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**Writ of Error**

(Filed July 17, 1919.)

(SEAL) The State of New Jersey to our  
Justices of our Supreme Court,  
GREETING:

Because in the record and proceedings and also in the giving of the judgment upon a certain indictment, which was in our said Supreme Court, before you between the State, defendant in error and Sing Lee, plaintiff in error, on a writ of error issued out of our Supreme Court to the judges constituting the Court of General Quarter Sessions in and for the County of Essex, as is said, manifest error hath intervened to the great damage of the said Sing Lee, 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 Sing Lee, do command you, that if judgment be thereupon given, then you send distinctly and openly under your seal the entire record, proceedings and indictment aforesaid, with all things touching and concerning the same to our Court of Errors and Appeals, before the judges thereof, on the sixth day of August, 1919, and this writ and that the records and proceedings aforesaid, being inspected, we may cause to be further done thereupon what of right and according to law ought to be done.

Witness, Edwin Robert Walker, our Chancellor and President Judge of our said Court of Errors and Appeals, at Trenton aforesaid, the seventeenth day of July, A. D., Nineteen Hundred and Nineteen.

THOMAS F. MARTIN,

*Clerk.*

ABNER KALISCH,

ISIDOR KALISCH,

*Attorneys of Defendant 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,

*C. J.*

# New Jersey Supreme Court

## Writ of Error

(Filed 191 )

The State of New Jersey, to Ruliff V.  
(L. S.) Lawrence, Esquire, Judge of the Court of  
Quarter Sessions of the County of Essex.

Because in the record and proceedings and also  
in the giving of judgment upon a certain indict-  
ment against Sing Lee, late of the City of New-  
ark, in the County of Essex for carnal abuse, 20  
whereof before you he hath been indicted and is  
thereof convicted by a certain jury of the County,  
taken between the State of New Jersey and the  
said Sing Lee, as it is said manifest error hath in-  
tervened to the great damage of the said Sing  
Lee, as he has complained we have received in-  
formation.

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 Sing 30  
Lee, command you that if judgment be thereupon  
given, that you distinctly and openly send under  
your seal, the record and proceedings aforesaid,  
with all things touching the same, to our Su-  
preme Court, to be holden at Trenton, on the  
twenty-sixth day of December, A. D. Nine-  
teen Hundred and Eighteen, and the writ, that  
the record and proceedings aforesaid, being in-  
spected, we may further cause to be done there-  
upon for correcting that error what of right and 40

## Return

according to the laws and customs of New Jersey,  
ought to be done.

10 WITNESS, WILLIAM S. GUMMERE, Esquire, Chief  
Justice of our Supreme Court at Trenton afore-  
said, the sixth day of December, Nineteen Hun-  
dred and Eighteen.

ENOCH L. JOHNSON,  
Clerk.

ABNER KALISCH,  
and

ISIDORE KALISCH,  
Attorneys for Plaintiff in Error.

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**Return**

20 State of New Jersey }  
County of Essex } ss:

I, Harry V. Osborne, Judge of the Court of  
Quarter Sessions in and for Essex County, New  
Jersey, do hereby certify and return to the Su-  
preme Court of Judicature of the State of New  
Jersey, the Indictment, Judgment Record and  
Proceedings together with all things touching and  
concerning the same, and all the proceedings had  
30 at the trial as by the within Writ to me directed,  
I am commanded.

IN WITNESS WHEREOF, I have hereunto set my  
hand and the official seal of said Court this fourth  
day of January A. D. 1919.

H. V. OSBORNE,  
J.

Presented in open Court this 7th day of De-  
cember, A. D. 1918.

H. V. OSBORNE,  
J.

### Indictment

State of New Jersey }  
 County of Essex } ss:

Be it remembered that at a Court of Oyer and Terminer, holden at Newark, in and for the county of Essex on the third Tuesday of September, in the year of Our Lord, One thousand nine hundred and eighteen, 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 Elvord C. Chamberlain, Ralph M. Smith, Joseph Terrens, George J. Ferry, Jr., William Provost, W. Nelson Knapp, J. Harry Connor, James B. Chalmers, James M. Beldon, Fred Strebinger, Oscar J. Wirtz, William Tries, Jr., Charles P. Schmidt, Frank J. Bock, Joseph Byrnes, Frederick W. Crempion, Frank Pannick, Thomas B. Cryer, William M. Bayles, James S. Throckmorton, Daniel Cronin, George H. Vanderhoof, Dr. Frank A. Caruso, good and lawful men of the said County of Essex, duly commissioned and then and there duly sworn and charged to enquire in behalf of the State of New Jersey, in and for the said County of Essex, it is presented in manner and form following, to wit, Essex County, to wit:

The Grand Inquest for the State of New Jersey, and for the body of the County of Essex, upon then oath Present, that Sing Lee late of the City of Newark, in the said County of Essex on the tenth day of June (amended to read on the First and Third day of June) in the year of our Lord one thousand nine hundred and eigh-

## Indictment

teen, with force and arms, at the City aforesaid, in the County aforesaid, and within the jurisdiction of this Court, in and upon one Jane McDonough, in the peace of God and of this State then and there being, an assault did make, and her the said Jane then and there did beat, wound  
10 and ill treat, and other wrongs to said Jane then and there did, to the great damage of the said Jane 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 Inquest, upon their oath aforesaid, do further present, that the said Sing Lee, being then and there above the age of sixteen  
20 years on the tenth day of June (amended to First day of June) in the year of our Lord one thousand nine hundred and eighteen at the City aforesaid, in the County of Essex aforesaid, and within the jurisdiction of this Court in and upon one Jane McDonough, in the peace of God and of this State then and there did unlawfully and carnally abuse, the said Jane, being then and there a woman over the age of twelve years and under the age of sixteen years—to the great  
30 damage of the said Jane 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.

J. H. HARRISON,  
Prosecutor of the Pleas.

### Plea

On the first day of October A. D. Nineteen hundred and eighteen, 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, 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. 10

And afterwards, that is to say on the third day of October A. D. Nineteen Hundred and eighteen, at the Court of General Quarter Sessions holden at Newark, in and for the County of Essex, before the Hon. Harry V. Osborne, presiding Judge of the Court of Common Pleas, Sing Lee in the custody of John R. Flavell, Sheriff of the County of Essex aforesaid, and the said Sing Lee being brought before the bar in his own proper person and forthwith being demanded of and concerning the premises in the above indictment specified and charged upon him, how he would acquit himself thereof, says that he is Not Guilty thereof, and therefore for the good and evil he puts himself upon the country, &c., and J. Henry Harrison, Prosecutor of the Pleas of said State, for said County of Essex in this behalf doth the like. 20 30

Therefore, let a Jury thereupon come before the Court of General Quarter Sessions to be holden at Newark, in and for the County of 40

## Plea

Essex, on the thirtieth day of October, A. D. nineteen hundred and eighteen, 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  
10 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 Sing Lee is Guilty of the premises in the said Indictment specified, or Not Guilty because the said J. Henry Harrison, Esq., Prosecutor, &c., as the said Sing Lee puts himself upon the jury and the same time is given to the parties aforesaid at the same place.

And Now, that is to say on the 4th day of December, A. D. 1918, to which day the said  
20 trial was postponed from October 30th and November 25th, 1918, at the same Court of General Quarter Sessions holden before the Honorable Harry V. Osborne, Judge of the Court of Common Pleas, come the said J. Henry Harrison, who prosecutes as aforesaid, and the said Sing Lee and the Jury of whom mention is before made, and by the said John R. Flavell, Sheriff of the County of Essex, for this purpose empanelled  
30 and returned, to wit: William W. Knight, Charles F. Bower, Thomas Carrick, David W. Ball, Robert P. Bennett, James M. Walker, William H. Dill, Charles R. Ellery, Austin A. McGlynn, Charles Ruehle, Louis E. Wilcox, George P. Bassett who, 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 on the fourth day of  
40 December A. D. Nineteen hundred and eighteen,

## Judgment

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 that they find the said defendant Sing Lee Guilty of abuse with recommendation of Mercy, and so they say all. 10

---

**Judgment**

Whereupon all and singular, the premises being seen and by the Court now here fully understood it is on this sixth day of December, A. D. Nineteen hundred and Eighteen, ORDERED and adjudged that the said Sing Lee be committed to the State Prison for a period of not less than two and one-half years and not more than fifteen years and stand committed until the costs are paid, which said costs are taxed by the Clerk at the sum of Forty-nine Dollars and forty-two cents. 20

Judgment signed December 6, 1918.

HARRY V. OSBORNE,  
Judge.

**Testimony**

ESSEX COUNTY COURT OF QUARTER  
SESSIONS.

10	THE STATE VS. SING LEE
----	------------------------------

Transcript of testimony, and so forth, taken in the above stated cause, at the trial thereof, Court House, Newark, N. J., Wednesday, December 4, 1918.

20 Before RULIFF V. LAWRENCE, Judge, and a Jury.

For the State appeared John A. Bernhard, Esq.  
For the defendant appeared Abner Kalisch, Esq.

JANE McDONOUGH, sworn in behalf of the State:

Direct-examination by Mr. Bernhard:

30 Q. Jane, how old are you? A. I will be fifteen the 19th of December.

Mr. Kalisch: I object to that, your Honor.

The Court: Objection overruled.

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

40 RULIFF V. LAWRENCE,  
J. (L. S.)

## Jane McDonough—Direct

Q. Do you mean by that you have passed fourteen, or do you mean by that you will be fourteen?

A. Past fourteen.

Mr. Kalisch: My objection is to extend to all testimony relating to her age given by her.

10

The Court: That is my understanding.

Mr. Kalisch: I desire an exception to both the questions and answers.

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

RULIF V. LAWRENCE,  
J. (L. S.)

Q. When were you fourteen? A. I was fourteen last December 19th. 20

Q. Up to June of this year, with whom did you live? A. With my mother.

Q. Where? A. Ninety-seven William Street, Newark.

Q. Who are the other members of your family who live there? A. My father, my mother, my sister and my brother.

Q. I understand your mother is in the corridor outside, Jane? A. Yes, sir. 30

Q. Did you leave home? A. Yes, sir.

Q. When? A. December 1st.

Q. When? A. June 1st.

Q. Of the present year? A. Yes, sir.

Q. Where did you go? A. I went to May's house.

Q. May who? A. May Wing.

Q. And where was that? A. On Howard Street.

Q. Had you known who May Wing was? A. Yes, sir. 40

## Jane McDonough—Direct

Q. Who was she? A. She's a woman.

Q. Of course. Is she a married woman and to whom married? A. Harry Wing.

Q. What was his business? A. He owned a laundry at the time.

10 Q. Where did May Wing live? A. On Howard Street.

Q. How long did you stay there? A. I stayed there for that day, not for the whole day.

Q. Part of the day? A. Yes, sir.

Q. Where did you go that night? A. Up to 434 Orange Street.

Q. And what is there at 434 Orange Street? A. A laundry.

Q. Owned by whom? A. Wing Lee.

20 Q. The defendant here? A. Yes, sir.

Q. Had you ever been to that place before? A. No, sir.

Q. Did you know him before that time? A. No, sir.

Q. What time did you go to his place? A. I don't know what time it was, but it was sometime during the day.

Q. Can you tell us whether it was in the afternoon or at night? A. It was in the afternoon.

30 Q. When you went in there, who did you see? A. Wing Lee.

Q. The defendant? A. Yes, sir.

Q. Does he talk English? A. Yes, sir.

Q. Do you know whether or not he writes English? A. Yes, sir.

Q. What conversation did you have with him, Jane? A. Well, I told him this May Wing sent me up there.

40 Q. Go right on from there, tell your story. A. I

## Jane McDonough—Direct

told him this May Wing sent me up there, and he asked me "What did I was?" and I told him I run away from home and I wasn't working; and I had asked him for money at the time, and he wouldn't give it to me, and he told me to wait until night, until the place closed.

