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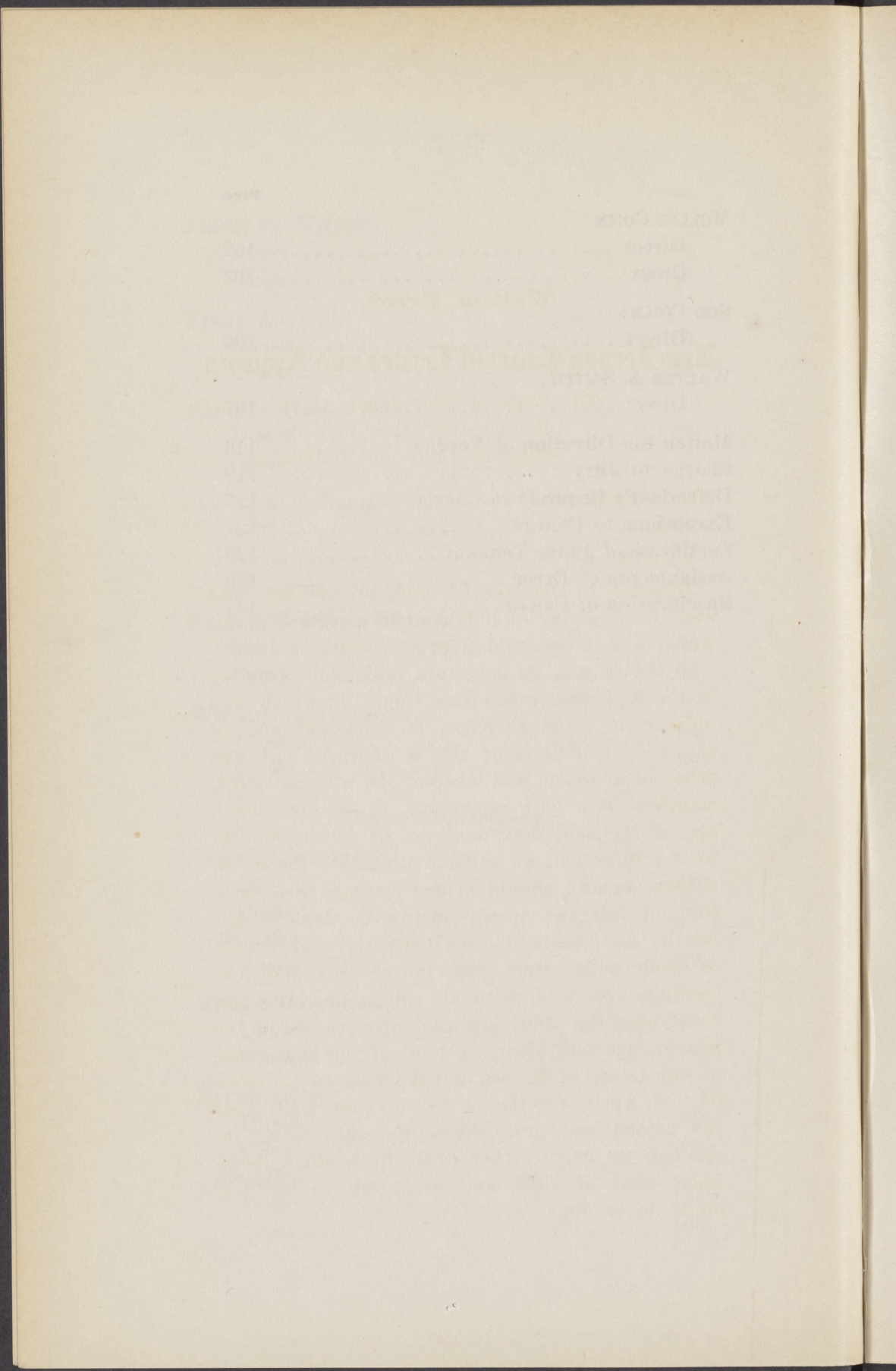
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Writ of Error.

New Jersey Court of Errors and Appeals

The State of New Jersey to the Chief
Justice and other justices of our
Supreme Court of Judicature.

10

NEW JERSEY, SS:

(Seal).

GREETING:

Because in the record and proceedings and
also in the giving of judgment in a certain plaint
which was in our said Supreme Court of Judica-
ture before you, on a certain indictment pending
in the New Jersey Supreme Court, in which said
indictment, Jane Fletcher, is defendant and in
which said indictment she is charged with the
crime of abortion, and whereof she was convicted,
manifest error hath intervened, to the great dam-
age of the said defendant, as by her complaint
we are informed, we being willing that the error,
if there be any, should in due manner be correct-
ed, and full and speedy justice be done in her
behalf, do command you distinctly and openly
to send, under your seal, the records and pro-
ceedings aforesaid, with all things touching and
concerning the same, also the entire record of the
proceedings had upon the trial of the said cause
to our Court of Errors and Appeals on the 15th
day of April, together with this our writ, that
the record and proceedings aforesaid being in-
spected, we may further cause to be done there-
upon what of right and according to the law
ought to be done.

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II.

WITNESS, our Chancellor and President Judge of our said Court of Errors and Appeals at Trenton aforesaid, the 28th day of March, Nineteen Hundred and Sixteen.

THOS. F. MARTIN,
Clerk.

HAMILL & CAIN,
Attorneys of Defendant—Plaintiff in error.

10

Return.

The answer of the Justices of the Supreme Court of the State of New Jersey, within named. The record and proceedings whereof mention is 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.

20

WM. S. GUMMERE,
C. J.

30

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Opinion.

(Filed March 6, 1916.)
NEW JERSEY SUPREME COURT.

November Term, 1915.

STATE,

v.

JANE FLETCHER,

10

Submitted, November 4th, 1915.

Decided, March, 1916.

Error to Hudson Sessions.

Before the Chief Justice and Justices Swayze
 and Bergen.

ROBERT S. HUDSPETH & GEORGE T. VICKERS for
 the State.

JAMES A. HAMILL, for defendant.

20

Per Curiam:

We think it was proper to allow Dr. Ill to
 use his hospital history to refresh his recollection.
 Although it was dictated by him to another and
 not transcribed in his presence, he identified it as
 a transcription of the notes he dictated at the time.
 We think he might well do so; and no more proof
 was necessary to justify its use.

The evidence warranted the statement of the
 prosecutor that Dr. Ballentine became convinced
 that a criminal operation had been performed.
 The statement that the doctor made an examina-
 tion perhaps was inaccurate, dependent on the
 sense in which the word examination was used;
 but it was harmless.

30

The cross examination of the defendant as to her
 acquaintance with Dr. Muttart was permissible.
 She testified on direct examination that her pa-
 tient told her she had come from a doctor in New

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Opinion.

York. On cross examination she said the girl gave her the name of Dr. Muttart. Her knowledge of the doctor might throw light on the probability that she would perform an abortion on a girl who claimed to have been sent by Dr. Muttart.

10 It was permissible to use the speculum offered in evidence to illustrate the kind of an instrument which the girl said the defendant had used.

The defendant was not injured by the charge that "the fact that this young woman had a previous miscarriage or visited someone else is not finally to affect your minds in determining this defendant's guilt. If she had ninety-nine other operations and somebody else had gone free, that is not the question." We infer that the judge was trying to warn the jury not to convict the defendant because they thought some one ought to be punished. It seems to be intended as a warning in favor of the defendant.

20

We think it was permissible to ask the defendant if she couldn't give the girl something to alleviate the pain. The defendant had testified that the girl had come to her suffering pains of pregnancy and wanting her to perform an abortion; that she had refused to do so, and offered to do nothing to alleviate the pain. The questions bore upon the probability of defendant's testimony, since the prosecutor might well argue that the natural instinct of humanity would lead the defendant to alleviate the pains if she was unwilling to perform the abortion.

30

Part of the prosecutor's examination of the complaining witness was leading, but we cannot say there was any legal error or abuse of discretion.

The judgment must be affirmed.

Rule on Affirmance and Remittitur.**NEW JERSEY SUPREME COURT.**

THE STATE OF NEW JERSEY,

Defendant-in-Error,

vs.

JANE FLETCHER,

Plaintiff-in-Error.

in Error to

Hudson

Quarter

Sessions. 10

This cause having been duly argued at the November Term, A. D., 1915, of this Court, by Robert S. Hudspeth, Prosecutor of the Pleas of the County of Hudson, Counsel for the State of New Jersey, Defendant-in-Error, and James A. Hamill, Counsel for the Plaintiff-in-Error, and the Court having considered the same, and the Court having examined the record and proceedings of the Hudson Quarter Sessions and finding no error therein, it is hereby ordered that the judgment of the Hudson Quarter Sessions in the above entitled matter be, and the same is, hereby affirmed: 20

And that the record in the said cause be remitted to the Hudson Quarter Sessions, there to be proceeded with in accordance with this judgment and the practice of the said Court.

Dated, March 25, 1916. 30

Entered, March 25, 1916.

On motion of ROBERT S. HUDSPETH,

Prosecutor of the Pleas, County of Hudson,

Attorney for the State of N. J., Defendant-in-Error.

A true copy.

WM. C. GEBHARDT,

Clerk.

Assignments of Error.

NEW JERSEY COURT OF ERRORS AND APPEALS.

	<p style="text-align: center;">THE STATE, <i>Defendant-in-Error,</i> <i>vs.</i> 10 JANE FLETCHER, <i>Plaintiff-in-Error.</i></p>	<p style="text-align: center;">} On Writ of Error to Supreme Court.</p>
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AFTERWARDS, to wit, the third Tuesday in June, 1916, before the Justices and Judges of the Court of Errors and Appeals, at Trenton, comes the said Jane Fletcher by Hamill & Cain, her attorneys, and says, that in the record and proceedings aforesaid there is manifest error in this:

20 1st. Because the Supreme Court affirmed the conviction of the Plaintiff-in-Error, whereas it should have reversed the same, because at the trial of the said indictment the Court admitted in evidence over the objection of counsel the instrument (*speculum*) to the injury of the defendant.

30 2nd. Because the Supreme Court affirmed the conviction of the Plaintiff-in-Error, whereas it should have reversed the same, because at the trial of the said indictment the Court permitted, over the objection of counsel, the witness Ill, produced on the part of the State, to use while testifying and for the purpose of refreshing his memory so that he could testify, notes which he himself had not personally made and which were not, so far as he could state, prepared from memoranda he had dictated at the time, to the injury of the defendant.

3rd. Because the Supreme Court affirmed the conviction of the Plaintiff-in-Error, whereas it

VII.

Assignments of Error.

should have reversed the same, because at the trial of the said indictment the Court, over the objection of counsel, compelled the witness Fletcher to state why she had not on her direct examination revealed the doctor's name, to the injury of the defendant.

4th. Because the Supreme Court affirmed the conviction of the Plaintiff-in-Error, whereas it should have reversed the same, because at the trial of the said indictment the Court, over the objection of counsel, compelled the witness Fletcher, the defendant, to state whether she had known Dr. Muttart, to the injury of the defendant. 10

5th. Because the Supreme Court affirmed the conviction of the Plaintiff-in-Error, whereas it should have reversed the same, because at the trial of the said indictment prejudicial error was admitted, over the objection of defendant's counsel, when the Prosecutor of the Pleas in summing up to the jury said: 20

"From an examination he made of her he became convinced that a criminal operation had been performed, and he would not have anything to do with her, but he gave her some codeine pills to allay the pain,"

and by reason of the fact that the Court stated that this was proper comment for the Prosecutor to make to the jury. 30

6th. Because the Supreme Court affirmed the conviction of the Plaintiff-in-Error, whereas it should have reversed the same, because at the trial of the said indictment the Prosecutor, over the objection of the defendant, in summing up to the jury stated:

"This girl when I asked her how her condition became public property, said that Dr. 40

VIII.

