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New Jersey Court of Errors and Appeals.

WRIT OF ERROR.

STATE OF NEW JERSEY, ss.

*The State of New Jersey to Our Supreme Court,
Greeting:*

Because in the record and proceedings and
 [SEAL] also in the giving of judgment in a certain
 10
 Court, before you, between the State of New Jersey,
 Prosecutor and Defendant in Error, and Frank Dunn,
 Defendant and Plaintiff in Error, in error to the Mercer
 County Quarter Sessions Court, manifest error hath
 intervened to the great damage of the said Defendant
 as by its complaint we are informed; we being willing
 that the error, if any there be, should, in due manner,
 be corrected, and full and speedy justice be done to the
 parties aforesaid, do command you that if judgment
 be thereupon given, then you distinctly and openly send,
 under your seal, the record and proceedings and plaint
 aforesaid, with all things touching and concerning the
 same, to our Court of Errors and Appeals in the last
 20
 resort in all causes, at Trenton, on the 15th day of
 January, 1927, together with this Writ and the record
 and proceedings aforesaid being inspected, we may
 cause to be done thereupon for correcting that error
 what of right and according to the law and custom of
 the State of New Jersey ought to be done.

Witness, our Chancellor and President Judge of our said Court of Errors and Appeals, at Trenton aforesaid, the 29th day of December, 1926.

Joseph H. S. Ditzfelner,
~~HARRY C. HARTPENCE,~~
 Clerk.

ROMULUS P. RIMO,
Attorney and Counsel with
Plaintiff in Error.

RETURN.

- 10 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.

RETURN TO WRIT.

(Filed April 30, 1925.)

[SEAL] The State of New Jersey to the Honorable Erwin E. Marshall, Judge of the Court of Quarter Sessions of the County of Mercer:

Because in the judgment of the Court of Quarter Sessions of the County of Mercer, upon a certain indictment against Frank C. Dunn, wherein with force and arms, at the City of Trenton, in the County of Mercer and State of New Jersey, and within the jurisdiction of the Court of Quarter Sessions of Mercer County, Frank C. Dunn, of the City of Trenton, being a single man over the age of eighteen years, did under the promise of marriage, unlawfully have sexual intercourse with one, Madalyn A. Barnett, who was then and there a single female of good repute for chastity, under the age of twenty-one years, by means of which sexual intercourse, she, the said Madalyn A. Barnett, afterwards became pregnant, contrary to the form of the statute in such case made and provided and against the peace of this State, the government and dignity of the same. 10 20

Pro ut the said indictment and the several counts therein, whereof, before you, he had been indicted and is thereof convicted by a certain jury of the County, taken between the State of New Jersey and the said Frank C. Dunn, as it is said, manifest error hath intervened to the great damage of Frank C. Dunn as from

his complaint we have received information, we being willing, in his behalf, to correct the error in due manner, if any there shall be, and that speedy justice be done to him, the said Frank C. Dunn, command you that if judgment be therefore given, then that you distinctly and openly send under your seal the record and proceeding aforesaid, together with all things touching and concerning the same to our Supreme Court, to be held at Trenton, on the 16th day of April, 1925, and this writ, that the record and proceedings aforesaid being inspected, we may further cause to be done thereupon for correcting that error what of right and according to the laws and customs of New Jersey ought to be done.

Witness, William S. Gummere, Esq., Chief Justice of our Supreme Court, at Trenton, this 27th day of March, 1925.

EDWARD J. KELLEHER,
Clerk.

ROMULUS P. RIMO,
Attorney of Plaintiff in Error.

INDICTMENT.

MERCER OYER AND TERMINER.
January Term, A. D. 1925.

Mercer County, to wit:

The Grand Inquest of the State of New Jersey, in and for the body of the County of Mercer, upon their respective oath present that Frank C. Dunn, late of the City of Trenton, in the said County of Mercer, on the first day of May in the year of our Lord one thousand nine hundred and twenty-four, with force and arms, at the City of Trenton aforesaid, in the County aforesaid, and within the jurisdiction of this Court, being a single man over the age of eighteen years, did, under promise of marriage, unlawfully have sexual intercourse with one Madalyn A. Barnett, who was then and there a single female of good repute for chastity under the

age of twenty-one years, by means of which sexual intercourse she, the said Madalyn A. Barnett, afterwards became pregnant, 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.

W. H. GERAGHTY,
Prosecutor of the Pleas.

JUDGMENT.

And afterwards, to wit, on Wednesday, the fourth day of February, in the year of our Lord one thousand nine hundred and twenty-five, at a session of the said Court of Oyer and Terminer as aforesaid, being as yet of the term of January aforesaid, the said indictment was by the said Court of Oyer and Terminer handed, set and transmitted to the Court of Quarter Sessions of the said County for trial according to the form of the statute in such case made and provided, and a rule to that effect then and there duly made and entered upon the record of each of the said courts respectively; and afterwards, to wit, on the ninth day of February, in the year of our Lord nineteen hundred and twenty-five, at a session of the said Court of Quarter Sessions in and for the said County of Mercer, of the Term of January, of the year of our Lord nineteen hundred and twenty-five, before the Honorable Erwin E. Marshall, Judge of the Court of Quarter Sessions, at Trenton, in the County of Mercer aforesaid, cometh the said Frank C. Dunn, in his proper person according to the conditions of the recognizances by himself and his pledges in that behalf heretofore made and now here touching the premises in the said indictment above specified and charged upon him being asked in what manner he will acquit himself thereof he says that he is not guilty thereof, and of this he puts himself upon the County, and W. H. Geraghty, Prosecutor of the Pleas of the said County of Mercer, who prosecutes

for the State in this behalf does likewise the same; therefore let the said indictment be continued until a jury thereupon come here before the said Judge aforesaid, at Trenton, in the County of Mercer. Wherefore let a jury thereupon come, to wit, on Wednesday, the 18th day of February, in the year of our Lord nineteen hundred and twenty-five, of the January term, nineteen hundred and twenty-five, before the Honorable Erwin E. Marshall, Judge of the Court of Quarter Sessions,

10 in and for the said County, twelve good and lawful men and women of the County of Mercer aforesaid, by whom the truth of the matter may be better known and who are not of kin to the said Frank C. Dunn, to recognize upon their oaths whether the said Frank C. Dunn be guilty as charged in the indictment aforesaid above specified or not guilty, because as well the said W. H. Geraghty, who prosecutes for the State in this behalf as the said Frank C. Dunn, have put themselves upon the said jury and the jurors of the said jury by Charles

20 H. Reichert, Sheriff of the said County of Mercer, and Frederick P. Rees, Jury Commissioners of the said County of Mercer, for this purpose empaneled, and returned agreeably to the statute in such case made and provided, to wit, Fred Sloer, George N. Cranmer, John V. Rouselle, J. Forman Rose, Harry L. Woodward, Edward McGrath, Ralph W. Hackett, Samuel P. Scott, Alfred Wilson, Bernard Tohill, Charles H. Mather and Steward Craig, who having been elected, tried and sworn to speak the truth of and concerning the premises upon

30 their oath, and after evidence from witnesses produced by Walter D. Cogle, the Assistant Prosecutor of the Pleas and the case of the State had rested, and Romulus P. Rimo, the attorney for the defendant herein, made a motion for a direction of a verdict, which motion was overruled and an exception allowed by the court and after evidence from witnesses produced by Romulus P. Rimo, the attorney for the defendant herein, and the case having been closed, and arguments presented to the Judge of the said Court by Romulus P. Rimo, the

attorney for the defendant herein, as well as by Walter D. Cogle, Assistant Prosecutor of the Pleas, and after a charge by the court the jury retired to consider their verdict and having agreed upon their verdict come again into court and by their foreman say they find the defendant guilty as charged, and so say they all, on him above charged in the form aforesaid and as by the indictment aforesaid is above supposed against him, and thereupon the said Frank C. Dunn was remanded for sentence until Friday, the twenty-seventh day of March,

10 nineteen hundred and twenty-five, at which last mentioned day the said Frank C. Dunn, being present before the said Court of Quarter Sessions, and it being forthwith demanded of the said Frank C. Dunn, if he hath or knoweth of anything to say wherefore the said Judge as aforesaid here ought not upon the premises and verdict aforesaid to proceed to judgment against him, who nothing further saith unless as he before had said, whereupon all and singular the premises being

20 seen and by the said Judge here fully understood, it is considered and adjudged and the Court do order on this conviction that the defendant be confined in the New Jersey Reformatory at Rahway, N. J., and do pay the costs of his prosecution.

STATE OF NEW JERSEY, }
 COUNTY OF MERCER, } ss.

I, Harry C. Hartpence, Clerk of the Court of Oyer and Terminer and Clerk of the Court of Quarter Sessions, do hereby certify that the foregoing are the

30 entire record and proceedings of the indictment, plea, trial, conviction and judgment, in the case of the State of New Jersey v. Frank C. Dunn, as the same remains of record in my said office.

IN TESTIMONY WHEREOF, I have here-
 [SEAL] unto set my hand and official seal of said
 Courts this 16th day of April, A. D. 1925.
 HARRY C. HARTPENCE,
 Clerk.

The entire record and proceedings of the indictment, plea, trial, conviction and judgment, including the entire record of the proceedings had upon the trial of said cause, whereof mention is within named, with all things concerning the same, to the Supreme Court of Judicature of New Jersey within specified at the day and place within contained, we certify in a certain schedule to this writ as we are commanded.

ERWIN E. MARSHALL,
Judge.

10

TESTIMONY.

MERCER COUNTY QUARTER SESSIONS.

THE STATE,

vs.

20

FRANK C. DUNN,

Defendant.

On Indictment for
Seduction.

Courthouse, Trenton, New Jersey, February 17-18, 1925.

Appearances—For the State, Water Cogle, Esq., Assistant Prosecutor; for the Defendant, Romulus P. Rimo, Esq.

30

The jury was duly impaneled and sworn.
Herbert L. Murdock, sworn as stenographer.

Miss Madalyn A. Barnett, called as a witness on behalf of the State, being duly sworn, testified as follows:

Direct examination, by Mr. Cogle.

Q. Your full name is what?

A. Madalyn A. Barnett.

Q. And you are how old?

A. 19.

Q. When were you 19?

A. April 3d.

Q. April 3d?

A. Yes.

Q. Where do you live?

A. 240 Main Avenue, Passaic, New Jersey.

Q. Passaic, New Jersey?

A. Passaic, New Jersey.

10

Q. Do you know this defendant, Frank C. Dunn?

A. I do.

Q. And when did you first meet him?

A. 1922.

Q. In 1922? Do you remember the month?

A. May.

Q. In May, 1922, where did you meet him?

A. At the Yacht Club.

Q. Where?

A. At the Yacht Club.

20

The Court—Whereabouts?

The Witness—On Lamberton Street.

Q. At the Yacht Club?

A. Yes, sir.

Q. That is in this city?

A. Yes, sir.

Q. Now, after the first of May, did you see him?

A. I did.

Q. Just tell what happened between you and him from that time on.

30

A. I met him on Tuesday night, and he made an appointment with me for on Friday night. He came around on Friday night, and we went to the South Broad Street moving picture house, and after that he kept company with me, and in September he gave me a diamond ring.

Q. In September, he gave you a diamond ring?

A. Yes.

The Court—September, 1922?

The Witness—September, 1922, he gave me a diamond ring, and he says that we would keep it a secret, our engagement, and not to let people know.

The Court—What happened besides his giving you a diamond ring?

The Witness—He just announced to me that we would become engaged, and we wouldn't let his parents know it.

10

Q. And when he said so, what did you say?

A. I said that would be satisfactory.

Q. Now, can you tell us just what the conversation was in connection with this ring and the engagement; that wasn't all that was said, was it?

A. Well, he didn't do any proposing or anything like that. He just gave me a diamond ring and said we would become engaged, and he says—

Q. All right. Go on and tell us the rest.

20 A. Then after that, why, I kept company with him, and then he announced it, announced our engagement, in 1923, in March, in the Tuesday paper.

Q. In March, 1923?

A. In March, 1923.

Q. And where and under what circumstances did he publish the fact of the engagement?

A. What?

Q. Where and under what circumstances did he publish the fact of the engagement, or did he announce the fact of the engagement?

30

A. At our house. He told me that we would become engaged, and he wrote that out and sent it to the paper, to the State Gazette.

Q. Who else was there?

A. We were at Mrs. Large's house at that time.

Q. Was Mrs. Large there at that time?

A. She was there at that time. She didn't know what he was doing. Her and her son was there. There were quite a few there. We sent it in to the paper.

Q. Now, you say he wrote it out. What do you mean by that?

A. He wrote out the engagement.

By the Court.

Q. The announcement of the engagement?

A. The announcement of the engagement.

Q. In your presence?

A. In my presence and Mrs. Large's son and Frank K. Gribben.

10

Q. Did you say that there was a representative of the newspaper there?

A. There was not.

Q. How did the announcement get to the newspapers?

A. He sent it to the paper.

Q. How?

A. He took it down to the mailbox.

Q. It was mailed?

A. Yes, sir.

20

By Mr. Cogle.

Q. He said he was going to mail it?

A. He did. I got a letter from these people asking me if it was so, and if it was to be printed. I got a letter from Caroline V. Stanley.

Q. And who is that?

A. The editor.

Q. Of what?

A. The social column.

Q. The social column of what paper?

30

Mr. Rimo—I object to any communication from the editor of the Gazette.

The Court—She said she got a letter from the social correspondent of the paper, so far as that goes.

The Witness—She asked me if I thought—

The Court—Never mind that. Was it published in the paper?

2 DUNN

The Witness—It was.

The Court—Do you know the date?

Q. Do you know the date when it was published?

A. It was March, 1922, I don't recall the date.

By the Court.

Q. 1922 or 1923?

A. 1922—no, it was 1923, rather.

10 By Mr. Cogle.

Q. That is the time when it appeared in the paper?

A. Yes, sir.

Q. And did you see the announcement in the paper?

A. I did.

Q. Do you happen to have a copy of that announcement?

A. I had two or three copies.

Q. Have you got them with you?

A. He took them from me and tore them up.

20 Q. Well, after that time what happened, after this engagement?

A. After the engagement, we had sexual intercourse.

Q. That is, after March, 1923?

A. After I became engaged to him, in September, 1922.

Q. And then from September, 1922, the time when he gave you the ring, until March, 1923, the time when the announcement of your engagement was made, did you have these relations with him, that is, sexual relations?

30 A. I did.

Q. Frequently or not?

A. Well, no, quite often.

Q. Quite often?

A. Yes.

Q. Where were you living then in September, 1922, to March, 1923?

A. At home.

Q. At home where?

A. 541 Emory Avenue, Trenton.

Q. And these promises, to which you have referred, this engagement, in which he said, "We are engaged, but won't tell our parents," in 1922; where did he say that? Where did you live when he said that?

A. 541 Emory Avenue.

Q. And did you live at the same place when he announced the engagement?

A. Yes, sir.

The Court—541 Emory Avenue?

10

The Witness—Yes, sir.

Q. Now, this sexual relationship took place where, at 541 Emory Avenue?

A. It did.

Q. And then after March of 1923, the time at which this announcement appeared in the paper, what happened?

A. Why, he just kept right on keeping company with me.

Q. And how often did he see you a week?

20

A. Almost every night.

Q. And did he have sexual relations with you?

A. He did.

Q. Did you continue to see him until what time; I mean during what time did this courtship continue?

A. It continued until in October, 1925.

The Court—1925?

The Witness—October, 1924.

The Court—He continued to go with you until October, 1924?

30

The Witness—Yes, sir; until October, 1924.

Q. Well, now, what happened between you and him between March, 1923, and October, 1924?

A. We moved from 541 Emory to 962 South Broad.

Q. Who moved?

A. I did.

Q. Did your parents move too?

A. Yes, sir.

Q. And did he continue to come there to see you?

A. He didn't see me for a month, that was February.

Q. And that was February of what year, 1923?

A. 1923.

Q. He didn't see you during that month?

A. No, sir.

By the Court.

Q. 1923, Now?

A. Yes, sir.

10 Q. Was that before he announced his engagement to you?

A. No, sir; 1922 he announced his engagement to me.

Q. March, 1923, that was published.

A. 1923 and 1924. He announced it twice.

Q. When was the period that he stopped coming?

A. It was in February, 1923.

Q. After the public announcement of the engagement?

A. No.

20 Q. Well, then, that can't be right.

By Mr. Cogle.

Q. Just the month before, I guess, Judge.

A. It was just a month before he came back to me and announced our engagement.

Q. Then it was a period of one month between the time when you first talked of the engagement and when you made a public announcement of it when he stopped coming to your house; is that right?

30 A. Yes, sir.

Q. When did you leave 962 South Broad Street, did you say? October, was it?

A. It must have been around the last of January or the first of February, 1923, because he didn't come to see me that February at all, when we lived on Broad Street.

Q. Do you know why that was?

A. We had an argument.

Q. And then what happened after that argument?

A. And then he wrote me a letter and he said he would come back to me when we lived on Broad Street, and then he kept right on going with me ever since then, until October, 1924, in October.

Q. And what relationship did you occupy towards each other during that time? That is to say, did he have or not sexual relations with you?

A. He did.

Q. And what was there that happened between that time and this present time? 10

A. We moved in Broad Street Park.

Q. You moved? When did you move to Broad Street Park? You have said that during January, 1923, you moved from Emory Street to 962 South Broad Street.

A. Yes, sir.

Q. Now, in February he stopped coming to see you and then you continued to live at this address, 962 South Broad Street, until what time? As nearly as you can tell. 20

A. Until March.

Q. And during March you lived where?

A. Down in Broad Street Park, at 188 Berg Avenue.

Q. And did he continue to come to see you there?

A. Yes, sir.

Q. Were you living with your parents there?

A. I was.

Q. Now, during that time in March, 1923, how long did you continue to see him there? How long did you continue to live there, and just what happened? 30

A. I lived in Berg Avenue, until August, which he persuaded me to leave home, and so I came to his house.

Q. He persuaded you to leave home?

The Court—To leave home, she said.

Q. To leave your parents?

A. He was coming to see me every night, and my mother didn't care for him; she knew things was going on, and she told him that she wanted him to keep away.

Mr. Rimo—I object to that, if your Honor please.

The Court—I think that is entirely proper, if the mother told him. If it should appear that she did not tell him, I will strike it out. It may be noted that you object unless the mother told him.

Q. Did you hear your mother tell him that he couldn't come any more?

10 A. Yes, sir.

The Court—What did she say?

The Witness—She told him to keep away from our house. He wasn't a fit fellow to come to the house, and he said, "If I can't come to the house I will take her away."

Q. Take who away?

A. He said, "If I can't come to the house I will take her away from home. I will take her away," and I left home; he persuaded me to go with him."

20 Q. And where did you go?

A. To Mrs. Large's, 209 South Clinton Avenue.

The Court—He went there and engaged a place for you?

The Witness—Yes, sir.

Q. When was this, in August, did you say, 1923?

A. It was in 1923; yes, sir.

Q. And Mrs. Large lived at 209 South Clinton Avenue?

A. At 209 South Clinton Avenue.

30 Q. And he took you there and engaged rooms?

A. Yes, sir.

Q. Did he occupy the same room with you?

A. He did not.

Q. Where did he live?

A. Right around the corner, on High Street.

Q. He lived on High Street?

A. Yes, sir.

Q. Well, now, did he continue to come and see you while you were living at home, 209 South Clinton Avenue?

A. He did for a while, until he took some records from the people that didn't belong to him.

Q. What was that?

A. He took some Victrola records that didn't belong to him, and that man forbade him coming there.

Q. He stole records?

A. He stole records.

10

Q. He stole records at this place?

A. Yes, sir.

Q. And then what happened?

A. Then these people told him not to come there any more.

Q. And did he continue to come there or not?

A. He did for a while, until the latter part of September or October, when he was told not to come any more.

Q. And after that?

20

A. After that I went to his house.

Q. That is, after September, 1924, you went to his house?

A. 1923, no, not 1924.

Q. You went to his house?

A. To his house to see him.

Q. And did you continue to have your room at Mrs. Large's?

A. Yes, sir.

Q. Who lived at his house?

30

A. His mother and father. They had a man rooming there, and himself.

Q. His mother and father lived there?

A. They had a young man rooming there, and himself.

Q. And did he occupy this same relationship towards you all this time?

A. At his house, just the same.

Q. Did you have sexual intercourse at his house?

A. Yes, sir.

The Court—Whereabouts?

The Witness—All over the house.

The Court—When would that be, when the other folks would be in bed, or what?

The Witness—When they were out, and when they would retire nights.

Q. Now, how long did this continue, that is to say, at
10 his house?

A. It continued until April, 1924, when I became pregnant.

Q. Now, where were you living at the time you became pregnant?

A. 209 South Clinton Avenue.

Q. Still at the Large's?

A. Yes, sir.

Q. You say you became pregnant when?

A. April, 1924.

20 Q. April, 1924?

A. Yes, sir.

Q. And when did your menstruations cease?

A. After April, after Easter.

Q. Did you have your menstruation in April?

A. Yes, sir.

Q. Now, after that, after you had become pregnant, what was your relationship with this man, that is to say, what attitude did he assume toward you?

A. He said that he couldn't marry me, and when I
30 told him, he didn't believe it was so, that he had me pregnant.

Q. He said he couldn't marry you?

A. Yes, sir.

Q. Did he say why he couldn't marry you?

A. He said he couldn't take care of me in any way.

Q. He said he couldn't take care of you? What do you mean by that?

A. For a home, he said, and child.

Q. What did he do at that time?

A. Then, he told me that he would take me to Dr. Tempesto.

Q. He said he would take you to Dr. Tempesto?

A. Yes, sir.

Q. Did you go to see Dr. Tempesto?

A. I went on for two months after I was that way. He didn't do anything, anything at all, and I cried and cried, and he wouldn't do anything at all, and then he took me to Dr. Tempesto. He said, "Don't tell. If you do, I will fix you. Don't tell that you are that way." 10

Q. Don't tell who?

A. Dr. Tempesto.

Q. Well, did he take you to see Dr. Tempesto?

A. Yes, sir.

Q. Did he say how the doctor was going to know what was the matter with you unless you told him?

A. No, sir; he didn't. He told me not to tell.

Q. Well, then you went to see Dr. Tempesto, during the month of June, will you say?

A. No, May—no, in June rather. 20

The Court—Did he go with you?

The Witness—Yes, sir.

Q. Did you see Dr. Tempesto?

A. I did.

Q. And what did you say to the doctor?

A. I told him I had not had my menstruation, and he said, "Are you pregnant?" And I wouldn't tell him. He forbade me, not to tell him, or I would take the consequences, and so I didn't tell him. And he gave me a prescription to go to Henry's Drug Store to get some
30 pills.

Q. What did you tell the doctor was the trouble?

A. I told him I hadn't come around and that I had a cold, or something. That is what I told him, what he told me to tell him.

Q. He told you to tell him that you didn't have your menstruation, and that you thought it was due to the fact that you had a cold.

A. Yes.

Q. And then Dr. Tempesto gave you a prescription you had filled at Henry's?

A. Yes, sir.

Q. In the meantime?

A. Yes, sir.

Q. And then what happened?

A. I took these pills and they didn't do me any good, and then I told him the way that was and he says, "Well," he says, "I will take you over there and you can
10 tell the truth now, and he can help you out of it."

Q. That is, Dunn said this?

A. Frank Dunn.

Q. He said, "You better tell the truth now?"

A. He said, "You better tell the truth, and probably he can help you in some way, because I can't marry you."

The Court—When did you go to the doctor again?

The Witness—Two weeks after I had been.

The Court—Two weeks after the first trip?

20 The Witness—Yes, sir.

The Court—And then did you go alone, or did he go with you?

The Witness—He went with me.

The Court—The second time?

The Witness—Yes, sir.

Q. You went sometime during the month of June, the second time?

A. Yes, sir.

Q. But you told him, did you?

30 A. Yes, sir.

The Court—You told whom?

The Witness—Told Dr. Tempesto.

Q. What did you tell him?

A. That I was pregnant and that these pills didn't do me any good, and he knew right away just what was the matter with me. I asked him, or I told him, or Frank said or asked him if he could do anything for me, and he said no, positively, he couldn't, that he wasn't the kind of man that would do that kind of work.

Q. Did you in the presence of Dr. Tempesto state who was responsible for your condition?

A. I don't know what you mean.

Q. Did you tell Dr. Tempesto who was responsible for your being in that condition?

A. Yes, sir. He was right in the outer room and the doctor saw him.

Q. He was there, was he?

A. Yes, sir.

10

By the Court.

Q. What did you say about his responsibility? Just what words did you use in describing your condition, or in saying that somebody was responsible, or who was responsible; what did you say to the doctor?

A. I told Dr. Tempesto I was pregnant. He said, "Why didn't you tell me when you came the other day?" And I said, "He forbid me to tell you, and said I should not tell you, if I could help it."

Q. Yes.

20

A. And Dr. Tempesto said, "I can't do anything for you." He said, "I know a doctor on Emory Street"; and he gave me Dr. Blum's name.

Q. He gave you the name of Dr. Blum, did he?

A. Yes, sir.

Q. What did you do then?

A. I went home and I didn't go to see him until on Saturday night after work. He met me, Frank met me, and we went down to Dr. Blum.

30

By Mr. Cogle.

Q. Saturday afternoon?

A. Saturday night, after the store closed at six o'clock.

Q. Still during June?

A. This was in July, about the second Saturday, the first or second Saturday.

Q. During July?

A. Saturday night.

Q. You say it was the second week?

A. The first week, on Saturday.

Q. The first Saturday in July?

A. Yes, sir.

Q. And what did Dr. Blum say. Just a minute. Did Dunn go with you?

A. He did.

Q. And did you both go in to see the doctor?

A. No, sir. I went in myself.

10 Q. Where was Dunn?

A. Sitting in the outer office.

Q. In the outer office?

A. Yes, sir.

Q. And did you have some conversation with Dr. Blum?

A. Yes, sir.

Q. And what did you tell him?

A. I told him that I was pregnant.

20 Mr. Rimo—I object, unless the defendant was present.

The Court—I think if the defendant was not in the room it is not relevant.

The Witness—He was called in afterwards.

Q. What did you say to the doctor when Dunn was there? You can tell that.

A. Dr. Blum talked to him.

Q. In your presence?

A. In my presence.

Q. What did the doctor say to him?

30 A. He said that he couldn't take care of me, because he was afraid of getting his license taken away from him, and he wouldn't take a chance. He said, of course it would cost him a lot of money for it. He said if Dr. Blum did it, it would cost between \$180 and \$200. Frank Dunn said, "I have no money, and I can't let you do it." Then he said, "I know a doctor in New York that will take these cases on the sly, and does this and doesn't charge quite as much." And he told him to think it over and let him know by Friday, to let him

know, Dr. Blum know, by Friday. He went home that Saturday night and all during the week he told me he was going to ask his mother for \$50 and his sister for \$50, and tell them he was going to Princeton with the men from the office where he worked, that he needed this money to go to Princeton with the men from the office where he worked. His mother went out and drew the money, and his sister, and gave him \$100. Then he let Dr. Blum know in the meantime, on Friday, the following Friday, we met Dr. Blum—met him and at the corner, and we went to the Pennsylvania Station. Dr. Blum came a little later and we got on the train and went to New York City. As we came from the Pennsylvania Station in New York we took a taxi. That expense was charged to Frank Dunn. We took this taxi and we went to this doctor's house in the slums of New York.