Q. Did you wait? A. Yes, sir. 10

Q. Where? A. I waited in the store—in the front of the store.

Q. That would be in the laundry? A. Yes, sir.

Q. What time did the place close? A. Ten o'clock.

Q. When you speak of the place closing, what did the defendant do? A. Closed and locked the door.

Q. Did he do anything else about closing? A. No, sir. 20

Q. Were there any lights in the place? A. No, sir.

Q. At night? A. No after he closed.

Q. Who turned the lights out, Jane? A. He did.

Q. Then what happened when he turned out the lights? A. We went to bed.

Q. Where? A. In back of the laundry.

Q. At that time how many persons were in the laundry? A. Two. 30

Q. Who? A. He and I.

Q. From the time you went there in the afternoon, until 10 o'clock at night, was there anyone else in the laundry who was working there? A. Yes, sir, a colored woman worked in the back ironing.

Q. What time did she leave? A. She left about 7 o'clock. 40

## Jane McDonough—Direct

Q. Did you have any supper? A. No, sir.

Q. What happened when you went to bed? A. He asked me if I would have intercourse with him and I told him no, and he asked me again and I told him no, and then I consented.

10 Q. Had you ever had intercourse with any one before that time? A. No, sir.

Q. What time did you leave, if you did leave that place, the next morning? A. About 8 o'clock.

Q. How many times that night did you have intercourse with him? A. Once.

Q. Where did you go the next morning? A. Over to Paterson to my cousin's house.

Q. How long did you stay there? A. The whole day.

20 Q. Did he give you anything when you went? A. Yes, sir.

Q. What? A. Three dollars.

Q. Where did you go that night? A. I went over to my own house. I didn't sleep in my mother's house, I slept in the woman's house downstairs.

Q. Do you know on what day you went to 434 Orange Street? A. The first of June.

30 Q. The 2d of June you were at the neighbor's house to sleep? A. Yes, sir.

Q. Where did you go after that? A. I stayed in that woman's house all day on the 3d and on that night, on the 3d, I went back to his laundry.

Q. To 434 Orange Street? A. Yes, sir.

Q. When you left there on June 1st, was there anything said by either you or Sing Lee about coming back? A. Yes, he told me to come back.

40 Q. Was there any definite time set when he wanted you to come back? A. No, sir.

## Jane McDonough—Direct

Q. You went back on the night of June 3d? A. Yes, sir.

Q. Do you recall what time you reached there?

A. It was about 10 o'clock.

Q. At night? A. In the morning.

Q. How long did you stay there at that time?

A. I stayed there for a while in the back talking to this colored woman, and then I went away, back to this May's house. 10

Q. Did anything happen on June 3d, in the morning when you went there at 10 o'clock? A. No, sir.

Q. What time did you leave that day after talking with the colored woman? A. I left about 12 o'clock.

Q. Did you go back again at any time? A. That night I went back. 20

Q. How did you happen to go back that night?

A. Oh, I don't know. I left this May's house and I went back that night.

Q. When you left there after talking with the colored woman, did Sing Lee say anything about coming back that night? A. Yes, he asked me to come back that night and I said, "All right."

Q. And you did? A. Yes, sir.

Q. Was the place opened or closed when you reached there? A. I didn't get there at 10 o'clock, I got there before 10. 30

Q. What time did you get there, if you recall?

A. About half-past eight,

Q. Was the place open or closed? A. Open.

Q. Who was in there? A. This colored woman had gone and he was there.

Q. Anyone else besides him? A. No, sir.

Q. How long did you stay that night? A. I 40

## Jane McDonough—Direct

stayed there that night and he had intercourse with me once that night.

Q. Did you get anything for that on that night?

A. I think I got two dollars or two dollars and a half.

10 Q. Now that was the night of June 3d, was it?

A. Yes, sir.

Q. Did you go there again? A. Yes, sir.

Q. Did you leave on the morning of June 4th or did you stay? A. I left.

Q. What time? A. About 11 o'clock.

Q. When next did you go back to that place?

A. On the 10th.

Q. Where did you go between June 4th and June 10th? A. I stayed in the house where I was rooming.

20 Q. Where was that? A. 291 Plane Street.

Q. When did you take your room at 291 Plane Street? A. On the first of June.

Q. What time did you return to 434 Orange Street on June 10th? A. About 2 o'clock.

Q. In the afternoon? A. Yes, sir.

Q. Who did you find there at that time? A. The colored woman and him.

30 Q. What did you do? A. I asked him for money and he gave me three dollars.

Q. How long did you stay there at that time?

A. I stayed there about an hour and then I went home.

Q. Did anything occur? A. No, sir.

Q. Did you go back after that, Jane? A. No, sir.

40 Q. I understand the last time you were there it was on June 10th? A. Yes, sir.

Q. When were you arrested? A. June 19th.

## Jane McDonough—Cross

Q. Where were you between June 10th and June 19th? A. I was at Clara Dale's.

Q. Where did you stay at night? A. I slept at 291 Plane Street.

Q. You said, didn't you, that the defendant could write? A. Yes, sir. 10

Q. Did you ever receive any letters from him? A. One letter.

Q. Under what name? A. May Taylor.

Q. When did you adopt the name May Taylor, Jane? A. On June 3d.

Q. Is that the name that you gave him? A. Yes, sir.

Q. When did you get the first letter from him? A. On June 4th.

Q. What did you do with that letter? A. Tore it up. 20

Q. Did you ever get anything else from him? A. A bracelet.

Q. When did you get the bracelet? A. It was on June 3d.

Q. And is this the bracelet I show you? A. Yes, sir.

Q. He gave you that? A. Yes, sir.

Q. On June 3d, did he? A. Yes, sir.

Q. Did he know where you were rooming? A. Yes, sir. 30

Q. How did he know? A. I told him the address.

Q. Did you ever get anything else from him? A. No, sir.

CROSS-EXAMINATION by Mr. Kalisch:

Q. You say you are fourteen years old, do you? A. Yes, sir.

Q. How do you know? A. I know by the proof of my baptismal. 40

## Jane McDonough—Cross

Q. Where is the book? A. My mother's got it.

Q. Now where were you living just before you went to Sing Lee's house? A. Ninety-seven William Street.

Q. And were you working? A. Yes, sir.

10 Q. Where? A. I worked in Edison's Lamp factory in Harrison, and I worked in the jewelry factory on Arlington Street.

Q. Did you ever say to anyone that you were seventeen years of age? A. Yes, sir.

Q. When did you tell him that? A. I didn't tell the defendant that.

Q. When did you say that? A. June 16th.

Q. How tall are you? A. Five foot five.

20 Q. Haven't grown any since last June, have you? A. I don't know whether I did or not.

Q. You were about that size then, weren't you? A. Yes, sir.

Q. How much did you weigh at that time? A. 129 pounds.

Q. You told an Italian fellow you were seventeen? A. Yes, sir.

Q. Did you have intercourse with another person except this Sing Lee? A. Yes, sir.

Q. How many times? A. Once.

30 Q. Did you say that the reason you went to this Chinaman's house was that you wanted to make money easy? A. No, sir.

Q. Didn't you swear to that? A. No, sir.

Q. Listen to this: You were a witness on June 21st before Judge D'Aloia, weren't you? A. Yes, sir.

40 Q. Do you remember the question being asked of you "And you want to make money easy, is that so?" A. I said—

## Jane McDonough—Cross

Q. One moment now. Take notice what I am reading. I am asking you this, whether this question wasn't put to you: "And you wanted to make your money easy, is that it?" "That's what you want to do, and you are willing to prostitute yourself for that purpose, is that so?" Didn't you answer "Yes?" A. No. I said I didn't want to work. 10

Q. That's the answer, is it? Didn't you answer "Yes" to this question? "You were willing to prostitute yourself to make money?" A. Yes.

Q. And you did go out for the purpose of making money, didn't you? A. Yes, sir.

Q. Did you make any complaint to anyone after you left the Chinaman's place—did you make any complaint that he had had intercourse with you? A. Yes. 20

Q. To who? A. May Wing.

Q. Outside of a member of your family, I mean. Did you tell your mother? A. No, sir.

Q. Did you tell your sister? A. No, sir.

Q. No one in your family? A. No, sir.

Q. You say that when you went to bed with him and he asked you to have intercourse with you, you said no. A. Yes, sir.

Q. Why did you say "No," when you went to bed with him for that purpose? A. I don't know why I said it, but I said it. 30

Q. You went for the purpose of having intercourse, didn't you? A. Yes, sir.

Q. Now isn't it true that you came to this Lee's house and that you asked him for money and that he drove you out of the place in the presence of this colored woman? A. No, it ain't so.

Q. Do you say you stayed all night there? A. Yes, sir. 40

## Jane McDonough—Cross

Q. Did you have supper that evening? A. No, sir.

Q. Now listen to this: "Q. When did you go?" "A. On Saturday." "Q. What month?" "A. June." What date in June was that? A. The first.

10 Q. Was that the time you say you stayed all night? You are sure about that? A. Yes, sir.

Q. What time of day did you get there on that day? A. It was in the afternoon.

Q. What time was it? A. I don't know what time it was.

Q. Was it 2 o'clock? You told the prosecutor it as 2 o'clock. Why don't you remember it now? A. Between half past one to two o'clock.

20 Q. You said upon your examination here you stayed there the whole afternoon? A. I stayed there from 2 o'clock until 10 o'clock.

Q. I thought you said you stayed all night? A. I did.

Q. You stayed there all night? A. Yes, sir.

Q. You say you had no supper? A. No, sir.

30 Q. Listen to this testimony: "Q. Well at 2 o'clock when you got there, what did you do?" "A. I went in the back." "What did you do in there?" "A. I was talking to the colored lady that works there." "Q. Then what?" "A. Then I stayed until he closed." "Q. Until what time did you stay there?" "A. Until about half-past ten at night." What do you mean by such a statement you only stayed until half-past ten, and now you say you stayed all night? A. I did stay all night.

40 Q. Why didn't you say that when you were asked in Court? A. I did say all night.

## Veronica McDonough—Direct

Q. Do you remember seeing a gentleman taking down what you said? A. Yes, sir.

Q. Then the question was asked again: "Q. Until what time did you stay?" "A. Until half-past ten at night." A. Yes.

"Q. Where did you have your supper, in there?" "A. In there." Now you say you didn't have any supper. A. I didn't have any supper.

