr. Mott. I object to the question as leading.

The Court. It is leading but if it is denial. There is no other way to make it complete.

Mr. Mott. I think counsel should put it in the language that she used.

Mr. Bradner. I am doing the best I can from memory.

Q. Did she tell you on that occasion that she was in the family-way? A. No, sir.

Q. Did you tell her that you would help her out for $75? A. No, sir.

Q. Did you examine her physically on that occasion? A. No, sir; I did not.

Q. Did you give her any medicine on that occasion? A. Yes, sir.

Q. What did you give her? A. I gave her a papian charcoal tablet with pepsin in it.

Q. So far as you can judge at that time what was your diagnosis of her trouble? A. I didn't think much about it. I thought she was nervous. She was hysterical.

Q. Did she come again to see you? A. Yes, sir.

Q. How soon after that? A. Couple of days.

Q. And what did you do then? A. Tried to examine her.

Q. How do you mean you tried to examine her? A. I tried to see the condition. Then she said that she—do you want me to tell you what she said?

Q. Yes. A. She wanted to know at that time what condition she was in. She said she had missed her menstrual period—she didn't say it that way—she hadn't been unwell. Well, I said to her I couldn't tell. She told me when she had missed and I said it is quite impossible to tell anything about it—your condition—she said she had a peculiar itching sensation and a slight discharge and she seemed to be very—well, she struck me as quite a modest little girl at the time and I didn't know whether to make advances toward examining her or not on account of her apparent youth. She looked quite innocent.

The Court. Now Doctor, just tell us what you did and what you said and not what you think.

Witness. Then I asked her to get on the examination chair, which she did. I got a speculum ready to examine her and I found quite some suppruation there, in the vagina.

Q. What is a speculum? A. The instrument you have in your hand.

Q. And for what purpose did you use that? A. So as to see—to examine and see the interior of the vagina and see the os, servix of the uterus.

Q. And what did you find on examination? A. I found that she had quite a good deal of discharge and upon examination—upon an oral examination I found that she had a case of gonorrhoea.

Q. That is, you diagnosed it as such? A. That is what I thought. The reason why I told her it was impossible to tell at that time, sometimes, up to the third week or fourth week—sometimes as early as that—very seldom—there is a softening of the os, of the mouth, the neck of the womb—it becomes large—but not in all cases. I thought I would take a chance to see, but I couldn't find anything like that. I told her—I said you have a great deal of suppuration and I gave her a tablet and told her to douche. I also gave her some pills, telling her to take three pills four times a day.

Q. What kind of pills did you give her on that occasion? A. I gave her a black pill, gelatine coated.

Q. I show you a bottle and ask you what that is? A. That is the same kind of a pill which I gave her.

Q. What are those pills? A. They are for gonorrhoea.

Q. What are the ingredients? A. The ingredients are on the bottle.

Q. What are they? A. Powdered cubebs 1½ grains, copaiba mass 1¼ grains, ferri sulphate exsic ½-grain, venice turpentine ½-grain.

Q. Do you recall how many of those pills you gave her? A. No; I do not, because I went in and Miss Wenz was in the labratory and I told her to put up some of those pills in a box, and the directions you put on that box too.

Q. Did she come to see you again after that? A. Yes, sir.

Q. How often? A. She came about as near as I can recollect, seven times. I charged her two dollars each time she came. She paid me five times, making $10. The sixth and the seventh time she omitted to pay me. She didn't have it, she said, and she said that she would pay me later on.

Q. Well, when she came after that the second time what did you do in the way of treating her? A. The second time I got her on the examination chair, tipped it back, took the speculum—.

Q. I mean after the second time. You have told us about the second time. A. I did it the third time too, and fourth time and fifth time and sixth time and seventh time.

Q. Besides giving her the pills what physical treatment did you make? A. I gave her an application. I took cotton, saturated it in a solution of borax acid, hydrastis, alum, zinc sulphate and tannic acid.

Q. What was that for? A. Acts as an astringent and cleanser and purifier and anti-germicide.

Q. Did she come back after the seventh visit that you speak about? A. Yes, sir.

Q. She was away, as she testified, for some time? A. Yes, sir; I didn't see her for some time. I didn't know—I had forgotten all about her.

Q. Came back alone? A. Yes, sir; that time she did as far as I know.

Q. Did Dr. Tippett come there to see you? A. Yes, sir.

Q. At the time that she was visiting your office what was there to indicate whether she was pregnant or not? A. Why there was no indication whatsoever.

It is quite impossible for a physician, no matter how skilful he may be, to tell for a surety whether the woman is pregnant until the sixteenth week.

Q. You agree with Dr. Washington on that? A. Yes, sir. Dr. Washington said three months to four months, but in all the works I have ever read it states sixteen weeks. Sometimes four months and a half, with the exception of where there is a softening of the servix uturine and that depends on whether the woman has had children before—whether she is a *primipara* or *multipara*.

Q. What I want to know, Doctor, is, did you have any reason to believe at the time this girl was coming to your office and you gave her pills and treated her locally that she was pregnant? A. No. sir; I did not.

Q. Did you think she was? A. I didn't think she was.

Q. Did you afterwards have any reason to believe that she was? A. Well, when she came to me and she made up her mind, she said she made up her mind she was pregnant and wanted me to help her out, I told her I wouldn't do it.

Q. When was that? A. That was in September. I hadn't seen her for some time. I had forgotten about her.

Q. On that occasion what did she say to you? A. Why, she wanted me—she said—I asked her where she had been. She said she had been, I think, to Syracuse, doing some reporting or telephoning—I don't recollect what she had been doing, but she had been away and she had made up her mind that she was pregnant. Well, I told her that I wouldn't help her out; I wouldn't have anything to do with it. She said, "I paid you $10;" I said, "You have got your money's worth. That $10, I treated you for this discharge." I never told her she had gonorrhoea. She was a peculiar girl, quite diffident and bashful. You couldn't—.

The Court. Now Doctor, will you kindly remember what the Court has already told you is the method by which you are to testify?

Witness. Yes, sir.

Q. Just confine yourself to what she said on that occasion in September? A. She wanted me to help her out.

Q. What did she say? A. She said, "I know I am in the family way and you haven't done me any good." I said, "I haven't tried to do you any good, except to cure your discharge or to treat your discharge."

Q. Then what did she say? A. Well, she says, "I paid you $10." I says, "You have got your money's worth for that $10." She says, "I want you to help me out? Won't you help me out?" She says, "I don't care what it costs." I said, "I will not help you out at all." I says, "It is your business to go to the man who got you into trouble and he is the one to help you out, not I." She says, "I don't know who it was." I says, "You don't know who it was?" She says, "No; I have been with eight or nine different men." "Well," says I, "You told me that Dr. Tippett"—she says, "Well, I don't know whether he is the man, but he is the only man that I can put it on to." I says, "What do you mean 'put it on to?'" Well, to make support it." I says, "For what?" She says, "The child." "Well," I says, "You are a rather unprincipled girl—rather unprincipled, a girl as young as you," I says, "go out and don't come back," I says, "I don't want to see you again—I don't want ever to see you again."

Q. Did she go out? A. She went out.

Q. Did she ever come back? A. Well, she did come back, but I didn't see her at that time—at least I happened to open the waiting-room door and saw her going out of the door back into the hall. You

come in one room—in one door into my waiting-room.

Q. You didn't see her again? A. Well, I saw her as she went through—.

Q. You didn't see her to have any conversation with her? A. No, sir; I did not. She came with Dr. Tippett at that time.

Q. You saw Dr. Tippett at that time? A. Yes, sir; he came in my office.

Q. I believe I asked you. Did you give her any emmenagogue pills? A. No, sir; it would be craziness to give her emmenagogue pills.

Mr. Mott. I ask to have that stricken out "It would be crazy."

Witness. It would be very foolish then.

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

Mr. Mott. One minute. I am objecting.

Mr. Bradner. I don't think it was responsive to my question.

The Court. It goes out by consent.

ADJOURNED until tomorrow morning at 10 o'clock.

ESSEX COUNTY GENERAL QUARTER SESSIONS COURT.

November 17, 1914.