Q. Do you know where that was?

A. I can find it easily if I was there. I don't know his name. Frank Dunn knows his name, just where it was. He had his place underneath the house.

Q. That is, in the basement?

A. In the basement of the house. He took me in there, and Dr. Blum went in first and talked with him and on the way over Dr. Blum said, "Don't tell him you are three or four months along or he will charge you too much." This doctor in New York got me all ready and came out and asked Frank Dunn how much money he had and he said \$100. He said, "That won't do, because, he said, "it was \$50 for each month," and I was three months. He said he needed 50 more dollars that Frank Dunn didn't have, but Dr. Blum said he would loan it to him if he would pay it back in three months. He wrote out a check, and gave it, or presented it to the doctor, and the doctor got ready again to perform an operation on me.

Q. Now what happened after that?

A. After that, why this doctor, after he performed the operation, he wrapped me up in a blanket and took

me in the outer room and left me there half an hour, until I came to, and he went out and Dr. Blum went, as soon as he made out the check for \$50, he left the place, and Frank Dunn was sitting in the waiting room, this doctor, after he got done, he left us two there until I came to, and after that I was all right, but I was weak, and I wasn't able to walk after I got outdoors and we took a taxicab to the Pennsylvania Station in New York. We rode to the station and took a train,

10 just the two of us, Frank Dunn and I. We got to Trenton at 9:30 and he said, "I am not going to hang around the station." He said, "My father might see me. He always hangs around the station and I am not going to stay there for my father to see me. But if my father sees me I will tell him I just pulled in from Princeton." He told me to go home and stay there. I went home and went to bed, and the next morning I went to work, and he met me on the corner, and walked to work—

20 Q. What day did you say this was?

A. This was in July. Thursday he took me to New York—

Q. Which, in the same month of July; what Thursday, the first, second, third or fourth?

A. It was after the fourth of July. He took me away after the fourth of July in that condition, and he took me up to a friend's house in this condition—that was a week after. That was about the 9th or the 10th of July.

30 Q. That he took you to New York?

A. Yes, sir.

Q. About the 9th or 10th of July?

A. Yes, sir.

Q. Now, after that you came back and you said you went to work.

A. Yes, sir.

Q. Where did you work?

A. I worked at Goldberg's Department Store.

Q. And did you continue to see him after that time?

A. I did. He promised on September 21, 1924, he was going to marry me if I didn't tell anything. He said after I had suffered all that, he would marry me, September 21, 1924.

Q. When did he tell you that?

A. He told me in New York, in that office, and while I was in that condition.

Mr. Rimo—That is objected to, that conversation in respect to the promise. Anything that he said subsequent to that.

10

The Court—But this is a conversation between them in relying upon this promise. I think that anything he said to her anywhere in New York would be relevant.

Q. Proceed and relate what was said.

The Court—Was this before the abortion?

The Witness—Sir?

The Court—Before the operation?

The Witness—No, sir. That he made this offer of marriage?

20

The Court—Yes.

The Witness—He kept telling me all along that he would marry me in September, each year, and when September came each year, and the time, why, he wouldn't marry me.

Q. You say that he told you that in the office in New York?

A. Yes, sir.

Q. Was that before the operation or after?

A. It was before and after.

30

Q. It was before and after?

A. Yes, sir.

Q. Particularly in reference to that part of his conversation where he said for what you have gone through, just detail that. Just use his own words.

A. When I was lying in the room, coming to, he says—he cried and he said that he was sorry, he wished that he had never done it, and he said that September

21, 1924, he would marry me, and he also told me all the way over in the taxicab.

Q. And when you came back you said you went to work and you continued to see him?

A. Yes, sir, I did.

Q. And what happened after that?

A. He got nasty to me. It didn't seem that he wanted me, and was trying to get away, because he promised to marry me on the 21st of September, and
10 he hit me and beat me, and I had marks on me, and he used me terrible.

Q. Where did he do that?

A. At his own house.

Q. How did he come to hit you?

A. He just didn't want me around. He just would hit me all the time.

Q. Did he do this more than once?

A. Several times, I went in Large's with marks on me.

20 Q. And do you recall any occasion when you showed the marks to them or not, to Mr. and Mrs. Large?

A. I told them lots of times—

Mr. Rimo—I object, unless the defendant is present, if your Honor please.

The Court—Yes.

Q. Now, why would he hit you on these occasions, or why did he hit you, if you know?

A. I suppose that he promised on September 21st, that he was going to marry me, and he didn't intend
30 to do it all the time that he was saying it, and if he hit me I would get disgusted and go away and let him off easy.

Q. And what else did he do?

A. He would keep me in the house all the time, and would never take me out anywheres.

Q. Well, during this time did you go to his house, or did he come to your house?

A. I went to his house.

Q. Did you go there at his request?

A. I did. And if I wasn't there certain nights, he would come to Large's to tell her to tell me to come out, or he would blow my brains out. He used to knock at the door, and bang at the door.

Q. I mean from the time that you came back from New York after this operation up until the time through the month of September, we will say, from July on to October, did you go to his house then?

A. I did.

Q. Did he come to your house? 10

A. No, sir, I went to his house.

Q. Well, why did you go to his house, if he beat you and struck you after you got there?

A. Because he used to threaten me. Several times he threatened me that if I didn't come over, he would come after me. And then he used to come over for me at nights when he would be at his house.

Q. Did you have anything to do with him sexually after the time you came back from New York?

A. I did not. This doctor told him not to touch me, 20
I wasn't in condition.

Q. Did you or not?

A. Which I didn't, but he used to force me. He forced me with a revolver one night.

Q. That is, he tried to have these relations?

A. Yes, sir, he tried to.

Q. Where did this occur?

A. At his house.

Q. Did that happen on one or more occasions?

A. It happened on quite a few occasions. 30

Q. You say that he became insistent?

A. Yes, sir.

Q. Now how did he—what form did that take? What did he say, and what did he do?

A. He would ask me, and I told him that the doctor in New York forbid me, that I wasn't in the condition, and he used to force me. He said he would force me. He would fight with me when there was no one at home.

Q. And what eventually happened after this time? Did you continue to go together?

A. We continued to go together.

Q. Until what time?

A. Until October, when my condition got worse from the operation in New York, and I had to go to the St. Francis Hospital under another operation.

Q. Resulting from this abortion?

A. On this day in October, he was gradually telling **10** me he didn't want to go with me, and he was breaking away. I said, "You promised to marry me on September 21," and I said, "We are there," and he said, "I don't want to go with you any more."

Q. And what was the last time you saw him?

A. In October, about the second week in October.

Q. And where did you see him on that occasion?

A. At his house.

Q. And where was that?

A. High Street.

20 Q. High Street?

A. Yes, sir.

Q. And what happened at this time?

A. He just said that he didn't care to see me any more.

Q. Did you go frequently to see him?

A. I did.

Q. What did you say to him?

A. He told me that he didn't care to see me any more, and I said why, and he say, "We can't just get along. **30** I don't care to see you any more. I am young, and I want to go around and have a good time." I said, "You promised to marry me September 21st," and he said, "No, I don't want to keep company with you any longer." That broke off the engagement.

Q. And what did you do after that?

A. I kept going to his house every night to see him to have a talk with him, and he would go out at six o'clock every night, and he wouldn't be there.

Q. What month was this?

A. In October.

Q. And this last week that you continued to go around there to talk with him, which week, or October, was this?

A. 1924.

Q. Yes, was it the last week in October?

A. No, it was about the middle part of October.

Q. When did you go to the hospital, the St. Francis Hospital?

A. In October, it was on Friday, I can't just recollect **10** the date.

Q. Was it on Friday?

A. Yes, sir.

Q. Was it the first or the latter part of the month?

A. The latter part.

Q. And were you operated?

A. I was.

Q. And after that did you ever see him again?

A. Never.

Q. And have you seen him, that is to talk with him **20** and be around with him, since that time?

A. No, sir. I saw him on the street often.

Q. Did you have a conversation with him on the street?

A. Never.

Q. What has his attitude been toward you since then?

A. Just walk past me.

Q. Did he say why?

A. No, sir.

Q. Now, did you ever have any relations of that kind **30** with any other fellow?

A. I did not, positive.

Q. And why did you have sexual relations with him?

A. Just under the promise of marriage, because I trusted him, and believed what he said.

Q. Because he promised to marry you?

The Court—What became of the ring he gave you; have you it on?

The Witness—Yes, sir. (Witness produces the ring.)

The Court—Show it to the jury.

Mr. Cogle—I will offer the ring in evidence.

Q. You say that he gave you that ring in September, 1922?

A. Yes, sir; in September, 1922.

Q. And the announcement in the paper, have you a copy of that?

10 A. I have the one in the Trenton Times, but not the one in the State Gazette. I haven't the one in the State Gazette.

The Court—It appeared in both papers?

The Witness—About a year apart, in March, about a year apart, in the State Gazette, and Trenton Times.

(Newspaper clipping shown witness.)

20 Mr. Rimo—I object to the use of this clipping of the newspaper of this announcement. It is not evidence and it is incompetent and irrelevant.

The Court—The witness has testified that Mr. Dunn, the defendant in this case, himself wrote out the notice of the engagement and sent it to the paper. Now, I think it is competent for her to testify whether or not the notice which actually appeared in the paper is a copy of the notice which he wrote.

Mr. Rimo—But I think that the newspaper itself ought to be used.

30 The Court—The newspaper, no doubt, can be procured from the files.

Q. How old are you?

A. Nineteen.

Q. And when were you nineteen?

A. April 3d.

Q. April 3d, 1924?

A. Yes, sir.

Cross-examination, by Mr. Rimo.

Q. Miss Barnett, when was it you said you first met Frank Dunn?

A. May 1922.

Q. And at that time you were how old?

A. Sixteen.

Q. And were single?

A. I was.

Q. And are you single now?

A. I am.

Q. Now, under what circumstances did you meet Dunn for the first time in May, 1922?

A. We were to the Yacht Club and they had a dance there, and he asked me after the dance, which he had three or four dances with me, and continued right on, and he asked me after the dance if he could see me the following Friday night, which I said yes.

Q. You did see him?

A. Yes, sir.

Q. Where did you see him?

A. At my house.

Q. About what time?

A. About between eight and half-past.

Q. You were then living where?

A. 541 Emory Avenue.

Q. With whom?

A. With my mother.

Q. Did you have a father?

A. I have.

Q. And was he living with your mother at that time? 30

A. He was.

Mr. Cogle—I do not see its materiality.

The Court—All right. She has answered the question.

Q. And when was this ring given?

A. September, 1922.

Q. Now, on that Friday that he called to see you at your house, did anything take place?

A. It did not.

Q. Did you have any intercourse with him?

A. I did not.

Q. You are positive?

A. Positive.

Q. And when did you meet him again?

A. The next night, which was Saturday.

Q. And where?

A. At my house.

Q. Did you have any intercourse with him there?

10 A. I did not.

Q. You did not? You are positive?

A. Positive.

Q. You had been courted by someone else just before Dunn met you; isn't that true?

A. Never.

Q. I beg pardon.

A. Never.

Q. Do you know a Harry Stern?

A. I do.

20 Q. And didn't he call to see you?

A. No; occasionally.

Q. Did he call to see you?

A. He did.

Q. He had been calling for sometime, hadn't he?

A. One month.

Q. And after Dunn met you, he had seen you again, hadn't he?

A. Never.

Q. You are positive of that?

30 A. Positively.

Q. Had you been engaged to Stern?

A. I had not.

Q. Had you been out with Stern?

A. I was.

Q. Had you had anything to do with Stern in the way of intercourse?

A. Never.

Q. You were frequenting dances about that time, weren't you?

A. I was not.

Q. But you had been out with other fellows other than Stern, hadn't you?

A. No, sir, never.

Q. But you did meet Dunn this following Friday and saw him the next night?

A. Yes, sir.

Q. And you saw him after that how often?

A. Every night.

Q. Every night until September of that year, 1922? 10

A. No, sir.

Q. Well, just what do you mean?

A. I kept right on seeing Frank Dunn until February, 1923, nearly a month.

Q. Well, you must have seen him then until September, 1922, if that is true.

A. Yes, sir.

Q. Yes. And between May of 1922 and September, when you got this ring, had anything happened, or was anything said by Dunn to you of marriage? 20

A. Yes, there was.

Q. And when was that first spoken of?

A. It was spoken of about three or four weeks after I had started to go with him, he said he was going to marry me, and I was the girl he was going to marry me.

Q. And did you know then that he had been out with Harry Stern?

A. I did.

Q. And just how did it come about that he said 30 that he was going to marry you?

A. He said that he thought a lot of me. He said that he thought a lot of me. And in September he was going to give me my diamond ring, which he did. He said I was the only girl for him, and that he was going to marry me.

Q. And you had been true to Dunn ever since, have you?

A. I have.

Q. You say you never have had any relations, sexual relations, with any other fellow?

A. Never.

Q. Do you tell the truth now on the stand, and as you have in the past to Dunn?

A. Positively.

Q. Everything you have told Mr. Dunn since you met him was the truth?

A. Yes, sir.

10 Q. Do you know a Paul Sisto?

A. I do not.

Q. Do you know a Michael Timilo?

A. I do.

Q. Were you out with Michael Timilo since you met Frank Dunn?

A. After October, 1924.

Q. Well, who was the man you were out with along about June of 1922?

A. No one.

20 Q. I show you a letter and ask you if that is your handwriting.

A. Yes, sir.

Q. I ask you if that is the letter that you wrote to Dunn.

A. It is.

Q. Who was the man or the person or fellow that you spoke of in this letter?

The Court—Let her have the letter and read it.

30 (Witness reads letter.)

A. One night my sister and I was going to Woodlawn Park to a dance.

Q. Where?

A. To a dance.

Q. But where?

A. Woodlawn Park.

Q. Well, you haven't responded to my question. I asked you who was this fellow.

A. As we came from Woodlawn Park we met this fellow, Charles Mack, and he said, "Are you going home?" He asked my sister and I to get in the machine and he drove us home and we drove directly home at 9:30. We didn't stay long. There were a few on the dance floor.

Q. Did you tell Dunn that you were going to this dance?

A. He wasn't down that night to tell him. He was out. 10

Q. I thought you said that you were out with him every night until September of 1922?

A. Several nights we had an argument, which he didn't come down.

Q. You say you had an argument several times when he didn't come down between May, 1922, and September, 1922.

A. Which caused him not to come down.

Q. And what were those arguments about?

A. It is just little things. We would go to a dance 20 and some one would ask me for a dance and he would not let me dance with anyone.

Q. Wouldn't that be about other fellows that you had been out with?

A. Never.

Q. This Charles Mack that you spoke of, is that his right name?

A. Charles Epispico.

Q. Why didn't you say that was his name first?

A. I didn't recall it. 30

Q. Well, was it Episcipo?

A. It is.

Q. Isn't Charles Mack the same one you know to be Michael Basso?

A. It is not.

Q. Do you know Michael Basso?

A. Yes, sir.

Q. Have you been out with him?

A. Never.

Q. Are you sure?

A. Never.

Q. Weren't these arguments that you have spoken about, about these other fellows that you were out with?

A. Not particularly.

Q. Well, when you say not particularly, does that mean that some were?

A. When we went to a dance he would not let me
10 dance with them. He forbade me dancing with them.

Q. Now, I show you another letter, dated the 7th month, the 17th day, 1922, and ask you if you recall writing this letter.

Mr. Cogle—If the Court please, I am not going to object to that, but I do not think anything in these letters is relevant unless it comes after September, 1922.

The Court—I do not know what is in the letter, of course. What is in the letter that you
20 wish to introduce?

Mr. Rimo—In reference to a fellow she met. That is, it requests forgiveness for having gone out with another fellow, which is in direct contradiction to her testimony.

Mr. Cogle—What testimony?

Mr. Rimo—Which she has since given.

Mr. Cogle—I understand since her engagement she was not out with any other fellow. She was not engaged until September.

Mr. Rimo—She testified that since she has met
30 him she has not been out with any other fellow.

The Court—I do not know that because this gentleman was at his home, and she called on him, that he had any claim on her so that she couldn't go out with anyone else.

Mr. Rimo—On the question of motive in this case, and the promise. As I understand it, your Honor, there are two sorts of promises: One is an unconditional promise and the other is a

conditional promise, but if, I take it, there is a conditional promise of marriage made that has considerable effect on the broad issue of a conviction.

The Court—Up to this time there seems to be nothing unconditional about it, or rather nothing conditional about it.

Mr. Rimo—Well, that is exactly what I was expecting to follow up with, your Honor, this argument about these other fellows, which was
10 prior to this, September, 1922, and which caused this ring to be given, upon the condition that she would have nothing to do with any other fellow.

The Court—The condition imposed by the defendant; is that what you mean?

Mr. Rimo—Yes, and accepted by her.

The Court—Well, I think I will permit you to examine her in reference to the letter.

Q. Will you just look over that letter?
(Witness reads letter.) 20

The Court—Have you concluded reading the letter?

The Witness—Yes, sir.

Q. Now I ask you.

A. That is the fellow, Charlie Mack, that brought us home from Woodlawn Park, that is the letter.

Q. What time did you go to Woodlawn Park that night?

A. About a quarter to eight or eight-thirty. 30

Q. How did you get there?

A. We walked.

Q. From where?

A. From 541 Emory Avenue.

Q. You stayed there until what time?

A. We just stayed there a few minutes and left there a quarter of nine, and coming out to Olden Avenue we met these two fellows in a machine, and he asked us

if we were going down their way, and we said yes, and they took us as far as the house, that is all.

Q. Who were these two fellows?

A. Charles Mack and Paul Pietro.

Q. Did you know Paul before?

A. I didn't know him personally, just neighbors to the boy and Charles.

Q. Now you had been out with other fellows there to dances every chance that you got, hadn't you?

10 A. Never.

Q. After you met Dunn?

A. No.

Q. Why did you ride with Charlie Mack?

A. He just brought us as far as the house.

Q. You walked there, to Woodlawn Park?

A. Yes, sir.

Q. Why didn't you walk back?

A. We thought it was no harm riding us back to the house, which it wasn't.

20 Q. Did you tell Dunn that afterwards?

A. I did.

Q. Well, what did Dunn say?

A. He didn't say anything. He just cried. He said he wouldn't be down for two nights, which was Monday and Tuesday.

Q. Didn't you write a letter to him in October, 1922, and beg him for another chance?

A. I did.

30 Q. And he didn't come back in two nights, did he. He did come back in two nights?

A. Yes, sir.

Q. Which was still in September?

A. Yes, sir.

Q. Or a month before September?

A. Yes, sir.

Q. Or July?

A. Yes, sir.

Q. And still in October of the same year you wrote him another letter asking for forgiveness; do you recall that letter?

A. That is the letter asking for forgiveness when I went out with Charles Mack, that letter you have in your hand now.

Q. This is dated September 10th.

The Court—Has the witness seen this letter?

Mr. Rimo—Not yet, your Honor.

The Court—All right, then, show her the letter. 10

(Witness reads letter.)

The Court—Now, have you read that letter?

The Witness—Yes, sir.

The Court—All right, Mr. Rimo, the witness has examined that letter.

Q. That letter was written by you in October, 1922?

A. Yes, sir.

Q. Did you beg forgiveness then—

A. This letter which I read, he said he was going to Washington, with some fellows from the Pennsylvania Railroad Station as a mail clerk, and those three nights I should go out and enjoy myself. 20

Q. And you did?

A. I did. There was no harm in it.

Q. And did you go with anyone?

A. No, sir; I went with my sister.

Q. And where did you go?

A. To Woodlawn Park.

Q. And did you go out after that with anyone? 30

A. No, sir; I went to a prom on Friday night at the Yacht Club. He said he had come back from Washington.

Q. You were taken to this Yacht Club by someone?

A. By my sister.

Q. You are sure it was your sister?

A. Positively.

The Court—Do you expect to use these letters?

Mr. Rimo—Yes, sir.

The Court—Then you had better have them marked in the order in which you have examined on them.

Mr. Cogle—I would like to object to these letters.

The Court—They are only being marked for identification at this time.

Mr. Cogle—But nothing was said as to their identification in chief about these letters.

10 The Court—That is proper in cross-examination, if they expect to use them, but they are identifying them, is all.

(Letters marked *Exhibits A, B and C* for identification.)

Q. Now when did the first intercourse between you and Dunn take place?

A. After we became engaged.

Q. And when was that?

A. October, 1922.

20 Q. Was it in October, 1922, that you had your intercourse?

A. Yes, sir.

Q. And you were engaged when?

A. September, 1922.

Q. This engagement was the latter part of September, 1922?

A. The latter part or the middle of September.

Q. And where did the intercourse first take place?

A. At our house.

30 Q. Where was your mother at that time?

A. At the house.

Q. And where was your father at that time?

A. At the house.

Q. And was it during the day or at night this occurred?

A. At night, after everybody had retired.

Q. Just tell us what was said by Dunn to you that night, if anything, before you had your intercourse.

A. He just said that he loved me, and he thought it wasn't any harm. I had my diamond ring, and he expected to marry me, and I says I would, on that promise of marriage. I had the diamond ring.

Q. Did you know at that time if you had intercourse with him under the promise of marriage that you could compel him to marry you?

A. I had my diamond ring. I was engaged to him.

Q. And when did you appear before this Court to make a complaint against him for seduction? 10

A. I never thought it would turn out this way. I trusted him.

Q. Now after that first time that you had intercourse with him did you continue to do it?

A. I did.

Q. Was anything said by him when the second time occurred?

A. He kept telling me how much he thought of me, and he intended to marry me—how much he loved me and he intended to marry me, I was the only girl he loved. 20

Q. Do you know why he hasn't married you?

A. He hasn't wanted me. He didn't want me in the first place.

Q. Isn't this the truth: That he knew afterwards that you had been out with other fellows, and that you had been out with other fellows since you had become engaged to him?

A. I never was.

Q. Isn't that the truth?

A. It is not. 30

The Court—You say "been out with other fellows." Do you mean having sexual relations with them, with other men, or simply appearing with them on the street, or going some place with them?

Mr. Rimo—I mean being out with them for the purpose of having sexual relations. I meant to qualify that.

The Court—That is quite different from going somewheres or some place to an innocent place of amusement with another fellow or going some place where there were sexual relations.

Mr. Rimo—I want to refrain from using the sexual relation term all I can. I want to refrain from that all I can.

10 The Court—But it doesn't mean anything sometimes if you do not speak plain in these cases.

Mr. Rimo—I will now offer these letters. I shall do that on my side of the case.

The Court—They should be offered, if offered at all, when you put in your case.

Mr. Rimo—Yes.

Q. Now, Miss Barnett, you say that you had intercourse with Dunn frequently since this engagement. Now, had you been pregnant at any time prior to this time that you spoke of when you went to Dr. Tempesto?

20 A. Never.

Q. Now, Miss Barnett, in the month of May or June, 1924, weren't you with Basso to have intercourse?

A. Never.

Q. Weren't you with Tamilo?

A. Never.

Q. To have intercourse?

A. Never.

Q. Didn't you have intercourse with him?

A. Never.

30 Q. Were you out with him?

A. Never.

Q. Or Peter Sisto about that time?

A. Never.

Q. Miss Barnett, you don't care very much for Dunn yourself, do you?

A. I do.

Q. Do you know a Miss Hutton?

A. I do.

Q. Do you remember talking with her about Dunn?

A. I used to talk to Dorothy Hutton; yes.

Q. And do you remember telling her that you didn't care for him at all?

(Objected to.)

A. That was after we went to New York, when he was treating me like a dog.

Q. And do you remember telling her that you didn't want him but you were going to see him suffer?

A. Never.

10

Q. You don't remember saying that?

A. Never.

Q. What did you say?

A. The only words I said, that he will suffer, that God will make him suffer like he made me suffer.

Q. Now, about this announcement, Miss Barnett, the first announcement that you have spoken of; do you recall exactly what month that was and the year?

A. Which one?

Q. The first.

20

A. It was in the State Gazette, March, 1923.

Q. Do you recall Mrs. Dunn calling to see your mother about this announcement?

A. She did.

Q. And do you recall what was said about this announcement by Mrs. Dunn to you or your mother, or both?

A. Not to me. She just said that she didn't want her son—

Mr. Cougle—I object to that. I do not see 3 where it is relevant.

The Court—I will admit it.

The Witness—She told us that her son wasn't of age.

Q. How old was her son at that time?

A. Going on for nineteen. He was eighteen years old.

Q. That was in 1923?

A. 1922. He was sixteen when I met him. In 1923 he was seventeen.

Q. Then he wasn't nineteen?

A. He was seventeen.

Q. Which is it, nineteen or seventeen?

A. Seventeen. If his mother didn't have power enough to keep him away from there, that was her fault, if he wasn't man enough—

Q. That is the way you felt about it, isn't it?

10 A. (No reply.)

Q. Now, do you recall what Mrs. Dunn said to your mother about your announcement?

A. I don't. I only know she said she thought her son was too young.

Q. Don't you remember that Mrs. Dunn said that she knew nothing of this affair and wanted to know how it got in the paper?

A. She did.

Q. Well, now, why didn't you just say a moment ago
20 when I asked you that question, or make the answer that you have just given?

A. You didn't ask me that question.

Q. I asked you what Mrs. Dunn said. You said she didn't say anything, except that her son was too young.

A. She said those words.

Q. Now, when Mrs. Dunn said to your mother, or asked your mother how that announcement got in the paper, do you recollect what your mother said?

A. My mother didn't announce it. She didn't put
30 it in the paper and didn't know anything about it.

Q. I am asking you if you recall what your mother said.

A. She didn't know anything about it. She didn't put it in herself. She didn't know anything about it.

Q. You are sure you didn't put it in?

A. I was with him when he wrote it out. He asked me if I would go on, if I thought enough of him to marry him, and I said yes.

Q. That was some year or so after you met him, or about a year after you met him, and surely seven or eight months after you had received this engagement ring. Do you mean to say he asked you then if you loved him?

A. Before he gave me the diamond ring?

Q. I am speaking of when this announcement went in; is that the time? At the time when the announcement was being prepared, as you say, by him, is that the time that he asked you if you loved him? 10

A. No, sir; he asked me several times before that, before he gave me the diamond ring.

Q. Well, how about since?

A. Ever since, all along, ever since I have been going with him.

Q. I am confining myself particularly to the time this announcement went in the paper. Did he then ask you, after the announcement went in the paper, whether you loved him?

A. Yes, sir. 20

Q. Did he so ask you?

A. He did.

Q. Now, I ask you if you knew that he was going to have this announced before the time that he prepared this for the paper.

A. I do.

Q. And what did he state?

A. He had talked it over for two weeks, him saying that he was going to announce it.

Q. Well, do you recollect that there was considerable
30 trouble about that announcement at that time in that you were asked by Frank Dunn how that announcement got in the paper?

A. Never. Not by Frank Dunn, never.

Q. By whom?

A. By no one only my own mother.

Q. What did you tell your mother at that time?

A. I told her that we announced it ourselves, Frank and I.

Q. Did your father know it at that time?

A. He wasn't living at home.

Q. Where was he living?

A. I couldn't tell you.

Q. He had left sometime before, hadn't he?

A. He had.

Q. After the announcement was anything said by you to him of getting married at the time when you were to be married under this announcement?