Q. Why did you testify you did have supper? A. I didn't say I had supper when I didn't.

Q. You did say here that you did have supper? A. I did not.

Q. You deny that this is true then what is in this statement here? A. I didn't have supper at all.

The Court: Of course the way to do that, Mr. Kalisch, is to call her attention to the question, and answer, and ask her if she did so testify.

Mr. Kalisch: I have asked her that particular question.

The Court: And she says she did not so testify.

---

VERONICA Mc DONOUGH, sworn in behalf of the State: 30

Direct-examination by Mr. Bernhard:

Q. You are the mother of Jane? A. Yes, sir.

Q. Is Mr. McDonough living? A. He is dead since last March 26th.

Q. Where was Jane born? A. Scranton, Pa., December 19, 1903.

Q. And her full name is what? A. Jane McDonough. 40

## Veronica McDonough—Direct

Q. Her father's name was—A. Edward McDonough.

Q. When did you come to Newark? A. Ten years ago this December.

10 Q. Where do you live in Newark? A. Ninety-seven William street.

Q. And you lived there then in June of this year? A. Yes, sir.

Q. How long have you lived at that address. A. Very soon two years.

Q. When Jane was born was there a certificate issued? A. Yes, sir.

Q. By what minister? A. By a Catholic priest in Scranton.

20 Q. Is this the certificate? A. Yes, sir, my husband got it.

Q. And you have always had that certificate in your possession. A. No, sir, we got it a year ago when she started to work in Edison's. We sent to Scranton for it.

Q. Did Jane leave your house? A. Yes, sir, she did.

Q. About when? A. The first day of June, Saturday morning. She was to meet me to get a pair of shoes and she met this girl.

30 Q. She didn't come back? A. No, sir.

Q. Did you do anything? A. Yes, sir, I went to Edison's—

Mr. Kalisch: I object to that. It is not material to this issue.

The Court: I cannot anticipate what the answer is going to be. I am rather in doubt as to an intelligent ruling.

40 Mr. Bernhard: She sent out an alarm for her.

## Edward Schroeder—Direct

The Court: I will admit it.

Q. Did you do anything; did you send out an alarm? A. Yes, sir, twice.

Q. Through whom? A. Through two detectives of the First Precinct.

Q. When did you do that? A. On the 3d. Saturday was on the first, and I did it on Monday morning following, a couple of days afterwards. 10

Q. Do you know Mrs. McDonough? A. Yes,

Q. After you sent out an alarm, did he come to your house? A. Yes, sir.

No cross-examination.

20

EDWARD SCHROEDER, sworn in behalf of State:

Direct-examination by Mr. Bernhard:

Q. You are connected with the Police Department of the City of Newark. A. Yes, sir.

Q. As an attache of the detective bureau, was your attention called in any way to a missing girl? A. Yes, sir.

Q. Do you know Mrs. McDonough? A. Yes, sir. 30

Q. After your attention was called, did you go anywhere? A. Yes, sir, I went up to Mrs. McDonough's house.

Q. And learned she was the mother of the girl? A. Yes.

Q. What did you then do? A. Made a search?

Q. Did anyone assist you in that search? A. Lieutenant Quinn and detective Bowman. 40

James J. Quinn—Direct

Q. Did you finally locate Jane? A. Yes, sir, on the afternoon of June 19th at 291 Plane street.

Q. Who was with you? A. I was alone at that time.

10 Q. What did you do with Jane? A. Took her to Police Headquarters.

Q. Did she have anything on her? A. No as I took notice.

Q. Did you subsequently get anything? A. Not I.

Q. Then you personally didn't know anything about this bracelet? A. No, sir.

No cross-examination.

20

JAMES J. QUINN, sworn in behalf of the State:

Direct-examination by Mr. Bernhard:

Q. Mr. Quinn, how long have you been an attache of the Police Department of the City of Newark? A. Over twenty-two years.

30 Q. And you are connected with the detective bureau, are you not? A. Connected with the Chief's office.

Q. In the line of your duty, was your attention called to a missing girl in June? A. Yes, sir, it was.

Q. By the name of Jane McDonough? A. Jane McDonough.

40 Q. Did you institute a search for her? A. I did.

Q. When was your attention first called to it?

Philip M. Bowman—Direct

A. Around the 3d or 4th of June; I think it was the 4th of June.

Q. Do you know whether or not Mr. Schroeder and Mr. Bowman was also working on that case in conjunction with you? A. They were.

Q. You learned subsequently that the girl had been apprehended and taken to Police Headquarters? A. Yes, sir. 10

Q. Did you see her then? A. Yes, sir.

Q. Who found that bracelet? A. That bracelet was on the girl's hand.

Q. Do you know that? (Handing witness bracelet). A. Yes, it looks like the bracelet she had on her hand.

Q. When? A. On the 19th of June.

Q. And where is the first place you saw the girl? A. In Police Headquarters. 20

Q. On the 19th of June? A. Eighteenth or 19th, either one.

Q. And at the time she had this bracelet? A. On her, yes, sir.

Q. Did she or did she not make a statement to you? A. Yes, sir, she did.

---

PHILIP M. BOWMAN, sworn in behalf of the State: 30

Direct-examination by Mr. Bernhard:

Q. How long have you been connected with the Police Department of the City of Newark. A. Over 16 years.

Q. And at the present time you are connected with Headquarters? A. Chief Long. 40

## Philip M. Bowman—Direct

Q. Was your attention called to a missing girl by the name of Jane McDonough? A. Yes, sir.

Q. Did you also institute search in conjunction with Mr. Quinn and Mr. Schroeder? A. Yes, sir.

10 Q. When? A. From the 4th of June up to the time the arrest was made.

Q. You subsequently learned she had been taken into custody? A. Yes, sir.

Q. Did you see her after she had been taken into custody? A. Yes, sir.

Q. Where? A. In Police Headquarters.

Q. Did you see the bracelet there? A. Yes, sir.

Q. Do you know anything about that bracelet?

20 A. I seen the bracelet on her wrist.

Q. Did she make a statement? A. Yes, sir.

Q. After she made the statement, did you do anything? A. Yes.

Q. What did you do, sir? A. I went up to 434 Orange Street and got Sing Lee.

Q. The defendant here? A. Yes, sir.

Q. What did you do? A. Placed him under arrest and took him to Police Headquarters.

30 Q. What day Mr. Bowman? A. I believe the 14th of June.

Q. When he reached Police Headquarters, was he searched? A. Yes, sir.

Q. Was anything found on him? A. Yes, sir, a letter.

Q. Is this the letter I show you? A. Yes, sir.

Q. The envelope is now open. Was it open at the time you took it from him? A. No, sir.

40 Q. Who opened it? A. We opened it that night, between the three of us. When I found it

## Philip M. Bowman—Direct

we turned it over to Lieutenant Quinn, and we opened it and read the letter.

Q. Is the envelope and letter in the same condition, now, with the exception of being unsealed, as it was the night you took it from the defendant? A. The same way. 10

Q. I call your attention to some crosses on the back of the envelope at the lap where it joins the envelope. Were those crosses on there at that time? A. Yes, sir.

Q. When you took the letter from him did you ask him about it? A. Yes, sir.

Q. What did you ask him? A. Asked him what he was doing with this letter, and he said he was going to mail it to May Taylor.

Q. Did you ask him Mr. Bowman, who May Taylor was? A. Yes. 20

Mr. Kalisch: I object to the leading manner of your examination. He is an intelligent witness; he could say what was done.

The Court: He may repeat the conversation.

Q. Give the conversation. A. The first thing he done when I went to place him under arrest—the first question he said there was no girls in there— 30

Mr. Kalisch: You weren't asked that question.

The Court: He was told to give the conversation, and he is giving it. It is entirely responsive. Let us have all that was said.

A. (Continuing) I went into the shop and told him he was under arrest, and he took me in back 40

Philip M. Bowman—Direct

and said, "No girls here." In back of the laundry. Where you go in there is an ironing place on that side (indicating) and a counter there (indicating) and in back of that counter there is a little room on the side. I didn't see  
 10 no bed, just boards with bed clothes on it, and he pulled the curtains along side of the door and he said "No girls." I said to him "Are you the boss?" and he said "No, the boss is out; gone to New York." I said "You dress yourself and come to Police Headquarters." When he got to Police Headquarters he was slated and taken into a room and searched, and this letter was found on him. I asked him what was he doing with this, and he said he was going to mail this to  
 20 May Taylor as it is addressed there, but I didn't know it was Jane McDonough at the time, until we learned later on that she was going under the name of May Taylor, 291 Plane Street.

Q. Did you ask him who May Taylor was, Mr. Bowman? A. No, I didn't ask him that. I took him in and faced the girl and Sing together.

Q. What happened, did she identify him? A. She said, "That's the man."

30 Q. Did he make any reply? A. Not a thing.

No cross-examination.

Mr. Bernhard: I offer the letter in evidence.

Mr. Kalisch: I object.

The Court: You need not argue it. I  
 40 will hear Mr. Kalisch. Why do you object?

## Argument

Mr. Kalisch: Because the letter is not addressed to a person who ever received it in the first place, and there is no identification that the defendant wrote it. Whether he was going to mail it for himself or someone else does not appear, and they have no right to seize any paper out of his pocket and make evidence unless they show it was written by him and was intended for the purpose it was intended for. We do not know the contents of the letter, and they are offering a letter that has not been identified. She said she went under the name of May Taylor. That may be so. The defendant said he was going to mail the letter. There is no evidence that he wrote it. 10 20

The Court: It is a circumstance to go to the jury and your objection is overruled.

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

RULIF V. LAWRENCE, 30  
J. (L. S.)

Letter received in evidence and marked Exhibit S-1.

Mr. Bernhard: I also offer the bracelet and birth certificate in evidence.

The Court: Let them be marked.

Bracelet received in evidence and marked Exhibit S-2; birth certificate received in evidence and marked Exhibit S-3. 40

## Argument

Mr. Bernhard: The State rests, subject to the right to produce the physician.

10 Mr. Kalisch: I would like to reserve my right to put in a defense, and yet I make a motion to discharge the defendant. I would like to be heard. The indictment sets forth that this act must be proven specifically and positively, and upon the day that is mentioned in the indictment.

The Court: Time is not regarded as the essence.

20 Mr. Kalisch: But in this case it is, and here the indictment sets forth that on the 10th day of June this took place and the girl says the 3d of June. That is a variance in the cause. Supposing this girl had been examined between the 3d and 10th and found that she had intercourse, evidence of copulation. It would make a difference for the defendant when he stayed with her on the 10th and the testimony of his having intercourse was sworn to by the prosecutrix as on the 3d that took place. Another thing, she denied intercourse except on the 3d.

30 The Court: That is not my recollection of the testimony.

40 Mr. Kalisch: But not on the 10th she never gave the 10th; she, came back, but the 10th has been left out entirely and this indictment has not been proven—the allegation, and I state, if your Honor please, that in this case the time is very essential and must be proven in order to hold this defendant to his defense.

## Jane McDonough—Direct

The Court: Is it your recollection Mr. Bernhard, that she did testify to two occasions?

Mr. Bernhard: I thought so; I am not quite positive about it; I will recall the witness.