STATE
vs.
CHARLES D. MANDEVILLE. } Causing Miscarriage. Second Day.

Appearances as before.

CHARLES D. MANDEVILLE resumed the stand for

FURTHER DIRECT EXAMINATION by *Mr. Bradner.*

Q. Doctor, did you tell Goldie Smith that it would cost $75 to bring on a miscarriage? A. No, sir.

Q. Did you use a needle and tell her that you did so to open the womb? A. No, sir.

Q. Did you tell her to get quinine? A. No, sir.

Q. During the month of August, 1912, on what days were you at your office? A. Mondays, Tuesdays and Wednesdays.

Q. How can you be sure about that? A. Because I have been in the habit of closing during July and August, Fridays, Saturdays and Sundays and sometimes Thursdays, Fridays, Saturdays and Sundays.

Q. And how was it in 1912? A. 1912 I closed Thursdays, Fridays, Saturdays and Sundays in August.

Q. I show you a box maked S2, a little black tablet. Can you tell what that is from the appearance of it? A. I couldn't tell unless it was analyzed, but by the appearance of it I should say that it was a tablet or similar to a tablet, that I gave Miss Smith.

Q. What kind of a tablet? A. It is for the stomach, composed of charcoal and pepsin. A digestive tablet.

Q. That which I refer to is the one which has no coating over it? A. Yes, sir.

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

CROSS-EXAMINATION by *Mr. Mott.*

Q. Dr. Mandeville, you have lived in Newark all your life? A. Yes, sir.

Q. Do you know Dr. F. E. Mandeville? A. Yes, sir.

Q. Are you any relation of his? A. His father and my father—

Mr. Bradner. I object.

The Court. What relation has that to this matter?

Mr. Mott. Why, to find out who this witness is, that is all. Just to find out who the party is. I don't care anything about it.

Mr. Bradner. Then don't ask it.

The Court. It is objected to.

Q. I understand from what your counsel said in his opening to the jury that you are not engaged in general practice, is that right, Doctor?

Mr. Bradner. I object. You cannot base a question on what I said in the opening to the jury. The question must be based on the direct examination.

The Court. Leave that part of it out, as to what you understood from counsel's address.

Q. Are you engaged in general practice? A. What do you mean by general practice.

Q. Just what the other physician means by that. A. I don't make calls. I do an office business alone.

Q. And have you a specialty? A. Yes, sir.

Q. What is your specialty? A. I make a specialty of nervous diseases and chronic disease—I mean by chronic disease—I make a specialty of nervous diseases, also genitourinara diseases.

Q. Well, by that do you mean venerial diseases? A. Venerial diseases.

Q. You said, as I understood you, that Goldie Smith got on the operating chair and that you were about to use the speculum on her. Did you use the speculum? A. On what occasion?

Q. On any occasion? A. Yes, sir.

Q. When was that? A. I started on the third visit.

Q. And what did you discover as a result of your use of the speculum? A. I discovered that she had a great deal of inflammation there—some suppuration.

Q. Where was the inflammation? A. At the vagina —the oriface of the vagina, also all through the vagina.

Q. Nowhere else? A. The length of the vagina and up near the cervix and the os of the womb.

Q. You say near the os, or up to the os? A. Up to that and including it.

Q. Any inflammation in the uterus? A. I don't know.

Q. Now, what was the first medicine you prescribed for her? A. It was a tablet.

Q. What did you give her that for? A. She complained of having a little nausea—she seemed to be upset and nervous.

Q. And what other medicine did you prescribe for her? A. At that visit?

Q. No; at any time? A. I prescribed a gonorrhoea pill.

Q. And you diagnosed her case as a case of gonorrhoea? A. I did.

Q. What evidence of gonorrhoea did you find? A. I found from her physical examination that she had a profuse discharge, the parts were quite swollen, very sensative to the touch—that is touch of the speculum.

Q. What? A. Sensitive to touch. She complained of pain upon urinating.

Q. Yes; anything else? A. Well, that is as far as I can remember. General symptoms.

Q. And from those facts can you diagnose gonorrhoea? A. If you have seen enough of it you can.

Q. Is it possible to diagnose gonorrhoea without a microscopic examination? A. Yes, sir.

Q. And you treated her for her gonorrhoea? A. Yes, sir.

Q. Gave her medicine to take? A. Yes, sir.

Q. Did you prescribe for anything else besides the nausea that you have spoken of and the gonorrhoea? A. Write a prescription?

Q. Or give her medicine? A. I gave her only medicine for nausea and medicine for gonorrhoea.

Q. And that is all? A. To take internally.

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

Q. Did you at any time become of the opinion that she was pregnant? A. No, sir.

Q. Not even at her last visit? A. She then asserted that she was.

Q. Well, I ask you what your opinion was, if you formed any? A. I didn't form any opinion about it.

Mr. Bradner. Before resting I desire to make a motion to strike out the testimony of Dr. Washington. As I recall I made an objection to the hypothetical question that was asked Dr. Washington and that objection was overruled. When I made the motion to quash the indictment I stated to the Court that any testimony which might tend to show that the specific drug contained in the pills were noxious would be inadmissible under this indictment and it was my intention to put that objection upon the record, and I will ask the Court either to let that objection go on the record so that the defendant can have the

benefit of it, because it is my oversight in not putting it in that form—the Court will know that I intended to object when I stated so in making the motion to quash—

The Court. You stated on the argument on the motion to quash that any testimony to show that the medicine as administered was noxious would be incompetent. You made no objection to the testimony.

Mr. Bradner. I did not make that objection and it was an oversight and I asked the Court's permission to put that objection on the record now in its proper place.

Mr. Mott. I do not think that is proper.

Mr. Bradner. If the Court declines to do that I make a motion to strike out Dr. Washington's testimony for these reasons. If the testimony tends to show that the pills were noxious that is evidence outside of the indictment and is not admissible because it has no reasonable tendency to prove the indictment, and it is not competent because the indictment does not allege that these drugs were noxious, or in other words, harmful. Also, if they do not tend to prove that the drugs were noxious—that is if his testimony does not tend to prove that—then it is not admissible because the statute requires that the drug or other thing shall be noxious. In either aspect of the case the testimony is not admissible or competent and I ask your Honor to strike it out and take it away from the consideration of the jury.

The Court. Motion denied. The ruling of the Court ought to be, perhaps, better understood than it was upon the motion to quash. The collocation of the words as stated in the Gedicke case signifies that the drug or medicine must be noxious. That is to say it must be

harmful, baneful, hurtful. Now, of course, a poison is presumptively inherently noxious and a drug or medicine must be something that is hurtful. It seems to the Court very much like a case where, if the statute provided that any person who shall attempt to shoot another with a gun, pistol or revolver or other dangerous weapon shall be guilty of a high misdemeanor, that an indictment under the statute would not be good if it charged the defendant with attempting to shoot at another with a revolver without saying that it is a dangerous weapon, but if there is any question, then of course, it would be necessary to show that it is dangerous, but the words in the statute "poison, drug, medicine or noxious thing" are in the disjunctive. I think it is necessary for the State to prove—it certainly is proper, because the Court and jury cannot take judicial notice of the fact, if it be a fact, that ergot is hurtful, but it seems to be necessary for the State to make out in its proof, at all events, that the drug or medicine claimed to have been administered was hurtful.

Defendant's counsel prays an exception to this ruling of the Court, the same is allowed and it is sealed accordingly.

WM. P. MARTIN, *Judge.* (L. S.)

DEFENDANT RESTS.

Dr. WALTER S. WASHINGTON recalled in rebuttal on the part of the State.

DIRECT EXAMINATION by *Mr. Mott.*

Q. Doctor, assume a case of a young woman about nineteen years of age who claims to be in the family-way and you find that there is a profuse discharge in the vagina, the parts are swollen, sensitive to the

touch and there is pain on urinating, is it possible from those facts to diagnose gonorrhoea?

Mr. Bradner. I object.

The Court. What do you mean by claims to be in the family-way?

Mr. Bradner. Another objection he doesn't state the age properly.

Mr. Mott. Seventeen, then. That is so much better.