10 A. I don't recollect what you are saying, or understand what you are saying.

Q. The announcement went in the paper, as you say?

A. It did.

Q. And after you saw it in the paper, did you say to Frank Dunn, "We shall be married on such and such a day"?

A. I never did, never.

Q. Why?

A. He said to me that we were to be married in 20 September, that following year, 1923, when it was announced and when September came he didn't marry me and kept putting it off year after year.

Q. But why?

A. I couldn't tell you why. It was just the old cry, that he didn't have any money. Why did he announce it?

Q. Now, when September came and you found that he hadn't complied with his promise, what did you do?

A. I kept right on going with him, as he said he 30 would marry me just as soon as possible and I believed him.

Q. Until the second announcement?

A. Until the second announcement, which he said that he would marry me, September again, that year, 1924.

Q. How did that second announcement get in the paper?

A. He wrote that himself.

Q. Again?

A. Again, positive.

Q. You saw him write it?

A. I did. He had it in his pocket. The morning he mailed it I was with him.

Q. What day was that?

A. I couldn't just recall the date. It was in March.

Q. He wrote it?

A. He did, at his house.

Q. What paper was that sent to?

A. The Trenton Evening Times.

Q. And was there anything said about that announce- 10 ment by his mother?

A. There was not.

Q. Or your mother?

A. There was not. My mother wasn't living in Trenton at that time.

Q. Your mother didn't know that you were to be married?

A. She knew all right that he was going to marry me. He kept telling her.

Q. She didn't know that you were going to put your 20 announcement in the paper?

A. She didn't know.

Q. Now, Miss Barnett, didn't you go in person to the Trenton Times?

A. Never, never inside of the Trenton Times.

Q. And have this announcement put in?

A. Never. That was sent by mail by Frank C. Dunn, which I received a letter from them asking me if I wanted it printed, which I showed him, and which contained the date and everything to be printed out as it 20 was, which I sent the letter back to them. They have that letter.

Q. They do have that letter?

A. They do.

Q. Have you seen that letter?

A. I have not.

Q. How do you know they have it?

A. They keep all such letters, announcements and such things.

Mr. Cogle—We have the letter, if you want it.

Q. Now, I ask you, Miss Barnett, about this time that you went to Dr. Tempesto—when was it that you first went to Dr. Tempesto?

A. In the latter part of April or the first of May.

Q. What year?

A. 1924.

Q. Why did you go there?

10 A. Because I was pregnant by Frank Dunn, which he didn't believe it was so, after he was so lucky for two years and a half, and he didn't believe it was so. He went with me and he said, "Don't tell me, probably it is not," He sat in Dr. Tempesto's office and Dr. Tempesto saw him in there. He said, "Is that the fellow?" and I said, "Yes." He said, "Why doesn't he marry you?" and I said, "He has no money, that is his cry."

The Court—That was the first time?

20 The Witness—No, sir; that was the second time; twice we went there.

Q. Now, on that first time why did you go to Dr. Tempesto at all if you were not going to tell Dr. Tempesto what your condition was, if you know?

A. He told me not to tell him.

Q. I ask you now, why did you go to Dr. Tempesto at all?

30 A. Because he took me there. He said he didn't think it was so. He said he thought probably I had a cold.

Q. Did you know that you were pregnant?

A. I knew, any girl would know.

Q. Why didn't you say to—

A. I told him—I told him thousands of times, but he didn't believe it. He gave me these pills the first time and they didn't work and in the meantime he got a box of pills from a doctor on Hanover Street. He said he knew a fellow that had a girl in trouble and he brought them to me and told me to take them every day.

When I went to Dr. Tempesto he gave me the same pills. I said, "Here are the same pills and if these pills won't do me any good why will these?" That didn't convict him. He didn't believe it.

Q. I ask you why did you permit this, knowing that you were pregnant, to go to Dr. Tempesto and simply tell him you had a cold.

A. That was the force from him.

Q. Did he have anything to force you with?

A. He took me there.

Q. But you went there willingly, didn't you?

A. Willingly, no.

Q. Why did you go?

A. I told him I didn't want to go.

Q. Why did you go at all?

A. He forced me to go.

Q. Isn't this why you went to Dr. Tempesto: that Frank Dunn had charged you with being in this condition as a result of having had intercourse with some one else?

A. Never.

Q. And that you went there for the purpose of finding out whether you were pregnant or not?

A. Positively; yes, yes.

Q. That is true; isn't it?

A. Yes, sir.

Q. Now, just what is, that you went there to find out whether you were pregnant or not from this person that you had intercourse with, or that—

Mr. Cogle—I object. The question is misleading. Do you mean the defendant? You said you had never been with any one else.

The Witness—Never.

Q. Now you didn't tell Dr. Tempesto the truth?

A. Not the first time, no.

Q. And do you realize that you are under oath?

The Court—Why ask such a question as that? There is nothing to indicate that this witness does not realize it.

Mr. Rimo—She admits she didn't tell Dr. Tempesto the truth,

The Court—She wasn't under oath. She simply told him her menses had stopped. She wasn't under oath and she thought she had a cold. She didn't have to tell the truth.

Q. Now, the second time you went to see the doctor what did you tell him?

A. He told me to tell him the truth and these pills
10 didn't give me any relief and that convinced me he knew that I was pregnant, which I was.

Q. Now, when was the second visit you made to the doctor?

A. The week after.

Q. In what month?

A. The latter part of May or June.

Q. Well, can you say which month it was?

A. I couldn't tell you just exactly. I was almost
three months gone. That is all that I can tell you.

20 Q. Now, did you have any intercourse with Dunn during the month of June, the same month that you went to Dr. Tempesto, or in the month of May?

A. I didn't.

Q. Are you sure?

A. I didn't.

Q. Now, you testified on your direct examination that he wrote a letter and he said that he would come back with me and he did. Now what letter did you speak of?

A. That was in February; that was the month when
30 he was not going with me.

Q. What did he say in the letter?

A. In his letter—I can't just recall what he said, that he would come back with me and stick with me, as he knew that he hadn't had any harm.

Q. Now, when was it that your mother left Trenton?

A. That I couldn't tell you. I was living at Large's. I couldn't tell you when she left Trenton, some time in June, 1924.

Q. You said that you lived on Burke, or Berg Avenue, until he persuaded you to leave your parents?

A. Yes, sir.

Q. Now, just how did he persuade you to leave your parents?

A. My mother got tired of him coming to the house, she had her suspicions of what was going on. She just told him to stay away. He said, "I won't and no one can make me. If I do have to stay away I will take her away from home," which he did. 10

Q. Is that about the time that this announcement went in the paper?

A. It was in the paper before that. When we lived on Berg Avenue, in March before that, it was in the paper.

Q. I think that is all.

Redirect examination, by Mr. Cogle.

Q. From September, 1922, up until the present time you haven't had sexual relations with any other fellow, 20 have you?

A. Never.

Q. Did you ever have these relations with any other fellow but this defendant?

A. Never.

Q. But you say that this defendant, during the month of April and during other months of the same year and the last time or times you went to the doctor's office in New York, constantly affirmed his intention of marrying you during September of 1924? 30

A. Positively.

Recross examination, by Mr. Rimo.

Q. Isn't it true that you left the house because your mother put you out?

A. Never. She didn't ever put me out of the house, but on his accord, he took me away.

Q. He took you away?

A. He took me away from home, as he was forbid to come to see me at our house.

Dr. Joseph A. Tempesto, called as a witness on behalf of the State, being duly sworn, testified as follows:

Direct examination, by Mr. Cougle.

Q. Doctor, you are a practicing physician in this city?

A. Yes, sir.

Q. You were practicing in April, 1924?

10 A. Yes, sir.

Q. Do you remember having seen this girl, Madalyn A. Barnett, at any time during June or July?

A. I saw her at my office the first time June 17, 1924.

Q. Do you remember just the circumstances of her call?

A. I happened to know the girl, the family, very well. I think on the first call she didn't come out with the story straight, because she complained of constipation the first time.

20 The Court—Did she come alone or some one with her?

The Witness—She came alone, in the office.

Q. She came alone in the office. Was there anybody else in the place, in the house, that came with her?

A. There is always some one in the waiting room.

Q. And do you know whether anybody was out there?

A. No, sir. She told me her menses were behind two months.

Q. Two months.

30 A. And she felt she had not come around on account of being chronically constipated. I treated her for chronic constipation. My record shows that I gave her a laxative, pills, extract of cascara.

Q. And did you see her again?

A. She came back to my office some two weeks later and told me that she didn't have her menses, they hadn't come around. I said, "Madalyn, there is no use of your lying here to me. You know you are in the family way, and she said, "Yes, I am."

Q. Was Dunn with her?

A. No, sir; I didn't see him.

Q. Did you examine her to find out if she was in the family way?

A. No, sir; because if she was in the family way I wasn't going to handle it.

Q. Did she have anything to say?

A. She asked my advice. I told her to go and tell her mother about the predicament she was in and she said she wouldn't do that, she didn't want to put her family in any embarrassing position, and she wanted to know what was to be done. And a patient had been in my office before Miss Barnett had been in and had come there to ask if I couldn't do anything for her, because she had been to a certain physician and her sickness didn't come around even when he had—whatever he had done to her—I don't know. So having that name in my mind when Miss Barnett came in I said, "I understand this doctor does some things, so you may go down and try your luck with him." Some three months after this she came back to my office and told me this physician had taken her to New York—

Mr. Rimo—I object, unless Mr. Dunn the defendant was present.

The Court—Yes.

Q. Well, was Dunn at any time present while she was talking to you about this?

A. No, sir.

By the Court.

Q. Well, he wasn't present in the consulting room; was he in the waiting-room?

A. I couldn't see him myself.

Q. You didn't?

A. No, sir.

By Mr. Cougle.

Q. It may have been possible he was out there?

A. Yes, sir.

- Q. Did you see her leave with anybody else?
 A. She told me her friend was in the waiting-room.
 Q. When did she tell you that?
 A. On the second occasion.
 Q. When?
 A. On the second visit. I never saw him.
 Q. Did you see him?
 A. They came in one door and went out the other.

10 By the Court.

- Q. You were looking after the patients, I suppose?
 A. Yes, sir.

By Mr. Cogle.

Q. Now, as to her condition, could you tell, aside from what she told you, whether she was pregnant or not?

A. I didn't examine her. I couldn't say. She told me she was pregnant to the extent of two months.

20 Mr. Cogle—I object to that and ask to strike it out.

The Witness—I was away in October. She told me—

By the Court.

Q. Did you ever treat her after that?
 A. I sent her to St. Francis, where she had an operation.

Q. Did you treat her at St. Francis?

30 A. No, sir; I sent her to Dr. Sommer there.

By Mr. Cogle.

Q. Did Dr. Sommer do it?

A. I think the records of the hospital show Dr. Sommer.

Q. Did you make an examination of her at the time you sent her to the hospital?

A. Well, yes, an external examination, abdominally. She was very tender over the appendix at the time she

was operated on for appendectomy, removal of the appendix.

Q. You were not present at the time of the operation at all, were you?

A. No, sir.

Cross-examination, by Mr. Rimo.

Q. There is just one thing. Dunn at no time—do you know Frank C. Dunn?

A. I don't know him.

Q. And no young man while she was coming to see you on any occasion spoke with you?

A. No, sir.

Q. Or talked with you?

A. No, sir.

Mr. Rimo—That is all.

Recess to 2.00 P. M.

(Trial of the cause resumed at 2.00 P. M.)

2 Mrs. Netta Barnett, called as a witness on behalf of the State, being duly sworn, testified as follows:

Direct examination, by Mr. Cogle.

Q. Where do you live, Mrs. Barnett?

A. Passaic, New Jersey.

Q. And are you the mother of this young lady, the complaining witness, in this suit?

A. I am.

Q. Do you know this defendant?

A. I do.

Q. Did you ever see him with her?

A. I have.

Q. Do you recollect when you first saw him?

A. One evening in May, he came home with my daughter from a dance.

Q. In May, 1922?

A. May, 1922.

Q. And after that was he frequently or not in her company?

30

A. He was, every night or two, only when they would have their little arguments and then they would make up; only nothing but little petty arguments, that was all they would have, and then he would come back and they would make up.

Q. How long did he continue to come to the house?

A. He continued to come to the house until my daughter left home.

Q. When was that?

10 A. 1923, in the latter part of August.

Q. The latter part of August, 1923?

A. In 1923.

Q. Have you had any talk with him relative to his intentions?

A. When we lived on Emory Avenue, when his mother came to my house and asked me to keep her son away from there and he told me that also when I lived near the drug store.

Q. Do you know when they became engaged?

20 A. The only way I knew they were engaged, I read it in the newspaper and then I taxed my Madalyn in regard to my name being put to it. I didn't sanction it. Madalyn said she and Frank made it up between them and put it in the paper and in the meantime there was a ring given to her. She said it was an engagement ring—

The Court—Not what she said. Anything the defendant said you may testify to. Did you ever talk about it, about their marriage?

30 The Witness—He told me he intended to have Madalyn, he didn't care what his mother said, I or any one.

Q. When did he first say that?

A. He said it when he first started to go out with my daughter, and the father objected to his coming to the house, and he said nobody could keep him away from Madalyn, she was the girl that he wanted.

Q. Do you remember seeing her wear the ring?

A. Yes, I do. She wore it on the left hand, the third finger.

Q. Do you remember when she got that ring?

A. I do.

Q. What do you know about the circumstances surrounding that?

Mr. Rimo—I object to that, so far as this witness is concerned.

The Court—She is being asked about it, if she didn't know anything about that. Anything 10 that the defendant may have said, Dunn, in regard to it.

The Witness—What about?

The Court—In respect to the ring.

The Witness—That he gave her a ring?

The Court—Yes.

The Witness—She admitted— No, I asked about the ring, and he denied it for a time, and he said finally that it is an engagement ring. His mother had come to the house— 20

Q. When was that?

A. In September, on Sunday. I can't recollect the date.

Q. 1922?

A. No, sir; 1923.

Q. Now, after that time, what was his conduct towards your daughter?

A. Well, yes; sir; I know they was perfectly all right, because I trusted my daughter and I always trusted the chap— 30

Mr. Rimo—I object to this characterization.

Q. And how long? Was it frequent?

A. He was to the house frequently. He was to the house and they would spend the evening in the home.

Q. Do you know what time they left at night?

A. Between eleven and twelve o'clock. That was one thing I couldn't get clear of all the time and that was one thing that the father objected to, to him coming

so frequently. He was a sticking plaster. When he came he didn't know enough to go.

Q. Did he leave before you retired or not?

A. No, sir; he never did.

Q. What year was it she left home?

A. 1923.

Q. Why did she leave home?

A. Simply because I objected to it. Their arguments were getting on my nerves. They were getting the best of me, them arguments. I objected to them and I said, "Why don't you break it off? Why do you and Francis keep going together?" We never called him Frank. She said, "I care for him and he cares for me. I am going to have him. I told him you objected and to stay away, that was the best thing that he can do." And he said he won't stay away from Madalyn, that was all, and I can't make him. Madalyn got irritable and cranky with me and despondent and wouldn't listen to what I said. That was on Sunday. And they had an argument on Tuesday evening and she left me, and Frank Dunn was waiting at the corner of Berg Avenue, and she packed her grip and left the house without saying good-bye or where she was going.

Q. Did you see him waiting on the corner?

A. I saw him waiting on the corner.

Q. When did you say this was?

A. 1922, the latter part of August.

Q. After that time did you see them together?

A. I have seen them together, yes.

Q. Where?

A. I saw them on the street together.

Q. Anywhere else?

A. No, sir; they never came to my house.

Q. Did you have any other conversation with him about it?

A. Yes, I had conversations with him.

Q. What did he say?

A. He didn't say anything.

Mr. Rimo—I object. I would like to know when.

By the Court.

Q. After your daughter left home, when did you speak with him?

A. I was keeping house with Mr. Wright. They came to see me while I was there.

By Mr. Cogle.

Q. When was that?

A. It was in January, 1924.

Q. January, 1924?

A. That was on Berg Street. They passed the house and Madalyn came over to see me. They came quite often there while I was keeping house with this gentleman. I had my two sons there with me.

Q. And what was said? Anything said about them being married?

A. Not while I was there, no.

Q. Did you ever hear him state anything further than you have stated to me contemplating marriage?

A. He said he would have Madalyn, he intended to marry Madalyn when he was old enough, no matter what his mother said or any one else said, he intended to marry Madalyn.

Q. Did he say that more than once?

A. Yes, sir; he often said that, even after his mother left our house.

Q. And after that did he say anything else?

A. After when?

Q. After the evening that his mother was to your house.

A. Why, he frequently said he was going to have Madalyn.

Q. Now, after the time that she saw you and you were at Mr. Wright's?

A. Yes.

Q. And did you see her and he in company?

A. Why, she would quite often go to work with him, backwards and forwards with him and they would stop over to Mr. Wright's together and come over and see me. Then, after I left there I didn't see her for quite sometime. I went with my married daughter.

Q. Where was that?

A. That was down on Jersey Street, 316 Jersey Street. They came and called on me one Sunday, him and Madalyn. In the meantime there was another engagement I didn't know about. Then I asked Madalyn about that and he said, "We are to be married in September."

Mr. Rimo—That is objected to.

The Court—Was he there?

The Witness—Yes, sir.

Q. What was said between you? What was said, talking about this announcement that appeared in the paper?

A. They were to be married in September.

Q. That was all he said?

A. They both said it. Madalyn said it and he sanctioned it along with her.

Q. Did he say why he was putting it off till September?

A. No, sir; because I never asked him why he had put it off.

Q. Now, from that time on—what month do you suppose that was? It was after March, after the announcement appeared in the Trenton Times?

A. It was.

Q. After this conversation with him did you have any other conversation?

A. I didn't see him any more after that.

Q. Do you know anything about their relationship after that?

A. No, sir. I left Trenton in May and went to Passaic and I knew nothing until in October I received a letter, my daughter had been taken—

Mr. Rimo—That is objected to. Now, just a minute.

Q. Now, do you know anything about your daughter's condition during the summer of 1924?

A. I do not.

Q. When did you next see her after you left Trenton?

A. In October, when I was sent for, she was taken to St. Francis Hospital.

Q. You saw her at St. Francis Hospital?

A. I did.

Q. Was that the early part of October or not?

A. That was the first or second week in October. I can't just recollect the date. It was early in October, I know.

Q. And you were down there?

A. No, sir; I never was to the hospital.

Q. And where does she live now?

A. Where does she live now? She lives home with me now. She came home on the 10th of January, 1925.

Q. That is where?

A. That is in Passaic.

Q. How old is she?

A. Nineteen.

Q. When was she nineteen?

A. Nineteen last year, April 3d.

Mr. Cougle—I guess her age is conceded, Mr. Rimo.

Mr. Rimo—Yes, sir.

Q. Do you know of her reputation for chastity in the community in which she lives?

Mr. Rimo—That is objected.

The Court—What is it? On what ground?

Mr. Rimo—On the ground that this is the mother of the prosecutrix.

The Court—But does that disqualify her from being a witness as to her reputation?

Mr. Rimo—I do not think it is permissible for the mother of the prosecutrix in a case of this

kind to testify to the character of her own daughter.

The Court—Have you any authority for that?

Mr. Rimo—I will confess just at this moment I have not. But I think I have read of a case where a mother in a seduction case cannot testify to the character of her own daughter.

The Court—It is not a question of character, it is a question of reputation.

10 Mr. Rimo—Reputation or character.

The Court—It is reputation, not character.

Mr. Rimo—It is reputation I am asking about. (Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

Judge (Seal).

The Court—The question is do you know your daughter's reputation for chastity—prior to what time, unless it is alleged—prior to what time? Prior to the 1st day of May, 1924?

20 Q. I will ask you, prior to the 1st day of May, 1924.

A. Her character was all right. She never kept company with anybody.

The Court—The question is what was her reputation for chastity.

The Witness—Good, good.

The Court—All right.

Cross-examination, by Mr. Rimo.

30 Q. You didn't ever discuss her reputation with any one? Her reputation hadn't never been brought to your attention by anybody prior to the time that she was living with you and shortly before 1924; is that true?

A. No, sir.

Q. And you never discussed it and never had any conversation with anyone?

A. No, sir.

Mr. Rimo—I ask now, if your Honor please, that her testimony in reference to reputation be stricken out.

The Court—Well, you already have an exception on the record as to the admissibility of the testimony.

Mr. Rimo—It is excluded?

The Court—Yes, sir.

By Mr. Cogle.

10

Q. You never heard anybody say anything adverse to her general reputation for chastity?

(Objected to.)

The Court—The objection is sustained.

Mrs. Lillian Large, called as a witness on behalf of the State, being duly sworn, testified as follows:

Direct examination, by Mr. Cogle.

Q. Where do you live, Mrs. Large?

A. 209 South Clinton Avenue.

20

Q. Do you know Madalyn Barnett?

A. I have known her for the past two years or a little more.

Q. And do you remember when you first met her?

A. Yes, it was at a party in my house, given by one of my boys on his birthday.

Q. And after that did you ever see her again?

A. Yes, sir; on the second occasion, a party given at my house, she came with Frank Dunn. He brought her there and after that, some time after, he came and asked me if I would take Madalyn to board. I told him that I didn't have any room at that time and I didn't take girls as a rule, but I had a single bed in my mother's room and I would take her if she was satisfied to stay in that room with my mother, I would take her for a while, and she could stay or make a change as she saw fit.

30

Q. And did she stay there?

A. She stayed two years, I think; but perhaps a little less.

Q. That is, she stayed from August, would that be about the time she came there? What time did she come to your house?

A. It was in the early spring, I think.

Q. She stayed then until what month?

A. She stayed until, I think it is two or three months ago; but I can't just remember.

10 Q. Well, until—would you say until she went to live with her mother?

A. Yes, sir; she stayed until she went to live with her mother.

Q. Now, during that time that she was staying at your house did you see this boy (indicating defendant) there frequently or not?

A. Yes, at first.

Q. And did he come there quite a lot?

A. Every night.

20 Q. And did he stay for a considerable period when he came?

A. He stayed late on two or three occasions and my husband spoke to me about the lateness, and I told him that he couldn't stay after the other members of the family had retired, that he should go home earlier.

Q. What did he say?

A. He didn't say anything; all right.

Q. Did he ever speak to you about Madalyn?

A. No.

30 Q. Ever say anything about his intentions or not?

A. No.

Q. Do you know why he stopped coming to your place?

A. My husband stopped him coming to our house.

Q. What did you say?

A. My husband stopped him coming to our house.

Q. He did?

A. Yes.

Q. Do you know why?

Mr. Rimo—I object, if your Honor please.

The Court—Not why. She can say what her husband said to him.

Mr. Rimo—If there was any conversation between them.

The Court—You may relate the conversation between your husband and the defendant, if you were present.

The Witness—Why, my husband was on one occasion—

10

The Court—In his presence. Anything you heard your husband say in his presence.

The Witness—"Frank, I don't want you coming here. I won't have you coming here. I want you to stay away."

Q. Was that all?

A. All that I remember.

Q. Now, you say you have known this girl for about two years and even longer than that? You knew her before her coming to live at your house, because she had been to parties there?

20

A. Yes, sir; that is it.

Q. You know of her general reputation, don't you?

Mr. Rimo—I object that the question is leading.

The Court—The question can be put in this form, whether or not she knows this girl's general reputation.

Q. Well, do you know the general reputation of Madalyn Barnett for chastity in the community in which she lives?

30

The Court—That question is do you know that reputation. You can answer yes or no.

Mr. Rimo—At a certain time.

The Court—Prior to May 1, 1924.

A. Yes, she was a good girl.

The Court—She has answered it.

Q. What was that reputation?

A. She was a good girl, as far as I know.

Q. Now, the question is what was her reputation, was it good or bad?

A. Good.

Cross-examination, by Mr. Cogle.

Q. You hadn't ever had occasion to speak to anybody about her reputation, or any one in your hearing charge her with wrong, that you know of?

A. No.

10 Q. But you hadn't talked with anybody about her reputation, had you?

A. No, sir.

Q. You hadn't had occasion to speak to anybody about her reputation during any of the time that you had known her, had you?

A. No.

Mr. Rimo—Now I ask that the testimony of this witness be stricken out, upon the ground that she has not testified to anything that could cause her to know her reputation. She said she never spoke with anybody about it.

20

The Court—I will overrule your motion.

Mr. Rimo—I will ask you for an exception, on the ground that there has been no testimony given by this witness to the effect that she ever had occasion to speak with anyone with reference to the reputation of the prosecutrix, as to her chastity.

The Court—The motion is overruled.

30

(Whereupon the defendant, by his counsel prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

Judge (Seal).

Mr. Cogle—I have nothing further.

Q. Just one question, Mrs. Large, during the time that Miss Barnett lived at your house, do you recall an occasion when Peter Tamilo, or a young man by the name of Tamilo, called to see Madalyn Barnett?

A. Not in the time she was in there, but I never knew any other young man to call on Madalyn.

Q. Do you remember a time when Mr. Large was present and found that Tamilo was there to see Madalyn Barnett at your house?

A. I remember it, just before Madalyn went home to her mother. Madalyn was talking with the young man on the front porch when he came in and he sent him off home and he told Madalyn to go on in the house.

10

By the Court.

Q. When was that?

A. Just before she went home to live with her mother, two or three months ago.

Q. Was that before or after the boy stopped coming to your house?

A. After.

The Court—That is all.

20

Bob Large, called as a witness on behalf of the State, being duly sworn, testified as follows:

Direct examination, by Mr. Cogle.

Q. Mr. Large, where do you live?

A. South Clinton Avenue, 209.

Q. And that was your wife who testified?

A. Yes, sir.

Q. Do you know this Madalyn Barnett?

A. I have been knowing her for two years.

Q. And have you seen—

A. Yes, sir.

Q. Did you see her at your house at various times?

A. Yes, sir.

Q. And did you ever see this defendant there?

A. Yes, sir.

Q. Will you tell us the first time you ever saw her?

A. The first time I ever saw her, he and my wife and mother-in-law was sitting on the front porch. I

30

suppose he brought her over there, with a grip, and he asked us did we have a room and I told my wife we didn't take any girls, see? So he said it was getting a little late, it was pretty hard to find a room, and so my wife said, "Well, I will tell you. I can keep her a while, if she wants to sleep in the room with my mother-in-law." She said, "Well, that will be all right." So we took her.

Q. And when was that?

10 A. Well, I can't tell the date, I couldn't say, but I know it was pretty nearly two years ago.

Q. During 1923 sometime, do you suppose.

A. Some time around there.

Q. After that she stayed there for some considerable time, did she?

A. Yes, sir.

Q. And did you see him there?

A. Well, we let him come there for a while, you know. We gave him his orders, 9:30. I work at
20 nights, you see, and I couldn't be at home, and we gave him until 9:30 to come. So we caught him stealing our Victrola records and I ordered him to stay away from my house. I didn't want any thief in my house.

Q. After that time did you ever see him out with her?

A. Oh, yes; he came there and called every night.

Q. Came and called for her every night.

A. Every night, he never came in my house after that time.

30 Q. Did you ever hear him make any statement concerning his relationship with this complaining witness that is, this Madalyn Barnett?