The Court: I will allow you to reopen the case. 10

Mr. Kalisch: I take an exception. It is wrong for counsel to say what he is going to prove. This girl will testify to what he wants her to say, and it is very unfair in a criminal case of such importance. It is done intentionally.

Mr. Bernhard: I have a perfect right to say that I am going to prove by this girl that on June 1st and June 10th she had intercourse with this man. 20

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JANE McDONOUGH, re-called, in behalf of the State:

Mr. Bernhard: Q. What days did you have intercourse with this defendant? A. On June 1st and June 3d. 30

The Court: Not on June 10th?

Q. Is that what you testified to before, Jane?

A. Yes, sir.

Mr. Kalisch: I insist on my motion.

Mr. Bernhard: I move to amend to June 1st and June 3d.

Mr. Kalisch: I object to that. I am prepared to prove that the day they said, 40

## Argument

according to this evidence, she was put out.

The Court: The indictment now relates to the 1st and 10th. You desire to amend this indictment so as to show the alleged offence to have been the 1st and 3d?

10

Mr. Bernhard: Yes, sir. A continuous offence.

Mr. Kalisch: I object to that; that is not the indictment found by the Grand Jury.

The Court: You say you claim surprise?

Mr. Kalisch: Yes, sir.

The Court: How much time will you require to prepare yourself to meet the amendment?

20

Mr. Kalisch: The defendant is supposed to be charged now in this new indictment to a crime committed on the 3d.

The Court: Just bear in mind I disagree with you wholly as to the right to amend. I am of the opinion the court has a right to amend this indictment. The only thing left is to claim surprise. If you do, I will give you an opportunity to get over your surprise to meet the new case. Now the question is, how much time do you require?

30

Mr. Kalisch: I prefer to stand upon my exception and not claim surprise. I stand upon my exception and ask the Court now to direct a verdict of acquittal, because the indictment as presented, and upon which this trial is had so far, does not show any offence committed on the date set forth in the indictment.

40

Florence E. Voorhees—Direct

The Court: The Court being of the opinion that this amendment is proper under the circumstances, and counsel for defendant waiving his claim to surprise, therefore Mr. Kalisch desires no further time to prepare his case. Therefore, that being so, your motion is overruled and you may have an exception. 10

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

RULIF V. LAWRENCE,  
J. (L. S.)

Mr. Kalisch: The record shows that amendment was made after the State had closed its case and after a motion was made for dismissal? 20

The Court: And also after the Court had reopened the case, re-calling the complaining witness for further examination. I understand it now that the offence is charged to have been committed on the first and third of June?

Mr. Bernhard: Yes, sir. 30

---

FLORENCE E. VOORHEES, sworn in behalf of State:

Direct-examination by Mr. Bernhard:

Q. Dr. Voorhees, you made an examination of Jane McDonough at the Parental Home? A. I did, on June 20th, 1918. 40

## Sing Lee—Direct

Q. Will you tell the court and jury what you found? A. I found evidence that she had been immoral. The hymen was ruptured and the vagina entered.

Q. Had the rupture healed, doctor? A. It had.

10 Q. Therefore you had no way of determining how long ago the hymen had been ruptured? A. No, I had no way of determining that fact.

By Mr. Kalisch: Q. It was of no recent date? A. I saw no evidence it was of recent date. I saw no fresh abrasions or bleeding points, or any evidence it was fresh.

Q. Within how many days or weeks? A. I couldn't say within days or weeks. It didn't seem to have any appearance it occurred within  
20 the week at least.

Mr. Bernhard: The State rests.

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SING LEE, defendant (through interpreter)  
sworn:

Direct-examination by Mr. Kalisch:

Q. What is your name? A. Sing Lee.

30 Q. And what is your work? A. Laundry.

Q. Where? A. 434 Orange Street, Newark.

Q. Were you there in June last; did you have a laundry there then? A. Yes.

Q. And how long have you been in business? A. About three years I have been working there.

Q. Do you know the girl that was on the stand here, Jane McDonough or May Taylor? A. I saw her in the laundry; she came in there several  
40 times.

## Sing Lee—Cross

Q. When she came, what did she ask you—what did she want? A. When she came in the first time she asked for laundry—bring an old ticket from some other laundry. Didn't belong to me.

Q. When was that? A. I can't remember exactly, but around the first of June.

Q. Do you remember when she came there again? A. About two or three days she came in there again. 10

Q. Did she ever stay with you in the laundry and go to bed with you? A. Never.

Q. Did you ever have intercourse with her? A. Never.

Q. Did you have any trouble with her the last time she came? A. She came in there teasing me for many things. I chased her out. 20

Q. Did you give her this bracelet? A. No.

Q. Did you give her any money? A. No.

Q. You say the last time that she came you chased her out. Who was there when that was done? A. If I remember right the colored woman was working in the back there.

Q. Do you know where that colored lady now is? A. No, I don't know where she lives.

Q. Was you ever convicted of a crime? A. No.

Q. How long have you been living here in this country? A. About fifteen years. 30

## CROSS-EXAMINATION by Mr. Bernhard:

Q. When did your brother leave your laundry?

A. I was working with my brother in his laundry pretty near four years ago.

Q. Was your brother at your laundry at 434 Orange Street? A. My brother has never worked up there. 40

## Sing Lee—Cross

Q. He has been to see you? A. Sometimes he goes up there to see me.

Q. Write your name in English.  
(Witness does so.)

10 Q. And will you write "434 Orange Street"?  
Mr. Kalisch: I don't object to his writing his name, but I object to his writing any more.

The Court: Objection overruled.

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

RULIF V. LAWRENCE,  
J. (L. S.)

20 Q. Write "434 Orange Street."  
The Court: Of course, you may be premature, Mr. Bernhard.

Mr. Bernhard: Question withdrawn.

Q. Did you write this letter, Exhibit S-1? A. No.

Q. Now, then write "434 Orange Street, Newark, N. J."

Mr. Kalisch: I object to that.

The Court: Objection overruled.

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

RULIF V. LAWRENCE,  
J. (L. S.)

Q. Write "Good bye."

Mr. Kalisch: I object.

The Court: Objection overruled.

40 Defendant's counsel prays an exception to this ruling of the Court, and the same

## Sing Lee—Cross

is allowed and signed and sealed accordingly.

RULIF V. LAWRENCE,  
J. (L. S.)

A. I can't even spell it.

Q. Can't spell "Good bye"? Write "brother." 10

A. Can't spell it.

Q. Write "B-r-o-t-h-e-r"? (Witness does so.)

Mr. Bernhard: I offer what the witness has written for identification.

Mr. Kalisch: I object.

Paper on which witness wrote "Sing Lee," "434 Orange Street, Newark N. J." "Good bye" and "brother" marker Exhibit S-4 for identification.

Q. How many times altogether did this girl 20  
come to see you? A. About three or four times  
she came into my laundry.

Q. What is her name? A. I don't know her  
name.

Q. What did you call her? A. I never called  
her by name.

Q. What did she call you? A. She called my  
name, "Sing Lee."

Q. Do you know May Wing? A. I don't know  
her.

Q. Never heard of her? A. I heard of that 30  
name but I don't know her.

Q. Do you know Harry Wing, her husband? A.  
I know his name, but I don't know the man personally.

Q. Do you know Mr. Quinn here? A. Why I  
know he's an officer. I don't know his name.

Q. The night you were arrested, did you ask  
him to send to New York for your friends? A. 40  
Yes.

## Jane McDonough—Cross

Q. Did you tell him also that you wanted to get a lawyer? A. Yes.

Mr. Bernhard: Mr. Bowman, stand up.

Q. Was Officer Bowman at your place? A. Yes.

10 Q. Did you tell him after pulling the curtains apart there were no girls in there? A. No.

Q. Did you take him in back of the laundry? A. I didn't ask him to go in the laundry, he followed me in back of the laundry.

Q. What did he ask you when he got you in there? A. He asked me many things, which I couldn't understand what he was talking about.

Q. What did you tell him? A. I couldn't say much to him because I can't speak the language.

20

Defense rests.

---

JANE Mc DONOUGH, re-called by the State in rebuttal:

By Mr. Bernhard: Q. Do you recognize the handwriting on that letter and on that envelope?

30 A. Yes, sir.

Q. Whose handwriting is it? A. Sing Lee's.

CROSS-EXAMINATION by Mr. Kalisch:

Q. Did you ever see him write before? A. Yes.

Q. Where? A. In his laundry.

Q. What was he writing? A. Writing out something in English—I don't know what it was—on a piece of white paper.

40 Q. You can tell the writing when you saw it

## Jane McDonough—Cross

once, whether it is the same writing? A. Yes, sir.

Q. How long did you go to school? A. Up to seven years.

Q. Was he writing in a book or writing a letter when you saw him? A. Writing on a scrap of paper. 10

Q. To put on the laundry package? A. No, sir.

Q. Sure about that? A. Yes, sir.

Q. What was it? A. I don't know what it was he was writing. It was on a scrap of paper in English.

Q. How do you know it was English? A. Because I can understand English myself.

Q. Did you watch him writing? A. Yes, sir. 20

Q. What did you watch him for? A. To see what he was writing. He wouldn't let me see it.

Q. Well, then, you didn't see it? A. No, sir, but I saw him writing.

By Mr. Bernhard: Q. You said you had received a letter from him before this one? A. Yes, sir.

By the Court: Q. That letter you destroyed? A. Yes, sir.

Mr. Bernhard: The State rests. 30

Mr. Kalisch: I again renew my motion to dismiss this matter on the ground there is no evidence corroborating the story told by the witness.

The Court: Motion denied.

Mr. Bernhard: May I reopen this case?

The Court: I will allow you to reopen it.

Mr. Kalisch: I object. I think this case ought to be tried in the usual way. 40

Sing Lee—Direct

The Court: Objection overruled.

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

10

RULIF V. LAWRENCE,  
J. (L. S.)

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VERONICA Mc DONOUGH, re-called in rebuttal by the State:

By Mr. Bernhard: Q. Did the defendant come to your place? A. Yes, sir, he sent a man there.

Q. Did he himself come? A. He and another  
20 man.

Q. When did he come to your place? A. One evening when I was sick, when the detective came.

Q. What did the defendant say, and what language did he speak? A. He said he had lots of money and could he marry her, and I said positively no.

Q. What language did he speak? A. English language.

30 By the Court: Q. When did he came? A. October 18th.

By the Court: Q. Last October? A. Yes, sir.

---

SING LEE, defendant, called in rebuttal:

40 By Mr. Kalisch: Q. Is there any truth in the statement that you went to this woman's house

## Charge

with somebody else and offered to marry the girl?

A. No.

Q. Were you ever in her house? A. No.

Recess.

Counsel summed up the case to the jury. 10

The Court then charged the jury as follows:

**Charge**

LAWRENCE, J.