Mr. Bradner. I object on another ground, that it is not material in this case to show that. Even if Dr. Mandeville might have made a mistake in the diagnosis, that has no bearing upon the case. He might have made a mistake; might have been incompetent. That makes no difference. The question is what did he do. This doctor is not in a position to testify to what he did or didn't do. We are getting away from the issue and it is collateral matter and I don't think it can be shown on rebuttal.

The Court. I will sustain the objection as to this particular question because the question has misstated the girl's age and contains the assumption or doubtful statement of fact that the girl claims to be in the family-way. Now, that is not anything from which the jury can infer any information based upon the Doctor's answer because nobody can understand what the doctor does with that claim upon her part, whether he assumes it to be correct or false or what he does.

Mr. Mott. Strike out that part of her claim and confining your answer to the symptoms stated with the age of the girl seventeen.

The Court. We better have the question as revised, so we will all understand it.

Dr. Walter S. Washington, direct.

Q. Doctor, assume a case of a young woman seventeen years of age who has a profuse discharge from the vagina, parts are swollen, sensitive to the touch and pain on urinating. From those facts can you diagnose gonorrhoea?

Mr. Bradner. I object. The question does not, as a hypothetical question, include all the facts that Dr. Mandeville testified to. He said there was suppuration and inflammation around the os of the uterus and servix or neck of the uterus, and other things that I cannot recall the language, but there were other symptoms. He said also it would make a difference in one's experience,—one who had a great deal of experience in those things, whether they could judge from it or not. That should all enter into the hypothetical question, in order to bind the defendant, if there is to be a hypothetical question at all. I object to it purely now, on rebuttal, because it is a collateral matter and is introducing a new issue into the case.

The Court. Objection overruled.

Defendant's counsel prays an exception to this ruling of the Court, the same is allowed and it is sealed accordingly.

WM. P. MARTIN, *Judge.* (L. S.)

A. There is only one way in which an absolute diagnose of gonorrhoea can be made and that is by a microscopical examination. The symptoms described by the doctor all point or might point to diarrhoea but you might have the same symptoms from simple inflammation.

The Court. You said diarrhoea. Gonorrhoea, you mean?

Witness. Gonorrhoea. You might have the same set of symptoms from a simple inflammation. not a specific one, and the only way in which the diagnosis can be made absolutely and on which physicians rely is a microscopic one.

Q. Do you find in the symptoms mentioned anything that would indicate pregnancy?

Mr. Bradner. I object.

The Court. What symptoms?

Mr. Mott. The profuse discharge from the uterus is what I have reference to—or from the vagina. Taking that one.

Mr. Bradner. It is not a question, if the Court please, in this case whether the woman was actually pregnant or not. The question is what did the doctor think about it. What was his state of mind.

The Court. Can he swear to that and nobody contradict him at all? And nobody can assume he had the general knowledge that every physician has and ought to know it was a case of pregnancy and not gonorrhoea? That is the question for the jury to determine, whether the doctor is telling the truth when he says that he thought that this was a case of gonorrhoea and that he gave a remedy for gonorrhoea. That is the question for this jury to determine. He can not say that it was gonorrhoea, or at all events if it was not he thought so and he gave her gonorrhoea medicine and that is the end of the case. That is the issue to be tried by the jury as to whether or not he is telling the truth, and as to the knowledge which every physician ought to have upon the subject it seems to the Court that that is perfectly proper to be introduced into evidence. Objection overruled.

Defendant's counsel prays an exception to this ruling of the Court, the same is allowed and it is sealed accordingly.

WM. P. MARTIN, *Judge.* (L. S.)

A. There is only one thing in the symptoms described that might lead one to think it was pregnancy and that is the profuse discharge, or at least an increased discharge in the vagina is quite common especially in women who are pregnant for the first time. Aside from that none of the other symptoms would tend to lean toward the idea of pregnancy.

CROSS-EXAMINATION by *Mr. Bradner.*

Q. At what period of pregnancy would there be a profuse discharge? A. Why, the early period.

Q. Early? A. Early period; yes, sir.

Q. What do you mean by the early period? A. Well, beginning say probably at the first month and continuing on during later months, but it would be a mucous discharge.

Q. Would there be any discharge in the case of leukorrhoea? A. Oh, yes. It is leukorrhoea, discharge is.

Q. It is leukorrhoea? A. Yes, sir; discharge is.

Q. You say that there can be no absolutely certain diagnosis of gonorrhoea without a microscopical test? A. That is all—the only way.

Q. A man with considerable experience in gonorrheal cases might be led to believe from his experience and the observation of conditions that there was gonorrhoea? A. Oh, that would be quite natural. I haven't any doubt that a great many cases of gonorrhoea are diagnosed without making a microscopical examination, but there is only one absolute way that it can be. You may have a simple inflammation which resembles a specific one and there is no pos-

sible way of determining the difference except by the microscope.

The Court. If a young woman seventeen years of age has a history of connection with a man in the month of June, menstruation period usually coming on so that she would expect it naturally on the 15th of July following, the menstruation ceases, and she suffers from headache and nausea, can you say from that what her condition would have probably been?

Mr. Bradner. I respectfully object to the question.

The Court. You have a perfect right to.

Mr. Bradner. On the ground that it assumes facts which must be found by the jury and not shown that those facts were indicated to the defendant.

The Court. The jury understands that those facts that are not in evidence cannot be considered upon any theory. Where is there any lack of evidence as to any of the specific facts stated?

Mr. Bradner. There is no evidence that she indicated to the doctor the fact that she had connection with a man in June. That was brought out on her cross-examination. In fact I don't think there is any evidence.

The Court. Didn't the Doctor say so?

Mr. Bradner. No; he doesn't say so. She said that on her cross-examination, and the baby was born in a little over seven months after that.

The Court. Didn't the Doctor say she not only had connection with one man but with twelve?

Mr. Bradner. That was afterwards. In September she told him that—several men.

The Court. Then I don't think the doctor better

answer the question. Doctor, what is the usual period of gestation?

Witness. Nine months.

GOLDIE SMITH recalled in rebuttal for the State

DIRECT EXAMINATION by *Mr. Mott.*

Q. Miss Smith, Dr. Mandeville says that you told him that you were suffering from headaches and nausea of the stomach and that you had pains on urinating, did you tell him? A. No, sir; I did not.

Q. Any such thing?

Mr. Bradner. One moment. I object. This is on rebuttal. It was all gone into on her cross-examination as to what she stated to the doctor.

The Court. Objection overruled.

A. No, sir; I did not.

Q. About any one of those symptoms did you say anything? A. No, sir.

Q. The doctor says that on the September visit that he said to you "It is your business to go to the man who got you in trouble and he is the one to help you out, not I," and that you said, "I don't know who it was." Did you say anything of that kind? A. No, sir.

Mr. Bradner. One moment. I object. She was asked on her cross-examination and she denied it then. Not rebuttal.

The Court. Objection overruled.

Q. Did you say anything of that kind? A. No, sir; I did not.

Q. He goes on and testifies that he said to you, "You don't know who it was?" and that you said, "No; I have been with eight or nine different men." Did you say that? A. No, sir.

Q. Or anything like that? A. No, sir.

Q. He goes on and says, "Well," I said, says I, "You told me that Dr. Tippett" and that you said, "Well, I don't know whether he is the man but he is the only man that I can put it on." Did you say that or anything like it? A. No, sir; I did not.

Q. At any time? A. No, sir.

NO CROSS-EXAMINATION.

STATE RESTS.

Mr. Bradner. I move the Court to direct a verdict of acquittal. My first ground is that the indictment in this case will not sustain a verdict of guilty. It is not sufficient in law as it does not charge any criminal offense. My second ground is that there is no proof that the pills given to Goldie Smith on July 29th, and during August, were noxious—no proof of noxious effect of pills containing the ingredients which the chemist said he found in those pills. His testimony was that the quantity was so infinitesimal that it was impossible to tell how much it was. There is no proof in this case that an infinitesimal quantity of those ingredients in the pills would have any harmful effect.

The Court. They would tend to create a muscular movement of the uterus resulting in the discharge of the fetus.

Mr. Bradner. That would depend upon the dose.