Assignments of Error.

Ballantine made it known to the public authorities. That is her testimony."

and which statements though untrue in point of fact were made by the Prosecutor and allowed by the Court as proper comment to the jury.

10 7th. Because the Supreme Court affirmed the conviction of the Plaintiff-in-Error, whereas it should have reversed the same, because at the trial of the said indictment the Court, before whom said cause was tried, at and upon the trial of the issues so joined between the State of New Jersey and the said Jane Fletcher charged and instructed the jury as follows:

20 "The fact that this young woman had a previous miscarriage, or visited someone else, is not finally to affect your minds in determining this defendant's guilt. If she had ninety-nine other operations and somebody else had gone free, that is not the question."

8th. Because the judgment in said cause was entered in favor of the State, whereas it should have been entered in favor of the defendant.

30 AND the said plaintiff-in-error, Jane Fletcher, prays that the judgment aforesaid be reversed, annulled and altogether held for nothing, and that she may be restored to all things she has lost by reason of the aforesaid judgment, etc.

HAMILL & CAIN,

Attorneys for Plaintiff-in-Error.

Dated, May 10th, 1916.

Specification of Causes.**NEW JERSEY COURT OF ERRORS AND APPEALS.**

<p style="text-align: center;">THE STATE, <i>Defendant-in-Error,</i> <i>vs.</i> JANE FLETCHER, <i>Plaintiff-in-Error.</i></p>	}	<p>On Writ of Error to Supreme Court. 10</p>
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To

ROBERT S. HUDSPETH, Esq.,
Prosecutor of the Pleas.

TAKE NOTICE, that the following is a specification of the cause relied upon by the plaintiff-in-error in the above entitled cause for reversal of the judgment rendered in the Hudson Quarter Sessions and affirmed by the Supreme Court. **20**

1st. Because the judgment rendered was contrary to law.

2nd. Because the Court admitted the instrument (*speculum*) in evidence, over the objection of counsel although it was not the instrument used at the alleged commission of the crime.

3rd. Because the Court at said trial permitted, over the objection of counsel, the witness Ill, produced on the part of the state, to use while testifying and for the purpose of refreshing his memory so that he could testify, notes which he himself had not personally made and which were not so far as he could state prepared from memoranda he had dictated at the time, to the injury of the defendant. **30**

4th. Because the Court compelled the witness Fletcher to explain why she had not given the doctor's name on her direct examination over the objection of counsel. **40**

Specification of Causes.

5th. Because the Court permitted the State to examine the witness Fletcher as to knowing Dr. Muttart, etc., over the objection of counsel.

6th. Because the Court permitted the State to ask the witness Fletcher if she had gotten any business from Dr. Muttart.

10 7th. Because while Mr. Hudspeth, the prosecutor, was summing up before the jury the following colloquy occurred, Mr. Hudspeth said:

“From an examination he made of her he became convinced that a criminal operation had been performed, and he would not have anything to do with her, but he gave her some codeine pills to allay the pain.

20 “MR. HAMILL: I object. He testified that he made no examination from which he finds that a criminal operation was performed. He testified he made no examination.

“MR. HUDSPETH: This testimony was, may your Honor please, that from the situation he found there he declined to attend the woman. That is what he said.

“MR. HAMILL: You said he found that a criminal operation had been performed.

“MR. HUDSPETH: We will eliminate the question of a criminal operation. He reported it—

“MR. HAMILL: That is right.

30 “MR. HUDSPETH: —report it to the criminal authorities.

“MR. HAMILL: It is not in evidence that he reported it to the criminal authorities.

“MR. HUDSPETH: Let us go back to the testimony.”

Whereupon the Court of its own motion interposed and ruled on the said colloquy as follows:

40 “THE COURT: We will not discuss the testimony now. The question is whether this was improper comment. I do not think it was. Go on.”

Specification of Causes.

And although objection was made by the defendant yet the Court did not instruct the jury to disregard it, but on the contrary approved it by declaring it was not improper and directed the Prosecutor to "Go on."

8th. Because the Court before whom said cause was tried charged and instructed the jury as follows:

10

"The fact that this young woman had a previous miscarriage, or visited someone else, is not finally to affect your minds in determining this defendant's guilt. If she had ninety-nine other operations and somebody else had gone free, that is not the question."

9th. Because the Court permitted the State to ask leading questions of its own witness, Edna Elva Palmer, throughout her entire examination by the prosecuting attorney; who though cautioned by the Court to refrain from so doing disregarded said request.

20

10th. Because the Court permitted the State to ask the witness, Fletcher, whether she had ever used a speculum again and again, after she had answered in the negative the first time the question was asked.

11th. Because the Court allowed the State to ask the witness, Fletcher, "do you mean to tell me you couldn't give her something or do something to alleviate her pain at that time?" Which question, coupled with the one which the Court had ruled out just before in reference to turning her, the witness Palmer, out by the door prejudiced the plaintiff-in-error in the minds of the jury: the prosecuting attorney well knowing that the plaintiff-in-error was prohibited by law from doing anything in the way of alleviation or relief.

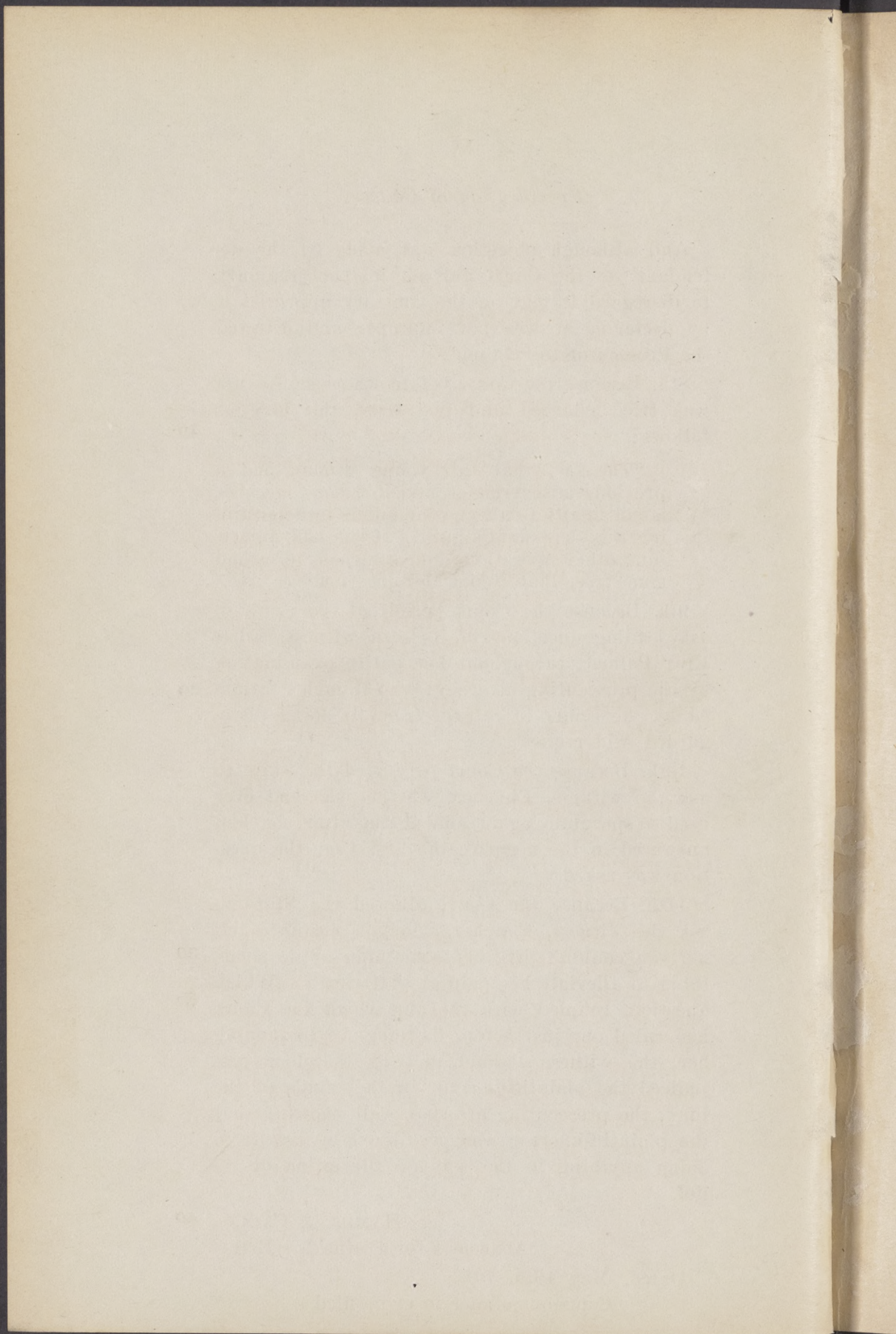
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HAMILL & CAIN, 40

Attorneys for Plaintiff-in-Error.

Dated, May 10th, 1916.

(Common joinder in error filed.)



Writ of Error.

NEW JERSEY, SS.:

(Seal.)

To the Hon. George G. Tennant, **10**
Judge of the Court of Quarter Ses-
sions in and for the County of
Hudson:

Because in the record and proceedings, and also
in giving of judgment upon a certain indictment
against Jane Fletcher, late of the City of Jersey
City, in the County of Hudson and State of New
Jersey, for abortion, and assault and battery upon
the person of one Elva Edna Palmer.

Pro ut the said indictment and the several **20**
counts therein, whereof, before you, she hath been
indicted, and is thereof, it is said, convicted by
a certain jury of the county, taken between the
State of New Jersey and the said Jane Fletcher,
as it is said, manifest error hath intervened to the
great damage of the said Jane Fletcher, as from
her complaint we have received information, we
being willing, in this behalf, to correct the error
in due manner, if any there shall be, and that
speedy justice be done to her, the said Jane Fletcher, **30**
command you that if judgment be thereon giv-
en, then that you distinctly and openly under your
seal, the record and proceedings aforesaid, and the
entire record of the proceedings had upon the
trial, with all things touching the same send and
and return to our Justices of our Supreme Court
of the State of New Jersey, on the twelfth day of
May, next, together with this writ, that the record
and proceedings aforesaid being inspected, we **40**

may further cause to be done thereon for correcting that error, what of right and according to the law ought to be done.

WITNESS, Honorable William S. Gummere, Esquire, our Chief Justice, at Trenton, aforesaid, the twenty-second day of April, in the year One Thousand Nine Hundred and Fifteen.

WILLIAM C. GEBHARDT,
Clerk.

10 HAMILL & CAIN,
 Attorneys for Plaintiff in Error.

Return.

20 The answer of George G. Tennant, Esquire, Judge of the Court of Quarter Sessions holden in and for the County of Hudson and within named, the record and proceedings of the plaint whereof mention is within made with all things touching the same I send to the Justices of our Supreme Court of Judicature at Trenton, N. J., at the day and year within contained, in a certain appeal to this writ annexed as within I am commanded.

GEORGE G. TENNANT,
Judge.

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40

Record.