Gentlemen of the Jury: You are about to consider the evidence taken by reason of an indictment found against the defendant charging him I may say primarily, and in the aspect in which you will consider it, with the unlawful carnal abuse of a girl above the age of twelve and under sixteen. While the indictment contains two counts, one for simple assault and battery, and the other specifically under the special provision of the Crime's Act relating to unlawful carnal abuse, I may say to you that the first count in the indictment will receive very little attention in your hands in deliberating upon the case, because the State's case rests entirely, if I correctly understand it, upon the charge against this defendant of abusing this girl. 20 30

The indictment is predicated, gentlemen, upon the well known provision of our Crime's Act, under the section comprehending the crime of rape. We choose sometimes to denominate it as statutory rape. In that section there is this pro- 40

## Charge

vision, that if any person shall unlawfully and carnally abuse a girl above the age of twelve and under the age of sixteen, with or without her consent, such person is guilty of high misdemeanor. While there is a distinction between the definition of rape which involves actual penetration of the female organ by the organ of the male, in this particular class of case penetration is not involved. The abuse here with which we are concerned is defined to be the assaulting of the sexual organs of the female by the sexual organs of the male, even though you believe the testimony in this case that there was actual copulation on at least two occasions. So that, gentlemen, you will bear in mind primarily, that if you are satisfied beyond a reasonable doubt that this girl was under the age of sixteen when the alleged occurrence is charged to have happened, it made no difference whether she consented or not. If the act did occur as alleged and the State has satisfied you, as I say, beyond a reasonable doubt that it did occur, then this defendant would be guilty. It indeed makes no difference whether this girl was a prostitute at the time she was said to have visited the defendant's place of business. If she was under the age of sixteen and above the age of twelve, and sexual intercourse occurred—no matter how many acts of intercourse she had indulged in with other men—the defendant would be guilty of a violation of this particular section or provision of our Crime's Act.

It is needless, gentlemen, to discuss with you the policy of this law. I think it is sufficiently manifest to any reasonable man. It suffices to say that it is the law, and you and I have no

## Charge

more right to discriminate in its application than we have to attempt to repeal the law by some individual *ipse dixit* of our own, or some notion that we do not agree with the policy of the law in its general application that if a girl over twelve and under sixteen becomes a prostitute and affiliates with a Chinaman, that is no concern of yours or of mine. We have no right to assume any such attitude at all. The legislature has declared that such conduct constitutes an offense and they have assumed to segregate girls of the minimum and maximum age stated apparently with the idea that they are to be protected against their own sex instinct, if you please, if they have a tendency that way, and therefore, the male who either leads them into such offenses or cultivates such offenses with them shall be guilty of a crime, Therefore, I say gentlemen, it is your duty as men to see that the law is enforced in a case where the State has established the right to conviction under the rules of the law applicable. Nevertheless, whether you approve of the policy or not in its general application in cases, it is no concern of yours with respect to your individual theories or beliefs one way or the other, but it is the law. Starting with that, then, as a postulate, you will proceed to consider the evidence in this case.

It is my duty to say to you that you would not be justified in convicting this defendant—I will say perhaps to put it cautiously—upon the mere statement of the girl alone. I don't mean to say you have no such right, because this is not a case of rape in which corroboration is required. But in any event, gentlemen, out of an abundance of

## Charge

caution before convicting this defendant, to ascertain if the State has proven his guilt, you will examine the entire evidence for corroboration of the girl's story here. The State claims that there is corroboration of a very striking character. You have the situation where the girl's story is denied by the defendant. You have had the benefit of her examination here—you saw her and had an opportunity to observe her demeanor, whether she was of that precocious intelligence that would indicate an attempt upon her part—for want of a better expression—to “frame up” a case on this defendant, or whether her testimony was given here under circumstances which indicated to you that there was no particular effort on her part to conceal her alleged relations with this defendant, or whether she was giving her testimony frankly as a girl of her years would—who is accustomed to telling the truth. It is your function, gentlemen, to determine the facts in the case.

In arriving at your opinions and conclusions you necessarily are accustomed to consider the probabilities of the truth of the narrative of the several witnesses, and then to give such testimony such weight and credence as you feel it deserves as reasonable men. In that connection, the inquiry would naturally arise what motive this girl would have in coming here and selecting this defendant as against some other Chinaman or some other person of a different race, and associating him with her in the alleged sexual intercourse. What motive would she have? I think, gentlemen, in reaching out for some corroborating detail or circumstance, you very naturally would endeavor to ascertain whether the girl was

## Charge

ever at the laundryman's place as alleged. The State claims it has some very striking testimony in corroboration the form of a letter, which was found, if you believe the testimony of the State's witness, upon the person of the defendant at the time of his arrest. They say that that letter was found on the defendant; that they interrogated him and he said that he had intended to mail it. Now you will bear in mind, gentlemen, that it is claimed by the State that this girl went under and assumed the name of May Taylor. That was after she had left her mother's home and began this alleged career of hers. But the letter itself, if I heard correctly its reading, is addressed to the girl, while the envelope, apparently, and as I recall, is addressed under her assumed name; but the interior, with more or less familiarity addresses her by her first name, that of "Jane" or "Jenny." Now, whether that indicates to you gentlemen that this defendant did have an intimate acquaintance with the girl in this case is for you to say. In comment, I may say, it would seem to be rather a singular circumstance; and would bear the claim of having corroborative force as made by the State, if it be true that this letter was found upon the person of the defendant addressed to the girl in an assumed name which she had admittedly taken; that is to say, so far as the superscription is concerned, but in the body of the letter, it is addressed familiarly to her as "Dear Jennie" or whatever the case may be. You will have the letter, and when you get it you can read it. The State claims that to be a striking corroboration of the girl's story. It is for you to say whether it is or not.

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## Charge

There seems to be no question that the defendant occupied a place at the address named, and there is no question that the girl called there, because the defendant says so, but he says that he drove her away, although he does say, too, that she come three or four times. I suppose it would be natural to inquire why she went three or four times if she was not a welcome visitor at that place. If in fact she had been driven away, why did she go back again, if she did? I am not clear from the testimony just when he claimed to have driven her away on the visits he admits she was there.

Now, gentlemen, there is further testimony claimed by the State to be corroborative, and that is the physical condition of this girl as testified to by the physician who was brought here. Jane claims there was sexual intercourse with this Chinaman as well with a certain other person. Her parts indicate that she did have sexual intercourse, if you believe the testimony of the physician—intercourse with some person. You will recall when the physician stated the examination to have been made and the parts indicated at that time that there had been previous intercourse, the doctor being unable to say whether it was recent or not, other than the fact that there was no present evidence of a freshly disarranged original part. At least a week had elapsed, giving time for the part to heal. Now recalling when that examination was made and when it was alleged this intercourse occurred, it is for you to say whether the testimony tends to corroborate the girl's story. Of course, that fact standing alone would not justify conviction of this defendant.

## Charge

The mere fact that someone had had intercourse with her as indicated by her private parts, would be no justification for the conviction of this defendant. In other words, you cannot convict this defendant on general principles.

You must always bear in mind that the burden is on the State to prove the guilt of a defendant beyond a reasonable doubt, because of the well-known principle that a presumption of innocence runs with the defendant throughout the trial. But when you reach the conclusion that the State has established his guilt beyond a reasonable doubt, then your duty is perfectly clear. 10

Now, gentlemen, the Court had occasion during the progress of this trial to rule upon a number of motions made by counsel for the defendant. You may recall what those motions were. You will understand that those motions were addressed to the Court, and in ruling upon them, the Court in no sense expressed any opinion as to the facts in the case. Neither are you to regard the action of the Court as being at all controlling upon your judgment in examining the evidence and arriving at a conclusion as to the facts, because under our process of trying criminal cases you are distinctly the judges of the fact, and no matter what the Court may say or what counsel may say in commenting upon the evidence, where statements of counsel or the Court are made respecting the evidence, it is always your recollection of what the testimony was that will prevail. While I do not mean to say that you must ignore the comments of counsel or of the Court, it is expected that you will give it such weight and attach such importance to it as you feel it deserves. 20 30 40

## Charge

Nevertheless, you are not conclusively bound by such comments, and therefore, in ruling upon the motions that have been made here, you will understand that the Court's disposal of the motion in no sense involved an intention of the Court to impinge upon your jurisdiction in arriving at the facts in the case.

Now, gentlemen, this case is an important case in the sense that if this crime has been committed this defendant ought not be allowed to escape, for two reasons: first, the example that your verdict would set for others who might be inclined to the commission of crime involving girls of tender years, or of the years indicated in the statute which is here to be applied; and the second is, if the defendant has been proven guilty beyond a reasonable doubt to your satisfaction, he ought to be punished, because he is amenable to law as well as any other person or citizen in this community. In order that he may have his rights protected, you gentlemen, as jurors, have a distinctly important function to perform and that is to ascertain the facts in the case. When you have done that, gentlemen, without prejudice, without sympathy, fairly and honestly—that is to say, performed your function as jurors and rendered a verdict in accordance with the evidence as you have taken oaths to do, then you will have done your full duty.

Finally, gentlemen, if you have any reasonable doubt of the defendant's guilt, it will be your duty to acquit. If you have no reasonable doubt of his guilt, it will likewise be your duty to convict him.

Mr. Kalisch: I taken exception to your Honor

## Charge

not having charged the requests handed to the Court. Also taken exception to your Honor's charge wherein you say that as a comment of the Court, the letter is corroborative as claimed by the state.

Defendant's counsel excepts to the Court's refusal to charge the several requests as requested. Exception allowed and same is hereby sealed accordingly. 10

RULIF V. LAWRENCE,  
J. (L. S.)

The Court: I did not say it was corroborative.

Mr. Kalisch: Well, to all that your Honor may have said on the subject, I further take exception to that part about the examination of the girl by the doctor, without adding that the girl herself had admitted she had intercourse with some one else. Her condition may have been from intercourse had by some other person. I also take exception to that part of your Honor's charge wherein you state that the case was important, and that this defendant should be punished. Whatever your Honor said on that point I take exception to. I also object to the papers being allowed to go to the jury. 20

The Court: Exceptions will be noted. 30

The defendant's counsel prays an exception to the Court allowing the papers to be taken by the jury to the jury room. Exception allowed and hereby signed and sealed accordingly.

RULIF V. LAWRENCE,  
J. (L. S.)

## REQUESTS

- 10 1. There can be no conviction under this indictment, unless the testimony of the prosecutrix has been corroborated either by testimony of a witness or by circumstances, tending to establish the commission of the act charged against him.
2. In order to convict the defendant of the crime charged against him, there must be corroborative testimony or corroborating circumstances of the testimony of the prosecutrix, that the defendant carnally abused her as charged in the indictment, and in the absence of such testimony or circumstances, it will be the duty of the jury to find the defendant not guilty.
- 20 3. Under the indictment and evidence in this cause, the jury must find the defendant not guilty.
4. If after hearing the entire evidence in the case there remains a reasonable doubt of the defendant's guilt, the jury must find the defendant not guilty.
- 30 5. The jury should disregard all motions addressed to the Court on questions of law made by either counsel throughout the trial, and all arguments and reference to evidence made in support of such motions.
6. It is the duty of counsel to raise such questions of law and bring them to the attention of the trial court when they arise in the course of a trial.
- 40 7. In determining the credibility of the prosecutrix as a witness, the jury may consider the fact that she did not make an immediate complaint

## Assignments of Error

against the defendant after the occurrence charged against him in the indictment.