The Court. That would be a harmful result, would it not?

Mr. Bradner. That would depend upon the dose, but there is no testimony in this case that shows that even what was given to her would have any such effect whatever.

The Court. The testimony is that he gave her a box with some fifteen or twenty pills and said "Take these every three hours" or something of that sort. Either three every four hours or four every three hours.

Mr. Bradner. The third ground that the defendant is entitled to be accused by indictment by the Grand Jury and is deprived of his constitutional right to be tried on an indictment which does not charge a criminal offense. We must assume that the Grand Jury had before it evidence of some kind. We must assume that the Grand Jury had the same evidence that was brought out here by the State. The Grand Jury did not see fit to charge that these ingredients in these pills were noxious, and not having done so we cannot assume it. We cannot allow that to be presented to the Court—to the jury. If we do we are depriving this man of his right to be charged with and tried on an indictment found by the Grand Jury. I therefore respectfully ask your Honor to direct a verdict of acquittal, which would be, of course, equivalent to quashing the indictment.

The Court. Motion denied.

Defendant's counsel prays an exception to this ruling of the Court, the same is allowed and it is sealed accordingly.

WM. P. MARTIN, *Judge.* (L. S.)

Charge.

Gentlemen of the Jury: The function of the Court is to instruct the jury with reference to the principles of law governing the case. The principles of law as charged should be accepted as a correct statement of law. The jury, however, is the sole judge of the facts, weight of testimony, credibility of witnesses, inferences to be drawn from the evidence and the conclusions to be reached on all the facts. The Court in referring to the evidence is not to be understood as deciding any facts, but merely as attempting to illustrate or explain the application of principles of the law. If the Court errs in the statement of any evidence the jury is to rely upon its recollection and not upon the recollection of the Court. If any part of the evidence is referred to, seemingly giving it particular emphasis, the jury is not to disregard other evidence which it may deem of equal or greater importance. It is the duty of the jury to consider and weigh all the evidence and pertinent proof bearing upon the question of the guilt of this defendant, not only the evidence which is mentioned by the Court, but all of the facts which may appear by the testimony. If it has been suggested or stated during the course of the trial that some facts have or may have occurred, or evidence has been offered and excluded, or evidence has been presented and subsequently stricken out, the jury should disregard all such suggestions, statements, offers and excluded matter. The mere asking of a question conveying an inference not supported by the answer in some way is not evidence. The verdict can, therefore, lawfully and properly, be based upon the testimony remaining in the case only.

The law presumes that the defendant is innocent. This presumption can be overcome only by evidence showing beyond a reasonable doubt the guilt of the

defendant. The burden of proving the guilt of the defendant beyond a reasonable doubt is upon the State, and does not shift from the State throughout the case.

"Reasonable doubt is a term often used, probably pretty well understood, but not easily defined. It is not a mere possible doubt; because everything relating to human affairs, and depending on moral evidence, is open to some possible or imaginary doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction, to a moral certainty, of the truth of the charge. The burden of proof is on the prosecution. If upon such proof there be reasonable doubt remaining, the defendant is entitled to the benefit of it by an acquittal. The evidence must establish the truth of the fact to a reasonable and moral certainty, a certainty that convinces and directs the understanding, and satisfies the reason and judgment of those who are bound to act conscientiously upon it. This is taken to be proof beyond a reasonable doubt; because if the law should go further than this, and require absolute certainty, it would exclude circumstantial evidence altogether."

And in this connection the Court will charge one of the requests to charge by the defendant. "3. If the jury can reconcile the evidence upon any reasonable hypothesis consistent with the defendant's innocence, they should do so, and find the defendant not guilty."

The defendant is presented here upon an indictment found by the Grand Jury sitting in the April Term, 1914, which contains two counts. The first

count is that the defendant, Charles D. Mandeville, on the 15th day of September, 1912, maliciously and without lawful justification and with intent to cause and procure the miscarriage of one Goldie Smith, a woman then pregnant with child, did direct the said Goldie Smith to take divers drugs, to wit, ergotine, cotton root extract, oil and extract of savin contained in divers pills known as emmenagogue pills, which pills he, the said Charles D. Mandeville, did give to the said Goldie Smith, contrary to the statute in said case made and provided. The second count in the indictment is, so far as the Court has been able to compare it, the same as the first count except that in place of the words "did direct" is inserted the words "did advise." So that in the first count the defendant is charged with directing Goldie Smith to take these drugs in the manner mentioned and in the second count the charge is that he did advise. The counts in the indictment cover a charge of the commission of a crime included in the 119th section of the Crimes Act, which, insofar as it seems to be necessary, the Court will now read:

> "Any person who maliciously or without lawful justification, with intent to cause or procure the miscarriage of a woman then pregnant with child, shall administer to her, prescribe for her or advise or direct her to take or swallow any poison, drug, medicine or noxious thing, shall be guilty of a high misdemeanor and punished accordingly."

The elements of the offense, as stated in this statute, are five. The first element is that the defendant must have maliciously or without lawful justification done what the statute prohibits, and maliciously means acting with an evil motive and in order to fulfill this essential element of the offense it is necessary that the jury find that the defendant acted

either maliciously or without lawful justification. That is to say, that if he acted for the purpose of bringing about a miscarriage under conditions when it was improper to bring about such a miscarriage, it would seem that that would be without lawful justification, and if you believe it was with an evil motive, it would seem to have been done maliciously. The second element in the offense is that the intent must be to cause or procure the miscarriage of the woman. It is not necessary for the Court to elaborate on this element. It is a very plain and simple proposition; that is that the intention in giving the advice or direction must be to cause or procure the miscarriage of the woman. The third essential element is that the woman must have been pregnant with child and in this connection there is a distinction between the fact of the existence of the pregnancy and the knowledge of the defendant. It makes no difference whether the defendant knew that the woman was pregnant with child; it is enough if he believes that she was pregnant or had suspicions of her pregnancy sufficient to make him form the intent which is prescribed by the statute, but the jury must find, regardless of whether the defendant absolutely knew that she was pregnant, that she was actually pregnant. The fourth element is that he must have advised or directed her to take or swallow some drug or medicine of the character hereinafter described, and the fifth element is that the drug or medicine must be noxious; that there must be a drug or medicine and that it must be a noxious thing. That is to say it must be hurtful, harmful, baneful,—something that has a tendency in itself physically to injury, and if it did have a tendency to bring about a miscarriage in a pregnant woman, it had a tendency of a baneful or harmful nature. The act must be done maliciously or without lawful justification, and must be done with the intent to cause or procure the mis-

carriage, it being immaterial whether the miscarriage follows, and in order to establish this intent it is not necessary that it be shown that the accused had absolute or positive knowledge of the pregnancy of the woman, for if the accused entertains a belief or a suspicion of the pregnancy it may be sufficient upon which to base his intent. The intent may be to cause or procure a miscarriage. The mere advising of the taking of poisons and so forth will make one guilty of the crime whether the advice be followed or not—the advice or direction to take any one of these forbidden articles enumerated under our statute as it stands at present. The thing advised to be taken, other than poison, must be noxious in its nature, but it is unnecessary to show that it would necessarily produce a miscarriage or that it would produce a miscarriage. The poison, drug, medicine or other thing must be noxious or hurtful, as the Court has already stated. If it possesses this quality and is administered, prescribed or directed to be taken with intent to cause or procure a miscarriage when the woman is then pregnant with child, the crime is complete, whether in the opinion of others it is capable of producing that result or not. It is dangerous to the life and health of the mother and to the existence of the child to experiment with any drug, medicine, or noxious thing to produce a miscarriage. The ignorance of the operator may lead him to select something that will not have the effect he designs, but if it be noxious in any degree, though in the judgment of others who have greater knowledge it cannot produce the effect intended, it is within the statute. Where the miscarriage is not produced the burden must be on the prosecution to show that the thing used was noxious in its character—nothing more. As a rule of evidence this can make but little practical difficulty, for if the pregnancy be shown, as it must be under the statute, and

the person charged, supposing it to exist, administers anything to affect it, very slight proof of the character of the thing administered will be required. Such things are usually known or their effects are apparent.