STATE OF NEW JERSEY, HUDSON COUNTY, to wit:
 Be it remembered that at a Court of Oyer and
 Terminer holden at Jersey City, in and for the
 said County of Hudson, on the First Tuesday of
 April in year of our Lord One thousand nine
 hundred and Fourteen before Honorable Francis
 J. Swayze, one of the Justices of the Supreme
 Court of Judicature of the State of New Jersey,
 and Honorable Mark A. Sullivan and Honorable
 George G. Tennant. Judges of the Court of Com- 10
 mon Pleas in and for the said County of Hudson,
 according to the form of the Statute in such case
 made and provided, by the oaths of Walter P.
 Gardner Forman and Stephen J. Algier, Alexan-
 der G. Armstrong, Edwin T. Boehler, Emil Bon-
 not, Anthony M. Crone, George M. Culver, M. D.,
 Henry F. Diekhaus, Edward E. Ely, Adolph Ey-
 ferth, Fred Flad, George A. Flagg, Kenneth M. 20
 Forbes, Julius Frey, E. J. Gaffney, John C. Gall-
 agher, Thomas G. Hinds, Edward A. Kuhlman,
 Wm. E. Kuntz, George Y. Lewis, James C. Lind-
 say, Thomas J. Maloney, Joseph B. Payton good
 and lawful men of said County, duly empanelled,
 sworn and charged to inquire for the State in and
 for the body of the said County of Hudson, it is
 presented in manner in form following, that is
 to say, that the Bills following are true bills.

W. GARDNER, 30

Foreman.

And the foregoing being presented to the said
 Court on the Twenty-first day of April, in the
 year of Our Lord, one thousand nine hundred and
 fourteen, with bills of indictment Nos. 1 to 24
 inclusive, it is ordered by said Court that the said
 bill of indictment so as aforesaid included as bill
 Number 5 for Abortion as charged upon Jane
 Fletcher should be handed to the Court of Quarter 40
 Sessions for trial and disposal according to law
 and said bill is in words as follows:

Indictment.**HUDSON OYER AND TERMINER.**

April Term, A. D. 1914.

Hudson County, to wit:—

The Grand Inquest of the State of New Jersey in and for the body of the County of Hudson, upon their respective oath, Present, that Jane Fletcher, late of the City of Jersey City, in the said County
10 of Hudson, on the fourth day of April, in the year of our Lord one thousand nine hundred and fourteen, with force and arms, at the City aforesaid in the County aforesaid and within the jurisdiction of this Court, maliciously and without lawful justification, with intent to cause and procure the miscarriage of one Elva Edna Palmer, a woman then pregnant with child, did administer to her the said Elva Edna Palmer, a certain poison, drug,
20 medicine and noxious thing, the exact nature and description of which is to the Grand Inquest unknown, contrary to the form of the statute in such case made and provided, against the peace of this State, the government and dignity of the same.

And the Grand Inquest aforesaid, upon their oath aforesaid, do further Present, that the said Jane Fletcher, on the fourth day of April, in the year of our Lord one thousand nine hundred and fourteen, at the City of Jersey City aforesaid, in
30 the County aforesaid, and within the jurisdiction of this Court, maliciously and without lawful justification with intent to cause and procure the miscarriage of one Elva Edna Palmer, a woman then pregnant with child, did unlawfully prescribe for, advise and direct her the said Elva Edna Palmer, to take and swallow a certain poison, drug, medicine and noxious thing, the exact nature and description of which is to the Grand Inquest un-
40 known, contrary to the form of the statute in such case made and provided, against the peace of this State, the government and dignity of the same.

Indictment.

And the Grand Inquest aforesaid, upon their oath aforesaid, do further Present, that the said Jane Fletcher on the fourth day of April in the year of our Lord one thousand nine hundred and fourteen, at the City of Jersey City aforesaid, in the County aforesaid, and within the jurisdiction of this Court, maliciously and without lawful justification in and upon one Elva Edna Palmer, a woman then pregnant with child, did unlawfully use an instrument, the exact nature and description of which is to the Grand Inquest unknown, with intent to cause and procure the miscarriage of the said Elva Edna Palmer, contrary to the form of the statute in such case made and provided, against the peace of the State, the government and dignity of the same. 10

And the Grand Inquest aforesaid, upon their oath aforesaid, do further Present, that the said Jane Fletcher, on the fourth day of April in the year of our Lord one thousand nine hundred and fourteen, at the City of Jersey City aforesaid, in the County aforesaid, and within the jurisdiction of this Court, maliciously and without lawful justification, with intent to cause and procure the miscarriage of one Elva Edna Palmer, a woman then pregnant with child, unlawfully did administer to her, prescribe for her advise and direct, her the said Elva Edna Palmer, to take and swallow a certain poison, drug and medicine and noxious thing; the exact nature and description of which is to the Grand Inquest unknown, contrary to the form of the statute in such case made and provided, against the peace of this State, the government and dignity of the same. 20 30

And the Grand Inquest aforesaid, upon their oath aforesaid, do further Present, that the said Jane Fletcher, on the fourth day of April, in the year of our Lord one thousand nine hundred and 40

Indictment.

fourteen, at the City of Jersey City aforesaid, in the County of Hudson aforesaid, and within the jurisdiction of this Court, in and upon one Elva Edna Palmer, in the peace of God and of this State then and there being, an assault did make, and her the said Elva Edna Palmer then and there did beat, wound and illtreat and other wrongs to the said Elva Edna Palmer then and there did, to the great damage of the said Elva Edna Palmer, contrary to the form of the statute in such case made and provided, against the peace of this State, the government and dignity of the same.

ROBERT S. HUDSPETH,
Prosecutor of the Pleas,
Hudson County, N. J.

ENDORSED:—Bill No. 5 Hudson Oyer and Terminer April Term 1914,
The State vs. Jane Fletcher, Indictment for Abortion.

ROBERT S. HUDSPETH,
Prosecutor of the Pleas,
Hudson County, N. J.

A true Bill.

W. GARDNER,
Foreman.

Presented, April 21, 1914, and handed down to the Court of Quarter Sessions.

JOHN F. CROSBY,
Clerk.

Judgment.

And afterwards to wit: on the First day of May, in the year of our Lord, one thousand nine hundred and fourteen, at a session of the Court of Quarter Sessions of the County of Hudson, aforesaid being now of the Term of April, One thousand nine hundred and fourteen, in the said year before the Honorable Mark A. Sullivan, Judge of the Court of Common Pleas in and for the County of Hudson, who doth constitute and hold the Court of Quarter Sessions, in and for the County of Hudson here cometh the said Jane Fletcher under the custody of Samuel R. Fletcher her bail, in whose custody she had before been committed for the cause aforesaid, who being brought here in her proper person by her bail aforesaid, to whom she is also here committed and having heard the indictment read and forthwith being demanded of and concerning the premises in the said indictment above specified and charged upon her, how she will acquit herself thereof, she says she is not guilty thereof, and therefore for good and evil she puts herself upon the country, and Robert S. Hudspeth, Esq., Prosecutor of the Pleas of said County, who prosecutes for the State of New Jersey, in this behalf, doth the like.

Therefore let said indictment be continued until April Twentieth, Nineteen hundred and fifteen, and let a jury come before the Honorable George G. Tennant, Judge of the Court of Common Pleas in and for the County of Hudson aforesaid, constituting and holding the Court of Quarter Sessions for said County being now of the Term of April, one thousand nine hundred and fifteen, of twelve good and lawful men of this State and residents in the County of Hudson, over the age of twenty-one years and under the age of sixty-five years, by whom the truth of the matter may be better known, and who are not of kin to the said

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Judgment.

Jane Fletcher to recognize on their oath whether the said Jane Fletcher be guilty of Abortion as in the indictment aforesaid, is charged against her, or not guilty thereof, because as well the said Robert S. Hudspeth, Prosecutor of the Pleas of the County of Hudson, aforesaid, who prosecutes for the State of New Jersey, in this behalf, as the said Jane Fletcher have put themselves upon the said

10 at the same time and place.

At which time, that is to say on the twentieth day of April, in the year of our Lord One thousand nine hundred and fifteen, at Jersey City aforesaid, in the County of Hudson aforesaid, before the Honorable George G. Tennant, Judge as aforesaid, constituting and holding the Court of Quarter Sessions as aforesaid, here come as well the said Robert S. Hudspeth, Prosecutor of the

20 Pleas aforesaid who prosecutes as aforesaid, as well the said Jane Fletcher under the custody of her bail aforesaid, to whose custody she has been hitherto committed and who being brought to the bar here in her proper person by her bail, and the jurors of the jury by the Sheriff of the County of Hudson, aforesaid, for the purpose chosen empanelled and returned, to wit: Wm. Funk, James Hague, Fred H. Denning, James Gillen, Wm. Reuss, Frederick Meyers, Frederick Schmidt,

30 Henry Henling, Herman Winckler, Joseph Schneider, Frank Shaspe, Edw. Drake, being called come who being chosen, tried and sworn to speak the truth and concerning the premises, and thereupon the trial of the said issue commenced before the said Court and Jury, and was continued during the day of the date as last aforesaid, and at which day the evidence of the parties is submitted and the attorneys were heard thereupon and the said issue after a charge from the Court was submitted

40 to the said Jury, and the said jury in charge of

Judgment.

the said officers of the Court, duly sworn for that purpose, were taken to a private room to consider of their verdict, and afterwards to wit, at the last day aforesaid at the City of Jersey City aforesaid, the said jury returned to the Court in charge of said officers, sworn as aforesaid to keep them in charge and then and there in the presence of the said Robert S. Hudspeth, Esquire, Prosecutor of the Pleas as aforesaid, and of the said Jane Fletcher do say that the said Jane Fletcher is guilty of abortion as in the aforesaid indictment is charged against her.

10

THEREFORE let the said Indictment be continued until April 23, 1915.

WHEREUPON all and singular the premises being seen and by the Court here fully understood the sentence of the law is and it is by the Court here considered, and adjudged, that the said Jane Fletcher be and is hereby sentenced to pay a fine of Two (2) Thousand Dollars and to be confined in State Prison at hard labor for a maximum Term of Seven (7) years and a Minimum Term of Three and One-half (3 1-2) years and thence until the Fine and Costs of prosecution are paid.

20

JUDGMENT entered and signed this twenty-third day of April, One thousand nine hundred and fifteen.

GEORGE G. TENNANT,
Judge of the Court of Quarter Sessions
in and for the County of Hudson,
State of New Jersey.

30

(Seal.)
Attest:

JOHN J. MCGOVERN,
Clerk.

40

Testimony.HUDSON COUNTY COURT OF QUARTER
SESSIONS.

TENNANT, J.

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<p style="text-align: center;">THE STATE, <i>vs.</i> JANE FLETCHER.</p>	}
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Transcript of short hand notes of testimony taken on the 20th day of April, 1915, before Hon. George G. Tennant, Judge, and a jury.

HUDSON COUNTY COURT OF QUARTER
SESSIONS.

20 TENNANT, J.

<p style="text-align: center;">THE STATE, <i>vs.</i> JANE FLETCHER.</p>	}	Abortion.
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30 TRIAL of the above stated case, April 20th, 1915, before Honorable George G. Tennant, Judge and a jury.

A P P E A R A N C E S :

MR. ROBERT R. HUDSPETH, for the State;
MR. JAMES A. HAMILL (Hamill & Cain)
for the Defendant.

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The jury was called and sworn.
Mr. Hudspeth opened to the jury.

Elva E. Palmer—Direct.