8. In examining and determining the weight to be attached to the testimony of the prosecutrix, her admission in open court of a violation of both the moral law and the statute law of this state may be considered by the jury, even though under indictments such as this, it would be difficult as a general rule for the State to prove its case without such an admission. 10

9. In order for the jury to find the defendant guilty, it is not sufficient for the State to prove its case by the weight of evidence, but the State is required to prove its case beyond a reasonable doubt. If it has failed in the latter regard, the defendant should be found, not guilty. 20

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**Assignments of Error**

## NEW JERSEY SUPREME COURT

STATE OF NEW JERSEY, Defendant-in-Error, vs. SING LEE, Plaintiff-in-Error.	}	On writ of Error.	30
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Afterwards, to wit, in the Supreme Court of Judicature of the State of New Jersey comes the said Sing Lee, by his attorneys, Abner Kalisch and Isidor Kalisch and says, that in the record 40

## Assignments of Error

and proceedings aforesaid and also in the giving of the verdict and judgment aforesaid there is manifest error in this to wit:

1. That the verdict should have been in favor of the defendant.

10 2. Because the Court, after the State had rested its case, erroneously and to the prejudice of the defendant, allowed the State and against the defendant's objection, to amend the indictment which alleged in the second Count thereof that the defendant on the 10th day of June, 1918, did unlawfully and carnally abuse Jane McDonough, a woman over the age of twelve and under the age of sixteen years, by substituting for and adding in  
20 place of the allegation aforesaid in the said second Count, two distinct and separate allegations, charging that the defendant did unlawfully and carnally abuse Jane McDonough, a woman over the age of twelve years and under the age of sixteen years, on the first day of June 1918, and on the third day of June, 1918.

3. There is also manifest error in this that the Court instructed the Jury that under the testimony the defendant could be convicted on the second count of the indictment as charged.  
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5. There is manifest error in this that no valid judgment could be pronounced on the record of this indictment as amended, because it charged two distinct and separate offenses, and therefore was duplicates.

6. There is manifest error in that at the trial of said cause the Court required and ordered the defendant to give specimens of his handwriting,  
40 against the objection of defendant's counsel.

## Assignments of Error

7. There is also manifest error in this that after the State had rested a second time and upon a Motion to Dismiss, the matter on the ground that there was no evidence of corroboration of the story told by the witnesses, the Court again allowed the State to re-open the case, against the objection of defendant's counsel. 10

8. There was also manifest error in this that the Court allowed the jury to take into the jury room the papers upon which the defendant had been required and ordered to give specimens of his writing before the Court, although the same had not been offered in evidence.

The plaintiff-in-error, Sing Lee, prays that the judgment aforesaid be reversed and altogether held for nothing, and that he may be restored to all things he has lost by said Judgment, &c. 20

ABNER KALISCH,  
ISIDOR KALISCH

Attorneys for Plaintiff-in-Error.

Service of a copy of the within Assignment of Errors is hereby acknowledged this 14 day of January, 1919.

J. H. HARRISON,  
Prosecutor.



**Notice**

## NEW JERSEY SUPREME COURT

STATE OF NEW JERSEY, Defendant-in-Error, vs. SING LEE, Plaintiff-in-Error.	}	Writ of Error	10
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To:

J. H. HARRISON, Prosecutor.

Please take notice that the plaintiff-in-error withdraws and abandons the fourth error assigned by him in the assignments of error served upon you on the fourteenth day of January, 1919. 20

ABNER KALISCH,  
 ISIDOR KALISCH,  
 Attys. of Plff-in-Error.

Service of a copy of the within notice is hereby acknowledged the 15 day of January, 1919.

J. H. HARRISON,  
 Pros.



date of the offense from June 10th to June 1st and June 3rd. The judge, after the proof was in, showing offenses upon these latter dates, did make an order permitting the indictment to be amended in that respect; but in drawing the amendment the prosecutor changed the date of the offense from June 10th to June 1st, making no reference to June 3rd.

We think the amendment as made was entirely proper. Whether if the amendment had been in fact made to charge two offenses on different days the defendant could have avoided this conviction because of duplicity of the indictment is another question. But advantage of such a defect must be taken by demurrer or by motion to quash or by motion that the prosecution elect between the offenses, and that the defendant did not do.

The second point is that the record discloses that the defendant was not convicted of the crime charged against him, and in fact was not convicted of any criminal offense.

We think there is nothing in this point. The situation was that there was but one charge given to the jury to consider and that was the charge of carnal abuse. The verdict meant that the jury found the defendant guilty of that offense, and such was its legal effect. *State vs. Janowski*, 82 N. J. L., 229.

The third point is that the judge erred in requiring the defendant to give specimens of his handwriting.

We find no error here. The only writing that the defendant did was to write his own name and address and the word "brother," and this was for the purpose of testing his credibility in view of his testimony. Moreover such writing was not admitted in evidence and was not seen by the jury.

The judgment will be affirmed.

**Remittitur**

(Entered July 16, 1919.)

## NEW JERSEY SUPREME COURT.

THE STATE,

*.Defendant in Error,**vs.*

SING LEE,

*Plaintiff in Error.*

*On Error to  
Essex County  
Court of  
Quarter  
Sessions.  
Remittitur.*

This cause having been duly submitted at the February, 1919, term of this court by J. H. Harrison, Esquire, attorney of the defendant in error, and Abner Kalisch, Esquire, attorney for the plaintiff in error, and the court having considered the same and finding no error in the record and proceedings in the Essex County Court of Quarter Sessions;

It is thereupon ordered and adjudged that the judgment of the Essex County Court of Quarter Sessions, removed by the writ of error in this cause, be affirmed with costs; and that the record be remitted to the Essex County Court of Quarter Sessions to be proceeded with in accordance with this judgment and the practice of said court.

Entered July 16, 1919.

On motion of

J. H. HARRISON,  
*Prosecutor of the Pleas of Essex  
County,  
Attorney of Defendant in Error.*

I, Enoch L. Johnson, Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of a rule entered in the minutes of the court in the above stated cause.

In testimony whereof I have set my hand and seal of said court at Trenton, this thirtieth day of July A. D., Nineteen hundred and nineteen.

ENOCH L. JOHNSON,  
*Clerk.*

(SEAL.)

### Assignment of Error

(Filed August 14, 1919.)

#### NEW JERSEY COURT OF ERRORS AND APPEALS.

STATE OF NEW JERSEY,

*Defendant in Error,*

*vs.*

SING LEE,

*Plaintiff in Error.*

*of Error.*

*Assignment*

Afterwards, to wit, etc., in the Court of Errors and Appeals in the last resort in all causes of the State of New Jersey, comes the said Sing Lee, by Abner Kalisch and Isidor Kalisch, his attorneys 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 there is manifest error in this, to wit:

1. Because the Supreme Court upheld the Trial Court in allowing the State to amend the indictment which alleged, in the second count thereof, that the defendant on the tenth day of July, 1918, did unlawfully and carnally abuse Jane McDonough, a woman over the age of twelve and under the age of sixteen, in substituting for and adding in place of the allegation aforesaid in the second count, two distinct and separate allegations charging the defendant did unlawfully and carnally abuse Jane McDonough, a woman over the age of twelve and under the age of sixteen, on the first day of June, 1918, and on the third day of June, 1918, against the objection of the defendant's plaintiff in error.

2. Because the Supreme Court upheld the Trial Court wherein it instructed the jury that under the testimony, the defendant could be convicted on the

second count of the indictment as charged, whereas there was no second count charging carnal abuse in the indictment originally found against the defendant by the Grand Jury of Essex County.

3. Because the Supreme Court upheld the Trial Court that there could be a valid judgment pronounced on the record of this indictment as amended, although as amended it charged two distinct and separate defenses and was therefore duplicitous.

4. Because the Supreme Court upheld the Trial Court who required and ordered the defendant to give specimens of his handwriting, although objected to by defendant's counsel.

5. Because the Supreme Court upheld the Trial Court who allowed the jury to take into the jury room, the papers upon which the defendant had been required and ordered to give specimens of his writing, although the same had not been offered in evidence.

6. Because the Supreme Court upheld the Trial Court in the passing of a judgment and sentence against the said Sing Lee as upon the conviction of a high misdemeanor, whereas the jury convicted Sing Lee of merely an abuse and not for carnal abuse as charged in the indictment.

Wherefore, the plaintiff in error prays that the judgment aforesaid be reversed and altogether held for nothing and that he may be restored to all things which he has lost by reason of the said judgment.

ABNER KALISCH,  
ISIDOR KALISCH,

*Attorneys for Plaintiff in Error.*

Service of a copy of the within Assignment of Errors is hereby acknowledged this 13th day of August, 1919.

J. H. HARRISON,  
*Prosecutor of the Pleas.*

NEW JERSEY COURT OF ERRORS AND  
APPEALS.

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THE State,

vs.

SING LEE.

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} *In Error.*

And hereupon, the said The State, by J. H. Harrison, 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.

J. H. HARRISON,  
*Prosecutor of Essex County.*

**Exhibit S-3**

June 16, 1918.

My dear Jennie:

Kindly call and see me right away as my brother has gone away and will not be here any more. I sent you letter on June 14th. Did you git it. Do not forget to come.