The State has presented here in support of the charge made in the indictment the testimony of Miss Goldie Smith, who says that she is now nineteen—I think she said that she was nineteen last August—and that in 1912, in the latter part of July, possibly at or about the 29th day of July—and right here the Court ought to pause to say that while the indictment charges this to be on the 25th day of September, or 15th day of September, the defendant may be found guilty if it is found that this woman went to his office—and the other elements of the crime are present—on the 29th day of July, or during August, instead of on the precise 15th day of September, as charged in the indictment—that she told the doctor that she would have been regularly due for her periods about the 15th of July and they had been unusually delayed and that she informed him upon that occasion that there had been intercourse by her with some person and she feared that she was pregnant and that she wanted to be relieved of that condition, and she says that the doctor gave her a box containing some pills which he told her to take in certain quantities at certain intervals, and she says that subsequently she obtained three other boxes of pills of a similar character, so far as she could observe, and that she was told to take them for the same purpose: the first visit she was examined, and then, as the Court remembers it, she was told that she must pay $75, and that she came back in three or four days and actually delivered $65, and it was on that second occasion that she obtained the first box of pills referred to. Miss Smith also testified that she had in her possession during the spring

of this year two of these boxes containing pills which had been given to her by the defendant and that she delivered them to one of the detectives of the prosecutor's office, by whom they were delivered, according to the testimony, to the chemist who was put upon the stand, and he examined them and he found in them traces of ergot and ergotine, oil of savin and cotton root, and as the Court remembers it, and it was testified to by Dr. Washington that those, singly or in combination, have a tendency to produce a contraction of the muscles of the womb and to expel the fetus, which, as the State claims constitutes an abortion. Now, if this testimony is believed it would seem to be sufficient upon which for the State properly to claim that this defendant should be found guilty of the charge made against him.

The defendant on the other hand says that he did not prescribe any medicine whatever for the purpose of bringing about an abortion or miscarriage, that he did not know and had no reasonable cause to believe that the woman was pregnant at the time that she first came to see him and that the existence of pregnancy was not even discussed until some time in September, when he discussed the matter either with Dr. Tippett or with Miss Goldie Smith so that his testimony is that of a complete denial of the statement of Miss Smith. And he also says in addition to the complete denial which he makes that he treated Miss Goldie Smith for a disease known as gonorrhoea. He says that when he examined her he found symptoms from which he was of the opinion that she had gonorrhoea, and he stated, as I remember, that the pills which he gave her were pills not containing any of the ingredients alleged by the State to be contained in these pills which have been offered in evidence. Whether that statement is correct or not, of course, is a matter for the jury to

determine, but at all events there was nothing in the pills—in the prescription for pills which the doctor read,—the formula of the pills which he said he gave her which included any of the elements or the medicines or the drugs particularly referred to in the indictment.

The duty of the jury is to search the minds and the consciences of the witnesses and go through the record and find out where the truth lies, and in this connection, amongst other methods which the jury may apply at its discretion, for the purpose of ascertaining the truthfulness of a witness upon the stand, the jury may consider the manner and the appearance, means of observation, accuracy of memory, mental capacity, and such other reasonable and proper tests as human experience shows assists in determining the truthfulness of a statement, and amongst such other things as may be considered by the jury the jury have a right to consider the interest of a witness in testifying. What interest has Dr. Washington for example in testifying? Why should he come here and tell an untruth? What interest has Miss Goldie Smith? I believe it was suggested in the testimony that she said that if the doctor wouldn't help her that she proposed to get even. Now, if you believe that, you have a right to consider her interest. You have, anyway, the right to consider her interest in testifying, but in that connection you may remember the fact that from September, 1912, until April, 1914, Miss Goldie Smith so far as the record is concerned, does not seem to have taken any steps whatever to have endeavored to get even with the defendant. There doesn't seem to be any evidence upon that, but, of course, that is a question for you to consider. Then you have a right to consider the interest of the defendant, because he was a witness and took the stand, in testifying and what effect, if any, his interest would

have upon his testimony upon the stand, and in that connection you have a right to consider the very great interest of this defendant in any verdict which the jury may render, and whether or not that interest would have any effect upon the story he tells upon the witness stand.

Gentlemen of the jury, if you believe, upon the principles as stated—principles of law—and the testimony remaining in evidence that this defendant is guilty, it is your duty to bring in a verdict of guilty. If the testimony does not show upon the principles stated that the defendant is guilty, then of course the verdict must be not guilty.

Defendant's Requests

1. The State must prove that the pills given to the woman were noxious, and that the defendant advised or directed her to take them, and that he knew or believed her to be pregnant and that he intended to cause a miscarriage, and that he acted with an evil motive or without any justifiable reason, that is, without any reason except to cause an unnecessary miscarriage; and if the evidence in the case does not in the judgment of the jury exclude every reasonable hypothesis except that of the defendant's guilt, there must be a verdict of acquittal.

Defendant's counsel prays exception to the refusal of the Court to charge as requested, the same is allowed and it is sealed accordingly.

WM. P. MARTIN, *Judge.* (L. S.)

2. The jury may not infer from the fact that the defendant gave emmenagogue pills to the woman that he intended to cause a miscarriage, because such pills may be prescribed for a proper and lawful purpose.

Defendant's counsel prays an exception to the Court's refusal to charge as requested, the same is allowed and it is sealed accordingly.

WM. P. MARTIN, *Judge.* (L. S.)

3. If the jury can reconcile the evidence upon any reasonable hypothesis consistent with the defendant's innocence, they should do so, and find the defendant not guilty.

Charged.

Defendant's counsel prays exception to that part of the charge wherein the Court said that if the defendant believed or had suspicion of her pregnancy that was sufficient, or what the Court said in that connection, the same is allowed and it is sealed accordingly.

WM. P. MARTIN, *Judge.* (L. S.)

Defendant's counsel also prays exception to that part of the charge wherein the Court said "if it (meaning the drug) did have a tendency to bring about a miscarriage it was harmful" and in that connection also to the statement "very slight proof of the character of the drug only is required," the same is allowed and it is sealed accordingly.

WM. P. MARTIN, *Judge.* (L. S.)

Defendant's counsel also prays exception to that part of the charge wherein the Court said in reference to Dr. Washington's testimony that ergot, oil of savin and cotton root have a tendency to produce a contraction of the muscles of the womb and expell the fetus, the same is allowed and it is sealed accordingly.

WM. P. MARTIN, *Judge.* (L. S.)

Defendant's counsel also prays exception to that part of the charge in which the Court said, after recapitulating some of the testimony on behalf of the State, "if this testimony is believed it would seem to be sufficient to sustain the charge made by the State," the same is allowed and it is sealed accordingly.

WM. P. MARTIN, *Judge.* (L. S.)

Defendant's counsel also prays exception to that part of the charge wherein the Court said, "there is no evidence in this record that Miss Goldie Smith from September, 1912, to April, 1914, took any steps whatever," or what the Court said in that connection, the same is allowed and it is sealed accordingly.

WM. P. MARTIN, *Judge.* (L. S.)

Defendant's counsel also prays exception to that part of the charge wherein the Court said, it was the right of the jury to consider the very great interest of the defendant, the same is allowed and it is sealed accordingly.

WM. P. MARTIN, *Judge.* (L. S.)

Defendant's counsel also pray a general exception to the charge of the Court, the same is allowed and it is sealed accordingly.

WM. P. MARTIN, *Judge.* (L. S.)

Certificate of Judge.

ESSEX COUNTY COURT OF QUARTER SESSIONS.

THE STATE vs. CHARLES D. MANDEVILLE.	On Indictment for Causing Miscarriage. Certificate of Record.

I, William P. Martin, Judge of the Court of Quarter Sessions, before whom the above stated indictment was tried, do hereby certify that the foregoing is the entire record of the proceedings had upon the trial of the indictment in the above stated case in the State of New Jersey vs. Charles D. Mandeville.

Dated December 30, 1914.

WM. P. MARTIN,
Judge.

O. K. F. L. SALMON,
Stenographer.

Assignments of Error.

Filed January 26, 1915.

New Jersey Supreme Court.