A. No, I never heard him say anything.

Q. He didn't talk to you about it?

A. No, sir. He told me he was going to get married, you know, when he came there.

Q. He told you that when he brought her there?

A. Yes. I told the little girl, "Why don't you stay with your mother?" He said, "We are going to get married," you know, and her mother ran her off.

Q. Her mother ran her off?

A. Yes. I found out later he brought her away from home.

Q. She was there up until very recently at your house, up until the time she went with her mother?

A. Yes, sir; she was there up until a month or two months ago, something like that. 10

Q. Have you ever seen this man Dunn to talk with him about this case?

A. Yes, sir.

Q. Under what circumstances?

A. Well, after this was over with, your Honor—

Mr. Rimo—I object, until the time is fixed.

The Witness—After all of it was over with, you know, she confessed to everything you heard, what happened and all. 20

By the Court.

Q. Can you fix the time when you had this conversation with her?

A. I can't recollect when the time was. I can't say that. I can say after she came out of the hospital, when she started back to work to Goldberg's. She used to come over to my store—

Q. That was St. Francis Hospital?

A. Yes, sir.

Q. And where did you talk to the defendant after that? 30

A. The little girl used to come to my store and come home with me to eat her dinner and go back with me. I used to go with her. And I said to her, "I can't walk on the street with you. I am a married man." I said, "People will think I am running with women." She said, "I am afraid to go by myself, Large, I am afraid he will kill me."

Mr. Rimo—That is objected to.

The Court—We do not want that, conversations you had with the defendant, not with Madalyn. Did you ever talk with him?

The Witness—Yes, sir. I am telling you now.

Q. Now, tell us what you said to him.

A. I asked him why didn't he go ahead and squash this case and marry the girl. I said, "You know you ought to marry her," and he told he, he said, "I will 10 squash the case all right." I said, "How in the world are you going to do it? He said, "By lying." That is what he told me. I said, "All right. You tell the Judge that," and I left him and the little girl came home.

By Mr. Cogle.

Q. Do you know this girl's general reputation?

A. So far as I know her she is a nice girl.

The Court—Wait, wait. Her reputation for 20 what?

Q. Do you know this girl's general reputation for chastity in the community in which she lives and with the people among whom she associates?

The Court—Particularly when?

Q. Particularly about May, 1924.

A. I didn't see her associate with anybody but him.

Q. The question is if you know her reputation for chastity.

A. No, sir; I never did know nothing wrong with 30 her.

Q. You knew nothing wrong with her? But did you know her reputation? Was it good or bad?

A. It was good, so far as I know.

Q. That is all. You say her reputation is good?

A. Yes, sir.

Cross-examination, by Mr. Rimo.

Q. You hadn't had occasion to speak with anyone about her reputation at all, had you, since you had known her?

A. No, sir.

Q. That is why you say it is good?

A. It was good, because I have known her.

Q. Well, you haven't had occasion to speak with any person about her reputation at all, for chastity?

A. No, sir.

Q. Now, you say the first time that you saw her was when he brought her there?

A. Yes, sir.

Q. And had you known of the parties that had been 1 had at your house prior to her coming there to live?

A. What is that?

Q. Did you know of the parties which were being had at your house?

A. Being had?

The Court—Any parties at your home since she had been there.

Q. Were there any parties in your home in which Madalyn was one of the guests prior to this time that she came there with Dunn? 20

A. I don't get that.

The Court—Any social gatherings of any kind when she visited your home?

A. Oh, yes, yes, yes.

Q. She was there?

A. No, sir; not that I know of.

Q. Were you there?

A. Well, I was there all during the day and when night would come I wasn't home.

Q. I am speaking of these parties. Did you know 30 of these parties?

A. I know of one party we had, the boy's birthday. It was a big party there that night.

Q. Was Madalyn there?

A. Well, I didn't know her at that time.

Q. You saw her at that time?

A. I know Frank had a friend with him. I couldn't say whether it was Madalyn or not, because I didn't know Madalyn at that time.

Q. Well, do you remember now whether it was the same girl that you saw there at this party?

A. No, sir.

Q. You don't remember that part of it?

A. No, sir.

Q. About this time that you spoke of, that you caught him stealing records?

A. Yes, sir.

10 Q. Now, just how did you come to catch him stealing these records?

A. I didn't catch him myself.

Q. Why did you say that you did?

A. I said we caught him.

Q. Who is we?

A. Why, my family.

Q. Who is the family?

A. My wife, the other two boys and my mother-in-law.

Q. You didn't see him.

20 A. No, sir; I didn't see him take them. I knew they came back and he brought them back.

Q. Now, did you ask him for them?

A. I will tell you. We asked him for them, see? The oldest boy was a State police, which he is now, and he told him he better get these records back there before he told me about it, because I would have him arrested and they came back and afterwards the other one came back.

30 Q. And is that what compelled you to go to him and tell him to keep away from the house?

A. To keep away from the house, yes.

Q. Now, where did Madalyn sleep in this house?

A. Madalyn slept in the room with my mother-in-law.

Q. What floor was that on?

A. On the first floor.

Q. On the first floor?

A. Well, you go up one stairs. It was the second floor, I mean.

Q. Do you remember having an argument with Dunn about you going into her bedroom?

A. I will tell you now how that was. The only time ever I was in her bedroom was when she came back from New York. She said she was going over to New York to see her people and when she came back she was upstairs and she never went to work and I came in from work that morning, I know I came in that morning, and my mother-in-law says, "There is something says, "She won't answer anybody." "Well," I says, "I 10 says, "What is the matter with her, can't she talk?" She says, "She won't answer anybody." "Well," I says,, "I will go up and see if she needs a doctor or anything." So I goes up and goes in the room—the door was open—and I says, "Madalyn, can I come in a minute?" She never gave me any answer and naturally I walked over and said, "Madalyn, what is the matter with you?" She wouldn't answer me. I said, "I am going to get a doctor and find out what is the matter with you, what is wrong with you," and she wouldn't answer me. And 20 I says, "Well, we will find out what is wrong with you. I am going down here and call an ambulance and I am going to take you to the hospital right now." She didn't give me any answer yet and I goes downstairs and I called my wife and mother-in-law and says, "The best thing that we can do is call an ambulance and take her to St. Francis Hospital and find out what is the matter." In the meantime Madalyn jumps out of bed, dresses and comes downstairs for a cup of coffee. I says, "What is the matter with you, you won't talk," I says to her there 30 in the presence of my wife and mother-in-law. "There is something wrong here," I says, "you better tell me right now. If you don't I am going to get an ambulance and you will have to go to the hospital." Still she says nothing but, "I am going to work to-day at noon."

Q. Was Dunn there at that time?

A. No, sir.

Q. So that everything you are testifying was while Dunn wasn't present?

A. Dunn wasn't present any of the time. He got her out in front of the home and started a racket with me and I said, "Madalyn, get in the house," and he would say, "Come on down. I can lick you." And you know one night they were arguing out in front and woke up the neighbors, and such as that. He was all the time pestering around the house and he wouldn't know any better than to come around at night. So I walked out and I says, "Here you are fighting again in front of my
10 house." He had Madalyn in front of the house and she went in that quick. (Indicating.) He said, "Come off of the steps and I will lick you."

Q. Were you a sort of a father or a guardian over Madalyn that you assumed that position?

A. I didn't allow anybody to stand in front of the house and argue or talk, because it would wake up my mother-in-law.

Q. But you were very much interested in this girl's welfare, weren't you?

20 A. No, not her welfare. I didn't want nothing to go on around my house. I protected my own home as best I could. I told her when she came there and I told him there would be no standing on my stoop and arguing.

Q. Now, when he did come if you felt there was anything wrong going on in your house, or that there was anything wrong, why didn't you tell Madalyn to go too?

A. I told her at the time she wouldn't talk to me, I told her, I said, "You better hunt you another place," I said. Well, the little girl commenced crying and said,
30 "I have no place to go. We are going to get married," and naturally I got sick and I took pity on her and kept her; naturally anybody would that had a heart.

Q. That is the only time you were in her bedroom?

A. That was the only time.

Q. Now, these times when you would be working, when you were going to your place of business—

A. These times?

Q. These times that you would be working, was that by appointment? How did that occur?

A. That occurred on my way to dinner and back.

Q. During the daytime?

A. During the daytime; yes, sir.

Q. Was she working, too?

A. Yes, sir; working every day, except the days she was sick and couldn't work.

Q. And did she work in the store where you worked, in the same direction?

A. I have a store at Front and Montgomery and she had to go out Front Street to Goldberg's. Naturally we
10 came the nearest way. She said she was afraid to come by herself, so naturally we came the nearest way.

Mr. Rimo—I think that is all, your Honor.

The Court—That is all, Mr. Large.

Mrs. Mary Cox, called as a witness on behalf of the State, being duly sworn, testified as follows:

Direct examination, by Mr. Cogle.

Q. Where do you live?

A. 211 South Clinton Avenue.

20

Q. What do you do?

A. Just stay at home.

Q. Do you know Madalyn Barnett?

A. Yes, sir; just to know her, a mere acquaintance.

Q. Have you known her for some little time?

A. The last year.

Q. And do you know of her general reputation for chastity prior to May 1, 1924?

A. Yes, I do.

Q. What is her general reputation?

30

A. Very good.

Cross-examination, by Mr. Rimo.

Q. You say you have just a slight acquaintance with her?

A. Yes; she just boarded with a family that lives next door.

Q. You didn't know anything about her?

A. No, sir; just saw her going in.

10 DUNN

Q. All you know about her was what you saw, going up and down and back and forth to the place where she lived, which was next door to you?

A. Yes.

Q. You didn't discuss this reputation of hers with anyone, for chastity in this community, since you have known her?

A. No, sir.

10 Mr. Rimo—I ask that this testimony be stricken out, because this witness is not qualified to give testimony as to the reputation of the prosecutrix.

The Court—The objection is overruled.

Mr. Rimo—I ask for an exception on that ground.

The Court—You may have an exception.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

20

Judge (Seal).

Mrs. Ada C. McGetrick, called as a witness on behalf of the State, being duly sworn testified as follows:

Direct examination, by Mr. Cogle.

Q. Where do you live?

A. Mercer Street.

Q. And do you know this young lady, Miss Madalyn Barnett?

A. Yes, I know Miss Barnett.

30 Q. And do you know her general reputation for chastity prior to May 1, 1924?

A. Yes, I did favors for Miss Barnett for a while and I know her to be very good.

Q. That is, you know her general reputation for chastity to be very good?

A. Very good.

Q. Very good?

A. Yes, sir; very good.

Cross-examination, by Mr. Rimo.

Q. How long have you known her?

A. I have known Miss Barnett for about three years.

Q. And during your acquaintance with her you have never heard anyone discuss her reputation for chastity at all, have you?

A. No, sir.

Mr. Cogle—Now, do you understand that question?

The Witness—Yes, sir.

10

Q. You have never heard?

A. No, sir.

Q. You didn't have occasion to talk to anybody and no one had occasion to talk to you about her reputation for chastity?

A. No, sir.

Mr. Rimo—I ask that this testimony be stricken out, your Honor.

The Court—Upon what ground?

Mr. Rimo—Upon the ground that she is not 20 qualified. She has not testified that she had occasion to speak with anyone about her reputation.

The Court—That is contrary to my understanding of the rule as to what qualifies a witness. The motion is overruled.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

Judge (Seal).

30

Miss Antoinette Sisto, called as a witness on behalf of the State, being duly sworn, testified as follows:

Direct examination, by Mr. Cogle.

Q. Where do you live, Miss Sisto?

A. 429 Princeton Avenue.

Q. Princeton, New Jersey.

A. Yes, sir.

Q. And where do you work?

A. In the County Clerk's office.

Q. In the County Clerk's office?

A. Yes, sir.

Q. And do you know Madalyn Barnett?

A. Yes.

Q. And you have known her for some time or not?

A. For about three years.

Q. And do you know her general reputation for chastity before the 1st of May, 1924? Do you understand? You do know her reputation for chastity; is that the answer?

A. Do you mean did I know her before 1924?

Q. Did you know what her reputation was?

Mr. Rimo—Yes or no to this. I think we are entitled to this.

The Court—I think you are entitled to that. The question was whether you know her reputation for chastity.

A. Yes.

Q. Well, what is her reputation?

20 A. So far as I have known her, she has always been a good girl.

By the Court.

Q. Well, about her reputation; had she a good or bad reputation for chastity?

A. She had a good reputation.

By Mr. Cogle.

Q. She has a good reputation?

20 A. Yes, sir.

Cross-examination, by Mr. Rimo.

Q. Miss Sisto, you have known her for three years? You have spoken with her?

A. Yes, sir.

Q. You have never had occasion to talk to anyone about her reputation at all have you.

A. No, sir.

Q. They never came to you during the time that you have known her and discussed her reputation for chastity in this community prior to 1924?

A. No, sir.

Q. So that all that you know is what you believe of her, what you think she is, the kind of a girl; that is all, isn't it?

A. Yes, sir; that is all.

Mr. Rimo—I think that is all. Now, if your Honor please, I move that this testimony be stricken out, upon the ground that the testimony does not offer any weight as to the reputation of the prosecutrix in the community in which she lived prior to 1924. 10

The Court—The motion is overruled.

Mr. Rimo—I ask for an exception.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

Judge (Seal). 20

State rests.

MOTION FOR DIRECTION.

Mr. Rimo—If your Honor please, I make a motion to direct a verdict of acquittal in favor of the defendant upon the ground: First, that the State has failed to offer testimony that is of affirmative character of the reputation of the prosecutrix for chastity prior to 1924. The section of the Crimes Act that deals with that situation— 20

The Court—I do not know that you need to go into that at length. The essentials of the indictment are to be proven by the State and are well known and well established under the law.

Mr. Rimo—One requirement is that there must be proof of an affirmative character of the chastity, and I contend, if your Honor please, that there has been no

proof of the reputation of this prosecutrix. There have been witnesses who have come here to testify as to how they thought of the prosecutrix, but no one has testified, none of these witnesses have testified in respect to her reputation that they knew her reputation from having discussed it with anyone and that is the only way, as I take it, your Honor, that one can get a reputation, from discussing about a certain person, either as to honesty, truth, veracity, chastity or any of those

10 qualities.

The Court—Yes, but I say, Mr. Rimo, that a man's reputation is above reproach, and it may be above reproach. Now, do you think that people talk about a man of that kind or a woman of that kind?

Mr. Rimo—I agree with your Honor. But I think, your Honor, that there is a distinction, and the distinction is with reference to reputation; that there must be proof of the occurrence at some fixed time, as to the discussions or conversations as to a person's chastity.

20 The Court—Let us not waste any time on it. I will overrule the motion and grant you an exception.

Mr. Rimo—On that point?

The Court—On that point.

Mr. Rimo—The second point is that there is no proof in this case that the prosecutrix was pregnant. She testifies that she was and that is the only testimony that we have that she was, other than that of Dr. Tempesto, and he very clearly testified that he did not know. The cases seem to hold, if your Honor please, that the

30 evidence of the female must be corroborated by the proof of strong corroborating circumstances, of such a character as clearly to warrant his guilt and overcome the oath of the defendant, and the legal presumption of innocence.

The Court—I think this is a jury question, Mr. Rimo, in this case, and I shall leave it to the jury.

Mr. Rimo—May I ask for an exception, if your Honor please?

The Court—Yes, an exception will be allowed.

Mr. Rimo—And I would like to state my grounds upon the record, that the State has not furnished the supporting or corroborative proof necessary as to the pregnancy.

The Court—The exception will be allowed.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

Judge (Seal). 10

DEFENDANT'S TESTIMONY.

Mrs. Louise Dunn, called as a witness on behalf of the defendant, being duly sworn, testified as follows:

Direct examination, by Mr. Rimo.

Q. Mrs. Dunn, where do you live?

A. 31 High Street.

Q. How long have you lived in Trenton?

A. Twenty-seven years. 20

Q. Are you married?

A. Yes, sir.

Q. Your husband is living?

A. Yes, sir.

Q. And living with you?

A. Yes, sir.

Q. Frank Dunn, is he your son?

A. Yes, sir.

Q. How old is he?

A. Nineteen years old. 20

Q. Do you know Madalyn?

By the Court.

Q. When was he nineteen?

A. Last June.

Q. Nineteen last June?

A. Yes, sir.

By Mr. Rimo.

Q. Do you know Madalyn Barnett?

A. Yes, sir; I do.

Q. The witness who has testified to-day?

A. Yes, I do.

Q. And how long have you known her?

A. It will be three years this fall.

Q. When did you first meet her?

A. When I went up to her mother's house and tried

10 to break it up?

Q. And do you recollect when that was?

A. That was in September.

Q. Of which year?

A. 1922.

Q. How did you come to go to the mother's to try to break it up?

A. Well, I had heard that he had given her a ring and I knew that he was too young to be married, as he was only seventeen. I didn't want to speak to her

20 people. Her mother would have him to come there, but her father strongly objected to it, but he hadn't much to say where the wife was.

Q. And did she speak to you about this matter?

A. No, sir; she didn't. They denied it. They said it wasn't so. They said that he didn't even give her a ring.

Q. Who said that?

A. The mother herself.

Q. And what did Madalyn say?

30 A. She denied it also.

Q. Denied what?

A. That he gave her a ring.

Q. Did you see the ring there?

A. No, I did not.

Q. And was your son with you at that time?

A. Yes, sir; he was out there.

Q. When you say out there do you mean in the house?

A. Yes, sir.

Q. In the house?

A. Yes, sir.

Q. Well, did you talk to her mother?

A. Yes, sir.

Q. Did Madalyn say anything to your son in your presence at that time?

A. No, sir; she did not.

Q. Did your son say anything to her?

A. No, sir.

Q. About this ring that he bought her.

10

A. Yes, sir; they both denied it.

Q. Now, since that time did you see her again?

A. Yes, I did.

Q. And how long was it after that first time that you did that?

A. After she came to our place and told us her mother, or her mother and Mr. Berg, or some man that lived there, that they had put her out of the house. That was a year ago this last August, in 1923.

Q. And did you learn whether her mother had put 20 her out?

A. Yes, sir; she told me so herself.

Q. Who?

A. Madalyn told me so herself, and she had her clothes out in the vestibule.

Q. Did you speak to her mother about that?

A. No, sir; I did not.

Q. Now did Madalyn come to your house very often?

A. Yes, every night.

Q. But your son was there?

30

A. Yes, sir.

Q. Who else lives with you?

A. My husband and Mr. O'Hara, a boarder I have.

Q. And what time would Madalyn go away from there?

A. Well, I couldn't tell you, because we all go to bed, so I couldn't tell you when she left.

Q. Where did she live at the time she came there?

A. At 209 Clinton Avenue.

Q. After that time, after they denied this engagement and about the ring and she came to your house, did you say anything to her about coming there?

A. Yes, I did, to him and her on a couple of occasions, but she always came back and cried again—

Q. What did you put her out for?

A. Well, I had heard from a friend of mine that she wasn't—

Mr. Cogle—That is objected to.

10 Q. Well, did you have a reason?

A. Yes, I had a good reason.

Q. And as a result of the reason or what you learned about, did you speak to her?

A. No, sir; I did not.

Q. Did you speak to your son?

A. Yes, I did.

Q. And did your son and Madalyn get along all right together when she visited your home?

A. No, sir; they argued quite frequently.

20 Q. And what was the argument about, do you recollect?

A. He always said she was going around with other fellows.

Q. She was there, of course? He was talking to her?

A. Yes, sir.

By the Court.

Q. She was coming to your house every night during that time?

30 A. Yes, sir.

Q. So that you mean that literally, every night in the week?

A. Yes.

The Court—All right.

By Mr. Rimo.

Q. What was that, about the fellows?

A. That she was running around with fellows, that was their argument always.

Q. Well, what would she say?

A. Well, I couldn't tell you what she had to say.

Q. Where were you when you heard this argument?

A. The boy told me.

Q. Yes, but I asked you if you heard the argument between him and her.

A. Yes.

Q. When they were talking together.

A. Yes.

Q. What would she say to him about these other 10 fellows?

A. What?

Mr. Cogle—I object, unless some time is set for these things.

Q. When was the first argument that you heard between them?

A. Shortly after she started to come to my place.

By the Court.

Q. They were of frequent occurrence? 20

A. Yes, sir.

By Mr. Rimo.

Q. What did she say?

A. She always denied it.

By the Court.

Q. Well, now, have you heard him charge her with running around with other fellows and her deny it?

A. Yes. 30

By Mr. Rimo.

Q. Were any names mentioned that you know of?

A. Yes, sir; Michael Basso, a fellow that was a boot-black on Clinton Avenue.

Mr. Cogle—I object to that. I don't see how that is relevant. I do not think it has any bearing on the question. The question is, did this fellow promise to marry this girl and what was

her reputation for chastity. I do not see where this bears on these matters at all.

The Court—I will give counsel a little latitude. I do not know what he is trying to develop. I will give him an opportunity to develop it.

Q. Now, Mrs. Dunn, you said you heard some names mentioned?

A. Yes, sir.

Q. Who mentioned those names?

10 A. My son.

Q. To her?

A. Yes, sir.

Q. What names did you hear?

A. Frank Basso. I can't tell you the other fellow. I don't know his name. I don't know him, and Charlie Mack.

Q. Well, what further can you tell us about that, about this conversation where your son accused her of running out with other fellows?

20 A. I can't tell you anything further about it.

Q. Until when did Madalyn come out to your house to see your son?

A. Until last September.

Q. Of 1924?

A. Yes, sir; of 1924.

Q. And did you learn anything further about the marriage?

A. No, sir; I never heard them speak about it, none of them.

30 Q. And did you give your son or loan your son any money?

A. No, I did not.

Q. \$50 or \$100?

A. No, I did not.

Q. At any time?

A. No.

Q. You are positive of that?

A. I am positive.

Q. Do you know much about this girl.

A. Yes, sir.

Mr. Cougle—Well, I will object to that.

The Court—Well, what do you mean by that?

Mr. Rimo—I mean if she knew about any of these meetings with other men.

The Court—Well, she has testified during all this period she knew this girl she came to her house every night and also she was in the daytime at Goldberg's.

10

By the Court.

Q. Working in the daytime and at your house at night?

A. Yes, sir.

Q. All right, go on.

A. Yes, sir.

Q. And your son with her at your house?

A. Yes, sir.

Mr. Rimo—What I mean was if she saw these 20 fellows herself.

The Court—You may ask her that.

A. I don't know these fellows.

By Mr. Rimo.

Q. But you never saw these fellows out with her?

A. No.

Q. Now, Mrs. Dunn, did Madalyn Barnett ever tell you that she didn't want to marry your son?

A. No, sir; she never said it to me. She never spoke 30 of marriage to me.

Q. Never spoke about it at all?

A. No.

Q. Now, can you tell us anything further about any arguments that were had by your son and her in your house?

A. No, sir.

Q. That is all you know about it?

A. Yes, sir.

Cross-examination, by Mr. Cougle.

Q. You say you went to her mother to try to break this up?

A. Yes, sir.

Q. You went there during the month of September?

A. Yes, sir.

Q. To break what up?

A. Them going together. He was too young. He was only seventeen.

10 Q. Eh?

A. He was too young.

Q. Well, of course, he had gone around before, had he?

A. Not with any other girl, no.

Q. Well, did you object to his going around?

A. Not going around. I didn't want him to go with any girl. He was too young, that is all.

Q. Well, you expected him to go around with girls, didn't you?

20 A. Yes, sir.

Q. Well, what was there in particular that you objected to at that time?

A. Well, a young girl came around to our house and told us she didn't bear a very good name.

Q. Well, wasn't it because you thought it was getting serious?

A. Yes, sir; that he gave her a ring, and they heard that.

Q. And that he gave her a ring?

30 A. Yes, but they denied that. They said that wasn't so.

Q. Did you see the ring afterwards when she came to your house?

A. No, not until then.

Q. She wore the ring?

A. Yes.

Q. Of course. Do you know that she wore that as an engagement ring?

A. No, I do not.

Q. And you didn't hear them discuss marriage at all?

A. No, sir; I did not.

Q. You saw the announcement in the paper?

A. Yes, I did.

Q. Well, after you saw the announcement in the paper what did you do?

A. I went to the Times office and asked them what they had, because I didn't verify it.

Q. You don't know whether your son verified it or not?

10

A. That I couldn't say.

Q. Well, you discussed it with your son?

A. Yes, sir; I did.

Q. Well, you said you didn't talk over this engagement with him.

A. When that was announced I did.

Q. Well, when you say that you didn't discuss this engagement with him, that is not quite the fact, is it? What did he say about the engagement?

A. He said that Francis put it in the paper for a joke. 20

Q. Did he say that about the first announcement?

A. Yes, sir.

Q. That was the one in the State Gazette?

A. Yes, sir.

Q. Well, then, did you see the second joke that appeared in the Trenton Times about a year later?

A. Yes, sir.

Q. And what did he say about that?

A. He didn't know how it got in there, that was all.

Q. He thought that was another joke, too, did he? 30

A. I never spoke to the girl about that.

Q. You spoke to him about it and he said it was a joke, but notwithstanding the joke you permitted her to come there?

A. Yes, she had nowhere else to go. Her folks put her out. What else could I do?

Q. You did it because you wanted to be kind to her?

A. That was right.

Q. Do you want to be kind to her now?

A. No, sir; not now; not after this I don't.

Q. You don't?

A. No, sir; not now, any more.

Miss Dorothy Hutton, a witness produced on the part of the defendant, being duly sworn, testified as follows:

Direct examination, by Mr. Rimo.

Q. Miss Hutton, where do you live?

A. 140 Pearl Street.

10 Q. In Trenton?

A. Yes, sir.

Q. How long have you lived in Trenton?

A. All my life.

Q. And do you know Madalyn Barnett?

A. I do.

Q. How long have you known her?

A. About two or three years, I guess. I worked with her.

Q. Will you speak louder, please?

20 A. I worked with her.

Q. Where did you work with her?

A. Goldberg's, Incorporated.

Q. And do you know Frank Dunn, the defendant?

A. I do.

Q. Did you ever speak with Madalyn about the marriage situation between Frank and herself?

A. I did; yes, sir.

Q. And do you remember when, about?

A. Well, I really couldn't tell you when she first
30 started working in the store, I guess, it was.

Q. Well, just about how long ago was that?

A. About a year ago I guess it has been.

Q. What conversation did you have with her?

A. Nothing; nothing much only business; never any personal things, only things she used to tell me, was all.

Q. Well, what did she say or tell you?

A. Well, for instance, she told me about her and Frank going together, but she said that she didn't intend to marry him.

Q. She didn't intend to marry him?

A. She said she didn't know at times whether she did like him or whether she didn't like him.

Q. And was that said once, or did you have more than one conversation with her?

A. She said it two or three times. She said it—

Q. I am afraid that the jury can't hear it.

A. She said it two or three times.

Q. Was that while you were at the store?

A. Yes, sir.

Q. Did you have any other conversation with her away from the store?

A. No, sir; never away from the store. I very seldom would see her away from the store.

Q. Had you seen Frank Dunn and Miss Barnett out together at any time?

A. No, I can't say I did. I can't say I saw them out together at any time.

Q. Did you see Miss Barnett and another young fellow out together at any time?

A. Only what she told me, that she was out with a little fellow.

Mr. Cogle—I object to that. What bearing has that in this case?