ELVA E. PALMER, a witness produced on behalf of the State, being sworn, testified as follows:

DIRECT EXAMINATION BY MR. HUDSPETH:

Q. How old are you? A. Twenty-two.

Q. Are you married or single? A. Single.

Q. Are you employed? Do you work for your living? A. Yes.

Q. Do you know Jane Fletcher, the defendant at the bar? A. Yes. 10

Q. Do you see her in the court room? A. Yes.

Q. Will you point her out? A. Sitting right over there (indicating).

Q. When did you first see this woman? A. Saturday afternoon, about four o'clock.

Q. What month and date? A. It was April, about the fourth of April.

Q. Where? A. 303 Grand Street, Jersey City. 20

Q. I didn't catch what hour of the day. A. About four o'clock.

Q. Just state what you did when you reached that house. A. Why, I went to this second floor—

Q. You rang the bell or knocked on the door? A. Yes, rang the bell.

Q. Who let you in, a man or woman? A. The maid, washing up the hall.

Q. Do you see her here? A. Yes.

Q. Where is she? A. Sitting in the first bench (indicating). She has pink on her hat. 30

Q. Is that the one (indicating)? A. Yes.

Q. When she let you in what happened? A. She took me to the dining room, told me to wait for Mrs. Fletcher.

Q. Mrs. Fletcher was not there then, was she? A. No, she wasn't.

Q. Did you go in the dining room? A. Yes, I waited there about half an hour.

Q. What floor was that on? A. Second floor. 40

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Q. Was there anyone else in the room while you were waiting there? A. There was no one in the room I was waiting in, no.

Q. You waited half an hour? A. Yes.

Q. Then what next happened? A. I was told to go in the parlor, after another party had left.

Q. Did you go in the parlor? A. Yes.

Q. What floor? A. Second floor.

10 Q. The same floor? A. Yes.

Q. In the front or the rear? A. Front room.

Q. Did anyone go with you? A. No, I went alone.

Q. When you got there did you find any one there? A. No.

Q. How long did you stay there before any one came? A. I waited about half an hour again; Mrs. Fletcher came.

20 Q. Then what did she say? A. She absolutely refused to do it.

Q. Tell us now what happened. She came—was this the first time you saw her? A. Yes.

Q. What did you say to her? A. I explained my case to her.

Q. What did you say, as near as you can recollect? A. I told her the condition I was in.

Q. What condition did you tell her you were in? A. I told her I was pregnant.

30 Q. What did she say? A. She asked me how old I was, and how long.

Q. Did you tell her? A. Yes.

Q. How old did you tell her you were? A. Twenty-one.

Q. She asked you how long you were what? A. How long I was pregnant. I told her.

Q. What did you tell her? A. Two months.

Q. What then, if anything, did she say? A. Well, she didn't want to perform this operation.

40 Q. What did she say as near as you can recollect—before I ask you that question, what if any-

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thing did you say to her as to what you wanted?

A. I just told her what I wanted.

Q. Tell us. We don't know. A. I explained to her I was pregnant, I wanted to get it over as easily as possible.

Q. You wanted to get rid of it as easily as possible? A. Yes.

Q. What did she say? A. She refused me at first. 16

Q. What did she say, as nearly as you can recollect? What was her language? A. She asked me who sent me to her, and I told her I overheard it one time.

Q. Overheard what? A. Her name mentioned as a mid-wife.

Q. In what connection? A. As a mid-wife.

Q. Then what did she say when you told her that? A. I don't remember. 20

MR. HAMILL: We object as being hearsay—what some one else told her.

THE COURT: It is relating to a conversation with the defendant, what the defendant told her.

Q. After you told her that, what did she say? A. I don't just remember.

Q. What happened next? A. Then she wanted to know how much money I had.

Q. What did you say when she asked you how much money you had? A. I told her I had fifteen dollars. 30

Q. What did she say? A. She asked me whoever told me she done such things for fifteen dollars? And she refused to do it at that price, I would have to have more money.

Q. Then what further followed? A. I called a friend up in Newark and asked for the loan of it.

Q. You what? A. I called a friend up and asked for the loan of it. 40

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Q. How did you call the friend up? A. Telephone.

Q. From that house? A. Yes.

Q. While she was there? A. Yes.

Q. Asked for the loan of how much? A. Five dollars.

Q. What was the result of calling that friend up? A. Because she refused to do it if I didn't
10 have the money.

Q. What did you tell her then? A. Told her I would be back Sunday morning with it.

Q. With the other five dollars? A. Yes.

Q. What was said about the twenty dollars being the price? A. She took it.

Q. Then what—after you arranged to pay her the twenty dollars?

MR. HAMILL: She did not say that.

20 Q. How much did she say she wanted? A. Twenty dollars.

Q. After she said she wanted twenty dollars, then what was the next thing that happened? A. When I agreed to have it for her she performed the operation.

Q. Did you give her any money then? A. I gave her fifteen dollars.

Q. That was the amount you had with you? A. Yes.

30 Q. What about the other five? A. I had to go home and come back Sunday morning.

Q. What did you say to her about it? A. She trusted me until I got it for her.

Q. After you agreed on the payment of twenty dollars, and gave her the fifteen, what next happened? A. She performed the operation.

Q. What did she do? Where did she take you to perform the operation? A. In a small bed
40 room off the parlor.

Q. What did she do with you when she got you in the small bed room? A. She performed the operation, with the instrument.

Q. Where? A. On the bed.

Q. Were you on the bed? A. Yes.

Q. How did you get on the bed? Did she put you there or tell you to get there? A. Told me to get there.

Q. When you were on the bed what did she say?
A. She had her instrument in a basin.

Q. She had an instrument in a basin. I show you what purports to be an instrument; was it anything like that? A. Yes.

Q. It was like that, was it? A. Yes.

Q. That was in the basin? A. Yes.

MR. HAMILL: For what purpose—

MR. HUDSPETH: Mark it for identification.

MR. HAMILL: I object. She doesn't say it is the instrument she had.

THE COURT: I don't see any objection to its being marked for identification. It is not offered in evidence.

Q. Describe the instrument as nearly as you can. A. I don't know what the other instrument was; I didn't see it. I didn't see the other instrument that was used.

Q. You saw—A. I saw that instrument in some water.

Q. Before or after you were lying on the bed?
A. As I was laying on the bed.

Q. You were lying on this bed; while you were there, you saw the basin and this instrument you point out, which I have shown you. Next what followed?

MR. HAMILL: I object to the question. It contains an assumption—"you saw this instrument which I have pointed out."

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THE COURT: She said distinctly a moment ago, referring to that instrument—whatever she means—that instrument, or some other.

MR. HAMILL: I object.

THE COURT: I will overrule the objection.

MR. HAMILL: I ask an exception.

THE COURT: Exception allowed.

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It is signed and sealed accordingly.

GEORGE G. TENNANT, J.

(Seal.)

Q. What was the next thing that happened?

MR. HAMILL: When he handed her the instrument, he said to her, was it something like this? She said yes. Now, in his question, he assumed this instrument. She didn't point out that instrument at all.

20

THE COURT: She said that was the instrument. I will allow it.

A. She used something else. I didn't see it.

Q. When she used something else, in the first place she had used something before it. What did she use before it? A. She used that first (indicating the instrument already marked for identification.)

30 Q. How did she use that upon you? We will have to have a description, as nearly as possible, how she used it. A. It seemed to be closed, and she had to open it in order to open the womb.

THE COURT: There is no necessity of going into it in too much detail. Did this woman ask you to remove any of your clothing?

THE WITNESS: No.

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BY THE COURT:

Q. Did she take this instrument and put it into your private parts? A. Yes.

THE COURT: There is no necessity of going any further than that.

BY MR. HUDSPETH:

Q. She put the instrument into your private parts. What next happened? A. She used something else. 10

Q. Do you know what she used? A. No, sir.

Q. Where did she use something else? A. She had it in a towel.

Q. Where did she put this something else? A. I didn't notice.

Q. Did you feel it? A. Yes.

Q. Where? A. Felt cramps in my stomach after it was used.

Q. Did she or not use it in your privates? A. 20 She did.

Q. Then you felt the cramps in your stomach, after it was used. Were you still lying on the bed? A. I got right up.

Q. Who was it that used the instrument upon you? A. Mrs. Fletcher.

Q. Any one else help her? A. No.

Q. Were you and she alone in the room? A. Yes.

Q. After you got up, what then did she say or do? A. That was on Saturday afternoon, she told me to report to her nine o'clock Sunday morning. 30

Q. Did you then go away? A. Yes.

Q. Come back Sunday morning? A. Yes.

Q. What time? A. Around nine o'clock next morning.

Q. Did you see her? A. Yes.

Q. Go to the same room? A. Yes.

Q. Upon the same bed? A. Yes. 40

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MR. HAMILL: I object. It is leading.

MR. HUDSPETH: I will withdraw it.

Q. You went in the same room. What happened? A. She performed the same operation again.

Q. Where were you when she performed the same operation? A. In a small room off the parlor.

10 Q. Standing up or lying down? A. Lying down.

MR. HAMILL: I object.

THE COURT: Why?

MR. HAMILL: He is absolutely putting the answer into the girl's mouth.

THE COURT: I will allow the question.

Q. On the bed? A. On the bed.

20 Q. When you say she performed the same operation—what did she do? A. She used the same instruments she did the night before.

Q. Put them into your privates, as you described? A. Yes.

Q. How many instruments did she use? A. I only saw her use the one.

Q. Which one? A. This one lying on the table now.

Q. Was she alone? A. Yes.

Q. No one helping her? A. No.

30 Q. How often did she operate on you that Sunday morning? A. Once.

Q. What did she say to you? A. She told me I would be directly all right, I could go home and not know any different, it would pass as though it was nothing.

Q. What, if anything, about the five dollars? A. I brought the five dollars with me.

Q. Sunday morning? A. Yes.

Q. Did you give it to her? A. Yes.

40 Q. Had she given you a receipt for the fifteen? A. No, sir.

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Q. Did she give you a receipt for the five? A. No.

Q. Or the twenty? A. No.

Q. Did she make any other demand for any more money? A. No.

Q. Beside operating on you in the manner described, with these instruments, did she do anything else to you? A. Give me some pills.

Q. When did she give you some pills? A. The second operation. 10

Q. When she used the second instrument upon you, the first time, did you feel anything? A. No.

Q. Any liquid? A. Yes, I felt a liquid.

Q. You did? A. Yes, there was a liquid.

Q. You felt a liquid. In what way did you feel it? A. I don't know. I was wet, that is all I can say.

Q. A little louder. A. I was wet, that is all I can say. 20

Q. Inside or outside? A. Well, outside.

Q. Did she say anything when she used this instrument and you felt this liquid? A. No.

Q. That was the second instrument she used? A. Yes.

Q. On the first day? A. Yes.

Q. Did she use the second instrument the second day? A. Yes.

Q. On the second day, also? A. Yes. 30

Q. Did you feel any liquid on that day? A. Yes.

MR. HAMILL: All through this examination it has been leading.

THE COURT: Try not to lead.

Q. You say she dismissed you after you gave her the five dollars, at that time giving you two kinds of pills. Will you kindly describe those pills? A. Black and white. 40

Elva E. Palmer—Direct.

Q. What if anything did she say regarding them? A. Told me to take them before and after meals.

Q. Which one first? A. I don't remember.

Q. Which one before meals? A. I don't remember.

Q. —after meals? A. I don't remember.

Q. But you did remember at the time, did you?

10 A. Yes, I did.

Q. Did you take them? A. Yes.

Q. As she directed you? A. Yes.

Q. How long a time? A. Took them at noon hour, and following Sunday took them before going to bed, before night, before I was taken sick.

Q. I show you a white pill. Were the white pills you speak of anything like that one white pill? A. Shaped like that; I am not quite sure of the size, almost like it.

20 Q. (By Mr. Hamill.) You say you are not quite sure of the size? A. Yes.

Q. I show you some black particles—what about the black particles? A. It was black, but it wasn't like that.

Q. Black like that? A. It wasn't broken like that, it was shaped like the white.

Q. How about the color? A. Color the same.

Q. You say you took the pills during the—

30 MR. HUDSPETH: The pills marked for identification.

MR. HAMILL: May I cross examine her as to her identification of these?