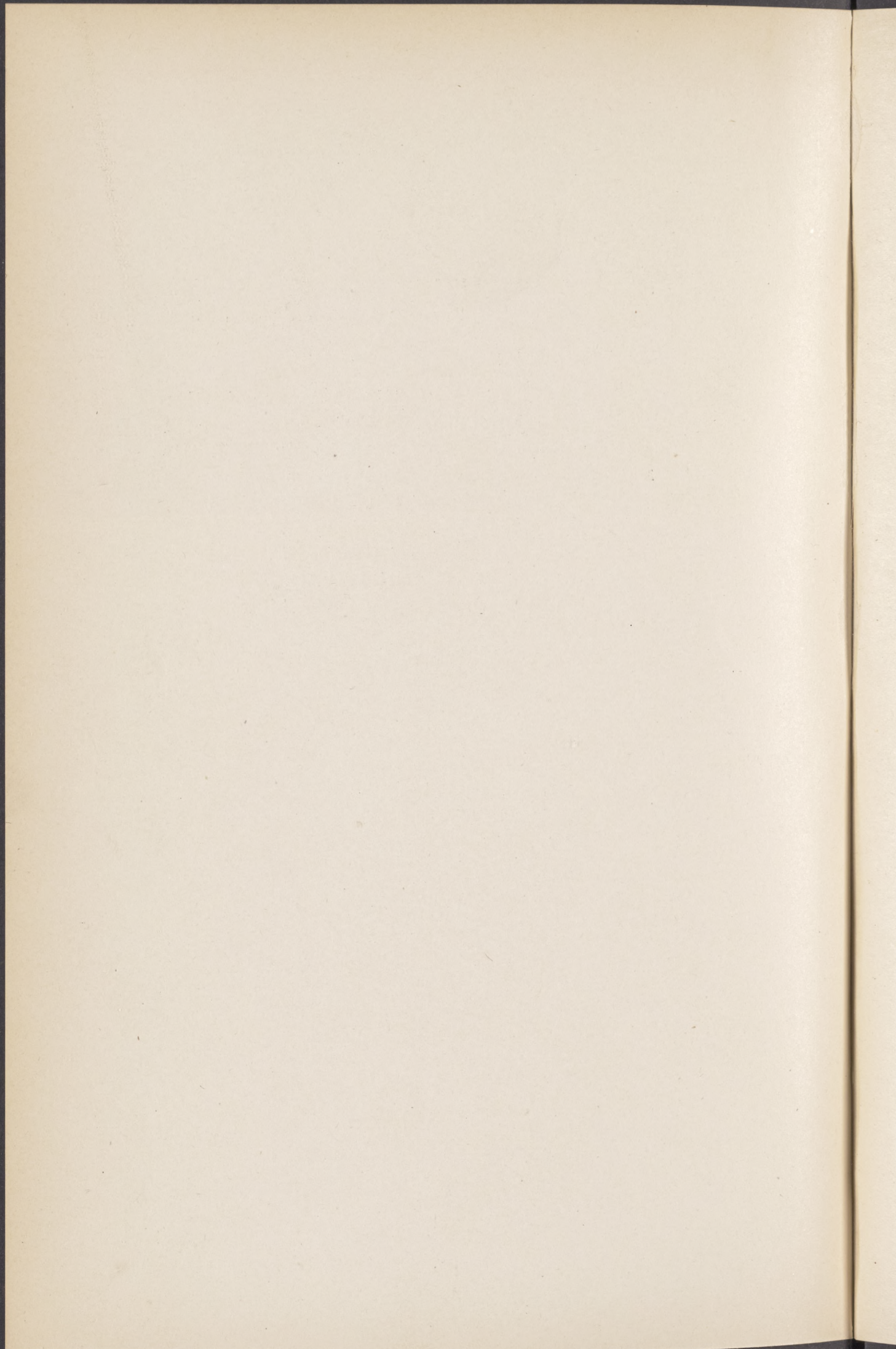
Yours truly,

From Wing Lee,

434 Orange St.,

Newark, N. J.

Good byy.



**Exhibit S-3**

June 16, 1918.

My dear Jennie:

Kindly call and see me right away as my brother has gone away and will not be here any more. I sent you letter on June 14th. Did you git it. Do not forget to come. 10

Yours truly,

From Wing Lee,  
434 Orange St.,  
Newark, N. J.  
Good byy.

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## New Jersey Court of Errors and Appeals

<p>THE STATE OF NEW JERSEY,  <i>Defendant in Error,</i>  <i>vs.</i>          SING LEE,  <i>Plaintiff in Error.</i></p>	}	<p><i>Writ of          Error.</i></p>
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ABNER KALISCH and ISIDOR KALISCH,  
*Attorneys of Plaintiff in Error.*

### BRIEF OF PLAINTIFF IN ERROR

#### Statement of Facts

The plaintiff in error, Sing Lee, was indicted by the Grand Jury of Essex County. The indictment contained two counts: one for assault and battery alleged to have been committed by him on the 10th day of June, 1918, upon a woman named Jane McDonough; and the second count of the indictment charged the defendant Sing Lee that on the 10th day of June, 1918, he did carnally abuse Jane McDonough, a woman over the age of twelve years and under the age of sixteen years, being a statutory offense and a high misdemeanor.

The first count of this indictment will require no consideration by this court, the same having been practically eliminated by the learned judge presiding at the trial. He says:

*By the Court.* "I may say to you that the first count of the indictment will receive very little attention in your hands in deliberating upon the case, because the State's case rests

entirely, if I correctly understand it, upon the charge against this defendant of abusing this girl." (Page 39, lines 28-33.)

The jury rendered its verdict as follows: "Do say upon their oath that they find the defendant, Sing Lee, guilty of abuse, with recommendation of mercy, and so they say all." (Page 7, line 10.)

At the trial it appeared that the offense was not committed on the 10th day of June as stated in the indictment, the State's testimony being that the defendant had sexual intercourse with the prosecutrix on June 1st and June 3d. In considering this case, we must have in mind that the second count of the indictment against this defendant charged but one offense and that alleged to have been committed upon the 10th day of June, 1918. (Page 4, lines 10-20.)

Upon the trial of the cause it appeared that the offense, if committed at all, was not committed on the 10th day of June, as was alleged in the indictment, but on divers other days in June, viz: June 1st and June 3d.

This evidence appearing during the trial, and at the time that the State had closed its case and after a motion had been made by the defendant to dismiss the proceedings, the case was re-opened and Jane McDonough, the complaining witness, was called on behalf of the State and testified as follows to the following questions put to her:

Q "What days did you have intercourse with this defendant?"

A "On June 1st and June 3d."

*By the Court.* "Not on June 10th?" (Page 39, lines 28-31.)

Upon this testimony the State moved to amend the indictment to June 1st and June 3d (page 29, lines 32-33). To this proposed amendment, counsel for the defendant objected. The court there-

upon asked counsel for the State whether he desired to amend the indictment.

*By the Court.* "The indictment now relates to the 1st and 10th. You desire to amend this indictment so as to show the alleged offense to have been committed the 1st and 3d?"

*Mr. Bernhard.* "Yes, sir, a continuous offense." (Page 30, lines 3-12.)

### POINT ONE

**The court erred in permitting the indictment to be amended so as to add thereto an allegation of the commission of another offense against the defendant of which the defendant had not been indicted by the Grand Jury.**

The statement by the court that "The Indictment now relates to the 1st and 10th," was erroneous as is apparent by perusing the second count of the indictment upon which the defendant was being tried (page 4, lines 10-20) and to which the court was referring and to which count of the indictment the court allowed an alleged commission of another offense against the defendant to be added and the indictment amended. (Page 30, line 10.)

In that count there appears but one offense charged against the defendant and alleged to have been committed by him upon the 10th day of June, and there is no allegation in the indictment of any offense having been committed by the defendant on the 1st day of June, as stated by the court. Counsel for the defendant objected to the amendment, for such an amendment as was requested by the State to be made, would charge the defendant with the commission of two separate and distinct offenses and upon different days upon the same person, while the indictment was for the alleged

commission of a single offense upon the 10th day of June, 1918. To this objection the court said:

*By the Court.* "Just bear in mind that I disagree with you wholly as to the right to amend. I am of the opinion the court has a right to amend this indictment. The only thing left is to claim surprise. If you do, I will give you an opportunity to get over your surprise to meet the new case." (Page 30, lines 21-32.)

Evidently the Court considered that the amendment of the indictment would make a new case and the case presented by the Grand Jury, abandoned.

It is also evident that the court misconstrued the contention of defendant's counsel. The defendant did not say, or did not intend to be understood that the court could not allow amendments, but what the defendant did insist was that in this case there was only one offense alleged to have been committed by the defendant and set out in the second count of the indictment, but the court not only allowed an amendment from the date set out in the indictment, which was the 10th day of June to the 1st day of June, but also allowed to be added the commission of another offense at another time by the defendant, charging the defendant with a second offense, which is said to have been committed on the 3d day of June, 1918. Allowing this was certainly not an amendment but an additional offense charged against the defendant without the same having been considered by the Grand Jury or presented by them into court by an indictment. The adding of the second offense to the indictment charging the defendant with again committing the offense upon another day, made two separate and distinct offenses, whereas the Grand Jury found only one offense to have been committed, to all of which defendant's counsel objected. Upon this objection the court ruled as follows:

*By the Court.* "The court being of the opinion that this amendment is proper under the circumstances, and counsel for defendant waiving his claim to surprise, therefore Mr. Kalisch desires no further time to prepare his case; therefore that being so, your motion is overruled and you may have an exception. (Page 31, lines 1-15.)

At this point counsel for defendant called the attention of the court that the amendment was made after the State had rested its case and after counsel had made a motion for dismissal. (Page 31, line 30.) The court ruling upon the amendment again said:

*By the Court.* "And also after the court had reopened the case, recalling the complaining witness for further examination. I understand it now that the offense is charged to have been committed on the first and third of June?"

*Mr. Bernhard.* "Yes, sir." (Page 31, lines 23-30.)

So that the court allowed the second count of the indictment to read that the defendant had committed the crime of carnal abuse on the girl, Jane McDonough, on the first day of June and the third day of June—two separate and distinct offenses upon different days and entirely in variance with the finding of the Grand Jury that presented the indictment.

The jury after having considered the case, rendered a verdict against the defendant for *Abuse*, with a recommendation of mercy, evidently finding him not guilty of carnal abuse. (Page 7, line 10.) Upon this verdict the court passed judgment and sentenced the defendant to State Prison for a period not less than two and one-half years and not more than fifteen years. (Page 7, line 20.) This judgment could only have been passed upon

the defendant if he had been convicted of the crime of carnal abuse, as charged in the indictment, but certainly no such judgment could have been passed upon him, the jury having convicted him of abuse only. In fact, I know of no such offense as abuse in our criminal law. Abuse may be committed in many ways: it may be by tongue, which would be slander; or it may be by many other minor actions, but persons guilty of such acts would certainly not be subject to an indictment. If the Grand Jury had presented this indictment against the defendant charging the commission of two separate and distinct offenses of the same nature in a single count, a motion to quash the indictment before the jury was sworn would have prevailed on the ground of the indictment being *duplicatus*. But in this case the court during the trial and after the State had rested and after allowing the State to reopen its case, allowed two separate and distinct offenses of the same nature alleged to have been committed by the defendant upon different days upon the same person, to be made part of the second count of the indictment found by the Grand Jury against this defendant which charged only one offense alleged to have been committed upon a day certain and not upon divers other days. From this viewpoint, it certainly seems that the learned judge in tacking on another offense to the second count of the indictment or allowing another offense to be charged against the defendant which had not been considered by the Grand Jury, was a violation of the constitutional mandate requiring a presentment by a Grand Jury, before a person can be placed on trial for a crime, etc.

I quote from the opinion of Clancellor Pitney, in the case of *State vs. Flynn*, N. J. L. 76, p. 477:

“It is manifest that the scope of a statute that authorizes amendments of indictments in

matters of substance must be confined to some extent in subordination to paragraphs 8, 9 and 10 of article 1 of the constitution of this state, which declares that in all criminal prosecutions the accused shall have the right to be informed of the nature and cause of the accusation; that no person shall be held to answer for a criminal offense unless on the presentment or indictment of a Grand Jury."

I therefore respectfully urge that the amendment was improper, it having stated an offense against the defendant of which he had not been indicted.

## POINT TWO

**The record discloses that the defendant was not convicted of the crime charged against him, and that judgment was pronounced on him on a verdict which convicted him of no criminal offense. This error is manifest on the record. (Assignments 9 and 10 on page 52 relate to it.)**

**The verdict as rendered by the jury was as follows: "Guilty of Abuse, with recommendation of mercy." (Page 7, line 10.)**

It needs no argument to establish that this was no verdict convicting the defendant of any criminal offense, and therefore it was manifest error of the court in passing sentence because there was no verdict of guilty of the offense charged in the indictment, and the sentence of the court upon the defendant was for a crime of high misdemeanor of which the defendant was not convicted.