Mr. Rimo—She denied she saw her.

Mr. Cogle—She may have been walking along with Mr. Large.

Q. What did she say?

A. She told me during the summer.

Mr. Cogle—What summer?

The Witness—Of 1924, that she had been out with this little fellow that worked across the street from the station. I don't know his name or anything like that. She asked me not to tell Frank that she was out with him.

Q. Did she say where she was with him?

A. No, sir; she didn't say where she was with him.

Q. How did that conversation happen?

12. DUNN

A. Well, she just said this one thing. She met this little fellow and he was walking by the house where she was boarding and he stopped and talked to her. She didn't say where they went.

By the Court—She didn't say whether they went anywhere?

The Witness—No, sir.

Q. He went by the house where she was boarding?

A. Yes, sir; this little fellow went by the house
10 where she was boarding; yes, sir.

Q. And he stopped and talked to her?

A. Yes, sir; and she told Frank she was going to stay home and go to bed. She asked me to tell Frank that she was going home and going to bed.

Cross-examination, by Mr. Cogle.

Q. Are you any relation to this Dunn boy?

A. Yes, sir.

Q. What relation?

20 A. I am a cousin.

Q. Oh, you are a cousin of this Dunn boy?

A. Yes, sir.

Q. Well, she knew you were a cousin at the time she was talking to you?

A. Yes, sir.

Q. And she told you she never intended to marry him?

A. She said she didn't know whether she did like him or not; she didn't think she was going to marry
30 him.

Q. Well, did you speak to her about the announcement in the paper that you saw in March, a month or so after the conversation?

A. I was speaking about the engagement in the paper. She said it was a joke; she hadn't known anything about it.

Q. She did?

A. Yes, sir.

Q. You are sure she told you that?

A. Yes, sir.

Q. Did you ask her about the announcement the year before that?

A. I didn't hear about it.

Q. Well, do you know about it?

A. No, sir.

Q. Did you have any conversation with your cousin about this engagement?

A. I asked him. He said it was a joke. They both admitted it was a joke.

Q. Well, did they say what kind of a joke they were
10 trying to play, or who the joke was on?

A. He nor she hadn't put it in. They said Francis Gribben had put it in for a joke.

Q. Who was that?

A. Mrs. Large's son. His name is Francis Gribben. They both said it was put in for a joke, that Francis Gribben put it in.

Q. Do you know anything about the ring?

A. I knew she had a ring, but I never asked her
20 anything about it, whether it was an engagement ring. Some times she would wear it on the right hand and some times on the left, and really I couldn't tell whether it was an engagement ring or not.

Q. Did you ask her whether it was a joke or not?

A. I didn't ask her anything about the ring, sir.

Nick Boscarell, called as a witness on behalf of the defendant, being duly sworn, testified as follows:

Direct examination, by Mr. Rimo.

Q. Nick, where do you live?
30

A. 465 South Broad.

Q. In Trenton?

A. Yes, sir.

Q. How long have you lived in Trenton?

A. Eighteen years.

Q. Will you speak louder?

A. Eighteen years.

Q. And do you know Madalyn Barnett?

A. Since I started to work in Goldberg's, I have.

Q. How long ago was that?

A. That has been since last April.

Q. She was working there then?

A. She was working there then. I was there about three or four weeks and then I found out who she was.

Q. Do you know Frank Dunn?

A. Yes, sir.

Q. Had you seen Frank Dunn and Madalyn Barnett
10 together?

A. Yes, sir; that is how I found out who she was, when I saw he and she together. I found out who she was when I saw Frank and she together.

Q. Now, you mean that Frank introduced her to you, or you to her?

A. Never.

Q. How did you find out who she was?

A. Why, she worked in the same store and I found out who she was.

20 Q. Did you know her name when she was working in the store?

A. Yes, sir.

Q. And had you seen her at any time away from Frank?

A. Yes, sir.

Q. When was the first time that you saw her?

Mr. Cogle—That is objected to. "Saw her out." I can't see what bearing that would have on the case.

30 Q. Do you know know Peter Tamilo?

A. Michael Tamilo.

Mr. Cogle—Well, now, I object to this testimony. I think it is irrelevant.

The Court—Well, we will find out presently whether it is relevant or not.

Q. Do you know Mike Tamilo?

A. Yes, sir.

Q. Did you ever see her out with Mike Tamilo?

A. I never saw them two together.

Q. Did you see her out with any other fellow besides Dunn?

(Objected to. Objection overruled.)

A. Yes, sir.

Q. Who was that and when?

A. I saw her out with John Cassidy, I think his name is.

Q. And where?

A. Well, walking on the street.

Q. And when was that, do you recollect? **10**

A. I don't recollect. It was quite a long time ago. I saw her out with a fellow who works in the store named Smith.

Q. In which store?

A. Goldberg's, he worked there at the time. His name was Smith.

Q. And where did you see them?

A. Well, going home from work.

By the Court. **20**

Q. What time, day or night?

A. At noon time.

The Court—What has that to do with a woman walking on the street with a man?

Mr. Rimo—I do not know what the witness is going to testify to.

The Court—We might be in a serious predicament, many of us, if that was any evidence.

Q. Do you know a Peter Sisto?

A. Yes, sir. **30**

Q. Did you ever see Peter Sisto out with her?

A. No, sir; but I have heard.

(Objected to.)

The Court—Strike it out.

Q. Did you ever see her out at any time with any other fellow besides Dunn?

A. I saw her at dances before that without Dunn.

Q. Where?

A. Rider's College and Roseland.

The Court—When?

The Witness—I can't recall the date.

Q. About when? How long ago?

A. I can't even say that. It has been quite a long time ago.

Q. Well, has it been more than a year ago?

A. No, sir; it has been about five or six months ago.

Q. Well, any other time before that?

A. Not that I know of.

10 The Court—That would be about September or October?

The Witness—Yes, sir.

The Court—Since that time or before that time?

The Witness—Well, around that time.

Q. Did you see her anywhere else with any other fellows besides Dunn?

A. Well, on the street was the only place.

Q. At what time; day or night?

20 A. Well, I saw her two or three times at night.

Q. And when was that?

A. Well, that was about three or four months ago, when Frank wasn't going with her.

Q. Well, I am speaking now of when he was going with her. Now, at this Roseland, as you say, do you know whether she went there alone or she was accompanied by anybody?

A. No, I just know she was there and I danced with her. I think she was with other fellows at the dance,
30 but I don't know who she came with.

The Court—But she was dancing with other fellows?

The Witness—Yes, sir; she was there with other fellows. I don't know that she came to the dance with them.

The Court—But she was dancing with you? When she was dancing with you she wasn't dancing with them?

The Witness—Yes, sir; at that dance.

Q. And leaving the place—did you see her leave?

A. No, sir; I didn't see her leave.

Q. Did you ever see her with any other fellow about a year ago, in an automobile, at night?

A. No, sir.

No cross-examination.

Miss Vera Dunn, called as a witness on behalf of the defendant, being duly sworn, testified as follows:

Direct examination, by Mr. Rimo.

10

Q. What is your name?

A. Vera Dunn.

Q. Where do you live?

A. 31 High Street.

Q. Are you a sister of Frank?

A. I am.

Q. How long have you lived in Trenton?

A. Well, all my life. I was born here.

Q. Do you know Miss Barnett?

A. I do.

20

Q. How long have you known her?

A. Well, I can't tell you exactly when it was. I remember going out to Woodland one evening and seeing her with my brother. That was the first time I saw her.

Q. You mean your brother Frank?

A. I don't know when I first saw her. I don't know when it was. It was in the summertime.

Q. And you became acquainted with her?

Q. No, sir; I didn't. I saw him with her and asked him who he had gone with and he told me the name
30 and that is all I know.

Q. And have you been in her company since and talked with her?

A. Only when my brother was with me.

Q. Did you talk about marriage?

A. No.

Q. Did you talk about anything else with her?

A. No, we didn't have a chance to.

Q. Do you know McNally?

A. Yes, sir; I do.

Q. Who is McNally?

A. I used to go with him. His name is Nally.

Q. Do you know whether she knew him?

A. She did know him.

Q. And where did she meet him, do you know?

A. Well, I will tell you how it was. I used to go with him, but one night she went out without my brother—

10 Mr. Cogle—I object to that as irrelevant.
The Witness—One night my brother didn't see her and she went to a dance without him.

I didn't see Bill that night, but following—

Q. That is, Bill Nally?

A. Yes, sir; Nally, he was saying that he had brought her home—

Mr. Cogle—I move that that be stricken out.

The Witness—Why, that he had brought her home, Nally. I asked her if he had and she said that he had brought her home.

20 Q. Did you speak to her about it?

A. I wasn't there, but a friend of mine was. Two of my friends walked past them.

Q. Who were they?

A. When his car, Newcomb's, would go past, and a girl, whose first name is Mary. I don't know what her last name is.

Q. Where did she live?

A. I don't know.

30 Q. Where does she work?

A. I don't know.

Q. How do you know her name was Mary?

A. Well, I saw her at dances.

Q. Well, would her friend Nally walk home with her?

A. Yes, sir; and sit on the porch with her.

Mr. Rimo—Which porch?

The Witness—Where she lived.

Q. Did you see her sitting on the porch?

A. No, sir; a friend of mine told me.

By Mr. Rimo.

Q. Well, did you speak to Madalyn Barnett about it?

A. No, sir.

By the Court.

Q. You did talk to Nally about it, did you? 10

A. Yes, sir; and he said that he had taken her home.

No cross-examination.

Frank E. Dunn, called as a witness on behalf of the defendant, being duly sworn according to law, testified as follows:

Direct examination, by Mr. Rimo.

Q. Mr. Dunn, where do you live?

A. 31 High Street.

Q. You live with your wife? 20

A. Yes, sir.

Q. Your son lives there with you?

A. Yes, sir.

Q. Frank?

A. Frank.

Q. How old is Frank?

A. Frank is nineteen.

Q. Do you know Madalyn Barnett?

A. I do.

Q. When did you first meet her? 30

A. It has been about two years ago.

Q. And where?

A. Out to her house.

Q. And under what circumstances?

A. Why, my wife and I went out to try to break it up, from keeping company with her.

Q. Was the boy with you?

A. No, sir; just the wife and I.

The Court—He was already there when you got there, was he?

The Witness—Yes, sir; he was.

Q. Do you work, Mr. Dunn?

A. Yes, sir.

Q. Where do you work?

A. The Essex Rubber.

Q. How long have you worked there?

A. Sixteen years.

10 Q. And when you got there with your wife who did you see?

A. I saw Mr. Barnett and Mrs. Barnett.

Q. And what was said by you or your wife to them?

A. My wife said, "Come out here." We wanted to stop the boy from coming out and Mr. Barnett—

The Court—I don't see that that is relevant unless the two people were there, the daughter and the boy.

Mr. Rimo—Well, I was just coming to that.

20 Q. Was your son Frank there at that time?

A. Yes, sir.

Q. And was Madalyn Barnett there at that time?

A. At the same time.

Q. That you and your wife and Mr. and Mrs. Barnett were there?

A. Yes, sir.

Q. And what did your wife say to either one of the Barnetts?

A. We wanted to stop him from coming out there.

30 We didn't want him to keep company, he was too young.

Q. And what did they say?

A. Then Mr. Barnett tried to talk and they wouldn't let him talk.

Q. Who wouldn't let him talk?

A. Mrs. Barnett wouldn't let him talk.

Q. Well, who did talk?

A. Mrs. Barnett.

Q. Who?

A. Mrs. Barnett did the talking.

Q. What did Madalyn say?

A. Madalyn said nothing.

Q. And what did you say or any of them?

A. Well, I didn't do much talking at all.

By the Court.

Q. You left it all to the family, did you?

A. That is all. I didn't get the chance.

10

By Mr. Rimo.

Q. Well, what was said about this marriage?

A. I didn't say nothing about it. I didn't hear any of them talking about the marriage. It was never brought up.

Q. Well, what about this announcement? Was anything said about the announcement?

A. Not down there; no, sir.

Q. Well, where was it said?

A. It was told me in the shop. Somebody read it in 20 the paper.

Q. Wasn't that why you went to the house, because you heard of the announcement, you and your wife?

A. Well, I think it was.

Q. Well, now, have you seen Madalyn since that time?

A. I saw her there, running up and down the streets when the party was at Large's.

Q. She was at Large's?

A. They had a party there; yes, sir.

Q. And where did the Large's live? 30

A. On South Clinton Avenue.

Q. Right around the corner from you?

A. Yes, sir.

Q. Well, do you know who was at that party?

A. No, sir; I wasn't there.

Q. Well, you said you saw them coming up and down the street?

A. To High Street, on the other side of the street from where I am living.

Q. Well, did she later come to your house?

A. Yes, she did.

Q. And after she started to come to your house did you hear any conversation between your son and Madalyn in reference to marriage?

A. I did not.

Q. Did you hear any conversation about anything between your son and Madalyn?

A. I did not.

10 Q. Well, did you hear any argument between Madalyn and your son?

A. I heard them chewing the rag and her pulling the cigars out of his mouth. I couldn't do nothing.

Q. What is that?

A. Pulling the cigars out of his mouth, grabbing him out of the car on the street and pinching him and all that.

Q. Well, did you hear your son say anything to her about other fellows?

20 A. Oh, I heard them talking around the streets, people, yes.

Q. What did you hear her say to him about that or him say to her?

A. I heard him say, "You were out with so and so the other night."

Q. Well, did you hear the name mentioned?

A. The fellow that shines shoes, Mike, I think.

Q. Did you know the man she speaks of?

A. Yes, sir; he was in here this morning.

30 Q. In this courtroom?

A. Yes, sir; this man was here

Q. Do you know his last name?

A. Yes, sir.

Q. What was said?

A. He said, "You was out with him last night."

Q. Wasn't she where? Was anything asked by him where she was?

A. No, sir; but things I heard of. I am only in the house at supper time, and after supper I am out.

Q. Well, did you later learn of another announcement?

A. I saw it in the paper, yes, or my wife showed it to me, or the lady next door.

Q. Well, after it was shown to you, what did you do? Did you speak to Madalyn about it?

A. I never had a conversation with her about the marriage at all.

Q. Well, did you speak to your son about it?

A. I asked him; yes, sir.

10

By the Court.

Q. What did he say?

A. He said it wasn't so.

By Mr. Rimo.

Q. Now, well, she came out of the house? Do you recall what time she would leave the house?

A. Well, sometimes I would be abed. Sometimes she would leave at twelve o'clock and eleven o'clock.

20

Q. She lived right around the corner?

A. Yes, sir; she would stay there all night, if you didn't try to put her out.

Q. How do you mean?

A. Why, argue and argue, all that. You couldn't get her to go home.

Q. Did you try to get her to go home?

A. Did I try to get her to go home? No, sir; but I heard the boy say, "I want to go to bed."

Q. And what would she say?

30

A. "You don't love me any more. You don't love me any more."

Q. Did you hear that more than once?

A. Oh, a couple times.

Q. Well, do you know of your own knowledge whether anything wrong had happened in your house, in other words, in your house between your son and Madalyn?

A. I do not.

Cross-examination, by Mr. Cogle.

Q. Now, you went down to her home to talk to her mother and father about this, didn't you?

A. I did.

Q. Do you make it a practice to go around to the different homes of the girls with whom your son had gone?

A. Do I make it a habit?

Q. Yes.

10 A. I do not; no, sir.

Q. To talk to their parents about it?

A. No, sir.

Q. Why did you go in this case?

A. Simply because we didn't want him to go, he was too young.

Q. Well, you didn't object to his going in the past?

A. He hadn't been running around. This was his first year of dancing.

20 Q. Then, you objected to your son going around with the girls?

A. Yes, sir.

Q. But any girl?

A. Yes, sir; any girl until he came of age.

Q. Well, now, when did you first learn of this announcement?

A. That was three years ago.

Q. Three years ago?

A. I think so. I am not sure, three or four.

Q. Well, do you object to his going with her now?

30 A. Do I object to his going with her now?

Q. Yes.

A. Yes.

Q. And did you object to his going with her during August of 1923?

A. I did; I am admitting that.

Q. What did you allow her to come to your house then for?

A. Why—

Q. And stay until eleven or twelve o'clock at night?

A. She came there and had no other place to go. The boy couldn't go to Large's. What was I going to do, put her out? You couldn't tell her to get out.

Q. Well, you went down to her own home and tried to keep her away from the boy and then you later permitted her to come to your house and stay there, as you say, until twelve o'clock every night. Now, what was your change of attitude due to?

A. I told her to stay away.

10 Q. You knew at the time she was coming to your house she was engaged, didn't you?

A. Only what I saw in the paper. They said it was a joke. She never told a word about it.

Q. Well, don't you think they should be engaged, if she came down every night and stayed there until that time.

Mr. Cogle—I object to that as calling for a conclusion. I ask to strike it out.

The Court—Yes, strike it out.

20 Q. You attached some significance to that, didn't you? You thought it was a serious affair, didn't you?

A. No, sir; I didn't. I thought it was all a joke.

Q. Notwithstanding the fact that you had seen this announcement in the State Gazette you thought it was a joke?

A. I didn't say so. I heard about it.

Q. I understood you thought about it, you thought it was a joke?

A. Yes.

30 Q. Did you know anything about her condition during last April? Did you hear about that? Did your son talk to you about this girl being pregnant?

A. Never spoke a word.

Q. Never spoke a word to you about this girl being pregnant?

A. No, sir.

Q. When did this girl last come to your house?

A. I think it was in August.

- Q. In August, nineteen twenty what?
 A. Nineteen twenty-four.
 Q. Did you ever see her after that time in your house?
 A. I think it was the following September before she went to the hospital?
 A. Yes.
 Q. Who told you?
 A. Why, my cousin or niece.
 Q. And from that time, from August until the time
 10 she went to the hospital, you didn't see her, did you?
 A. I am not talking about going to St. Francis Hospital, I am talking about going to the Mercer Hospital.
 Q. She was in the Mercer Hospital?
 A. Yes, she was. She was in the Mercer Hospital and the doctor came out there and she ran away.
 Q. When was this that she was in the Mercer Hospital?
 A. Oh, it must be a week or two weeks before she went to St. Francis.
 20 Q. That was during the year 1924?
 A. 1924; yes, sir.
 Q. Did you find out why she went to St. Francis?
 A. They told her she had appendicitis.
 Q. Who told you that?
 A. When she came from the hospital they said she was operated on for appendicitis.
 Q. Did you go to see her?
 A. No, sir.
 Q. Did your son go to see her?
 30 A. I don't think he did.
 Q. Did any member of your family go to see her?
 A. I don't know whether my daughter did or not. I know my wife didn't go.
 Q. Did you have any discussion at home about her illness?
 A. No, sir.
 Q. Why not?
 (Objected to. Objection overruled.)
 A. She never interested me at all.

- Q. When she was there the last time in August, 1924, did you have any conversation with her then?
 A. With Madalyn?
 Q. Yes.
 A. Not that I know of.
 Q. Did you see her the last time she was in your house?
 A. I don't think I did.
 Q. Did you ever ask your son why she didn't come back?
 10 A. I did not.
 Q. Never made any inquiry?
 A. No.
 Q. You never discussed her condition at the hospital?
 A. Never.
 Q. Did you give her any money to take her to New York?
 A. I should say not.
 Q. Did he get any money from you?
 A. Not that I know of.
 20 Q. Did he get any money about that time for any purpose from you?
 A. He didn't get any money from me.
 Q. Any sum of \$50 or \$100?
 A. If I had \$50 I wouldn't look at him.
 Q. Then you don't know why she discontinued coming to your house?
 A. I do not.
 Q. You never made any inquiry about it at all?
 A. I never made any inquiry about it at all.
 30

By the Court.

- Q. During the period she was coming to your house; how long a period was that?
 A. Oh, I will say a year or a year and a half.
 Q. How frequently did she come to your house?
 A. Well, she would be there pretty nearly every night, when there wasn't any chewing, and then she would miss one or two nights.

- Q. She would stay until what time?
 A. Well, I will say eleven or twelve o'clock.
 Q. I see. And that kept up for a year and a half?
 A. Oh, it wouldn't be every night that way.
 Q. She came during that period of a year and a half?
 A. Yes.

By Mr. Rimo.

10 Q. Now, just one question. I understood you to say that you objected to her coming. What was the objection that you had?

A. Frank was too young. I didn't want him to keep company with her.

Q. And was that the only objection?

A. That was the only objection that I had; yes, sir.

Q. Did you learn about her? Did you learn of anything about her?

A. No, sir.

(Adjourned till February 19, 1925, at 10:00 A. M.)

20

Frank Newcomb, called as a witness on behalf of the defendant, being duly sworn, testified as follows:

Direct examination, by Mr. Rimo.

Q. Mr. Newcomb, where do you live?

A. 258 North Warren Street.

Q. How long have you lived in Trenton?

A. Sixteen years.

Q. Do you work in Trenton?

A. Yes, sir.

30 Q. Do you know Frank Dunn?

A. Yes, sir.

Q. Do you know Madalyn Barnett?

A. Yes, sir.

Q. How long have you known her?

A. About two years.

Q. When did you first meet her?

A. At Mr. Dunn's house.

Q. And do you know William Nally?

A. Yes, sir.

Q. How long have you known him?
 A. I have known him pretty nearly a year or over. I can't just remember the date or time.

Q. Did you ever see Nally and Madalyn Barnett together at night?

A. I have.

Q. When and where?

A. What time?

Mr. Cougle—I object to that. I can't see that it would make any difference if he had seen 10 them together.

The Court—I will overrule the question.

The Witness—I saw them together on her boarding mistress' stoop, in September, 1923.

Q. At what time?

A. Between half-past eleven and twelve o'clock at night.

Q. Where was that boarding mistress' place?

A. On Clinton Avenue, between Greenwood and High. 20

Q. What were they doing, do you know?

A. They were there on the stoop, talking, what they done later I don't know.

The Court—You do not know that they did anything, do you?

The Witness—I can't swear to that; no, sir.

Q. Did you see her with anybody in an automobile?

A. I seen her get in one, yes.

Q. All right. Who was there when you saw her?

A. I met Mrs. Hutton and walked down the street 30 and Miss Madalyn Barnett was ahead of us.

Q. And when was this?

A. This was around September.

Q. Of last year?

A. Yes, I think it was. Maybe it might have been a little later or a little earlier.

Q. Who was in the car, do you know?

A. I don't know who the people were. I know there were three heads besides her.

Q. Men or women or what?

A. They looked like men to me.

Q. How far from the car where you?

A. The car was about as far as from here to the door (indicating).

Q. Did you recognize her?

A. Did I recognize her? Yes, sir.

Q. Where did she sit in the car?

A. She got in the car.

10 Q. Where did the car go?

A. It went out South Clinton Avenue, as far as I could see.

Q. Did she live on South Clinton Avenue at that time?

A. Supposed to live there.

The Court—Well, she was living there?

The Witness—Yes.

Q. Well, did the car go past her house?

A. Went right past her house.

20 Q. What time was that, do you know?

A. Right after the show left out, around 11 o'clock or a little after.

Q. That is all.

Cross-examination, by Mr. Cogle.

Q. You say you couldn't state the time definitely from this happening?

A. I know from the show, I am to that often enough.

Q. You couldn't fix the time?

30 A. Not exactly; no, sir.

Q. It may have been September and may have been October, so far as you know?

A. I know it was around the fall of the year. It wasn't in the summer time.

Mrs. Anna M. Hutton, called as a witness on behalf of the defendant, being duly sworn, testified as follows:

Direct examination, by Mr. Rimo.

Q. Where do you live, Mrs. Hutton?

A. 140 Pearl Street.

Q. How long have you lived in Trenton?

A. I guess I have lived in Trenton twenty-seven years.

Q. Do you know Frank Dunn?

A. Yes, sir.

Q. Do you know Madalyn Barnett?

A. Yes, I do.

Q. How long have you known her? 10

A. I guess I have known her two years.

Q. And when did you meet her?

A. I first met her at the Trenton Electric plant.

Q. In Trenton?

A. Yes, in Trenton, on Canal Street.

Q. How did you meet her there?

A. Why, we naturally worked there. She went in one department and I in another. How I met her was in the waiting room, that is how I came to know her. 20

Q. Do you know that she was engaged to be married to Dunn?

A. Yes; I knew she was engaged.

Q. Well, did you see her one night in an automobile?

A. I seen her get in an automobile right in front of the Belvidere Restaurant on South Clinton Avenue, right opposite the Clinton Street Station.

Q. Where did she live at that time?

A. She was living with Mrs. Large, on South Clinton Avenue. 30

Q. And do you know who was in the car with her?

A. I know there was a young man spoke to her and escorted her in the machine and they drove down South Clinton Avenue. It was sort of a maroon colored machine and was an open car.

Q. What did the young man look like? Could you give a description of him?

A. I know he was a short man.

Q. Was Dunn there?

A. No, sir, Dunn wasn't there.

Q. How near were you to this automobile when it was in front of the Belvidere Restaurant?

A. I imagine I must have been right up behind them. She was walking right in front of us coming down Clinton Avenue, and I seen her stop and speak to this young man. I imagine she spoke about a minute to him and then he escorted her to this machine and then they drove on down Clinton Avenue as far as I could see.

10 Q. Were you walking south on Clinton Avenue going towards Hamilton Avenue?

A. Going towards Hamilton Avenue, going towards my home.

Q. You say this car started off with her in it?

A. Yes, started off with her in it.

Q. Did it go out Greenwood Avenue?

A. Went right past the house where she lived at Large's.

20 Q. Passed that?

A. Yes, sir.

Q. How far did the car go when you last saw it?

A. I saw it to Hamilton Avenue, further than that you can't see, because there is a sort of bend there.

Q. Well, now, do you know Madalyn's reputation in the community for chastity?

Mr. Cogle—That is objected to.

Q. Did you know it before May, 1924?

30 Mr. Cogle—I object to the question, because it is not properly asked and it is not good, particularly, as to form.

The Court—The question is whether you knew her reputation for chastity in the community in which she lived prior to May, 1924.

The Witness—Well, she didn't have a very good reputation.

Q. Just a moment—

Mr. Cogle—Let her answer it.

Q. Do you know that reputation?

A. Yes, I know she didn't have a very good reputation.

Mr. Rimo—That is all.

Cross-examination, by Mr. Cogle.

Q. Where do you live, 140 Pearl Street?

A. Yes, sir.

Q. Do you do any work?

A. I am not working now. I am not well. I am under the doctor's care.

10

Q. What is your husband doing?

A. I am a widow and have been a widow for three years.

Q. Who was with you when you saw this girl?

A. I met Mr. Newcomb—I was with my daughter.

Q. Who was your daughter?

A. She was on the stand yesterday, Miss Dorothy Hutton.

Q. And you were with Mr. Newcomb?

A. Yes, sir, he walked on down Clinton Avenue with us.

20

The Court—He was the witness who was just on the stand and testified to seeing her get in an automobile?

The Witness—Yes, sir.

Q. Does Mr. Newcomb live near you?

A. No, sir; he lives up on North Warren Street.

Q. And do you know that the car—do you know what month this was in?

A. I believe September. I remember having a fall coat on that I had just bought and I remember having the coat on. It was chilly that evening and I think she had her heavy coat on.