Q. (By Mr. Hamill.) You don't know whether these are the pills or not? A. No, I don't know, but they are similar.

Q. You say you took them until you were taken sick. When were you taken sick? A. Five o'clock

40 Sunday evening.

Elva E. Palmer—Direct.

Q. What date? A. April 5th.

Q. Where were you taken sick? A. 68 Warren Street, Newark.

Q. Where you were living? A. Yes.

Q. Did you call a doctor? A. Dr. Valentine was called three o'clock Monday morning.

Q. Did he come? A. Yes.

Q. That was the first doctor you had seen after leaving Mrs. Fletcher? A. Yes. 10

Q. Were you alone when he came? A. No.

Q. Who was with you? A. A girl friend.

Q. In your bed room? A. Yes.

Q. Did Dr. Valentine see you? A. Yes.

Q. Did you tell him your condition? A. Yes.

Q. Did he examine you? A. No, he didn't examine me, no, sir.

Q. Did he, after you had told him your condition, attend you? A. Yes. 20

Q. How long? A. He gave me something, to take, some pills.

Q. Was there anything in the room, the result of the operation? A. Yes.

Q. What? A. Child.

Q. Where was it? A. Taken from the bed.

Q. From whose bed? A. From my bed.

Q. Who took it from the bed? A. The lady that was taking care of me.

Q. Where did that child come from? A. Taken from me. 30

Q. Came from you. That was the foetus, wasn't it? A. Yes.

MR. HAMILL: I object. She doesn't know whether it was or not.

THE WITNESS: I do know.

Q. Was that the time Dr. Valentine was there?
A. It happened after Dr. Valentine.

Q. Not when he was there? A. No. 40

Q. After he left? A. Yes.

Elva E. Palmer—Direct.

Q What next happened? A. I sent for Dr. Wilson, about nine o'clock.

Q. Who is Dr. Wilson—a practicing physician in your neighborhood? A. He is practicing in Newark.

Q. Did he come to see you? A. Yes.

Q. Did he examine you? A. Yes.

Q. Did he attend you after examining you? A. 10 He ordered me to the hospital.

Q. What next happened after he ordered you to the hospital? A. I was taken to the hospital about seven o'clock Monday evening.

Q. What hospital? A. St. Barnabus.

Q. Do you remember what doctors you saw there? A. Yes.

Q. Who were they? A. Dr. Hosp.

Q. Any one else? A. I didn't see any that evening I remember.

Q. Do you remember Dr. Ill? A. Yes. I saw 20 him the following day.

Q. Did he see you? A. Yes.

Q. Examine you? A. Yes.

Q. Did Dr. Hosp examine you? A. Yes.

Q. How long did you remain in the hospital? A. About ten days.

Q. Were you operated on there? A. Yes.

Q. How long after you reached the hospital?

A. About two hours. 30

Q. Who operated on you? A. Dr. Hosp.

Q. When you say this child, the foetus, was in your bed—whose attention did you first call that to, beside the person, the girl, waiting upon you?

A. No one else.

Q. None of the doctors? A. Dr. Wilson.

Q. When did you call his attention to it? A. I don't believe he saw it, but I told him about it.

Q. How long were you in the hospital—

40

MR. HAMILL: I move to strike out the answer.

Elva E. Palmer—Cross.

THE COURT: It may be struck out, what she told the doctor.

Q. How long were you in the hospital? A. About ten days.

Q. How long were you pregnant when this operation was performed on you by the defendant?

A. Two months.

Q. Did you tell her that? A. Yes.

MR. HUDSPETH: I offer the instrument in evidence. 10

MR. HAMILL: I object to the offer of the instrument.

THE COURT: Why?

MR. HAMILL: Will the Court give me the opportunity to cross examine her before it is offered?

THE COURT: Yes.

CROSS EXAMINATION BY MR. HAMILL: 20

Q. You are not positive that was the exact instrument used? A. Not positive, no, but it was one similar to it.

Q. It was one similar to it, but you cannot say that was the instrument? A. No, sir, I cannot say it.

Q. And you didn't say it at any time? You didn't say it during the examination of the Prosecutor? A. I don't know whether it was mentioned or not; I don't remember. 30

Q. Where did you get this instrument? A. I didn't get it.

Q. When was the first time you saw it?

MR. HUDSPETH: I don't want to mislead you. We don't say that was the same instrument that was used upon her, but a similar instrument to that, identically similar to that. 40

Elva E. Palmer—Cross.

Q. When was the first time you saw this instrument? A. About four o'clock, Saturday, April 4th.

Q. This particular instrument? A. I saw it.

Q. When it was shown to you in court this morning? A. No. Before.

Q. In the Prosecutor's office? A. Yes.

Q. Who showed it to you? A. I don't remember.

Q. You didn't give it to him, did you? A. No, sir, but I pointed it out.

Q. How did you come to point it out? A. I saw it laying on the book case or something, in the Prosecutor's office.

Q. Did he say, "Was an instrument like this used on you"? A. He asked me what kind of an instrument. I showed him that.

Q. Who showed you this? A. I saw it first myself.

Q. Then what did he say to you about the instrument? A. I don't remember.

Q. Did he tell you that was the kind of instrument used by doctors in operations of this kind? A. No, sir.

Q. But you are not sure that this was the instrument you saw in Mrs. Fletcher's? A. One just like that.

MR. HAMILL: We object to its being presented in evidence.

MR. HUDSPETH: I offer it as an instrument similar to the one used upon her, as she has described it and identified it.

THE COURT: I will hold it for a little while. I will consider it. I will not take it just at this moment. We will see later.

Q. You called at Mrs. Fletcher's some time in April, 1914? A. Yes.

Elva E. Palmer—Cross.

Q. What day of the week do you say it was?

A. Saturday.

Q. What time of the day? A. About four o'clock.

Q. Wasn't it a little earlier than four o'clock?

A. It may have been. I don't remember.

Q. Might have been two o'clock? A. It was not two o'clock, no, sir.

Q. Later than two o'clock? A. Yes.

10

Q. It might have been between two and three?
A. No, sir.

Q. But you are not sure it was four o'clock? A. It was almost four o'clock.

Q. How do you fix the time? A. Because I left business at one, and done some shopping before I went there.

Q. Where is your business? A. New York.

Q. What is your business? A. Telephone operator and clerical work.

20

Q. Where? A. Scientific Engraving Company, New York.

Q. Where? A. City Hall place.

Q. You left City Hall Place at one o'clock. How long did it take you to do some shopping? A. I went uptown, New York.

Q. Where did you shop? A. Thirty-fourth Street.

Q. You went up on the elevated? A. No, sir.

30

Q. How long were you shopping? A. I should judge about two hours.

Q. Where did you go? A. To a department store on 34th Street.

Q. What store? A. Gimbel Brothers and Macy's.

Q. Those were the only two? A. No, sir, I went to the smaller stores.

Q. What time did you leave New York? A. I left New York about half past three.

40

Elva E. Palmer—Cross.

Q. What means did you take of coming to Jersey City? A. I came by way of the tube to Exchange Place.

Q. Then took the trolley car? A. Yes.

Q. When you got to Mrs. Fletcher's you knocked at the door and the maid let you in? A. I didn't knock at the door. The maid was washing up the floor, and she let me in.

10 Q. Was the door open? A. Yes.

Q. Who was there beside the maid? A. There was other people, I don't know who they were.

Q. Sitting there? A. Yes.

Q. How many people? A. I noticed two.

Q. You sat there in the kitchen for a while?
A. I sat in the dining room.

Q. Where was the dining room? A. Off the kitchen.

20 Q. You could see all these people, could you not? A. Yes.

Q. While you were sitting there? A. Yes.

Q. Who sent you to Mrs. Fletcher? A. I overheard it.

Q. From whom? A. One time; I don't know who it was.

Q. Did any doctor in New York send you there?
A. No, sir.

30 Q. (By the Court.) Do you mean you overheard a conversation in which her name was mentioned? A. Yes.

Q. (By the Court.) In connection with what? Mr. Hamill means. A. With abortion cases.

Q. Where did you hear that conversation? A. I heard it one time while I was—summer afternoon, it was a group of people.

Q. Where did you hear it? A. I don't remember. I know I heard it.

Q. In what city? A. Newark.

40 Q. Who told you about it? A. I don't know.

Q. You don't remember hearing this conversa-

Elva E. Palmer—Cross.

tion? A. I remember hearing it, but I don't know which one mentioned it.

Q. You don't know who it was who said it?
A. No.

Q. You don't remember when it was? A. I know, but I don't know the date. I didn't keep that in mind.

Q. Did some one tell you to go to Mrs. Fletcher?
A. No. 10

Q. You want us to understand your only knowledge of her was derived as the result of your overhearing a conversation, about which you can remember nothing except that you did hear it? You don't know who took part in the conversation you overheard? A. I know who did, but I don't know where the people are now.

Q. Who were they? A. Just a group of people I was out with.

Q. Who were they? A. I don't remember. I haven't them all in mind. 20

Q. Men or women? A. Both.

Q. Did you hear her address spoken of? A. No, sir.

Q. How did you find the address? A. Telephone book.

Q. There are a number of Fletchers in the telephone book? A. There was only one Mrs. Fletcher at that time listed.

Q. She was the only one in the telephone book?
A. There was only one Mrs. Fletcher that was listed. 30

Q. Mrs. Fletcher wasn't there when you called that day? A. No, sir.

Q. And the maid sent out for her? A. I don't know whether the maid sent for her; she told me she would be in for lunch later on, to wait.

Q. Mrs. Fletcher came in in about half an hour after you got there? A. She came in almost an hour after I was there. 40

Elva E. Palmer—Cross.

Q. About an hour after you got there. When she got there she refused to perform this operation, didn't she? A. Yes.

Q. And then didn't you leave the place and never go back to it? A. No, sir.

Q. Didn't you go away because she wouldn't perform the operation? A. No, sir.

10 Q. Didn't you telephone to somebody whom you called Mike, and tell him you were coming there?
A. No, sir, I called him up because she told me to have five dollars; to be sure of it, I called him up and asked him for the loan of it.

Q. What was his number? A. The number at the time was Mulberry—no, Market, I think.

Q. Who was this Mike you called up? A. Friend of mine.

Q. What was his name?

20 MR. HUDSPETH: I object. It is immaterial.

MR. HAMIL: That man ought to be here. It would be a matter to comment upon.

THE COURT: Why?

MR. HAMIL: To corroborate the girl's testimony. He is an important witness.

MR. HUDSPETH: I withdraw the objection.

A. He knew nothing of it.

30 MR. HUDSPETH: I withdraw the objection.

THE COURT: The question in my mind, material. If it is material you have a right whether it is necessary in a case of this kind to do any more than try the issue we have before us. This case may be an unfortunate matter, but there is no reason why we should bring in people who are not to press your question.

40 MR. HUDSPETH: I withdraw the objection on this ground; they have probably the

Elva E. Palmer—Cross.

right to discredit her, to secure corroboration.

Q. What was the telephone number? A. I am not sure of it now. I believe it was Market, 2950; I am not sure.

Q. What business is this man you telephoned to in?

MR. HUDSPETH: I object. I think that is 10
going a little far.

MR. HAMILL: I don't want to ask the name of the man.

MR. HUDSPETH: Then I withdraw the objection.

Q. What business? A. This young man had nothing to do with the case. He didn't know anything about it. He didn't know what I wanted the five dollars for. I don't see why I should mention 20
his name or his business.

Q. What business is the young man in?

THE COURT: You can tell us his business. We won't go any further.