THE STATE OF NEW JERSEY, *Defendant in Error,* vs. CHARLES D. MANDEVILLE, *Plaintiff in Error.*	On Error to Essex Quarter Sessions. Assignments of Error.

Afterwards, to wit, on the return day of the said writ of error before the Justices of the Supreme Court of Judicature at Trenton, comes the said Charles D. Mandeville, by Frank E. Bradner, his attorney, and says that in the record and proceedings aforesaid, and also in the giving of judgment aforesaid, there is manifest error in this respect, to wit:

1. The denial of the motion to quash the indictment.

2. The admission of the testimony of Goldie Smith, that needles were used.

3. The admission of the general question put to Goldie Smith:—"What occurred on these visits?"

4. The admission of the answer of Goldie Smith to the question, as follows:—"And when you came back, you went to Dr. Mandeville's office with Dr. Tippett, didn't you? A. Yes. I went alone a couple of times, and he was not there;" and the refusal of the Court to strike out the answer.

5. Permitting the Prosecutor to designate Mr. Godfrey, after the witness Goldie Smith had identi-

fied Mr. Hargan as the detective to whom she had given the two boxes of pills.

6. Permitting the witness Albert E. Edel to testify as an expert, after it appeared that he had no special knowledge of the subject.

7. Admitting the testimony of Albert E. Edel, of the analysis that he made of the pills not in the presence of the defendant, and without giving the defendant an opportunity to have the pills analyzed.

8. Denying the application of the defendant to cross-examine the witness Albert E. Edel, for the purpose of ascertaining whether he was told what was supposed to be in the pills.

9. Permitting the witness James H. Tippett, to testify generally to a conversation that he had with the defendant.

10. The admission of the question put to Dr. Walter S. Washington:—"In a woman in a pregnant condition, that contraction would produce what result?"

11. The exclusion of the labels on the four bottles marked Exhibits D2, D3, D4 and D5.

12. The denial of the motion to strike out the testimony of Dr. Washington insofar as it tended to show that the pills were noxious.

13. Admitting the following question put to Dr. Washington:—"Doctor, assuming a case of a young woman seventeen years of age, who has a profuse discharge from the vagina, parts are swollen, sensitive to the touch and pain on urinating. From those facts can you diagnose gonorrhoea?"

14. Permitting the question put to Dr. Washington:—"Do you find in the symptoms mentioned, anything that would indicate pregnancy?"

15. The denial of the motion to direct an acquittal.

16. The refusal of the court to charge the first request made by the defendant specifically as requested.

17. The refusal of the court to charge the second request made by the defendant specifically as requested.

18. The refusal of the court to charge the third request made by the defendant specifically as requested.

19. The charge of the court as follows:—"It is enough if he believes that she was pregnant, or had suspicious of her pregnancy sufficient to make him form the intent which is prescribed by the statute."

20. The charge of the court as follows:—"If it (meaning the drug) did have a tendency to bring about a miscarriage in a pregnant woman, it had a tendency of a baneful or harmful nature."

21. The charge of the court as follows:—"And it was testified to by Dr. Washington that these singly or in combination, have a tendency to produce a contraction of the muscles of the womb, and to expell the fetus."

22. The charge of the court as follows: —"Now, if this testimony is believed, it would seem to be sufficient upon which for the State properly to claim that this defendant should be found guilty of the charge made against him."

23. The charge of the court as follows:—"You have anyway the right to consider her interest in testifying, but in that connection you may remember the fact that from September, 1912, until April, 1914, Miss Goldie Smith so far as the record is concerned, does not seem to have taken any steps whatever to have endeavored to get even with the defendant."

24. The charge of the court as follows:—"Then you have a right to consider the interest of the defendant, because he was a witness and took the stand, in testifying in what effect if any, his interest would have had upon his testimony upon the stand and in that connection, you have a right to consider the very great interest of this defendant in any verdict which the jury may render, and whether or not that interest would have any effect upon the story he tells upon the witness stand."

25. The charge of the court as follows: "She told the doctor that she would have been regularly due for her periods about the 15th of July, and they had been unusually delayed, and that she informed him upon that occasion, that there had been intercourse by her with some person;" there being no evidence that Goldie Smith made such a statement to the defendant.

26. The charge of the court as follows:—"It was testified to by Dr. Washington that these singly or in combination, have a tendency to produce a contraction of the muscles of the womb and to expel the fetus;" which was a misstatement of Dr. Washington's testimony, who testified that the action of any one of them, singly or in combination, if given in sufficient doses and the patient was susceptible enough to the influence of the drugs, would tend to empty the womb; and also testified:—"In order to bring on anything of the kind (meaning an abortion) it would have to be given in large doses, doses large enough probably to be unsafe and dangerous."

27. The charge of the court as follows:—"The defendant says that he did not know and had no reasonable cause to believe that the woman was pregnant at the time that she first came to see him, and that the existence of pregnancy was not even discussed until some time in September, when he discussed the

matter, either with Dr. Tippett, or with Miss Goldie Smith;'' there being no evidence that the defendant discussed the matter with Dr. Tippett, except to say that he didn't know whether she was in trouble or not, and hadn't given her a personal examination.

Wherefore, the said defendant, Charles D. Mandeville, alleges that by reason of the respective errors aforesaid, he has been prejudiced in maintaining his defense upon the merits of the case, and prays that the judgment and sentence aforesaid, by reason of the aforesaid errors and all other errors appearing in the record and proceedings aforesaid, and in the giving of judgment and passing of sentence aforesaid, be reversed, annulled and held for nothing, and that the said Charles D. Mandeville, defendant as aforesaid, may be restored to all things he has lost on occasion thereof.

FRANK E. BRADNER,
Attorney of Plaintiff in Error.

Specification of Causes.

Filed January 26, 1915.

NEW JERSEY SUPREME COURT.

THE STATE OF NEW JERSEY, *Defendant in Error,* vs. CHARLES D. MANDEVILLE, *Plaintiff in Error.*	On Error to Specifications of Causes. Essex Quarter Sessions.

And the said plaintiff in error also specifies the following causes relied upon by him for relief, or for reversal pursuant to the statute in such case made and provided.

1. The admission of testimony to show that the defendant made use of some mechanical means to produce a miscarriage, which was outside of the charge contained in the indictment.

2. The admission of testimony as to what occurred on the visits by Goldie Smith to the defendant, in addition to the conversations between them and the act of giving her some pills.

3. The refusal of the court to strike out the testimony of Goldie Smith, that was not responsive to the question which she was asked:—"When you came back, you went to Dr. Mandeville's office with Dr. Tippett, didn't you?" and she answered, "Yes, I went alone a couple of times and he wasn't there."

4. The proceeding admitted by the court for the identification of the detective to whom Goldie Smith gave the two boxes of pills.

5. Permitting Albert E. Edel to testify as an expert, the evidence showing that he had no special knowledge of the subject.

6. Permitting the witness Albert E. Edel to state the result of his analysis, which was not made in the presence of the defendant or his representative, and without giving the defendant an opportunity to have an analysis made of the same pills.

7. Refusing to permit a further cross-examination of the witness Albert E. Edel, for the purpose of ascertaining whether he was told when the pills were given to him what was supposed to be in them.

8. Permitting the witness James H. Tippett to testify generally to his conversation with the defendant.

9. Permitting Dr. Washington to testify in answer to a hypothetical question, which was not based upon all the evidence in the case, and did not contain all the facts that had been proved, and particularly the question:—"In a woman in a pregnant condition, that contraction would produce what result?" referring to the question and answer immediately preceding.

10. The ruling of the court, that Dr. Washington could testify as to the effect of the different drugs, if given to a woman who was actually pregnant.

11. The refusal to admit in evidence the labels on the several bottles containing pills, which had been marked for identification and had been proved by the chemist and by the purchaser of the bottles of pills.

12. The denial of the motion to direct an acquittal at the close of the case on behalf of the State.

13. The denial of the motion to direct an acquittal at the close of the whole case.

14. Admitting the testimony of Dr. Washington in answer to the question:—"Doctor, assuming a case of a young woman seventeen years of age, who has a profuse discharge from the vagina, parts are swollen, sensitive to the touch, and pain on urinating. From those facts, can you diagnose gonorrhoea?"