30

Q. It was late enough to wear a coat?

A. Yes, sir, it was chilly that evening, and I think September.

Q. But you don't know who was in the car?

A. No, but I saw this young man. I know there were three in the car. There were two in the back seat. She got in the front with this young man.

Q. Do you know Madalyn very well?

A. Yes, I know her well.

Q. Did you ever attend any parties given at the home of Mr. Dunn at which she attended?

A. No, I don't know as they ever had any parties there.

10 Q. Well testimony was given by reputable witnesses here that she attended parties, various parties at her home; did you know that?

A. Why, they were at Large's. I didn't attend any.

Q. Well, you don't know anything about her reputation then?

Mr. Rimo—I object. She said she didn't attend any parties there.

A. Well, her reputation wasn't very good.

Q. Well, when wasn't it good?

20 A. Well, I seen quite a lot—

Q. Now, don't answer except what I am asking you here. Now, you testified here that the girl's reputation was not good?

A. Yes.

Q. Now, I want to know at what time you learned that that reputation was not good.

A. When I worked in the Trenton Electric.

Q. And when was that?

A. That was two years ago.

30 Q. That was two years ago?

A. Yes, sir.

Q. That was 1923?

A. 1923, she was then supposed to be engaged.

Q. That was at the time when she was supposed to be going with Dunn?

A. Yes, sir.

Q. Do you know anything about her reputation before she went with Dunn?

A. No, sir; I can't say that, only since I got acquainted with her.

Q. Dunn is a friend of yours, isn't he?

A. He is my nephew.

Q. Oh, he is your nephew, is he?

A. Yes, sir.

Q. All right.

A. Yes, sir.

Q. When she was in the hospital you went out to see her, didn't you? 10

A. Yes, sir, I went to see her.

Q. Why did you do that?

A. She worked in the store with my daughter and my daughter didn't want to go out in the evening alone.

Q. Did Dunn talk to you about being up there?

A. No, sir.

Q. Did Dunn talk to you about it?

A. No, sir.

Q. I mean your nephew.

A. No, sir; I didn't speak to Frank about it. 20

Q. You weren't a particular friend of hers, were you?

A. No, I was no particular friend.

Q. Well, why did you go out to see her?

A. I told you because my daughter was afraid to go to the hospital alone. It is quite lonesome out Hamilton Avenue. I don't as a rule allow her to go out alone, and usually take her with me when I go anywhere.

Q. Was your daughter a great friend of her?

A. I don't know, only in the store. I don't know 30 as she ever went out with her.

Q. That is your reason for going to the hospital?

A. Yes, sir, I went with my daughter.

By the Court.

Q. Who did you ever hear discuss Madalyn's reputation?

A. At the Trenton Electric.

Q. Who did you hear discuss it?

A. I heard a few things I thought wasn't ladylike.

Q. It is a question of reputation. Who did you hear discuss it?

A. Several young men said they had been out with her and they didn't think Frank Dunn should go out with her, because she wasn't a very nice girl.

By Mr. Cogle.

10 Q. Where were these several young men that said they had been out with her?

A. At the Trenton Electric.

Q. Who were these young men?

A. By name I can't remember now. That is two years ago. I haven't been working there. If I saw them by their faces I would know them.

Q. Do you know their first names?

A. I think one fellow's name was John.

Q. You are sure it wasn't Henry?

20 A. No, it was John. I remember that. Is that all?

By the Court.

Q. Do you know how frequently she went out with Mr. Dunn?

A. No, sir; I couldn't say, because Mr. Dunn came over to visit us, his mother, and grandfather.

Q. The testimony, however, admittedly, is that she was at Mr. Dunn's house every night.

A. That I couldn't say. I know Mr. Dunn came to 30 our house.

Q. You didn't hear of her going out with someone else at that time when she was going out with Mr. Dunn?

A. I don't know, only when Mr. Dunn came over, he said he didn't have any appointment with Madalyn, because they had had an argument.

By Mr. Rimo.

Q. Was it before she started to go to his house that they came to your house?

A. No, sir; Mr. Dunn came to our house during the time that she is supposed to have been going to Miss Dunn's home.

Mr. Rimo—That is all.

Frank C. Dunn, called as a witness on behalf of the defendant, being duly sworn, testified as follows:

Direct examination, by Mr. Rimo.

Q. Mr. Dunn, where do you live?

A. 31 High Street. 10

Q. How long have you lived in Trenton?

A. Nineteen years.

Q. Do you know Madalyn Barnett?

A. I do.

Q. When did you meet her first?

A. In May, 1922.

Q. Where?

A. At a dance at the Yacht Club?

Q. Did you see her again after that?

A. I did. 20

Q. When and under what circumstances?

A. Well, I made a date with her and went down to her house. That was about three nights later.

Q. And then, when you went to see her at the house did you have any intercourse with her?

A. I did not.

Q. How often did you see Madalyn after that?

A. Well for three or four months I saw her about three or four nights a week. 30

Q. And did you see her at the house?

A. I did.

Q. And did you go out with her?

A. Yes, sir.

Q. Where did you go?

A. Frequently to Woodlawn Park to the dances and at times down to the South Broad Street Theatre.

Q. And then took her home?

A. I would.

Q. Did you have any intercourse with her at any time at her home.

A. No, sir; I did not.

Q. Do you remember giving her a ring?

A. Yes, sir; I do.

Q. And before giving her that ring what did you tell her? What did she state to you?

A. Just what do you mean?

Q. Well, was there anything said to you by her before you gave her this ring?

A. About the engagement, do you mean?

Q. Well, about anything.

A. There was nothing, only that I gave her a ring. It wasn't really what you call an engagement ring.

Q. Well, what was said?

A. Well, it was just a ring, nothing more than a present rather than an engagement ring.

Q. Well, what did you say when you gave her the ring?

20 A. Just handed her the ring. I just handed her the ring and told her it was a present.

Q. And told her it was a present?

A. Yes.

Q. Then later did you see the engagement in the paper?

A. I did.

Q. Did you have anything to do with this announcement going in the paper?

A. I didn't put it in the paper.

30 Q. What did you do?

A. I can tell you the name of the party that put that engagement in the paper.

Q. Who put it in the paper?

A. Francis Gribben.

Q. And was there anything written about the announcement by anyone before it went in the paper?

A. Nothing. Mr. Gribben wrote something about it.

Q. Who is Mr. Gribben?

A. Sitting in the third row in the back (indicating)

Q. Is he a friend of yours, or what?

A. He is a friend of mine; yes, sir.

Q. And after you noticed that announcement in the paper did you speak to her about it?

A. Did I speak to Madalyn about it?

The Court—I understood you to admit that there was an engagement of marriage between these two people.

Mr. Rimo—Yes, I did.

The Court—Well, why waste time on it? 10

Q. Now, did you later have Madalyn come to your house?

A. I did.

Q. And while at your house did you have any intercourse with her?

A. No, sir, I didn't.

Q. Did you steal any records from the Large's?

A. I couldn't steal any. They didn't have any victrola.

Q. Well, did you steal any? 20

A. No, sir, I didn't.

Q. Did you have an argument with Large?

A. Yes, sir, I did.

Q. While Madalyn was living there?

A. Yes, sir.

Q. What was the argument about?

A. That argument came, in the year, September, 1923, she lived there with Mr. Large, and she came to me and said he had gone in her bedroom and she was afraid and she wanted me to say something about it, and I went to his house to tell him something about it, and as a result he put me out. 30

Q. What did you tell him about?

A. I told him it was not a nice thing to go in a girl's bedroom, and he said he would do as he wanted to in his own house, and I said, "Well, I am going with the girl, and you won't do any such thing."

Q. That was the argument?

A. That was the argument.

Q. And did you go back?

A. I didn't.

Q. During the time that you were going with Madalyn do you know of any time that she was out with other fellows at night?

A. I don't know the exact dates. I can name several occasions she has been out with fellows, because that is what most of the arguments came from.

Q. Well, who did they tell you she was out with?

10 A. Well, there was Michael Basso, she admitted being out with him.

Q. Do you know when that was, about?

A. Well, I couldn't swear to it. It was possibly six months after I met her. She had been out with him and around. She also was out with Harry Stern. She was out with Charles Epispico.

Q. At night, that was?

A. Yes, sir, at night.

Q. That she told you herself?

20 A. She told me that herself and her mother knows about it also.

Q. Now, as a result of these arguments that you have had did you receive these three letters from her?

A. Let me see and I will tell you.

Mr. Rimo—One is dated the seventh month and the eighteenth day.

The Court—That letter should be marked.

Mr. Rimo—It is marked *Exhibit A*.

(Witness reads letter.)

30 A. I recall that letter.

Q. I show you a letter marked *Exhibit B* and ask you if you received that letter from her?

A. Yes, sir.

Q. I show you a letter marked *Exhibit C* and ask you if you received that letter from her?

A. Yes, sir.

Q. Since you were going with her?

A. Yes, sir.

Mr. Rimo—I will offer these letters in evidence, your Honor.

The Court—I will pass on them presently.

Q. After you received these letters with reference to forgiveness, what did you say to her?

A. Well, we was possibly mad for three or four nights, maybe two weeks, I don't recollect just the length of time. She asked me to forgive her and she wouldn't go out with any more fellows, no matter how big a machine he has, if I would forgive her, if only I would go to see her, and it would be all right, but she repeatedly did the thing over again. 10

Q. And what caused you—did you stop going with her later?

A. I did.

Q. About when?

A. At one time later, she wrote one time in October—I didn't go with her for two weeks.

Q. And when was the last time that you went with her? 20

A. The last time I went with her was in September, 1924.

Q. The latter part of September?

A. No, sir; it was before the Fair time, because I went to the Fair without her. If she went with me I wouldn't be able to go to the Fair, she would flirt with somebody.

Q. That was the latter part?

A. No, sir, the middle, I would say.

Q. And what was the cause of your stopping? 30

A. The main cause was because she was out with a certain William Nally.

Q. Did you know William Nally?

A. Yes, sir.

Q. Did she tell you where she had been with William Nally?

A. Yes, sir.

Q. Did she tell you she had been out with William Nally?

A. No, sir; I didn't put the question to her. I never saw her after that. It was on Tuesday night.

Q. You say you stopped because she had been out with William Nally?

A. Yes, sir; the week before she was also out with another fellow. I don't know who he was. She came and told me about it.

Q. Did she tell you where she was?

A. She was out with him, but not where or anything
10 of that kind.

Q. Did you ask where she was?

A. She didn't answer me at all. She said she was out with a fellow, and so I stayed at home for a couple of nights and the following Tuesday night she went out with this William Nally.

Q. You didn't have occasion to speak to her about this William Nally, because you left her; is that the idea?

A. That is the idea, exactly.

20 Q. Well, you promised to marry her.

A. I did.

Q. And when you promised to marry her just what did you say to her? How did the promise come to be made?

A. Well, there was no real promise until March, 1924, and that is when the engagement was in the paper, and it was supposed to be for a couple of years, because I wasn't of age.

Q. How old were you when you first met her?

30 A. I was sixteen.

Q. And did you meet the mother?

A. I did.

A. And was she in favor of the engagement?

A. Well, there was never any discussion brought up about any engagement down there at all.

Q. Did her mother put you out of the house?

A. Her mother didn't put me out of the house, her mother put her out.

Q. Her mother put her out of the house?

A. She did.

Q. Do you know when she put her out of the house?

A. It was in July, 1923.

Q. And why?

A. I really couldn't tell you why she put her out, but one night we came home and her suitcase and all her clothes was on the front porch. I imagine it was 11 o'clock at night. I knocked on the front door, and he came down the stairs, Bill Buicker (?) came down, 10 and we had a fight and he hit me in the mouth.

Q. Who was he?

A. He lived at the house at that time.

Q. Who was he?

A. He was going with her sister.

Q. And when you saw the suitcase on the porch, what did you say?

A. She started to cry and she didn't have no place to go.

Q. Well, what did you do? 20

A. I knocked on the door and he finally came out and let me in next door. I found her working in Cohen's store. She was out and had left home and they put her out one night, and he let us in, and they told her she had to go. Naturally I knew Mr. and Mrs. Large, and I got her a place over there.

Q. While she came to your house did you have any intercourse anywhere in the house with her?

A. No, sir; I did not.

Q. Do you remember, about June, 1924, her going to 30 Dr. Tempesto's office?

A. She never said anything to me about it.

Q. Did you during 1924 have any conversation with her about her condition?

A. No, sir.

Q. Do you recall the testimony of Miss Barnett yesterday, that you told her you were going to Washington?

A. I do not.

Q. Do you remember her saying that yesterday?

A. I remember her saying it.

Q. And did you say that to her?

A. I did not.

Q. And did you see her or meet her at a dance by chance?

A. Yes, sir.

Q. Do you remember that?

A. I do.

10 Q. Just how did that come about?

A. I was down to the Yacht Club. I came down around ten o'clock, and she was already there.

Q. Did you know she was going to be there?

A. I did not.

Q. What did she say when you met her there?

A. Well, she didn't say nothing much that I can recall.

Q. Did you ask her how it happened that she was there?

20 A. She told me that she came down with her sister. That is all that I know about it.

The Court—That was the dance, was it?

The Witness—That was the dance.

Q. Did you tell her you were going?

A. I did not.

Q. Then you both put one over on each other?

A. That was not the idea. I didn't see her for three days before that.

30 Q. These two letters, marked *Exhibits A* and *B*, one dated 17-22 and the other dated 7-18-22; those letters both refer to the same time?

A. I imagine they do.

Q. The Monday night before?

A. I don't know about that.

Q. The letters refer to Monday night?

A. They both refer to the same event. I can't tell you the name of the fellow she was out with that night.

Q. My question is they both refer to the same event, do they?

A. They do.

Cross-examination, by Mr. Cogle.

Q. You say the last time you saw her was about the middle of September?

A. Yes, sir.

Q. And before that, when had you seen her just immediately before the last time you saw her? 10

A. Well, the last time I saw her was Monday night.

Q. During September?

A. During September.

Q. And then before that you had seen her when?

A. I would see her when she came to our house.

Q. Well, did she come to your house regularly up until September?

A. I can't say or recall the night, or every night. She came six nights a week or possibly five.

Q. Well, during the time that you were going with 20 her, from May, 1922, up until September; was there any time there that you didn't go with her?

A. During that time?

Q. Yes.

A. Well, to tell you the truth, I went with her only three times, but I didn't see her for two weeks after that.

Q. When was that?

A. That was three days after I met her.

Q. When was that? 30

A. In May, I discovered it, I imagine three or four weeks after I met her. She was out with Harry Stern all day and part of the night, as far as that is concerned, the fellow she used to go with.

Q. Those letters that you refer to, about whom were they written, or about whom did they concern or mention, what fellows?

A. One concerned Michael Basso.

Q. Anybody else?

A. I can't remember what the others concern now. It was in the letter like this in October. I kind of think it was Charles Epispico.

Q. And when was that?

A. 1922.

Q. Well, how many letters have you got there?

A. There are three letters. Two refer to the same one, Michael Basso.

Q. Now, to refer to Michael Basso, he went with
10 her during the month of October, 1922?

A. No, sir, he was out with her during July, 1922.

Q. Oh, during July, 1922? Now what does the other one refer to?

A. The other refers to a party she was out with in October, 1922.

Q. Now, did she write you any letters concerning any other fellows after that time?

A. Not that I can recollect. I received letters from her plenty of times when I stopped going with her there
20 from January up until February, 1923. I didn't see her for easily eight weeks. I stopped going with her.

Q. She says it was one week.

The Court—No, sir, one month.

A. She said one month. It was longer than one month. At the time I stopped going with her she lived on Emory Avenue and when I went back to her she was living on South Broad Street.

Q. And that was the only time you stopped going with her, or when your relations had ceased, until Sep-
30 tember of 1924; is that right?

A. I can't say that. We had continual arguments during that time.

Q. But you didn't stay away for a period of a month or more?

A. No, sir, that was the longest time.

Q. Now, in 1924, from February on until September, you went with her steadily, didn't you?

A. Well, I can't say I saw her very steadily. We had numerous arguments.

Q. I don't mean that you saw her every minute of the day or every hour of the day, but you saw her every week.

A. All through the week?

Q. Yes.

A. Not every night in the week. We had arguments and that was the main reason I stopped going with her, mainly, was arguments.

Q. Well, you didn't have any other girl during that time?

10

A. No, sir.

Q. You went with her, or you started to go with her from February up until September, didn't you?

A. Yes.

Q. Now, were you going with her during the month of April? Did you see her at all during the month of April?

A. Surely I saw her during the month of April.

Q. You saw her during the month of May?

A. During the month of May I saw her some two
20 nights. I didn't see her, she was out with two fellows.

Q. You saw her during the month of March?

A. Yes, sir.

Q. Because you announced your engagement.

A. The engagement was announced in March.

Q. So that you had pretty well decided then that there was no doubt about your coming marriage in March; that was so?

A. Our coming marriage in March?

Q. I mean you had decided the date sometime in
30 March that you were to be married, at some certain time?

A. I wouldn't say it would be at a certain time. That is what the engagement was put in for, it depended on how it was kept.

Q. How it was kept?

A. How it was kept.

Q. What do you mean by how it was kept?

A. When she stopped going out with other fellows it would be a different thing.

Q. Well; she wasn't going out with other fellows just at the time you made this announcement, was she?

A. No, not in March she wasn't.

Q. Well, you must have been pretty well assured that you were willing to take a chance on her at that time, weren't you?

A. I wouldn't say I was going to take a chance with her. I wouldn't take a chance with any girl.

Q. Why did you announce your engagement, if you were not willing to take a chance?

A. I am telling you.

Q. What was it again?

A. I thought, naturally, the engagement being in the paper, naturally she would stop.

Q. Well, during April, did she go out with any other fellows?

A. I can't say she went out with any during April. If she went she didn't tell me about it.

Q. Or during May?

A. She did.

Q. Who?

A. She went out with Michael Basso one night.

Q. How do you know that?

A. Well, now, she told me herself.

Q. She told you herself?

A. She did, yes, the night before she went out with Peter Sisto, and she denies knowing Sisto.

Q. You are sure of that?

A. I am absolutely sure of it.

Q. Did she say where she had been?

A. No, sir, she was out in a machine with Michael Basso. That is all I know about that. She was out in a machine with Peter Sisto and there were three other fellows with him, and she told me how he acted with her, and she told me to go around and fight with him, and I wouldn't do it.

Q. She didn't admit she had sexual relations with him, did she?

A. Well, I didn't expect her to admit that to me.

Q. Well, do you think she had?

A. No, I can't say that she had relations with him.

Q. Well, would you say that she didn't?

A. Well, you know going out with three fellows don't look nice or good, for an engaged girl.

Q. Well, you had confidence in her virtue, would you say?

A. I wouldn't swear that I had.

Q. Why not?

A. She was continually out with other fellows.

Q. Well, she had never done anything with you to indicate that she was not virtuous, had she?

A. No, sir, she had not.

Q. Did she meet you at your house during the month of April?

A. She did.

Q. And came to your house during the month of May?

A. She did.

Q. And came to your house during the month of June?

A. Yes, sir.

Q. And came to your house during the month of July?

A. Yes, sir.

Q. And came to your house during the month of August?

A. Yes, sir.

Q. And came to your house during the month of September?

A. Not all of September.

Q. Did you go with her as much after June first as you did any other time?

A. I did.

Q. Was she as friendly?

A. Yes, sir.

Q. When did she go to the hospital?

A. I don't recall. I wasn't going with her. I imagine it was in the month of October.

Q. It was in the month of October?

A. I should imagine it was. I wasn't going with her at that time.

Q. Did you go to see her?

A. The first time she was at Mercer Hospital.

Q. When was that?

10 A. Two or three weeks before she went to St. Francis she asked me about my cousin, and if I wouldn't bring him up there, and I went to see her and the following day she came out of the hospital, they wouldn't operate on her, and she came to my house when I told her I didn't want to go with her any more.

Q. When did you tell her that?

A. In my house. She came out of the Mercer Hospital and she went home and I didn't see her any more.

Q. Why didn't you want to go with her?

20 A. Would I want to go with a girl that ran with fellows? I am sure I wouldn't.

Q. Of course, you accused her with running with fellows back in October, 1922.

A. Why, her own letter admits that.

Q. Well, that didn't stop you from going with her then, did it?

A. It stopped me a couple of weeks, as I told you, and then I started going with her again.

30 Q. Well, after that, you had forgiven her, hadn't you?

A. I had.

Q. And in September, when you had this conversation with her about going with other fellows, you would not forgive her at all?

A. No, sir, I wouldn't; I got tired of it.

Q. Why did you tire of it?

A. Well, as I told you before, I didn't want to go with any girl that ran with fellows, and then two years is long enough.

Q. The testimony is practically that every night from August, 1923, up until the time of her going over to New York, up until the time of September, that she was at your house practically every night?

A. I didn't say every night, I said practically every night.

Q. Well, she didn't have much chance to run around with other fellows, did she?

A. She had enough time to go out with two of them in May, didn't she? 10

Q. In what, May?

A. May, 1924, she went out with two other fellows during that time.

Q. Well, you don't know where she went?

A. No, sir.

Q. She didn't admit that she had done anything wrong, did she?

A. Why would she admit that to me?

Q. But you had been thinking all the time that she was a perfectly virtuous girl, now why did you object to her going out with these two other fellows in a car? 20

A. There were three fellows in the car besides her.

Q. Did she tell you that she had been taken home by a relative in a red car?

A. A relative in a red car?

Q. Yes.

A. No, sir.

Q. Do you know that to be the truth?

A. Well, she didn't tell me nothing about it. 30

Q. So this was your only reason for stopping, the fact that in May she had been out with some other fellow?

A. That is it.

Q. You were going with her in June, weren't you?

A. I was.

Q. You were going with her in July?

A. I was.

Q. And in August?

A. Yes.

Q. Well, if you were going to leave her because she had been out with these other fellows in the month of May why didn't you come to that conclusion right away?

A. Why, because she wanted another chance.

Q. And you were willing to give her a chance?

A. I was willing to give her one more chance. I
10 told her that.

Q. And when did you give her that one more chance?

A. May.

Q. But you went with her after May.

A. That was when I started to go with her again.

Q. You mean that you were going to give her another chance to go with you?

A. To go with me?

Q. And not another chance to become your wife?

A. Not exactly.

20 Q. What did she do after May that led you to decide you weren't going back?

A. The only thing that made me decide was in September she was out two nights, one night with William Nally, and two of them testified they saw him with her that night, and that is the main reason I stopped going with her.

Q. She was out with William Nally during September?

A. She was.

30 Q. And that was the real reason you stopped going with her?

A. That is the main reason.

The Court—Do you know where she was with Nally?

The Witness—I understood she was to a dance, but whereabouts I don't know. I understood she met him on the street and gave him money to take him into the dance.

Q. Was that after she came out of the hospital?

A. No, sir.

Q. What?

A. No, sir, it was not.

Q. When did she go to the hospital?

A. Well, I understood it was October.

Q. Did you go with her?

A. I did not.

Q. Did you know that she was sick sometime after June?

A. I did not. 10

Q. You didn't know that?

A. The only thing I knew she was sick was when she was to the hospital.

Q. At the McKinley Hospital?

A. At the Mercer first and then they took her out to the St. Francis Hospital.

Q. Do you know what was the matter with her when she was out to the Mercer Hospital?

A. I don't. They said it was the appendicitis. They didn't operate. Why didn't they, if it was the same
20 thing was the matter at the St. Francis Hospital, Doctor Tempesto said it was?

Q. Did you know Dr. Tempesto before?

A. I never saw him before yesterday.

Q. Were you in his office with her?

A. I was not.

Q. Sure of that?

A. Very sure.

Q. Did you go around there twice with her?

A. I was never in his office. 30

Q. Sure of that?

A. Very sure.

Q. Did you—now just think it over very, very closely—did you tell her to go around there and tell the doctor that she had a cold and she thought her sickness was due to that condition?

A. I never said nothing to her about it.

Q. You are sure of that?

A. Very sure.

Q. Do you know of any other instance where she went with another fellow regularly except yourself during this time?

A. During the time I was going with her?

Q. Yes.

A. I can't say she went with any fellow regularly. I told you before she was out with them.

Q. Well, say from March, or from January, of 1924, up until the time you stopped going with her.

10 A. Yes.

Q. You don't know of any fellow she kept company with regularly, do you?

A. I don't know any fellow she kept company with regularly.

Q. She didn't have much chance, did she?

A. I know she didn't come over every night. I told you she was out two nights in May with two fellows and she must have had time to go with them there.

Q. But that is two nights out of seven months.

20 A. I won't say it was two nights. How do I know how many other times.

Q. That is all you know?

A. Yes, sir.

Q. And you know that because she told you?

A. She told me, and if she told the truth she wouldn't deny it herself.

Q. And you don't know of any other instance that she was out with any other fellows from January until you stopped going with her?

30 A. I couldn't swear positively she was out with fellows. I accused her of it and argued with her. I had friends tell me where—she knows Nally and they know him and they know her, and they told me, but I can't say I ever saw her out with any fellows.

Q. And you don't know of any fellow that she professed a great interest in, do you, other than yourself?

A. Well, I couldn't say that.

Q. You don't know of any other fellows?

A. (No reply.)

Q. But you do not believe that she is the sort of girl, who happening to meet a fellow once or twice, would surrender her virtue to him, do you, from your experience with her?

A. Not from my experience. I don't know what she would do for anybody else.

Q. But you never had any sexual relations with her?

A. I did not.

Q. Do you know Dr. Blum?

A. I do not.

10

Q. Did you ever see Dr. Blum?

A. I did not.

Q. Do you remember having a conversation in the presence of Madalyn's mother relating to having been to New York?

A. I do not.

Q. You never had that conversation?

A. I did not.

Q. Do you or not deny that you gave Dr. Blum, or a man in New York, \$100 for performing an operation? 20

A. I deny it.

Q. You deny it?

A. I do.

Q. Now, you gave this girl a ring, didn't you?

A. I did.

Q. Now, did you ever give her anything else?

A. I gave her several articles of jewelry.

Q. What were they?

A. A wrist watch.

Q. When did you give her a wrist watch? 30

A. Christmas, 1922.

Q. What else did you give her?

A. Well, I gave her a ring. I can't recall when I gave it to her, but I gave her one I used to wear myself. I gave her a cedar chest for Christmas, 1923.

Q. And did you give her a manicure set?

A. Yes, sir.

Q. When did you do that?

A. For her birthday, 1924.

Q. What did that cost?

A. I don't recollect, but I imagine it was somewhere around \$75.00.

Q. And the cedar chest, what did that cost?

A. \$40.00.

Q. And notwithstanding the fact that you gave her this \$75.00 manicure set in April you said she went out with other fellows during April and May?

A. She did.

10 A. Now, you told your mother to go to this girl Madalyn and try to get this ring back? Did you ever tell her to do that?

A. What ring?

Q. The ring you gave her, the engagement ring.

A. I never did that.

Q. Are you sure of that?

A. I never told her to go and try and get the ring back.

20 Q. So far as you know then, this girl never had sexual relations with any other fellow; isn't that so?

A. Yes, sir; so far as I know. What they know, I don't know anything about that.

Q. And she never had sexual relations with you?

A. No, sir.

Q. And she didn't become pregnant as a result of having sexual relations with you?

A. Not to my knowledge.

Q. Did she ever have sexual relations with you?

A. She did not.

30 Q. Are you sure of that?

A. I am very sure.

Q. But you say you kept her in your house and she stayed late until your people had retired?

A. On some occasions, not all the time.

Q. No, but some occasions.

A. She did, surely.

Q. Is it true, that from the month, April, 1924—

A. She said from July, 1923, to September, 1924, when she was coming to my house, not necessarily April, but any month during that time.