A. He is a salesman.

Q. You say Mrs. Fletcher put you on the bed?

A. She told me to lay down on the bed, she didn't put me on the bed.

Q. Did you remove any of your clothing? A. 30
No, sir.

Q. Did you have on a hat and—A. Yes.

Q. Coat? A. Yes.

Q. I mean overcoat. A. I had a suit on.

Q. Suit on. Did you take any of those garments off? A. No, sir, only my hat.

Q. You took off only your hat? A. Yes.

Q. Did you cry—(interrupted.)

MR. HUDSPETH: She didn't take off only 40
her hat; she only took off her hat.

Elva E. Palmer—Direct.

Q. You took off only your hat, nothing else?
A. Yes.

Q. You have told us that Mrs. Fletcher used two instruments on you. You don't know whether she did or not, do you? A. I do know, yes.

Q. Did you see her use them? A. I saw her use the one, I knew she had this other one in a towel because she told me so.

10 Q. Let us get that. You saw her use one, and you felt something which made you believe she was using another. A. I knew she had it.

Q. How did you know? A. Because I saw her go for it.

Q. But you didn't see her bring it back? A. I did. She had it in a towel.

Q. How did you know she had anything in a towel? A. Because she said so.

20 Q. What did she say? A. I don't know whether that is the words she said, but she said she had it.

Q. You saw her come back with a towel, but you don't know what was in the towel? A. No, I don't.

Q. What did she say? A. I don't remember.

Q. This knowledge on which you base your statement she had another instrument—A. Yes, I know she did.

30 Q. How could you see her using this instrument when you were lying flat on the bed, as you say? A. I saw her take it from the basin.

Q. Where was it? A. Under the bed.

Q. This basin was under the bed? A. Yes.

Q. You couldn't see her take the instrument out of the basin, you lying on the bed? A. I certainly did.

Q. Didn't the way your clothing was arranged at that time prevent your seeing? A. No, sir.

40 Q. You say Mrs. Fletcher gave you some pills? A. Yes.

Elva E. Palmer—Cross.

Q. And the white pills were like the white pill which the Prosecutor showed you? A. Yes.

Q. You cannot say that that was one of the pills, can you? A. It looks very much like it, yes.

Q. But you cannot say that was the pill? A. I haven't any doubt but what it was.

Q. You didn't give this pill to the Prosecutor, did you? A. Yes.

Q. Where did you get it? A. Mrs. Fletcher 10
gave it to me.

Q. You gave these to the Prosecutor? A. Yes.

Q. Are you sure this identical white pill is the pill you gave to the Prosecutor? A. It looks very much like it. There isn't any difference.

Q. You know that those pills can be purchased by any one from a drug store, do you? A. No, sir.

Q. What time did you come there Sunday morning? A. About nine o'clock. 20

Q. In the morning? A. Yes.

Q. Who was there? A. Mrs. Fletcher.

Q. Was the maid there? A. Yes.

Q. Where was the maid? A. She was in the kitchen.

Q. Mrs. Fletcher took you into this room again? A. Yes.

Q. How many rooms did you go through in order to be taken into that room? A. I went 30
through the kitchen, through the dining room, through Mrs. Fletcher's bed room—she pointed it out as her room—and the parlor opened to the small room.

Q. You mean to say she did the very same thing the next morning she had done the afternoon before? A. Yes.

Elva E. Palmer—Cross.

BY THE COURT:

Q. When you had this conversation with her, on the first visit there, when you first explained your condition, was anybody else present? A. No one I knew.

Q. Or did she take you in another room? A. She took me in another room.

10 Q. When you told her what the trouble was?
A. There wasn't any one in the parlor at all.

Q. When you told her? A. No.

Q. When you saw the girl who was doing washing, you say you waited an hour? A. I waited half an hour in the dining room, there was some in the parlor. I went in the parlor and waited another half an hour.

Q. There was no one in the parlor when you were talking to Mrs. Fletcher? A. No.

20 Q. Was there any one in the room when you were on the bed, when she used these instruments?
A. No, sir.

BY MR. HAMILL:

Q. There was no other witness to any of these conversations? A. No, sir, that is, no one; only next morning, nine o'clock, when I was coming out, after the operation was performed, there was another lady having an operation performed.

30 MR. HAMILL: I move to strike out the answer.

MR. HUDSPETH: I object.

THE COURT: I think it is irresponsible. It may be struck out.

Q. What time did you get home Sunday morning, after you left Mrs. Fletcher's? A. About eleven o'clock.

40 Q. How long after getting home—how long was it after you got home that you took sick? A. About five o'clock that evening.

Elva E. Palmer—Cross.

Q. And you sent for Dr. Valentine? A. Sent for Dr. Valentine three o'clock next morning.

Q. Three o'clock in the morning? A. Yes.

Q. Sent when you felt the cramps? A. No, sir. I felt them at five o'clock that night.

Q. Did Dr. Valentine give you any medicine? (No answer.)

Q. (By the Court.) You mean five o'clock the same night she did this thing to you? A. No, the second time. 10

Q. (By Mr. Hudspeth.) Five o'clock that Sunday afternoon? A. Yes.

Q. Did Dr. Valentine give you medicine? A. He gave me some small white pills.

Q. Some what? A. Small white pills.

Q. Like the pill you have shown here? A. No, sir.

Q. They were white pills? A. No, they were not like that, they were much smaller. 20

Q. Smaller than that? Is that what you said? A. Yes.

Q. What time did he give you those pills? A. When he came?

Q. Yes. What time did he give you those pills? A. About three or four o'clock in the morning; I don't know.

Q. (By the Court.) Early Monday morning? A. Yes.

Q. Was it after that that this foetus was expelled? A. Yes. 30

Q. How long after taking the pills? A. About seven o'clock.

Q. You took the pills about three o'clock? A. Yes.

Q. (By the Court.) That is, three o'clock in the morning, of Monday, the doctor gave you these pills, and what time was the foetus thrown out? A. About seven o'clock. 40

Elva E. Palmer—Cross.

Q. (By Mr. Hudspeth.) Monday morning? A. Yes.

Q. (By the Court.) The same morning he had given you the pills? A. Yes.

THE COURT: I reserved the question of this offer of this instrument. Have you anything to say now on that question? You object to its introduction?

10

MR. HUDSPETH: I wanted to ask, when your Honor brought this proposition up, that it be held for a short time because I want to show by physicians the purpose of the instrument.

THE COURT: Aside from that, why isn't it proper for a witness to refer to a model or map to illuminate and illustrate her testimony? She said the instrument that was used was just like this. For the purpose of illustrating what she said, why isn't this admissible in evidence?

20

MR. HAMIL: I think the statement she made as to what she knows about the instrument would show that she learned it, she learned that this was an instrument used by doctors, in the Prosecutor's office. I don't mean for a moment to say she was coached, but she saw this instrument, and she knows nothing about medicine or medical instruments, so far as we knew, and she simply said it was an instrument like this. It is evident she doesn't know whether it was this instrument or not.

30

THE COURT: I can only take her statement on that. She said she saw this instrument in the Prosecutor's office, she went over and pointed it out, said that is like the instrument the defendant used on her. It is well settled that a witness may

40

Elva E. Palmer—Cross.

show a map, or have a model or use a drawing or photograph, to illustrate testimony; and if she now says that it was a pen like (indicating) "that my lawyer handed me to sign my name" it can be offered in evidence to illustrate her testimony to identify the kind of pen that was used at the time referred to.

MR. HAMILL: I think that what the Court has in mind is as to the production of representations of those things which cannot be conveniently brought into court, as photographs of a house or locomotive; for that reason it could not be brought in.

10

THE COURT: That is not the theory; it is for the purpose of illustrating to the jury.

MR. HAMILL: You will allow me an exception?—it is immaterial, irrelevant and incompetent.

20

THE COURT: How is it immaterial?

MR. HAMILL: It is—I will withdraw the immateriality.

THE COURT: I will admit the instrument in evidence. You may have an exception. I interrupted you in order that you might know the instrument is in evidence. You may cross examine now if you care to.

Exception allowed, and signed and sealed accordingly.

30

GEORGE G. TENNANT, J.

(Seal.)

The instrument was admitted in evidence and designated Exhibit S-1.

BY THE COURT:

Q. Had you, after she did what you say she did with this instrument on Saturday, felt any effects of it subsequent to what she did and before

40

Elva E. Palmer—Cross.

you saw the doctor? A. I didn't feel it at all until the second time.

Q. You didn't feel any effect of it until after the second day—is that the answer? A. Yes.

Q. After she did it the second time did you feel any effects of it before you saw this Doctor Valentine? A. Why yes.

Q. Was there any effect of pain? A. Yes.

10 Q. Where was that pain? A. In my stomach.

BY MR. HAMILL:

Q. How soon after you left Mrs. Fletcher did you first feel pain? A. About five o'clock in the evening.

Q. That was the first time you felt pain? A. Yes.

Q. You had left there about nine o'clock in the morning? A. (No answer.)

20 BY THE COURT:

Q. On Sunday, what time was it you left her place, the second time you were there? A. I felt the pains five o'clock Sunday night. I didn't feel it Saturday night at all.

Q. (By Mr. Hamill.) What time Sunday morning did you leave her home? A. I left there a few minutes after nine o'clock.

30 Q. It was late that evening before you felt these pains? A. Yes.

Q. Had you taken any pills she gave you between Saturday and Sunday? A. I took them down there, Sunday noon, and Sunday evening when I was taken sick.

Q. Had you taken any pills she gave you between Saturday and Sunday? A. I took them Sunday.

Q. You didn't take any on Saturday? A. No, sir.

40 Q. Had she given them to you on Saturday?

Elva E. Palmer—Re-Direct.

A. I am not sure. I know I was there—I think it was Sunday she gave them to me.

BY MR. HAMILL:

Q. You know something about medical instruments, do you, and about pills? A. No, sir.

Q. Didn't you work for a doctor? A. No, sir.

Q. Didn't you tell somebody you worked for a doctor? A. No, sir. 10

Q. Didn't you tell the maid you worked for some doctor? A. No, sir, I didn't speak to the maid, only to ask for Mrs. Fletcher.

Q. Did you have any talk at all with her about your working for a doctor? A. No, sir.

Q. You are a single woman? A. Yes.

RE-DIRECT EXAMINATION BY MR. HUDSPETH:

Q. Didn't you say you felt some effects from a liquid, you have described, was injected into you when she used the second instrument? A. I felt the instrument the second time, but I don't know as it affected me, only later. 20

Q. Didn't you say the liquid had some effect on you? A. Why, I felt it.

Q. Didn't it have other effect that your mere feeling it being injected? A. No, sir.

Q. The first pain was on that Sunday afternoon—A. Yes. 30

Q. —about five o'clock? A. Yes.

Q. When did you take the first pill she gave you? A. I was told to take it before lunch and after lunch.

Q. On Sunday? A. Yes.

Q. Hadn't you taken one Sunday morning? A. I am not sure.

Q. Didn't you say a little while ago you had?

MR. HAMILL: No, she didn't. 40

Elva E. Palmer—Re-Direct.

Q. You took one before dinner and one after dinner, Sunday? A. Yes.

Q. White and black pill? A. Yes.

Q. Alternately? A. Yes.

Q. Did you take any Saturday? A. I don't remember. I don't remember when she gave them to me. I know she gave them to me, but I am not sure of the day.

10 Q. Are you now sure whether she gave them to you in the first operation or the second? A. I am not sure.

Q. How long were you there during the operation? A. Just a few minutes.

Q. Do you know why you waited half an hour in the parlor? A. Mrs. Fletcher was out.

Q. Do you remember anything about luncheon? A. She said she was going to have her dinner first, before she saw me.

20 Q. That was on your first visit? A. Saturday afternoon.

Q. The first visit? A. Yes.

Q. Then did she leave you? A. She went out and had her lunch and came back to me again.

Q. How long was she away from you? A. Just a few minutes.

Q. Were you in the dining room or the parlor? A. In the parlor.

30 Q. That took up part of the half hour in the parlor, while she had her lunch? A. No, it was after that.

Q. After that. Was it before she operated on you? A. She et (ate) before she operated on me.

Q. I beg pardon? A. She et her lunch.

Q. Then operated on you after that? A. Yes.

Q. Do you know Mr. Charlock, sitting by me? A. Yes.

40 Q. He is a detective in the Prosecutor's office—you know, do you? A. Yes.

Elva E. Palmer—Re-Direct.