Specification of Causes.

15. Permitting the question put to Dr. Washington:—"Do you find in the symptoms mentioned, anything that would indicate pregnancy?"

16. Permitting the witness Goldie Smith, to testify that Dr. Tippett was a dentist.

17. Permitting the Prosecutor to call the witness Walter Godfrey to contradict the testimony of Goldie Smith, that she had given the two boxes of pills to Mr. Hargan.

18. The refusal of the court to permit the witness Edel, to state the formulas in the labels on the bottles shown to him.

19. Permitting the Prosecutor to recall the witness Goldie Smith in rebuttal, and to testify over objection to matters already covered in her cross-examination.

20. The charge of the court to the jury, that they could consider Goldie Smith's interest, and that it had been suggested in the testimony that she proposed to get even with the defendant, and in that connection to remember the fact, that from September, 1912, until April, 1914, she had not, so far as the record is concerned, taken any steps whatever to get even with the defendant; disregarding the evidence that she had been a witness in some former trial and had appeared before the Grand Jury prior to the finding of this indictment, and the absence of evidence that she was not a voluntary witness.

The said plaintiff in error alleges that the foregoing respective matters prejudiced him in maintaining his defense upon the merits, and prays that for the causes aforesaid, in addition to the assignments in error, the judgment aforesaid may be reversed.

FRANK E. BRADNER,
Attorney of Plaintiff in Error.

Opinion.

Filed January 3, 1916

New Jersey Supreme Court.

JUNE TERM, 1915.

THE STATE *vs.* CHARLES D. MANDEVILLE.	*Error to Essex Quarter Sessions.*

Argued before Gummere, Chief Justice, and Justices Swayze and Bergen.

For plaintiff in error, Frank E. Bradner.

For the State, Frederick F. Guild, Prosecutor of the Pleas, Wilbur A. Mott, Assistant Prosecutor of the Pleas.

The opinion of the Court was delivered by Gummere, *C. J.*

The defendant was indicted and convicted under the 119th section of the Crimes Act (Comp. Stat., p. 1784) which provides that "Any person who maliciously, or without lawful justification, with intent to cause or procure the miscarriage of a woman then pregnant with child, shall administer to her, prescribe for her, or advise or direct her to take or swallow, any poison, drug or medicine, or noxious thing, or who maliciously or without lawful justification shall use any instrument or means whatever with the like intent, shall be guilty of a high misdemeanor." He now seeks to reverse his conviction for alleged errors occurring during

the trial. The case comes up under the 136th section of the Criminal Procedure Act, Comp. Stat., p. 1863.

The first ground upon which he seeks a reversal is that the indictment, as he alleges, does not charge a criminal offense, and that this motion to quash it for this reason was erroneously refused. A motion to quash, as a general rule, is addressed to the discretion of the Court, and is not reviewable on writ of error. *State* v. *Siciliano,* 91 *At.* 989. It would seem, however, that the rule is not applied when the motion is rested upon the failure of the indictment to charge a crime and the alleged error appears upon the face of the record. *Mayer* v. *State,* 63 N. J. L. 35; *S. C. on Error,* 64 *Id.* 323. The motion in the present case being within the exception to the rule apparently, indicated by the case last cited, we proceed to consider the validity of the ground upon which it was rested.

The indictment contains two counts. The averment of the first is that the defendant "with intent to cause and procure the miscarriage of one Goldie Smith, then pregnant with child, did direct the said Goldie Smith to take divers drugs, to wit, ergotine, cotton root extract, oil and extract of savin, contained in divers pills known as emmenogogue pills." The averment of the second count is like that of the first, except that it charges the defendant with advising the woman to take the specified drugs. The contention in support of the motion to quash was that the indictment does not charge a criminal offense in either count, because it nowhere alleges that the drugs directed or advised to be taken were any of them, either separately or when mingled together, noxious in character. If the indictment had charged the defendant with directing or advising the woman to

take a drug the identity of which was unknown to the grand jury, but had failed to aver that the drug was noxious in character, the contention of counsel for the defendant would have been entirely sound; for unless the drug was noxious there was no violation of the statute; *State* v. *Gedicke,* 43 N. J. L. 86, and in the absence of such an averment the law will not presume that the drug directed or advised to be taken was of the character struck at by the statute. But where the indictment specifies the particular drug or combination of drugs advised to be taken, the absence or presence of an averment that it or they are of a noxious nature is entirely immaterial. If such be the fact the averment is unnecessary; if the fact be otherwise the averment will be unavailing. *Breese* v. *Trenton Horse R. R. Co.,* 52 N. J. L., 250, 252; *Millville Gas Light Co.* v. *Sweeten,* 75 N. J. L. 23. The attack upon the form of indictment, therefore, was without legal substance, and the motion to quash was properly denied.

The next ground upon which the defendant seeks a reversal of the conviction is that the court erroneously permitted the State to prove, over objection, that on the occasion of the woman's third visit to him (he having twice before given her the pills) he used needles upon her for the purpose of opening the mouth of the womb. The testimony is considered by him to be objectionable because it tends to prove an independent crime not charged in the indictment, the statute making either the prescribing of drugs, or the use of instruments, for the purpose of bringing on a miscarriage, criminal. But the fact that the testimony has the tendency attributed to it does not necessarily render it incompetent. The rule which requires the rejection of proof of independent

crimes committed by a defendant, entirely unconnected with that for which he is being tried, has no application where the offense sought to be proved, although not specified in the indictment, is one of a series of acts each and every of which is done in aid of the purpose sought to be accomplished by the commission of the specific offense with which the defendant is charged. Evidence of acts done by the defendant which have this relation to the particular offense laid against him by the grand jury is competent, notwithstanding that each of them might also be made the subject of an independent criminal prosecution. *State* v. *Deliso,* 75 N. J. L., 808. The testimony objected to was of this character, and was properly admitted.

It is next urged as a ground of reversal that the trial court erroneously permitted one Edel, an analytical chemist, to testify as to the component parts of the pills which had been given by the defendant to Goldie Smith, some of which had not been taken by her, and had come into the hands of the State. The testimony was objected to upon the ground that the witness had failed to qualify as an expert with relation to the subject matter concerning which he was interrogated. He was examined and cross-examined as to his experience in making analyses of drugs, and his evidence upon this point satisfied the trial court that he was qualified to give expert testimony upon that subject. It is entirely unnecessary at this day to point out that the question whether a given witness has the necessary special experience to qualify him to give opinion evidence is one of fact for the determination of the trial court; and that the decision of that court upon the matter will not be interfered with, even under the broad review provided by the 136th section of the Crim-

inal Procedure Act, if the testimony fairly supports it. The cases upon this subject are collated in *State* v. *Arthur,* 70 N. J. L. 425. In the present case the evidence fully justified the conclusion of the trial court that the witness Edel had the requisite experience to qualify him.

It is alleged as a further ground of reversal that it was incompetent to permit the State to prove by one of its expert medical witnesses that the administration to a pregnant woman of ergot, cotton root and oil of savin in combination, if given in sufficient quantities, would tend to produce a miscarriage; the basis of the contention being that the indictment failed to aver that those drugs, either separately or in combination, were "noxious" in character. What we have already stated in disposing of the attack upon the form of the indictment is also dispositive of this ground of reversal. It may be added that, whatever may be the form of the indictment, the burden rests upon the State of proving, as a part of its case, that the drugs advised or directed to be taken are, in fact, noxious in character; and that proof that their administration to a pregnant woman in sufficient quantity tends to produce a miscarriage, is evidence of their noxiousness.