Q. During all that time?

A. Yes.

Mr. Cogle—That is all.

The Court—The letters that were marked for identification will be admitted in evidence.

(The letters previously marked *Exhibits A, B and C* for identification were marked *Exhibits D-1, D-2 and D-3.*) 10

State rests.

STATE'S TESTIMONY IN REBUTTAL.

Miss Madalyn Barnett, recalled for the State.

Direct examination, by Mr. Cogle.

Q. Mr. Dunn says that during the month of May, 1924, you were seen in the company of Mr. Nally, Wil- 20
liam Nally, I think it was.

The Court—That wasn't in May, it was in the fall.

Mr. Cogle—Basso or Sisto I think it was.

Q. Were you out automobile riding with anybody during the month of May?

A. I was not.

Q. And during the month of April were you out with anybody?

A. Never. 30

Q. During the month of September were you out with one William Nally?

A. After Frank Dunn had stopped going with me in September I had went to a dance myself and met William Nally there and he asked to escort me home, and I told him I was afraid of Frank Dunn.

Q. You said you were afraid of Frank Dunn?

A. Yes, sir.

Q. Why?

A. Yes, sir; he had threatened me several times.

Mr. Rimo—I object, it is not rebuttal.

The Court—This is rebuttal on the question of this trip with Nally. That came out on your case.

Mr. Rimo—I meant to go into this whole thing.

The Court—As to being afraid of Dunn?

Mr. Rimo—Well, I ask that be stricken out.

10 The Court—Strike it out.

Q. At that time you lived where?

A. 209 South Clinton Avenue, Mrs. Large's.

Q. At that time did he take you home?

A. Yes, sir.

Q. And did you stay in your home for some time?

A. We sat right on the front porch.

Q. From the time, March, 1924, up until the time that you stopped going with this man you had never had sexual relations with anybody?

20 A. No one, never.

Q. Or at any other time?

A. Never, Frank Dunn, the only one.

Q. Do you remember the statement on this night of Frank Dunn and Mrs. Hutton who testified that you were seen to get in a car—

A. That was in front of Large's house. My sister and my brother-in-law they took me to a dance as far as Roseland.

30 Q. And was there any fellow that accompanied you particularly on that occasion?

A. There was not.

Q. And you didn't go out specifically with any other fellow on that day?

A. I did not.

Mr. Cogle—That is all.

Cross-examination, by Mr. Rimo.

Q. You say that at the time you went out in this automobile was after Frank Dunn had stopped going with you?

A. Yes, sir.

Q. In September?

A. It was.

Q. Are you positive?

A. Positively.

Q. Was that a maroon car that you were in? **10**

A. No, sir; it was not.

Q. What was it?

A. It was a black car, a Cadillac.

Q. Were there three men in it?

A. No, sir; my sister, her husband and her child, in front of my own house, 209 South Clinton Avenue.

By the Court.

Q. The testimony is that Mrs. Hutton saw you get in this car in front of the Belvidere restaurant at the Clinton Street station? **20**

A. Yes, sir.

Q. Do you deny that?

A. Yes, sir; I saw these two Frank Newcomb and Mrs. Hutton, when I was getting in that machine, in front of my own house, on the other side of the street.

By Mr. Rimo.

Q. But you say you were taken to a dance? **30**

A. I was.

Q. Do you say there are dances on Sunday night in Roseland?

A. This particular time when Mrs. Hutton saw me.

Q. Do you say that there are dances in Roseland?

A. I am talking about the particular time Mrs. Hutton saw me.

Q. That was Sunday night.

A. Mrs. Hutton saw me two or three times in the automobile.

Q. In that automobile?

A. Yes, sir.

Q. But you do remember that one of these times was Sunday night?

A. It was on Sunday evening.

Q. Not that you went to Roseland?

A. No, sir.

10 Q. Well, now, I don't know whether I misunderstood you or not. One of the times you saw Mrs. Hutton and Mr. Newcomb when they were in front of your house?

A. I did.

Q. And at that time you were getting in an automobile and you were being taken to a dance?

A. I wasn't. This was Sunday evening when she saw me, Mrs. Hutton.

Q. That you got in the car?

A. Yes, sir. At another time she saw me, because

20 I saw her, because it was on Thursday night, and she was being taken to a dance. She couldn't help but see me, because I saw her.

Q. But you say you didn't get in an automobile in front of the Belvidere restaurant?

A. I didn't, never.

Redirect examination, by Mr. Cogle.

Q. You were never out in any other car during the summer of 1924, or we will say from January, 1924, until you stopped going with Frank Dunn?

30 A. I was not.

Q. Other than the car of your brother-in-law?

A. Never.

Q. You say your brother-in-law's car is black?

A. Yes, sir; a Cadillac.

Q. It is really green, isn't it?

A. It is not green, no. It is a mixture of colors.

Q. What do you mean?

A. Of black and green, but it is not green.

Both sides rest.

CHARGE OF THE COURT.

GENTLEMEN OF THE JURY—Frank C. Dunn, the defendant now on trial in this cause, was indicted by the grand jury of this county, charged with an offense which is commonly known as seduction. This offense is one that is denounced by a section of our criminal statute in the following language:

"Any single man over the age of eighteen years, who, 10 under the promise of marriage, shall have sexual intercourse with any single female of good repute for chastity under the age of twenty-one years, she thereby becoming pregnant, shall be guilty of a high misdemeanor and punished accordingly."

You will observe that this section which I have read contains a number of essential requisites which the State must prove before a conviction can be had. The first essential is that the defendant must be a single man over the age of eighteen years. Second, that the female 20 must be a single woman. Third, she must be under the age of twenty-one years. Fourth, she must be of good repute for chastity. Fifth, the sexual intercourse must have been had under the promise of marriage. Sixth, she must thereby become pregnant.

There is one other requisite in the statute which I did not read, but will read at this time, and that is that the evidence of the female must be corroborated to the extent required in the case of an indictment for perjury.

So that the seventh and last requirement is that the 30 evidence of the woman must be corroborated to the extent required in the case of an indictment for perjury. The testimony must be the oath of one witness supported by the proof of strong corroborating circumstances of such a character as clearly to turn the scale and overcome the oath of the defendant and the legal presumption of innocence.

There have been handed up to me a number of requests to charge by the defendant, which I will take up

at this time in order that I may not overlook them, and then I will deal somewhat briefly with the facts of the case.

First: "If the jury believes from the evidence that Madalyn Barnett was never pregnant, even though she had intercourse with the defendant, the defendant should be acquitted."

As you will observe from the reading of the statute pregnancy is one of the essentials; but you must first of course, in this case, that the woman, Madalyn Barnett, became pregnant, otherwise a conviction could not be had. I charge that request as given.

Second: "If the jury believes from the testimony that the reputation of Madalyn Barnett has not been proven by the State as a good reputation for chastity at the time the defendant met Madalyn Barnett, the defendant should be acquitted."

I charge that.

Third: "If the jury believes that the defendant should have intercourse with Madalyn Barnett at any time before the promise of marriage, and that Madalyn Barnett had intercourse without regard for the promise of marriage, the defendant should be acquitted."

I charge you that request. The intercourse must have been had under promise of marriage.

Now, as to the facts in this case: The State alleges and has produced witnesses here tending to show that this defendant, Frank Dunn, has seduced this young girl, Madalyn Barnett, under circumstances which, under this section of the statute, which I have read, render him guilty of the offense charged in the indictment.

I may say before going on with this charge, that there are really but three of the elements which I charge to you which need give you much concern in this case because the other elements are practically admitted. It is admitted that the defendant is a single man. It is likewise admitted that he was above the age of eighteen years. It is not disputed that the prosecuting witness

Madalyn Barnett, is a single female and that she was under the age of twenty-one years.

The three disputed questions of fact for you to determine are—and you must remember that it is likewise not in dispute that there was a promise of marriage between the defendant and Madalyn Barnett. That leaves three essentials which the State must prove:

First, the good repute of the prosecuting witness for chastity. Second, the fact of the intercourse between the defendant and Madalyn Barnett, and, third, that the pregnancy ensued as a result of that intercourse.

Madalyn Barnett testified, and it is not disputed, that she met the defendant sometime in the month of May, 1922, her first meeting having taken place at a dance held at the Yacht Club, at which both of these people were present. At that dance an appointment was made, or an engagement, between the defendant and Madalyn for a subsequent meeting at her home a few nights later. The defendant went to her home and kept that appointment and from that time on became a frequent visitor, first, at the home of the prosecuting witness, Madalyn Barnett, and later at the home of Mr. and Mrs. Large, on South Clinton Avenue, for a short time, and after that Madalyn went to his home, at 31 High Street for a period of over one year. Madalyn charges that in the month of September, 1922, the defendant promised to marry her, and gave her an engagement ring. That ring, I think, was offered in evidence and will be presented before you. She says that prior to this engagement of marriage, and the presentation of the ring, there was never any sexual intercourse between her and the defendant; but after they had become engaged to be married they did have sexual intercourse from time to time after that in the home of her parents, while she lived there, and later at the home of the defendant's parents, on High Street. She says that in the month of June, 1924, she found out, or a little earlier than that, I think, in the month of April, she found that her monthly periods had ceased,

- and later she consulted a physician, Dr. Tempesto, about the matter. She said that she found that she was pregnant, and so informed the defendant, but that he refused to believe that she was pregnant, and advised her to go to Dr. Tempesto and get him to give her some medicine, with the hope that it would bring about these monthly periods again. She went there, she says, accompanied by the defendant, who, according to her testimony, remained in the outer office. She saw Dr. Tempesto, and he has corroborated her testimony on that point, and he gave her some medicine, to act as a laxative, which, of course, did not produce the result which she desired. About two weeks later she said that she and the defendant again returned to Dr. Tempesto and at that time the defendant consented that she should tell the doctor the fact that she had had intercourse and believed that she was pregnant, and, according to her testimony, again returned with the defendant to Dr. Tempesto's office. She says that the defendant remained in the waiting room and that she went into the private room with the doctor. This time she did tell the doctor what the trouble with her was and asked him to afford her some relief. Dr. Tempesto said that he told her that he didn't do that kind of business, that he had nothing to do with that kind of practice, and couldn't do anything for her. But he does say that he mentioned the name of another physician in Trenton who might decide to do something to relieve the complaining witness.
- 30 Subsequently, according to her testimony, she went to consult another physician here in Trenton, and he likewise refused to do anything for her, but suggested that he knew a doctor in New York who might be willing to perform an operation. According to her statement, she then, at a later date, went with the defendant to this other physician in New York City, and there an operation was performed, which resulted in an abortion. Later, she returned to Trenton and continued for

some period after that to visit Mr. Dunn at the defendant's home on High Street.

In the month of September their relationship, their friendship or friendliness, seemed to have stopped. She did not go to his house after that, nor did he come to see her. She was questioned as to the reason why this relationship was broken off, and said that it was because she went out with some other men, and therefore the defendant told her that he would not continue to go out with her.

Now, that is the story of the complaining witness as to her relations with the defendant, and what followed from those relations.

On the part of the defendant, there is a complete denial of any relationship of the kind with the girl at any time. The defendant says that he never had sexual relation with this girl at any time or place. Of course, if you believe the defendant's story, that there never was any sexual relation between them, then, of course, there could be no pregnancy resulting for which he could be chargeable, and necessarily he must be acquitted.

The questions presented to you are purely questions of fact, which you are to weigh, and which you are to consider from the standpoint of the evidence and reach a conclusion in accordance with the evidence submitted from the witness stand and the surrounding circumstances. In this case, as in every criminal case, notwithstanding the indictment by the Grand Jury, the burden of proof is upon the State to establish the defendant's guilt beyond a reasonable doubt. By reasonable doubt is not meant every possible doubt or conjectural doubt; it is rather that state of the case which after the entire comparison and consideration of all of the evidence leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction to a moral certainty of the proof of the charge. If such a reasonable doubt exists in your mind on any material phase of this case, the defendant should

be acquitted. If, however, the State has met the burden imposed upon it, and has satisfied you beyond a reasonable doubt that the defendant is guilty, your duty is equally plain and you should return a verdict accordingly.

CERTIFICATE OF COURT STENOGRAPHER.

MERCER COUNTY COURT OF GENERAL
QUARTER SESSIONS.

10

STATE OF NEW JERSEY }
vs. } On Indictment for
FRANK C. DUNN. } Seduction.

STATE OF NEW YORK, }
COUNTY OF CHEMUNG, } ss.
20 CITY OF ELMIRA. }

I, Herbert L. Murdock, official stenographer of the Mercer County Court of General Quarter Sessions, do hereby certify that the foregoing transcript contains the entire record of the proceedings and testimony taken by me at the trial of the case of the State of New Jersey against Frank C. Dunn, upon indictment for seduction, which trial was held before the Hon. Erwin E. Marshall, presiding judge of the Mercer County Court of General Quarter Sessions, in and for the county of Mercer, and a jury, on the 17th and 18th day of February 1925, at Trenton, New Jersey.

30

Dated April 24, 1926.

HERBERT L. MURDOCK.

Sworn and subscribed to before me this twenty-fourth day of April, 1926.

MARY E. BURT.

My commission expires March 30, 1928.

STATE OF NEW YORK, }
COUNTY OF CHEMUNG. } ss.

I, Asaph B. Hall, Clerk of the County of Chemung, and also Clerk of the Supreme Court for said County, the same being a Court of Record, Do Hereby Certify, that Mary E. Burt, whose name is subscribed to the foregoing affidavit of the annexed instrument; and thereon written, was, at the time of taking such affidavit, a Notary Public, in and for the County of Chemung, dwelling in the said County, commissioned and sworn and duly authorized to take the same. And further, that I am well acquainted with the handwriting of such Notary, and verily believe that the signature to the said affidavit is genuine.

10

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the said Court and County, the 24th day of April, 1926.

[SEAL]

ASAPH B. HALL,
Clerk.

20

CERTIFICATE OF JUDGE.

MERCER COUNTY COURT OF GENERAL
QUARTER SESSIONS.

STATE OF NEW JERSEY }
vs. } On Indictment for
FRANK C. DUNN. } Seduction. 30

STATE OF NEW JERSEY, }
COUNTY OF MERCER. } ss.

I, Erwin E. Marshall, Presiding Judge of the Mercer County Court of General Quarter Sessions and the Judge who presided over the aforesaid cause, certify that the above printed book contains the entire record

19 DUNN

of the proceedings had upon the trial of the said cause, and that the same is returned by the plaintiff-in-error therein with the writ of error bringing up the bill of exceptions signed and sealed in this cause.

ERWIN E. MARSHALL,
*Judge of the Mercer County
Court of General Quarter
Sessions.*

10 CLERK'S CERTIFICATE.

STATE OF NEW JERSEY,
COUNTY OF MERCER.

I, Harry Hartpence, Clerk of the County of Mercer, and also Clerk of the Common Pleas, etc., Courts holden therein, said Court being a Court of Record, having a common seal, do hereby certify that the foregoing is a true copy of the proceedings and judgment record in the case of the State against Frank C. Dunn, as the same
20 are filed and entered in said office.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal at Trenton, New Jersey, this
day of _____, A. D. 19____
HARRY HARTPENCE,
Clerk.
(Seal.)

JOINDER IN ERROR.

NEW JERSEY SUPREME COURT.

30 THE STATE,
Defendant in Error, }
vs. } In Error.
FRANK C. DUNN, }
Plaintiff in Error. } On Indictment for
Seduction.

(Filed April, 1926.)

And thereupon, afterwards, to wit, on the 21st day of April, 1926, the said State of New Jersey by William H.

Geraghty, Prosecutor of the Pleas of the Court of Quarter Sessions of the County of Mercer, 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 that the court here may proceed to examine as well the record and proceeding as the matters aforesaid assigned for error, and that the judgment aforesaid, in manner aforesaid given, may in all things be affirmed.

WM. H. GERAGHTY, 10
Prosecutor of the County of Mercer.

Service of copy of Joinder of Error acknowledged this 28th day of April, 1926.

ROMULUS P. RIMO,
Attorney for Plaintiff in Error.

ASSIGNMENT OF ERROR. 20

NEW JERSEY SUPREME COURT.

STATE OF NEW JERSEY }
vs. } On Indictment for
FRANK C. DUNN. } Seduction.

Afterwards, to wit, etc., in the New Jersey Supreme 30
Court, comes the said Frank C. Dunn, by his attorney, Romulus P. Rimo, and says that the judgment herein should be reversed because in the records and proceedings herein and in the matters contained and noted in the several bills of exception herein and also in the finding of the verdict and the giving of the judgment herein, there is manifest error to the great injury of the plaintiff in error whereby they were prejudiced in main-

taining their defense upon the merits in the case as well as in other respects, to wit:

1. Because the verdict is clearly against the weight of the evidence.
2. Because the court excluded legal, relevant and competent testimony.
3. Because the court admitted illegal, irrelevant and incompetent testimony.
4. Because the trial court erred in permitting Netta Barnett, mother of prosecutrix to testify to the reputation for chastity of her daughter, prosecutrix, after objection duly made upon the ground that a mother could not testify to the reputation of her own daughter for chastity in a seduction case.
5. It was prejudicial error to prevent the mother of the prosecutrix to testify to the general reputation of the prosecutrix for chastity in the community in which she lived.
6. The trial court erred in refusing to exclude the testimony of the mother of the prosecutrix for the reputation for chastity even though objection duly made, and even though the mother testified she had never had occasion to discuss with anyone the reputation of the prosecutrix.
7. The trial court erred in permitting the testimony of Lillian Large to be admitted after objection duly made when the witness had testified that she had not had occasion to speak to anyone about the reputation of the prosecutrix during any time that she knew her.
8. The trial court erred in permitting the testimony of Bob Large with reference to the reputation of the prosecutrix to stand over objection when it was testified to by said witness that he hadn't had occasion to speak to anyone about her reputation at all since he had known her.
9. The trial court erred in permitting the testimony of Mary Cox with reference to the reputation for chastity of the prosecutrix to stand after due objection made, when all that the witness testified to was that she had a

slight acquaintance with prosecutrix and all she knew about her was that she went up and down, back and forth to the place where she lived and she never discussed her reputation for such chastity with anyone since she had known prosecutrix.

10. The trial court erred in permitting the testimony of Mrs. Adah McGetrick to stand as to the reputation for chastity of the prosecutrix after due objection made and exception allowed, when all that the witness testified to was that she never discussed her reputation for chastity at all with anyone.

11. The trial court erred in permitting the testimony of Antoinette Sisto to stand over objection and exception as to the reputation for chastity of the prosecutrix when she testified that she has a good reputation, but upon cross-examination she testified she never had occasion to talk to anyone about her reputation at all.

12. The trial court erred in refusing to grant a motion for the direction of a verdict of acquittal based upon: First, the ground that the State had failed to prove in an affirmative manner the reputation of the prosecutrix in chastity; and upon the second ground, that the State had failed to prove that the prosecutrix was pregnant, such proof under the law to be corroborated by proof of strong corroborating circumstances of such character as to overcome the oath of the defendant and legal presumption of innocence.

13. The trial court erred in allowing the case to go to the jury when the State had failed to prove in an affirmative manner the reputation for chastity of the prosecutrix.

14. The trial court erred in permitting the case to go to the jury when the State had failed to prove by corroborative proof of corroborating circumstances, pregnancy.

ROMULUS P. RIMO,
Attorney for Plaintiff in Error.

Service of the within Assignment of Errors is hereby acknowledged this _____ day of _____, 1926.
WALTER D. COUGLE,
Mercer County Assistant Prosecutor
of the Pleas.

SPECIFICATION OF CAUSES FOR REVERSAL.

10

NEW JERSEY SUPREME COURT.

STATE OF NEW JERSEY }
vs. } On indictment for seduction.
FRANK C. DUNN. }

The plaintiff-in-error specifies the following causes
20 in the record relied upon for a reversal of this judgment:

1. Because the verdict is clearly against the weight of the evidence.
2. Because the court excluded legal, relevant and competent testimony.
3. Because the court admitted illegal, irrelevant and incompetent testimony.
4. Because the trial court erred in permitting Netta Barnett, mother of prosecutrix, to testify to the reputation for chastity of her daughter, prosecutrix, after
30 objection duly made upon the ground that a mother could not testify to the reputation of her own daughter for chastity in a seduction case.
5. It was prejudicial error to prevent the mother of the prosecutrix to testify to the general reputation of the prosecutrix for chastity in the community in which she lived.
6. The trial court erred in refusing to exclude the testimony of the mother of the prosecutrix for the

reputation for chastity even though objection duly made, and even though the mother testified, she had never had occasion to discuss with anyone the reputation of the prosecutrix.

7. The trial court erred in permitting the testimony of Lillian Large to be admitted after objection duly made when the witness had testified that she had not had occasion to speak to anyone about the reputation of the prosecutrix during any time that she knew her.

8. The trial court erred in permitting the testimony 10 of Bob Large with reference to the reputation of the prosecutrix to stand over objection when it was testified to by said witness that he hadn't had occasion to speak to anyone about her reputation at all since he had known her.

9. The trial court erred in permitting the testimony of Mary Cox with reference to the reputation for chastity of the prosecutrix to stand after due objection made, when all that the witness testified to was that she had a slight acquaintance with prosecutrix and all she knew
20 about her was that she went up and down, back and forth, to the place where she lived, and that she had never discussed her reputation for such chastity with anyone since she had known prosecutrix.

10. The trial court erred in permitting the testimony of Mrs. Adah McGetrick to stand as to the reputation for chastity of the prosecutrix after due objection made and exception allowed, when all that the witness testified to was that she never discussed her reputation for
30 chastity at all with anyone.

11. The trial court erred in permitting the testimony of Antoinette Sisto to stand over objection and exception as to the reputation for chastity of the prosecutrix when she testified that she has a good reputation; but upon cross-examination she testified she never had occasion to talk to anyone about her reputation at all.

12. The trial court erred in refusing to grant a motion for the direction of a verdict of acquittal based upon: First, the ground that the State had failed to

prove in an affirmative manner the reputation of the prosecutrix in chastity; and upon the second ground, that the State had failed to prove that the prosecutrix was pregnant, such proof under the law to be corroborated by proof of strong corroborating circumstances of such character as to overcome the oath of the defendant and legal presumption of innocence.

13. The trial court erred in allowing the case to go to the jury when the State had failed to prove in an affirmative manner the reputation for chastity of the prosecutrix.

14. The trial court erred in permitting the case to go to the jury when the State had failed to prove by corroborative proof of corroborating circumstances, pregnancy.

ROMULUS P. RIMO,
Attorney for Plaintiff-in-Error.

OPINION.

NEW JERSEY SUPREME COURT.

STATE OF NEW JERSEY,
Defendant in Error,

vs.

FRANK DUNN,
Plaintiff in Error.

(Argued May term, 1926. Decided October term, 1926.)

Romulus P. Rimo, for Plaintiff in Error.

William H. Geraghty, for Defendant in Error. 10

Argued before THE CHIEF JUSTICE, TRENCHARD and MINTURN, JJ.

PER CURIAM.

The defendant was convicted of seduction, and sentenced to the Reformatory. The reasons assigned for reversal are that there was no corroboration of the complaining witness as to pregnancy, and no legal proof adduced to the complaining witness' good repute for chastity.

It must suffice to state that the requisite proof of pregnancy was amply supplied by the circumstances of the case. Such proof, while circumstantial in character, under the rules of evidence, is sufficiently convincing where it is otherwise free from reasonable doubt.

Witnesses testified to the good reputation of the prosecutrix for chastity, but on cross-examination admitted that they had never heard her reputation in that respect discussed. It has been held that even negative proof of

that character affords some evidence of reputation which in the absence of proof of a more positive character is sufficient to create a presumption that her character is at least normal.

1 Phil. Ev. 470.
 40 Cyc. 2198 and cases.
 Miskel vs. State, 43 N. J. L. 644.
 State vs. Brown, 64 N. J. L. 418.

The testimony adduced presented a jury question,
 10 and the case was properly submitted to them. The judgment of conviction should be affirmed.

ORDER OF AFFIRMANCE AND REMITTITUR.

NEW JERSEY SUPREME COURT.

STATE OF NEW JERSEY, <i>Defendant in Error,</i>	}	On error.
<i>vs.</i>		
FRANK DUNN, <i>Plaintiff in Error.</i>		

This cause having been submitted at the May Term
 20 of this Court, 1926, by William H. Geraghty, Esq., Attorney for the Defendant in Error, and Romulus P. Rimo, Esq., Attorney for the Plaintiff in Error, and the Court having considered the same and finding no error in the records and proceedings of the Court of Quarter Sessions of the County of Mercer, return with the writ in this cause;

It is Ordered and Adjudged that the judgment of the Court of Quarter Sessions of the County of Mercer, removed by Writ of Error in this cause, be affirmed with

costs, and that the record be remitted to the said Court of Quarter Sessions of the County of Mercer, to be proceeded with in accordance with this judgment and the practice of said court.

Entered December 18th, 1926.

On motion of
 WILLIAM H. GERAGHTY,
Prosecutor of the Pleas,
Attorney for Defendant in Error.

SUPREME COURT CLERK'S CERTIFICATE. 10

I, Edward J. Kelleher, 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 the seal of said Court at Trenton, this 29th day of December, A. D. 1926.

[SEAL] EDWARD J. KELLEHER,
Clerk.

ASSIGNMENT OF ERRORS. 20

NEW JERSEY COURT OF ERRORS AND APPEALS.

STATE OF NEW JERSEY, <i>Defendant in Error,</i>	}	On Error to Supreme Court.
<i>vs.</i>		
FRANK DUNN, <i>Plaintiff in Error.</i>		

Afterwards, in the New Jersey Court of Errors and Appeals, comes the said Frank Dunn, by Romulus P. Rimo, his attorney, and says that in the record of the Supreme Court and proceedings aforesaid, and also in the giving of the verdict and judgment aforesaid, there is manifest error in this respect, to wit:

1. That the said Supreme Court affirmed the judgment of the Mercer Quarter Sessions Court, whereas said Court should have reversed said judgment.
- 10 2. That the Supreme Court neglected, and therefore erred by not taking up the fourth reason (4) of the Specification of Causes for Reversal filed in the Supreme Court of the State of New Jersey, which Assignment of Error is as follows: Because the trial court erred in permitting Netta Barnett, mother of prosecutrix, to testify to the reputation for chastity of her daughter, prosecutrix, after objection duly made upon the ground that a mother could not testify to the reputation of her own daughter for chastity in a seduction case. This very Assignment of Error is one of the Specifications of Causes for Reversal which was filed in the New Jersey Supreme Court, and appeared as No. 4 on page 150 of the State of the Case, filed in the Supreme Court. The plaintiff in error insists that this point is a very important point in the case, and should have been decided by the Supreme Court.
- 20 3. Because the verdict is clearly against the weight of the evidence.
4. Because the court excluded legal, relevant and competent testimony.
- 30 5. Because the court admitted illegal, irrelevant and incompetent testimony.
6. Because the trial court erred in permitting Netta Barnett, mother of prosecutrix, to testify to the reputation for chastity of her daughter, prosecutrix, after objection duly made upon the ground that a mother could not testify to the reputation of her own daughter for chastity in a seduction case.