Q. When you speak of giving the pills, some of them you had received from Mrs. Fletcher, to the Prosecutor do you know whether or not you handed them to Mr. Charlock? A. I gave them to Mr. Charlock.

Q. You gave all the pills, which you testified you gave to the Prosecutor, to Mr. Charlock, the Prosecutor's detective? A. Yes.

Q. (By the Court.) Were those the pills that the defendant had given you, that you gave to Mr. Charlock? A. Yes. 10

Q. You said, in answer to the question of Mr. Hamill, as to whether you didn't call up Mike on the telephone from Mrs. Fletcher's house—was Mrs. Fletcher present when you went to the telephone? A. She told me to go in the dining room, and she stayed in the parlor.

Q. She told you to go in the dining room? A. Yes, that was where the telephone was. 20

Q. Did you tell her what you wanted? A. Yes, I told her what I was going to do, yes.

Q. Did you tell her then the name of Mike? A. I didn't tell her who it was, unless she heard it.

Q. What is that? A. I didn't tell her who I was calling up, unless she overheard it.

Q. Was there any box around the telephone in the dining room? A. The telephone was on the wall, I think. 30

Q. Was it an open place in the dining room? (No answer.)

Q. (By the Court.) Was it a booth? A. It was like a seat, a window seat.

Q. In the dining room? A. The telephone, I think, was on the wall, there was a wooden seat right under the telephone.

Q. In the dining room? A. In the dining room.

Q. There was no concealment of the telephone, was there? A. No. 40

Elva E. Palmer—Re-Cross.

Q. In an open place in the room? A. Yes.

Q. When you talked, you talked without concealment, didn't you? A. Yes.

Q. Did you look up the telephone book in Mrs. Fletcher's house at that time, to find the number you desired to get? A. No, sir, because I know it.

MR. HAMILL: I object to the question.

MR. HUDSPETH: Yes, it is leading.

10

Q. You knew the number? A. Yes.

Q. Your attention was called to the telephone book in which you say you saw the name of Mrs. Fletcher? A. Yes.

Q. Before you went there the first time? A. Yes.

Q. Where did you look up her name? A. I happened to look it up in the telephone book.

Q. Where? A. In Newark.

20

RE-CROSS EXAMINATION BY MR. HAMILL:

Q. You saw Mrs. Fletcher's name in the telephone book? A. Yes.

Q. At 303 Grand Street? A. Yes.

Q. (By Mr. Hudspeth.) Had you ever seen Mrs. Fletcher before the first occasion you went there, on this Saturday afternoon? A. No, sir.

30

MR. HUDSPETH: (Reading from telephone book.) "Mrs. J. Fletcher, 303 Grand Street."

MR. HAMILL: Issue of May 14, 1914.

Q. How many pills did Mrs. Fletcher give you? A. I don't know.

Q. (By the Court.) Were they in a package or a bottle? A. She took them from a bottle.

Allen De B. Ballantine—Direct.

ALLEN DE B. BALLANTINE, a witness produced on behalf of the State, being sworn testified as follows:

Q. You are a practicing physician in Newark?
A. Yes.

Q. Were in April, 1914? A. Yes.

Q. How long have you been practicing your profession? A. Since 1886.

Q. Do you remember calling upon this girl, Elva E. Palmer 68 Warren Street, Newark, last year? A. Yes. 10

Q. Do you remember about the time? A. About April 6, 1914.

Q. At what hour, day or night? A. Somewhere around three o'clock in the morning.

Q. Where did you find her? A. In bed.

Q. Did she have any one with her? A. Two other women.

Q. What did you find her condition to be? A. I found her suffering from severe bearing down pain. 20

Q. What do you mean by bearing down pains?
A. Sharp, oppressive, bearing down. When they phoned me I asked what the trouble was, they said it was appendicitis; I saw the pains were nothing like appendicitis and I asked her what she had been doing.

Q. After you asked her what she had been doing, what did you do? 30

Q. (By the Court.) Don't tell us what she told you. Tell us what condition you found in her, as to physical condition? A. I found severe bearing down pain.

Q. What did that indicate? A. It indicated to me as though she was going to have a miscarriage.

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

Q. What did you do after you found she was 40

Allen De B. Ballantine—Direct.

suffering from severe bearing down pain, which indicated to you, as you testify, she was going to have a miscarriage? A. I said I didn't care to have anything to do with the case.

Q. Why? A. Because I asked her in the first place if she was a married woman and she said no. I suspected something had been done.

10 Q. You declined to have anything to do with the case? A. I declined to have anything to do with her. Finally she asked me to give her something to relieve the pain. I gave her some medicine, hoping possibly to relieve the pain; it would stop the miscarriage.

Q. What did you give her? A. As near as I can remember codeine.

Q. To produce what? A. To relieve the pain.

20 THE COURT: All that testimony as to what she told the doctor as to her condition, I will strike out. It is incompetent. The jury will disregard it all.

Q. You administered codeine?

30 THE COURT: Let us get the record straight. The statement of the doctor as to what he asked her, I will strike out from the record. The jury will not regard that. The jury is only to regard what the doctor said he found.

Q. Would codeine cause an abortion? A. It would not.

Q. Would it abort the womb of anything? A. Would it what?

Q. Would it abort the womb of anything? A. I don't exactly understand your question.

40 Q. Would it eject anything from the womb? A. Would it eject anything from the womb? No, sir.

Allen De B. Ballantine—Cross.

Q. What did you do when you declined to attend her? A. After she asked me to leave her something to relieve the pain I left, as I have stated, and went home.

Q. Did you see her again? A. I did not. I told her I would not come again.

Q. If the woman still retained that foetus would the codeine which you prescribed abort the foetus, eject that foetus? A. If the codeine would relieve the pain it would be apt to stop the miscarriage. 10

Q. To what? A. Interfere with the miscarriage.

Q. Stop it or cause it? A. Prevent it.

Q. Not cause it? A. Not cause it. It would be more apt to prevent it.

Q. Did you see her after that? A. No.

Q. (By the Court.) You didn't see the foetus then? A. No, it had not arrived when I was there.

20

CROSS EXAMINATION BY MR. HAMILL:

Q. What form was the codeine in? A. White pills, small white pills, tablets.

Q. Isn't it possible for a woman to perform an abortion on herself? A. Surely.

Q. And they can perform it with various instruments, such as a hat pin— A. Surely.

Q. Or a button hook or umbrella rib? A. Yes.

Q. Anything that will stir up and cause a disturbance in the womb will cause it to abort, will it not? A. Yes. 30

Q. How soon after this disturbance of the contents of the womb is caused, in any of the ways I have indicated, is it possible for the womb to expell its contents? A. Is it possible?

Q. Could it be within an hour afterward? A. No certain time. It is according to the person.

Q. Just according to the condition of the person? A. Yes. 40

Allen De B. Ballantine—Re-Direct.

Q. Can drugs cause an abortion? A. Very often, not always.

Q. (By the Court.) His question is, can they? You can answer the question yes or no. Can drugs cause an abortion? A. They can, yes.

Q. But very rarely? A. Well, I wouldn't say very rarely, very often, and there are certain people that drugs would never interfere with.

10 Q. Don't drugs only—don't drugs cause a general disturbance of the system only, without affecting particularly the womb? A. It will.

Q. So it would depend on how sensitive a woman was, as far as her genital parts are concerned, how sensitive she is to the disturbance in her general condition caused by the taking of drugs? A. Yes, that is right.

20 Q. Doctor, if a woman has had a previous abortion, does the second and subsequent abortion come easier than the first? A. Not necessarily.

Q. Depends, as you said before, on the condition of the patient? A. The condition of the patient at the time.

RE-DIRECT EXAMINATION BY MR. HUDSPETH:

30 Q. I show you a pill which the State has produced and called the complaining witness's attention to. Will you observe it and tell us whether that is similar to the codeine pills you prescribed? A. No, sir.

Q. Anything like it? A. No, sir.

THE COURT: What is that, to which you refer?

MR. HUDSPETH: It is the pill previously shown the complaining witness—the white pill. I will have it marked for identification.

40

(It is marked with an "x".)

Allen De B. Ballantine—Re-Cross.
James W. Wilson—Direct.

RE-CROSS EXAMINATION BY MR. HAMILL:

Q. Are these pills used—I mean used legitimately—by doctors for women in child birth?

THE COURT: Don't answer that.

Q. Are they used by physicians for obstetrical purposes? (Indicating the pill just marked "x.")

A. Tell me what is in it, and I will tell you. 10

Q. I mean, do doctors prescribe these for woman?

A. I cannot tell you.

MR. HUDSPETH: This may be a piece of sugar. We haven't shown what it is. I object to the question on the ground it is irrelevant, incompetent and immaterial.

MR. HAMILL: I withdraw the question.

JAMES W. WILSON, a witness produced on behalf of the State, being sworn, testified as follows: 20

DIRECT EXAMINATION BY MR. HUDSPETH:

Q. You are a practicing physician in the county of Essex, in the city of Newark? A. Yes.

Q. Were you in April, 1914? A. Yes.

Q. Did you have occasion to visit professionally the complaining witness? A. Yes. 30

Q. In April, 1914? A. Yes.

Q. Where? A. 68 Warren Street.

Q. In the city of Newark? A. Yes.

Q. Had you ever seen her before? A. Yes.

Q. You had seen her before? A. Yes.

Q. Had you attended her on another occasion previously? A. Some time before.

Q. So you knew who she was? A. Yes.

Q. How did you receive this call on this day in question? A. On the telephone. 40

Q. About what time did you reach 68 Warren

James W. Wilson—Direct.

Street? A. It was in the afternoon, I should think about five or half past five.

Q. Where was Miss Palmer? A. In bed.

Q. In her room? A. Yes.

Q. Any one with her? A. Yes.

Q. What was her condition, if you observed?

A. I observed—

10 Q. Her condition— A. She was lying in bed; she was suffering from some pain in the abdomen.

Q. About what time? A. About five or half past five.

Q. Did you ascertain from her what the matter was? A. She told me—

THE COURT: Never mind.

Q. (By the Court.) What did you find from your examination?

20 Q. (By Mr. Hudspeth.) After she told you something, what did you do?

Q. (By the Court.) Did you examine her? A. I don't think I did.

Q. From what she told you, did you do anything? A. I didn't do anything.

Q. Did you see anything there? A. Yes.

Q. What? A. A foetus.

Q. Where did you see the foetus? A. In a turkish towel, lying on the floor under the bed.

30 Q. What did you do after you saw this foetus? A. We talked the matter over—

Q. You talked the matter over with her. Never mind what you said. After talking it over, what did you do. A. I went and telephoned to the hospital.

Q. What hospital? A. St. Barnabus.

Q. What caused you to telephone to the hospital? A. Because the women that were in the room—

James W. Wilson—Direct.

THE COURT: Never mind what they told you.

Q. (By the Court.) By reason of the foetus—did you locate the foetus in any way in connection with the condition of the woman? Did you find from her condition it had anything to do with the foetus you saw there in the room? A. I should think so.

10

Q. (By the Court.) Did you see anything about the room—did you find from her condition that the foetus had been in any way connected with her. A. Well, I didn't examine her. I don't remember examining her.