In the case of *State vs. Rudner*, the court said that:

"The plaintiff in error having been charged in the same indictment with the commis-

sion of an ordinary misdemeanor and also with the commission of a high misdemeanor, and the jury convicting him of the lesser offense, that offense was outlawed at the time the indictment was presented, and consequently the verdict is without force. The jury, although the question was submitted to it, failed to pass upon his guilt or innocence of the crime charged in the third and fourth counts of the indictment. In this situation the trial court was without legal power to pass sentence upon the plaintiff in error." This was the opinion of the learned Chief Justice in the case cited in the Atl. Rep., 104, page 320.

Could there be a more parallel case than the one now for review? Here the indictment contained two counts, one for assault and battery, and one for a high misdemeanor. The first count is eliminated by the court and the second count submitted to the jury. Evidently, the jury failed to pass upon his guilt or innocence of the crime charged in the second count, or intended to find him not guilty, but rendered a verdict for abuse, which does not import the crime of which the defendant was indicted and tried. Is not this the same situation then, that the trial court was without legal authority to pass sentence upon the plaintiff in error, and therefore I submit that the judgment should be reversed. It was manifest error for the court to pass sentence upon the plaintiff in error for a crime of high misdemeanor of which the plaintiff in error was not convicted.

### POINT THREE

**The court erred in requiring the defendant to give specimens of his handwriting.**

The plaintiff in error also took exception to the court requiring and ordering the plaintiff in error at the trial to give specimens of his handwriting. While in some cases this might be eminently proper, I cannot conceive that the plaintiff in error, who was tried for carnal abuse, should have been compelled to give specimens of his handwriting; and if it was against his interests and aided the State in their case against him, would it not be compelling him to furnish evidence in court against himself which might well incriminate him, which no person upon trial upon an indictment is obliged to do.

And it was likewise error for the court to allow these specimens of his handwriting to be taken into the jury room by the jury when they retired to consider upon their verdict, all of which was against the objection of counsel of plaintiff in error.

As to the first point of the brief of the plaintiff in error, the Supreme Court in its opinion affirming the conviction says, "the first point is that the judge erred in permitting the indictment to be amended changing the date of the offense from June 10th to June 1st and 3d." And the court further says, "But in drawing the amendment the prosecutor changed the date of the offense from June 10th to June 1st, making no reference to June 3d." The court further says, "that an advantage of such a defect must be taken by demurrer or by a motion to quash or by a motion that the prosecution elect between the offenses and that the defendant did not do. This was absolutely impossible to do. The defendant had been tried upon the indictment, the State had rested. (Page 28, line

10.) The State rested subject to the right to produce the physician after that. (Page 29.)

*Mr. Bernhard.* "I have a perfect right to say that I am going to prove by this girl that June 1st and June 10th she had intercourse with this man." (On same page, line 30.)

It appears that June 10th was wrong, and that is the date that appears in the indictment. The proof was put in and amendment asked for and made after a motion had been made to dismiss, and the State had rested its case. As to the amendment being made to June 1st and June 3d, we turn to page 29 of the printed case, line 40:

*Mr. Bernhard.* "I move to amend to June 1st and June 3d."

Which motion was granted by the court. Now there can be no doubt that the indictment was amended, and after the State had rested its case.

That the crimes were alleged to have been committed on the 1st and 3d of June; two separate and distinct offenses, whereas the Grand Jury had found an indictment only for one offense. Of course the amendment was not done in writing, but the court proceeded with the case considering the amendments made and noted on the record, which is generally done in cases where an amendment is made during the course of a trial. The amendment was noted on the record by order of the court, so that the prosecutor had no right after the trial and conviction of the defendant to amend the indictment in any other way or form only as it was ordered by the court. So that the indictment was good up to the time the defendant was called to put in his defense. The indictment containing only one count and therefore not duplicatus. "The indictment contained but one charge and therefore the defendant could not call upon the State to make a choice."

The court says in its opinion "whether the amendment was made, in fact, the defendant was charged with two offenses on different days the defendant could have avoided this conviction, because of duplicity in the indictment is another question, but an advantage of such a defect must be taken by demurrer or motion to quash, etc." This could not have been the practice in this case because the amendment was not made or asked for at the beginning of the trial so that a motion could be made to quash the indictment on the ground of its duplicity, but the amendment was made after the State had rested its case; then certainly no such motion could have prevailed but it was an error in the trial of the cause of the appearing on the record and a violation of the defendant's constitutional rights, this certainly is subject to be brought for review to the Appellate Court by writ of error. It was not the question of duplicity of the indictment, it was the fact that the defendant was charged and tried on an offense of which he had not been indicted.

The Supreme Court in affirming the conviction of the court below in its opinion, referred to the second point of this brief, wherein the plaintiff in error claimed a reversal on the ground that he had not been convicted of the crime charged against him in the indictment presented by the Grand Jury of Essex County. The court contended that there was nothing in this point saying, "the situation was that there was but one charge given to the jury to consider and that was the charge of carnal abuse, the verdict meant that the jury found the defendant guilty of that offense and such was its legal effect." We respectfully insist that such a contention is not tenable. It is not what the jury meant. It is what they actually did and said by their verdict in court, whether they actually meant

to do what their verdict implies is not to be questioned; and we respectfully submit that it is not within the province of the court after the verdict has been rendered (if not ambiguous), to say what, in their judgment, the jury meant and give what in their opinion is its legal effect.

It was the duty of the court below when the jury had returned with a verdict of "Abuse" which was not the offense charged in the indictment, to have sent them back for further consideration as to whether they intended to find the defendant guilty of carnal abuse or not.

The prosecutor refers to the case of State against Jankowski. The case of Jankowski cited by the prosecutor and likewise appearing in the court's *per curium* does not seem to be in any wise applicable to this case. In that case the defendant was indicted for a crime known as the White Slave Traffic, and the proof at the trial, the date of the commission of the offense varying slightly from the date set forth in the indictment. There was no amendment asked for and no amendment made and there is no doubt but that under the Criminal Procedure Act a slight variance of the date was immaterial, but that was not a case like the one at bar. In this case the indictment was amended, not only from the date set forth in the indictment to another day, according to the testimony of the case, but the indictment was amended by charging the commission of another offense against the defendant, alleged to have been committed upon another day, thereby adding a second count and second offense to the indictment. This certainly was very material to the defendant, and was in violation of his constitutional rights, because he was placed upon trial for two distinct offenses, of one of which he had never been indicted, the Grand Jury having indicted him only of one offense. The

prosecutor's contention that this was a continuous offense is wholly without merit, such contention may apply to the case already cited in the State against Jankowski, but in this case there is no continuation of the offense, but every act, particularly when committed on different days, with a girl under the age prescribed by statute, constitutes a separate and distinct offense for which the defendant may be indicted.

We respectfully urge that the Supreme Court overlooked the evidence and the objection made referring to the third point in this brief where the defendant was required to give specimens of his handwriting.

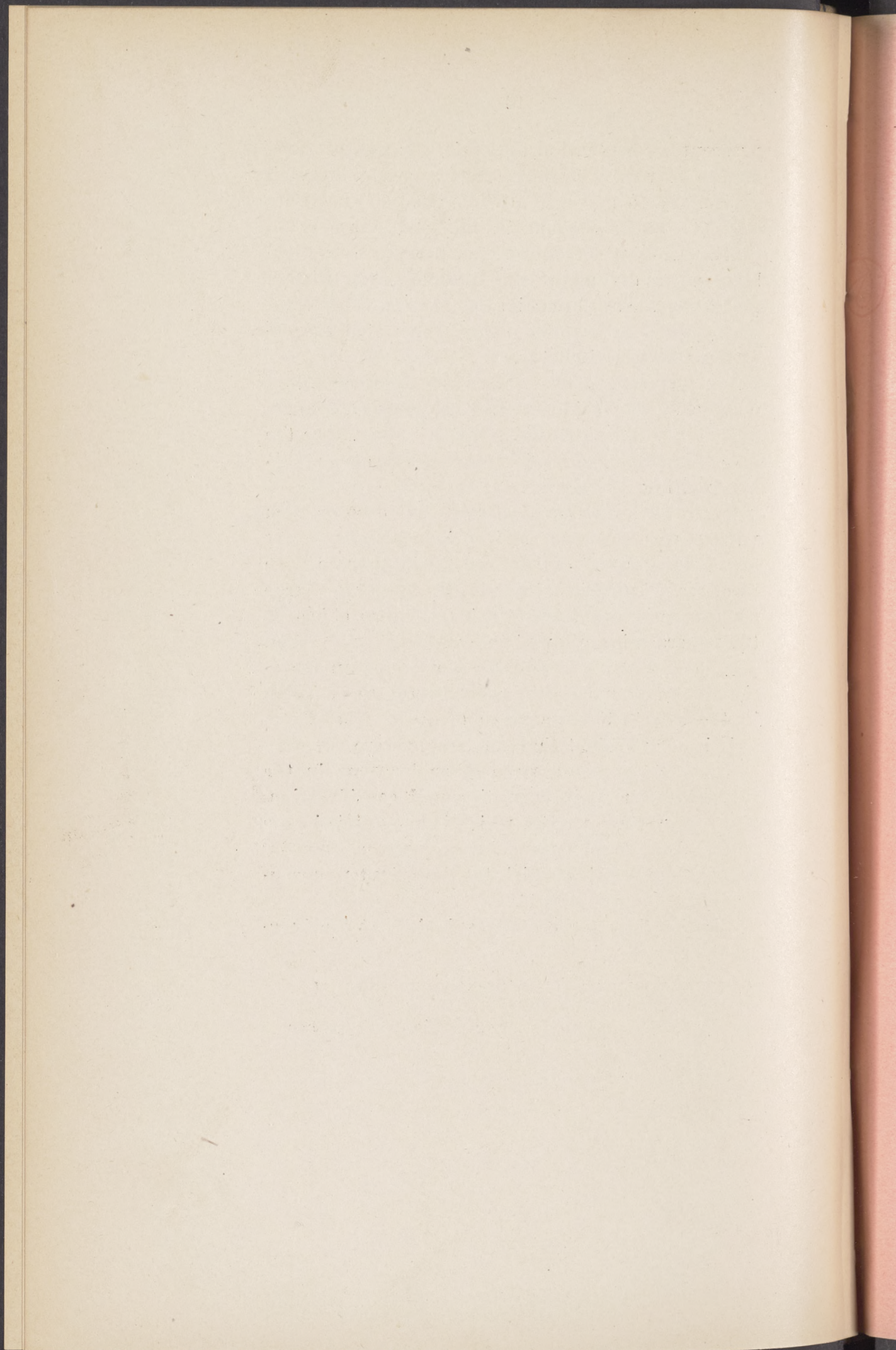
This court in its opinion says: "Moreover such writing was not admitted in evidence and was not seen by the jury." If the court will turn to page 47 of the printed case, immediately after the charge counsel for the defendant said: "I also object to the papers being allowed to go to the jury." And furthermore the defendant's counsel took an exception to the court allowing the papers to be taken by the jury to the jury room (page 47, line 30).

It is very evident that the papers were not only seen by the jury but were taken by them in the jury room for their inspection and consideration. The papers were a letter which is an exhibit in the case and the other papers were the papers containing the handwriting which the defendant was compelled to make in court.

We therefore respectfully submit that the judgment be reversed.

ABNER KALISCH and ISIDOR KALISCH,

*For Plaintiff in Error.*



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