7. It was prejudicial error to prevent the mother of the prosecutrix to testify to the general reputation of the prosecutrix for chastity in the community in which she lived.

8. The trial court erred in refusing to exclude the testimony of the mother of the prosecutrix for the reputation for chastity even though objection duly made, and even though the mother testified she had never had occasion to discuss with anyone the reputation of the prosecutrix.

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9. The trial court erred in permitting the testimony of Lillian Large to be admitted after objection duly made when the witness had testified that she had not had occasion to speak to anyone about the reputation of the prosecutrix during any time that she knew her.

10. The trial court erred in permitting the testimony of Bob Large with reference to the reputation of the prosecutrix to stand over objection when it was testified to by said witness that he hadn't had occasion to speak to anyone about her reputation at all since he had known her.

20

11. The trial court erred in premitting the testimony of Mary Cox with reference to the reputation for chastity of the prosecutrix to stand after due objection made, when all that the witness testified to was that she had a slight acquaintance with prosecutrix and all she knew about her was that she went up and down, back and forth, to the place where she lived, and that she had never discussed her reputation for such chastity with anyone since she had known prosecutrix.

30

12. The trial court erred in permitting the testimony of Mrs. Ada McGetrick to stand as to the reputation for chastity of the prosecutrix after due objection made and exception allowed, when all that the witness testified to was that she never discussed her reputation for chastity at all with anyone.

13. The trial court erred in permitting the testimony of Antoinette Sisto to stand over objection and excep-

tion as to the reputation for chastity of the prosecutrix when she testified that she has a good reputation; but upon cross-examination she testified she never had occasion to talk to anyone about her reputation at all.

14. The trial court erred in refusing to grant a motion for the direction of a verdict of acquittal based upon: First, the ground that the State had failed to prove in an affirmative manner the reputation of the prosecutrix in chastity; and upon the second ground, 10 that the State had failed to prove that the prosecutrix was pregnant, such proof under the law to be corroborated by proof of strong corroborating circumstances of such character as to overcome the oath of the defendant and legal presumption of innocence.

15. The trial court erred in allowing the case to go to the jury when the State had failed to prove in an affirmative manner the reputation for chastity of the prosecutrix.

16. The trial court erred in permitting the case to go 20 to the jury when the State had failed to prove by corroborative proof of corroborating circumstances, pregnancy.

ROMULUS P. RIMO,
Attorney and of Counsel for
Plaintiff in Error.

Service of the within Assignment of Errors is hereby acknowledged this day of, 1926.

WALTER D. COUGLE,
Mercer County Assistant Prose-
cutor of the Pleas.

30

SPECIFICATION OF CAUSES FOR REVERSAL.

NEW JERSEY COURT OF ERRORS AND APPEALS.

STATE OF NEW JERSEY, }
Defendant in Error, }
 } On Error to Supreme
vs. } Court.
FRANK DUNN, }
Plaintiff in Error. }

Plaintiff in error assigns the following reasons for reversal of the judgment of the Supreme Court, sustain- 10 ing the verdict and judgment of conviction in the above-stated cause upon the whole record.

1. That the said Supreme Court affirmed the judgment of the Mercer Quarter Sessions Court, whereas said court should have reversed said judgment.

2. That the Supreme Court neglected, and therefore erred, by not taking up the fourth reason (4) of the Specification of Causes for Reversal filed in the Supreme Court of the State of New Jersey, which Assignment of Error is as follows: Because the trial court 20 erred in permitting Netta Barnett, mother of prosecutrix, to testify to the reputation for chastity of her daughter, prosecutrix, after objection duly made upon the ground that a mother could not testify to the reputation of her own daughter for chastity in a seduction case. This very Assignment of Error is one of the Specifications of Causes for Reversal which was filed in the New Jersey Supreme Court, and appeared as No. 4 on page 150 of the State of the Case, filed in the Supreme Court. The plaintiff in error insists that this 30 point is a very important point in the case, and should have been decided by the Supreme Court.

3. Because the verdict is clearly against the weight of the evidence.

4. Because the court excluded legal, relevant and competent testimony.

5. Because the court admitted illegal, irrelevant and incompetent testimony.

6. Because the trial court erred in permitting Netta Barnett, mother of prosecutrix, to testify to the reputation for chastity of her daughter, prosecutrix, after objection duly made upon the ground that a mother could not testify to the reputation of her own daughter for chastity in a seduction case.

7. It was prejudicial error to prevent the mother of the prosecutrix to testify to the general reputation of the prosecutrix for chastity in the community in which she lived.

8. The trial court erred in refusing to exclude the testimony of the mother of the prosecutrix for the reputation for chastity even though objection duly made, and even though the mother testified she had never had occasion to discuss with anyone the reputation of the prosecutrix.

9. The trial court erred in permitting the testimony of Lillian Large to be admitted after objection duly made when the witness had testified that she had not had occasion to speak to anyone about the reputation of the prosecutrix during any time that she knew her.

10. The trial court erred in permitting the testimony of Bob Large, with reference to the reputation of the prosecutrix, to stand over objection when it was testified to by said witness that he hadn't had occasion to speak to anyone about her reputation at all since he had known her.

11. The trial court erred in permitting the testimony of Mary Cox with reference to the reputation for chastity of the prosecutrix to stand after due objection made, when all that the witness testified to was that she had a slight acquaintance with prosecutrix and all she knew

about her was that she went up and down, back and forth, to the place where she lived, and that she had never discussed her reputation for such chastity with anyone since she had known prosecutrix.

12. The trial court erred in permitting the testimony of Mrs. Ada McGetrick to stand as to the reputation for chastity of the prosecutrix after due objection made and exception allowed, when all that the witness testified to was that she never discussed her reputation for chastity at all with anyone.

13. The trial court erred in permitting the testimony of Antoinette Sisto to stand over objection and exception as to the reputation for chastity of the prosecutrix when she testified that she has a good reputation, but upon cross-examination she testified she never had occasion to talk to anyone about her reputation at all.

14. The trial court erred in refusing to grant a motion for the direction of a verdict of acquittal based upon: First, the ground that the State had failed to prove in an affirmative manner the reputation of the prosecutrix in chastity; and upon the second ground, that the State had failed to prove that the prosecutrix was pregnant, such proof under the law to be corroborated by proof of strong corroborating circumstances of such character as to overcome the oath of the defendant and legal presumption of innocence.

15. The trial court erred in allowing the case to go to the jury when the State had failed to prove in an affirmative manner the reputation for chastity of the prosecutrix.

16. The trial court erred in permitting the case to go to the jury when the State had failed to prove by corroborative proof of corroborating circumstances, pregnancy.

ROMULUS P. RIMO,
Attorney and of Counsel for
Plaintiff in Error.

Service of the within Specification of Causes for Reversal is hereby acknowledged this day of, 1926.

WALTER D. COUGLE,
Mercer County Assistant Prosecutor of the Pleas.

New Jersey Court of Errors and Appeals.

STATE OF NEW JERSEY, <i>Defendant in Error,</i>	} On error to Supreme Court.
<i>vs.</i>	
FRANK C. DUNN, <i>Plaintiff in Error.</i>	

BRIEF FOR PLAINTIFF IN ERROR

STATEMENT OF FACTS

Frank C. Dunn, plaintiff in error, the defendant in the Trial Court, was convicted for the crime of seduction in the Mercer County Court of Quarter Sessions, in the month of February, 1925, and sentenced to the New Jersey Reformatory, Rahway, New Jersey.

Writ of Error was later issued out of the New Jersey Supreme Court to the Mercer County Court of Quarter Sessions, which matter was argued in the May term, 1926, and decided in the October term, 1926, in the Supreme Court of New Jersey, which affirmed the conviction.

The cause is before this Court on Writ of Error to the New Jersey Supreme Court, to review judgment therein.

POINT I

Because the Verdict Was Clearly Against the Weight of Evidence.

The State, at the close of its case and before the defense went in, had failed to introduce testimony to corroborate the element of pregnancy, which is one of the requisites in the crime of seduction, and further had failed to prove her reputation since it had no proof at all from any witness who had ever discussed the gen-

eral reputation in the community in which the prosecutrix lived for chastity, which is also an essential element to make up the crime of seduction, and because of the failure to prove in an affirmative manner both of these elements, and particularly the general reputation for chastity, the jury in finding its verdict of guilty did so because of prejudice and clearly against the weight of evidence.

2. Mrs. Netta Barnett, mother of prosecutrix and witness for the State, testified that the general reputation for chastity of her daughter was good, and upon cross-examination she testified she had never discussed it with anyone, and upon motion to strike out testimony, motion was overruled.

"Character lives in a man—reputation outside of him." *State v. Ussery*, 118 N. C. 1177-1180. (24 S. E. 414.)

"With regard to the chastity of a woman, it is what the people of her acquaintance generally say of her in this regard." *State v. Brien*, 34 Kansas 63, 72; 8 Pac. 260.

"Reputation is common knowledge of a community of the opinion generally entertained, or the concurrence of many voices to the same fact."

The Court of Errors and Appeals of New Jersey said, "A witness ignorant of the reputation of accused in the community in which he resides is not competent to testify to his good reputation." *The State v. Thome*, 82 N. J. Law 799; 85 Atl. 453.

"A witness who has not been so situated as to know the character or reputation of another cannot testify in regard thereto; nor is a witness competent where his testimony would be based solely on his personal knowledge concerning the person as to whose reputation he is called to testify." 40 Cyc., pp. 2198-99.

"The general reputation can be proven only by witnesses who can testify that they have had occasion to speak with persons in the community of the reputation of a person, but no one can testify to the reputation of a

person, nor can one testify his opinion of a person and consider that his opinion is reputation unless he can first testify that he has discussed with others the reputation of a person with reference to truth, veracity, chastity, or any other quality." *Smith v. Compton*, 67 N. J. Law 548; 52 Atl. Rep. 386.

"A witness who has heard one person speak of another's character is not competent to testify as to such person's character." *State v. Day*, 188 Miss. 359; 87 S. W. 465.

"It is the reputation one has in the community up to the time of the commission of the offense, only, which is admissible." *Foulks v. Silkway*, 3 Esp. N. P. 236.

"Reputation can only be proven by witnesses from what they have heard said of the person as to whom they are testifying, as to whatever quality of reputation they are testifying about in the community in which he lives down to the time of the commission of the offense, and any other testimony aside from that of personal opinion without having discussed it with others is harmful, prejudicial, and inadmissible and reversible error." *State v. Sprague*, 64 N. J. L. 419; 45 Atl. 788.

POINT II

1. The Trial Court erred in permitting Netta Barnett, mother of prosecutrix, to testify that her daughter's reputation was good when such testimony was objected to, which testimony after cross-examination developed that Netta Barnett had never discussed with anyone the reputation of the prosecutrix for chastity.

2. Paragraph two under point one is herein repeated to support the argument under this point. See Case, pp. 59, 60.

POINT III

Because the Verdict Was Clearly Against and Contrary to the Law.

1. Paragraph one, under point one, is herein repeated to support the argument under this point. See Case, p. 77.

2. At no time during the trial was there testimony of a corroborative nature to corroborate the prosecutrix as to pregnancy and at no time was there proof in an affirmative nature as to the chastity of the prosecutrix and the verdict of guilty in a seduction case where those two elements of the crime are uncorroborated, and particularly where there is no affirmative proof of the chastity of the prosecutrix, is against the law.

POINT IV

The Trial Court erred in refusing to grant motion for direction of verdict of acquittal found on page 78 of Case, to which exception was allowed, signed, and sealed by the Court.

The Court may consider whether the defendant has suffered injury in the denial of any matter which was a matter of discretion, which includes a refusal to direct a verdict at the close of the State's case, but it brings into review only the question whether on the evidence as it then stood there was a case for the jury.

POINT V

The Trial Court erred in refusing to strike out, on proper motion, the testimony of Bob Large, who, on direct examination as a witness for the State, testified: "Q. The question is if you know her reputation for chastity?" "A. No, sir; I never did know nothing wrong with her." "Q. You knew nothing wrong with her? But did you know her reputation? Was it good

or bad?" "A. It was good so far as I know." "Q. That is all? You say her reputation was good?" "A. Yes, sir." And on cross-examination: "Q. You hadn't had occasion to speak to anyone about her reputation at all, had you, and since you had known her?" "A. No, sir." "Q. Well, you haven't had occasion to speak to anyone about her chastity at all?" "A. No, sir." Motion to strike out excepted to and granted.

State v. Thome, 82 N. J. Law 799; 85 Atl. 453.

POINT VI

The Trial Court erred in refusing, after proper motion made, to strike out the testimony of Netta Barnett, mother of prosecutrix. Exception allowed by court.

Testimony by relatives to parties in a suit of action at law ordinarily may be admitted, but, when so done, courts should charge that such testimony should be considered with a cautious and careful eye. From a review of the testimony and the charge of the court, it will be noted that no such charge was made by the court which was a prejudicial error.

POINT VII

The Trial Court erred in permitting the testimony of Mary Cox to stand, who was a witness in behalf of the State, with reference to general reputation, which testimony was: "Q. And do you know of her general reputation for chastity prior to May 1, 1924?" "A. Yes, I do." "Q. What is her general reputation?" "A. Very good." "Cross-examination. Q. You say you have just a slight acquaintance with her?" "A. Yes, she just boarded with a family that lives next door." "Q. You didn't know anything about her?" "A. No, sir; just saw her going in." "Q. All you know about her was what you saw, going up and down and back and forth to the place where she lived, which was next door to you?" "A. Yes." "Q. You didn't discuss this reputation of hers with anyone, for chastity in this

community, since you have known her?" "A. No, sir." Counsel for the defendant asked that the testimony be stricken out because the witness was not qualified to give testimony as to the reputation of the prosecutrix. The court overruled the objection and allowed an exception which was sealed.

State v. Thome, 82 N. J. Law 799; 85 Atl. 453.

POINT VIII

The Trial Court erred in permitting the testimony of Adah McGetrick to stand, who was a witness called for the State as to the general reputation of the prosecutrix, although an objection was made, overruled, and exception allowed and sealed, which testimony was as follows: "Q. And do you know her general reputation for chastity prior to May 1, 1924?" "A. Yes, I did favors for Miss Barnett for a while and I know her to be very good." "Q. That is, you know her general reputation for chastity to be very good?" "A. Very good." "Q. Very good?" "A. Yes, sir; very good." On cross-examination. "Q. How long have you known her?" "A. I have known Miss Barnett for about three years." "Q. And during your acquaintance with her you have never heard anyone discuss her reputation for chastity at all, have you?" "A. No, sir." "Q. You didn't have occasion to talk to anybody and no one had occasion to talk to you about her reputation for chastity?" "A. No, sir." Motion made to strike out testimony on the ground that witness had not qualified to testify to the reputation of the prosecutrix for chastity. The court said, "That is contrary to my understanding of the rule as to what qualifies a witness." Motion was overruled. Exception allowed and sealed.

State v. Thome, 82 N. J. Law 799; 85 Atl. 455.

POINT IX

The trial court erred in permitting the testimony of Antoinette Sisto, witness for the State, called to testify

to the reputation of prosecutrix for chastity, to stand; such testimony given is as follows: "Q. And do you know her general reputation for chastity before the 1st of May, 1924? Do you understand? You do know her reputation for chastity; is that the answer?" "A. Do you mean did I know her before 1924?" "Q. Did you know what her reputation was?" "A. Yes." "Q. Well, what is her reputation?" "A. So far as I have known her, she has always been a good girl." "By the Court. Well, about her reputation; had she a good or a bad reputation for chastity?" "A. She has a good reputation." "Q. She has a good reputation?" "A. Yes, sir." Cross-examination. "Q. Miss Sisto, you have known her for three years? You have spoken with her?" "A. Yes, sir." "Q. You never had occasion to talk to anyone about her reputation at all, have you?" "A. No, sir." "Q. They never came to you during the time that you have known her and discussed her reputation for chastity in this community prior to 1924?" "A. No, sir." "Q. So that all that you know is what you believe of her, what you think she is, the kind of a girl; that is all, isn't it?" "A. Yes, sir; that is all." Motion to strike out testimony was made on the ground that the witness was not qualified. The motion was overruled and exception allowed and sealed.

POINT X

The Trial Court erred in permitting the testimony of Lillian Large, a witness for the State called to testify to the reputation of the prosecutrix, after due objection made, which testimony was: On Direct. "Q. Well, do you know the general reputation of Madalyn Barnett for chastity in the community in which she lives?" "A. She was a good girl, as far as I know." "Q. Now the question is, what was her reputation; was it good or bad?" "A. Good."

By the Prosecutor:

"Q. You hadn't ever had occasion to speak to anybody about her reputation, or anyone else in your hearing charge her with wrong, that you know of?"

"A. No." "Q. But you hadn't talked with anybody about her reputation, had you?" "A. No, sir."

"Q. You hadn't had occasion to speak to anybody about her reputation during any of the time that you had known her, had you?" "A. No." Counsel for defendant asked that testimony be stricken out on the ground that witness had never discussed the reputation for chastity of the prosecutrix with anyone and the testimony given could not be used because witness was disqualified.

Motion was overruled, exception allowed and sealed.

POINT XI

The Trial Court erred by permitting the evidence to go in, over objection, which was irrelevant, immaterial and incompetent. *State v. Lewis*, 121 Atl. 83.

The plaintiff in error maintains that the trial errors were prejudicial to him and to his rights to such extent as to entitle him to a reversal of the conviction and a *venire de novo*.

POINT XII

Because the Supreme Court of New Jersey failed to take up for consideration and decide point 2 in the brief for plaintiff in error, which is the same point, to wit, point 2 of the plaintiff in error, as shown in his brief herein, which point is, "The Trial Court erred in permitting Netta Barnett, mother of prosecutrix, to testify that her daughter's reputation was good when such testimony was objected to, which testimony, after cross-examination, developed that Netta Barnett had never discussed with anyone the reputation of the prosecutrix for chastity. See Case, pp. 59, 60, 61."

The plaintiff in error contended at the Trial Court and in the Supreme Court, and does here contend that he has been wronged by the court's permitting a mother to testify to the reputation of her own daughter, an element necessary to be proven in a prosecution for crime in seduction cases, because it is only natural to suppose that a mother would testify that her daughter's was good, regardless of whether such reputation was good or not.

The Supreme Court should have passed upon this point, as is contended by plaintiff in error, and by not doing so, the fact has been to lead into the case testimony from a maternal parent, which prejudice in favor of the prosecutrix, that in itself and without any other testimony from anyone else as to the reputation of the prosecutrix could have persuaded and convinced the minds of the jury in favor of a conviction, when should the mother's testimony have been ruled out, there was no one else in the case who testified that they had discussed her general reputation for chastity, and that from the discussion the prosecutrix enjoyed a good reputation for chastity, all of which the plaintiff in error contends is harmful error.

The plaintiff in error further contends that the Supreme Court should have at least filed an opinion upon that question, and that the question was and is of great importance, as is contended by the plaintiff in error, and because of the failure of so doing, there is reversible error.

Respectfully submitted,

ROMULUS P. RIMO,

*Attorney for and of Counsel with
Plaintiff in Error.*

New Jersey Court of Errors and Appeals

STATE OF NEW JERSEY,
Defendant in Error,

vs.

FRANK DUNN,
Plaintiff in Error.

On Writ of Error
to Supreme Court.

BRIEF FOR DEFENDANT IN ERROR.

STATEMENT OF FACTS.

This case was tried in the Mercer County Court of Quarter Sessions on February 17 and 18, 1925. The plaintiff in error was convicted of the charge of seduction, and was sentenced to be committed to the New Jersey Reformatory at Rahway. Thereafter a writ of error was issued from the New Jersey Supreme Court to the Mercer County Court of Quarter Sessions, and in the Supreme Court during the October term, 1926, the conviction of the defendant by the Mercer County Court of Quarter Sessions was affirmed. The case is now before this court on writ of error issued to the Supreme Court.

POINT 2.

THE ACTION OF THE COURT IN PERMITTING WITNESSES TO TESTIFY AS TO THE GENERAL REPUTATION OF THE COMPLAINING WITNESS FOR CHASTITY WAS LEGAL AND PROPER AND IS NOT OBJECTIONABLE OR ERRONEOUS.

It is urged that the trial Court erred in admitting testimony of general reputation when the witnesses giving such character testimony, after cross-examination, admitted that they had never discussed with any one the reputation of the prosecutrix for chastity, although all of the said witnesses testified that they knew her general reputation for chastity to be good. This seems to be the main reason for reversal urged by the plaintiff in error. A careful examination of the authorities in this subject leads to the conclusion that the trial Court acted in conformity with generally accepted principles of law in admitting this testimony.

In the case of *Treschman v. Treschman*, 61 N. E. Reporter 966, 28 Ind. Appeals 206, it is said, "A person's reputation for truth is made by what his neighbors generally say of him in this regard; if they generally say he is untruthful, that makes his general reputation for truth bad. Upon the other hand, if a man's neighbors say nothing whatever about him as to his truthfulness, that fact of itself is evidence that his general reputation for truth is good. Again in the case of *State v. Bryant*, 8 Pacific Reporter 260-266, 34 Kan. 63; *Gondolfo v. State*, 11 Ohio St. Reports 114, 1 Whart. Ev. Section 49. The following doctrine is enunciated and supported:

"A woman's reputation for chastity is what the people of her acquaintance generally say of her in this regard; that is the general credit for chastity which she bears among her neighbors and

acquaintances. If a woman's neighbors and acquaintances say nothing of her, or do not question her character for chastity, then her reputation in this regard should be considered good. The best character is generally that which is the least talked about. Therefore, the negative evidence of a witness that he never heard anything against the character of a woman for chastity on whose behalf he has been called, that is, that he never heard her conduct criticised, condemned, or ever talked about, is admissible upon the trial where the reputation of the woman for chastity is in question, and is strong evidence of the woman's good reputation."

Again in 40 Cyc., pages 2198 and 2199, the following statement is made:

"A witness is competent to testify as to character or reputation when his circumstances were such that he was in a position to know the general character or reputation of the person in question, although he has not discussed such person's character or reputation with a majority or even a large number of the people of the community and does not live in the same community."

The tendency of modern cases is to allow proof of character by sustaining witnesses where the witness qualifies by testifying that he knows the reputation of the party or witness in the community in which he lives, although the witness may state that he testifies from his own knowledge and also states that he never heard the character in question discussed. This is on the ground that the reputation of the best men is least questioned, and, therefore, an intimate knowledge on part of the witness testi-

fyng of the party in question for years, and the absence of any charge against his reputation is coming to be generally recognized as competent evidence. *L. R. A. (New Series)*, Volume 22, page 666.

In *State v. Bryan*, 34 *Kansas* 63, the Court said:

"If a woman's neighbors and acquaintances say nothing of her or do not question her character for chastity, then her reputation in this regard should be considered good."

In *Morss v. Palmer*, 15 *Pa.* 51, the Court said:

"It is certainly some proof that a person against whom the tongue of slander has never been heard to wag is not so destitute of truth and sincerity as that he ought not to be believed on his oath. The presumption is that if the charge is true, it must have been heard by those who live near and were in daily intercourse with him."

The testimony of the witness to the good character of the accused cannot be excluded merely because his saying is that he never heard it discussed. The Court remarks that sometime this is the highest kind of testimony that can be obtained. *State v. Grate*, 68 *Mo.* 22; *Abbott's Criminal Trial Brief*, page 576.

Reference to the above authorities clearly establishes the current of judicial opinion in the United States to be that this so-called negative testimony is the most credible and trustworthy. It is quite evident that this testimony occupies as high a plane as other testimony. Witnesses are required to have knowledge of the facts concerning which they testify. Knowledge of facts is gained by the opportunity to observe and understand the subject matter of the testimony. In the instances where the State relied

upon the testimony of witnesses as to the general reputation of the prosecutrix, the witnesses stated that they knew her general reputation to be good. The fact that they did not discuss the reputation of the prosecutrix with any one did not prevent them from having knowledge, because this knowledge could be gained in ways other than by conversation and contact with those who discussed generally the prosecutrix or her personal characteristics.

If the above view be rejected by the Court as a rule governing the admission of testimony relating to the reputation of witnesses, most men or women having excellent reputations would find themselves unable to establish the same, because it is rarely, if ever, that the community discusses generally or to any extent the reputation of those against whom nothing can be said.

POINT 3.

THE VERDICT WAS FOUNDED UPON PROOF BEYOND REASONABLE DOUBT OF ALL THE ELEMENTS MENTIONED IN THE STATUTE DEFINING SEDUCTION.

In the discussion of this point made by the plaintiff in error, reference is made to the argument appearing under point one, page 2, hereof.

POINT 4.

THE REFUSAL OF THE TRIAL COURT TO GRANT A MOTION FOR THE DIRECTION OF A VERDICT OF ACQUITTAL WAS PROPER AND DID NOT DENY THE PLAINTIFF IN ERROR ANY RIGHT TO WHICH HE WAS ENTITLED.

This contention is supported by reference to all the testimony of the case from which it clearly appears that each element necessary to the proper proof of the charge was established beyond a reasonable doubt.

POINT 5.

IT IS ONLY NECESSARY TO PROVE EACH OF THE ELEMENTS OF THE OFFENSE MENTIONED IN THE STATUTE TO SUPPORT THE CONTENTION OF THE STATE.

The plaintiff in error stresses the fact that there was no testimony of a corroborative nature of the pregnancy of the prosecutrix, nor of the chastity of the prosecutrix. Reference to the facts in the case as stated in the argument under Point 1 clearly shows that these two elements, as well as the third element of sexual intercourse under the said promise was convincingly established by the testimony of the witnesses. This testimony appears in abbreviated form in the argument under Point 1. The corroboration required by statute is the oath of one witness and strong corroborating circumstances. *State v. Zabriskie*, 43 L. 640.

POINT 6.

THE TESTIMONY OF BOB LARGE, LILLIAN LARGE, NETTA BARNETT, MARY COX, ADA McGETRICK, AND ANTONETTE SISTA WAS PROPERLY ADMITTED.

The authority for, the competency, and propriety of this testimony is argued and set forth in the discussion under Point 2 herein.

POINT 7.

The plaintiff in error contends that the trial Court erred in permitting the mother of prosecutrix to testify that her daughter's general reputation for chastity was good and insists that because of the relationship between the parties, the mother ought to be disqualified. There is obviously no merit in this contention because the relationship

can be and was proved, and the jury from the evidence can say whether the relationship influenced the witness to distort her testimony. However, the mother's testimony did not stand alone in proof of chastity, but ^{found} ~~formed~~ strong corroboration in the words of many other witnesses, who stated that the general reputation of the prosecutrix for chastity was good. How, then, can any injury be done since the jury could ignore the mother's testimony and still have many others to prove the element of chastity required in the case?

It is submitted that the defendant below, and plaintiff in error, has suffered no injury, but has been legally convicted and the judgment of the lower Court should be affirmed.

Respectfully submitted,

WALTER D. COUGLE,

*Assistant Prosecutor of the Pleas of
Mercer County, Attorney for and
of Counsel with the Defendant in
Error.*

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