It is contended further that it was error to permit this same witness to testify that certain symptoms, which the defendant, while on the stand as a witness, had stated that he had discovered when making a physical examination of the woman, were indicative of pregnancy in the patient. The situation was this: the defendant, according to his own story, had been practicing medicine for about twenty-five years at the time the woman came to his office, making a specialty of the treatment of nervous and venereal diseases. Having testified to the making of the physical examina-

tion of the woman, and as to the symptoms which he then discovered, he stated that he had diagnosed her trouble as gonorrhoea, and had treated her for that disease; denying positively that he had given her any drug for the purpose of bringing on a miscarriage. It was the right of the State to discredit the defendant's testimony by showing that the symptoms described by him would not justify a diagnosis of gonorrhoea, thus casting doubt upon the truth of his testimony as to what his diagnosis was and the character of his treatment. The testimony objected to was manifestly introduced by the State for the purpose of thus discrediting the defendant. It had a tendency to produce this result, and, so, was competent. That such tendency was slight cannot be said to have rendered it immaterial. The objection to its admission, therefore, was properly overruled.

Again, it is urged that the trial court should have directed a verdict of acquittal at the close of the case, upon the motion of the defendant, upon the ground that there was a failure of proof that the drugs advised or directed to be taken were sufficient in quaitity to be noxious; that is, as we understand the argument, to produce a miscarriage. But no such proof was necessary in order to support a conviction under the indictment. The specified drugs were shown to be noxious in that when administered in sufficient quantities to a pregnant woman they were likely to produce a miscarriage. If they were prescribed for the purpose of producing that result, the fact that they failed of that purpose, because through ignorance or through inadvertence not given in large enough doses, does not relieve the offender from the condemnation declared against him by the statute; *State* v. *Gedicke, supra.* The defend-

ant was, therefore, not entitled to prevail on his motion to direct a verdict of acquittal.

Counsel for defendant produced in court certain vials, the labels upon which stated that they contained emmenagogue pills, and specified the ingredients which went into their composition. Having proved that the parties who manufactured these pills were well known and reputable chemists, counsel then offered the labels in evidence for the purpose of proving that the emmenagogue pills put up by these manufacturers contained ingredients not found by the State's expert chemist in his analysis of those supplied by the defendant to Goldie Smith. The offer was overruled, and counsel now asserts before us that the exclusion of the labels was harmful error. Why he so considers it we are not advised, as he contents himself with the mere statement in his brief that "The evidence was competent to show the formula of pills in the market known as emmenagogue pills, and it was error to exclude it." The disposition of this ground of reversal may be made with almost equal brevity. There was nothing to show the authorship of the labels; nothing to show that the authors had any personal knowledge of the component parts of the pills contained in the vials; nothing to show (assuming that they had such knowledge) that they truthfully stated those components in their formulas. The labels, therefore, had no evidential value for the purpose for which they were offered, and were properly excluded.

Other grounds for reversal are directed at the charge to the jury, and at the refusal to charge certain requests submitted on behalf of the defendant. We have examined them all, and find none which seem to us to be of sufficient importance to merit separate discussion. They may be

disposed of by the statement that, as to alleged errors of law appearing in the charge, they are without merit; as to the alleged misrecitals of evidence the inaccuracies were harmless; and that as to the refusals to charge as requested, such of the matters contained in the requests as the defendant was entitled to have submitted to the jury were, in fact, charged in substance.

We conclude, therefore, that, for none of the reasons specified in the grounds for reversal should the conviction under review be disturbed.

Remittitur.

Filed January 4, 1916.

New Jersey Supreme Court.

STATE OF NEW JERSEY,
Defendant in Error,
vs.
CHARLES D. MANDEVILLE,
Plaintiff in Error.

On Error.
Remittitur.

The above stated cause having been duly submitted on briefs at the June Term, Nineteen hundred and fifteen, in the New Jersey Supreme Court, by Frederick F. Guild and Wilber A. Mott, attorneys for the defendant in error, and Frank E. Bradner, attorney for the plaintiff in error, and the Court having considered the matter and finding no error in the record and proceedings in the Essex Quarter Sessions Court;

It is thereupon ordered and adjudged that the judgment of the Essex Quarter Sessions Court, removed by the writ of error in this cause, be affirmed in all things with costs; and that the record be remitted to the Essex Quarter Sessions Court to be proceeded with according to law and the practice of said Court.

Entered January 4, 1916. On motion of

FREDERICK F. GUILD,
Prosecutor of the Pleas,
Attorney of Defendant in Error.

A true copy,
WM. C. GEBHARDT,
Clerk.

Assignments of Error.

Filed January 27, 1916.

New Jersey Court of Errors and Appeals

STATE OF NEW JERSEY, *Defendant in Error,* *vs.* CHARLES D. MANDEVILLE, *Plaintiff in Error.*	*On Error to Supreme Court.* *Assignments of Error.*

Afterwards, to wit, on the 26th day of January, 1916, in the Court of Errors and Appeals in the last resort in all causes, the said Charles D. Mandeville by Frank E. Bradner, his attorney, comes and says that in the record and proceedings aforesaid, and also in the matters recited and contained in the said bill of exceptions, and also in the giving of the verdict and judgment aforesaid and in the giving of the judgment in the said Supreme Court, there is manifest error in this, to wit:

First: Because the Supreme Court determined that the indictment is sufficient in law and sustained the action of the Court of Quarter Sessions in denying the motion to quash the indictment.

Second: Because the Supreme Court determined that the testimony of Goldie Smith, that needles were used, was admissible and competent evidence, and sustained the action of the trial court admitting such evidence.

Third: Because the Supreme Court sustained the action of the trial court denying the motion of the defendant to strike out the testimony of Dr. Washington in so far as it tended to show that the pills were noxious.

Fourth: Because the Supreme Court sustained the action of the trial court, admitting the following questions put to Dr. Washington—

1. "Doctor, assuming a case of a young woman 17 years of age, who has a profuse discharge from the vagina, parts are swollen, sensitive to the touch, and pain on urinating; from those facts, can you diagnose gonorrhea?"

2. "Do you find in the symptoms mentioned anything that would indicate pregnancy?"

Fifth: Because the Supreme Court sustained the action of the trial court denying the motion at the close of the whole case, to direct an acquittal.

Sixth: Because the Supreme Court sustained the charge of the trial court as follows: "And it was testified to by Dr. Washington that these singly or in combination, have a tendency to produce a contraction of the muscles of the womb and to expel the foetus."

Seventh: Because the Supreme Court sustained the charge of the trial court, as follows: "Now, if this testimony is believed, it would seem to be sufficient upon which for the State properly to claim that this defendant should be found guilty of the charge made against him;" and in connection therewith, the following charge: "You have anyway the right to consider her interest in testifying, but in that connection you may remember the fact that from September, 1912, until April, 1914, Miss Goldie Smith, so far as the record is concerned, does not seem to

have taken any steps whatever to have endeavored to get even with the defendant;" and also in that connection, the following charge: "Then you have a right to consider the interest of the defendant, because he was a witness and took the stand, in testifying, in what effect, if any, his interest would have had upon his testimony upon the stand, and in that connection, you have a right to consider the very great interest of this defendant in any verdict which the jury may render, and whether or not that interest would have any effect upon the story he tells upon the witness stand."

Eighth: Because the Supreme Court adjudged that the judgment of the Essex County Court of Quarter Sessions should be affirmed in all respects.

Wherefore, and for other errors appearing in the record and proceedings aforesaid, the said Charles D. Mandeville prays that the judgment of the Supreme Court may be reversed and the record remitted to that court with directions to reverse the judgment of the Court of Quarter Sessions in and for the County of Essex.

FRANK E. BRADNER,
Attorney for Plaintiff in Error.

Joinder in Error.

Filed February 15, 1916.

New Jersey Court of Errors and Appeals

THE STATE, *Defendant in Error,* *vs.* CHARLES D. MANDEVILLE, *Plaintiff in Error.*	*In Error.* *Joinder in Error.*

And hereupon, afterwards, to wit, on the fifteenth day of February, nineteen hundred and sixteen, the said The State, by Frederick F. Guild, Prosecutor of the Pleas, its attorney, comes into court and says that there is no error either in the record and proceedings aforesaid, or in giving the judgment aforesaid, and he prays here, that the Court here may proceed and examine as well the record and proceedings aforesaid as the matters aforesaid assigned for error, and that the judgment aforesaid, in manner aforesaid given, may in all things be affirmed, etc.

FREDERICK F. GUILD,
Prosecutor of the Pleas.
Attorney for Defendant in Error.