Q. She told you something? A. Yes.

Q. As to her condition? A. She told me—

Q. Then you saw the foetus? A. Yes.

Q. You talked with her? A. Yes.

Q. You followed it up by calling up the hospital?

20

A. Yes.

Q. In relation to her condition? A. Yes.

Q. What happened then? A. I went out, and she went to the hospital in a taxicab.

Q. Who did you call up? A. A sister at St. Barnabus Hospital.

Q. Did you have a conversation with any of the internes or physicians connected there? A. Yes, a Sister.

Q. Who? A. I don't know her name, but she is connected with the hospital.

30

Q. Did you tell her the situation? A. Yes.

Q. Where you were? A. Yes.

Q. What you wanted done? A. Yes.

Q. You conducted the telephone conversation?

A. Yes.

Q. Did you continue attending her after that?

A. No.

Q. You went away? A. Yes.

40

James W. Wilson—Direct.

Q. What did you with the foetus? A. I didn't do anything. I left it in the towel.

Q. Was she in bed? A. Yes.

Q. Undressed? A. Yes.

Q. What was her condition as far as you observed, as far as you went? A. Why, just the condition of any woman that had had a miscarriage, suffering from loss of sleep and pain.

10 Q. Her appearance—what would it indicate to your professional eye? A. That she was suffering?

Q. From what? A. Pain.

Q. Caused from what? A. Possibly miscarriage.

Q. When you saw the foetus there, and the talk you had had with her, then what happened?

MR. HAMILL: I object.

20 THE COURT: I will overrule the objection.

Q. (By the Court.) Did you make any examination of her which determine in your mind, from that examination, that the foetus was from her or that she had had a miscarriage, other than what she said? A. No, sir.

Q. Why didn't you examine her?

MR. HAMILL: I object.

30 THE COURT: I will not overrule it.

Q. Why didn't you make a careful examination of her? A. I asked her—

THE COURT: Never mind about that.

Q. Was it or not from what she told you? A. Yes.

Q. After she told you as to her situation and condition, then you did not make any further examination? A. No.

40 Q. Except call up the hospital, as you testified?

James W. Wilson—Cross.

MR. HAMILL: I ask that that be stricken out.

THE COURT: He said he made no examination of her, but simply called up the hospital.

MR. HUDSPETH: May your Honor please, I think under the rule that the question of the subjective conditions of this woman is perfectly competent, and it is proper testimony for the attending physician to give, and is a proposition we have a right to inquire into. 10

THE COURT: What she told him?

MR. HUDSPETH: What she said was the matter with her when he came there.

THE COURT: What do you seek to prove?

MR. HUDSPETH: That this woman told him her condition. In other words, she had had— 20

THE COURT: What evidential value would it have?

MR. HUDSPETH: Only this evidential value, that she had had a criminal operation committed on her, that the result was the aborting of this foetus.

THE COURT: That would not bind this defendant. I will overrule it. 30

CROSS EXAMINATION BY MR. HAMILL:

Q. You don't know whether that foetus had any connection with the woman you attended or not, that is to say, you may have suspected it—I will withdraw the question and put it this way—this foetus could be taken and brought in there and have belonged to some other woman instead of the woman in bed?

MR. HUDSPETH: I object. It is a conclusion. 40

Edgar A. Ill—Direct.

MR. HAMILL: The question I merely want to ask the doctor if he cannot testify that that foetus he saw in a turkish towel came from the woman?

THE COURT: He said he doesn't know it was taken from her.

10 EDGAR A. ILL, a witness produced on behalf of the State being sworn, testified as follows:

DIRECT EXAMINATION BY MR. HUDSPETH:

Q. You are a practicing physician in Newark?

A. Yes.

Q. Have been how many years? A. Five years, practicing.

Q. Connected with St. Barnabus Hospital? A.

20 Yes.

Q. In what capacity? A. Attending surgeon.

Q. Do you remember this woman, Miss Palmer, coming to the hospital in April, 1914? A. Yes.

Q. Did you have cause to examine her? A. Yes.

Q. Did you examine her? A. Yes.

Q. What did you find her condition to be? A. Can I read my hospital history?

30 Q. (By the Court.) Did you make it? A. I didn't write it, but I dictated it.

Q. (By the Court.) Those are notes you dictated at the time of the examination you made of her? A. Yes.

BY MR. HAMILL:

Q. When? How long after you examined the woman did you dictate this statement? A. Probably at the time. I don't remember exactly. It is customary to dictate them at the time.

40 Q. But you don't remember when you dictated them? A. No.

Edgar A. Ill—Direct.

Q. You didn't see the person to whom you dictated it taking it down? A. Probably, yes.

Q. We have to get this accurately; you couldn't say positively? A. I don't recollect, no.

Q. You don't know whether the person that took it, first took rough notes, and then completed the perfect copy you have in your hand? A. I don't know, no.

MR. HAMILL: I don't think the doctor ought to use this. 10

BY THE COURT:

Q. Is that a transcription of the notes you dictated at the time the case was treated by you? A. Yes.

Q. Can you by reading those notes refresh your memory as to the condition you found this woman in at the time she was in the hospital, under your care? A. Yes. 20

MR. HAMILL: I ask an exception.

THE COURT: To what?

MR. HAMILL: To putting in of those notes.

THE COURT: They are not going in.

MR. HAMILL: To the doctor using them to refresh his memory.

THE COURT: I will permit this witness to use it to refresh his memory. 30

MR. HAMILL: I ask an exception.

THE COURT: Exception allowed.

(It is signed and sealed accordingly.)

GEORGE G. TENNANT, J.

(Seal)

Q. (By the Court.) You may examine the transcript, refresh your memory as to the condition you found this woman in. (No answer.)

Q. (By Mr. Hudspeth.) Answering my ques- 40

Edgar A. III—Direct.

tion, as to your examination, and what condition you found her to be in, refer to these notes where necessary to refresh your recollection, and please proceed and give us your answer. A. There was tenderness across the lower part of the abdomen, she had a red vaginal discharge with a foul odor, the uterus enlarged, and the cervix was open.

10 Q. (By the Court.) Could you tell from your examination whether she had had a miscarriage or not? A. No.

Q. That was the result of your personal examination? A. Yes.

Q. Could you say or not, from your personal examination, that this woman was suffering from an abortion? A. Positively, no.

Q. Had the symptoms anything to do with an abortion? A. Yes, alongside with what she said when she came in.

20 Q. She made a statement when she came in? A. Yes, we got her history.

Q. You made an examination? A. Yes.

Q. I ask you if you think, in view of your examination of her she had been the victim of an abortion, to state the fact to the jury. A. That was what we operated on her for, yes.

30 Q. I don't want what she said as to what was the matter with her or as to her condition—I want that stricken out—but simply, after what she told you, you then proceeded to make this examination is that right? A. Yes.

Q. And the result of your examination was as you have testified to? A. Yes.

Q. Regarding her condition? A. Yes.

Q. What followed then? A. Why, I told Dr. Hosp—

Q. Never mind. A. I mean during the operation.

40 Q. What happened after that? A. She was sent to the operating room for an operation.

Edgar A. Ill—Direct.

Q. (By the Court.) Did you go up there? A. No.

Q. Who took charge of her then? A. Dr. Hosp.

Q. I show you an instrument, S-1 in evidence; can you tell us from your experience as a physician—an obstetrician too? A. Somewhat.

Q. Can you tell us what that instrument is? A. That is a speculum.

Q. Used for what in the profession? A. It is used to expose the vagina, so you can see the vagina and see the opening into the womb. 10

Q. You open up the lips? A. Yes.

Q. You can look in there? A. Yes.

Q. With these two tongues? A. Yes.

Q. That is the purpose of it? A. Yes.

Q. Show how it operates. A. It is rather a poor instrument. You introduce it into vagina, separate it this way (indicating); putting the patient in certain positions it will show better than other position. 20

Q. That speculum not only opens up the lips of the womb, but it also, because of its material, casts light into the interior, doesn't it? A. Possibly, yes. I don't think you can see much without a light. You wouldn't see at all without additional light, you wouldn't see at all. I wouldn't say you couldn't see, though. I will change that, you can see some, but not very well. 30

Q. What effect does the drug, quinine, when administered to a woman, have upon the womb? A. It is supposed to cause contraction of the womb.

MR. HAMILL: It has not been shown that any quinine has been given in this case.

THE COURT: Do you intend to connect it? 40

MR. HUDSPETH: Yes.

Edgar A. Ill—Direct.

THE COURT: I will admit it. You may answer.

A. It is supposed to cause a contraction of the womb, one of the therapeutic effects.

Q. What effect would contraction of the womb have upon aborting the contents? A. It would expel the contents.

10 Q. In your judgment, from your experience as a physician, is sulphate of quinine used to obtain an abortion? A. It is used; I don't believe it works very well, but it is used.

Q. What effect does the iron—sulphate of iron—have on the womb of a woman if administered to her? A. Supposed to have the same effect.

Q. What effect has aloin upon the menses? A. I don't believe it has any.

20 Q. What effect does it have upon the womb of a woman if administered to her? A. I don't believe it has any.

Q. What effect would aloes, sulphate of iron and aloes, in conjunction, have upon the menses? A. Well, they are supposed to have that effect of contracting the womb, but I do not believe any of these drugs really do.

Q. What effect, if any, would that combination of those drugs have upon a woman's womb after instrumentation had been had. A. After it?

30 Q. Yes. A. Then it would cause contraction.

Q. Then if instruments had been used on a woman to produce an abortion, the use of these drugs in combination upon that woman after instrumentation would produce a contraction? A. Yes.

Q. That would have a tendency to eject— A. Yes.

Q. —anything that was in the womb? A. Yes.

40 Q. Anything foreign? A. Yes.

*Edgar A. Ill—Cross.***CROSS EXAMINATION BY MR. HAMILL:**

Q. This speculum, I think you call it—this instrument— A. Yes.

Q. It is used by doctors to examine for pregnancy, isn't it, to make an examination to discover whether— A. No.

Q. —a woman in pregnant? A. No; a vaginal examination, yes.

Q. You could not commit an abortion with that instrument? A. Well, hardly. It would be an aid. 10

Q. It would not go far enough into the womb?
A. It would not go into the womb at all, unless the woman was full term, but it would expose the opening into the womb.

Q. In order to perform an abortion you don't necessarily have to have a speculum? A. Not necessarily, no, not this kind. 20

Q. After you extend the lips of the speculum, this opening between the upper and lower lip, you can shove an instrument through, from outside into the womb? A. Yes, very easily.

Q. It can be used for that purpose? A. Of course, within the vagina, surely.

Q. You open the lips of the vagina, reach the womb, shove the instrument through that orifice there? (Indicating.) A. Yes, surely. 30

AFTER RECESS.

Paul H. Hosp—Direct.

PAUL H. HOSP, sworn.

DIRECT EXAMINATION BY MR. HUDSPETH:

Q. Doctor, you are a practicing physician in the city of Newark? A. I am.

Q. You are connected with Saint Barnabas Hospital? A. I am.

10 Q. Were you in April, 1914, so connected? A. I was.

Q. In what capacity? A. I was interne.

Q. And Doctor Ill, who was the witness preceding you, was a physician attached to the hospital at that time, was he not? A. Yes.

Q. Do you remember the occasion in April last of Elva A. Palmer going to the hospital? A. I do.

20 Q. Did you see her when she came there? A. I did.

Q. Did you examine her? A. I did.

Q. Where did you examine her; that is, professionally? A. What?

Q. Professionally. A. Right in the hospital.

Q. What did you find her condition to be? A. Do you wish me to read the notes or tell you what I found?

30 Q. Testify from your memory if you can. A. By the way, I may add that these notes are my notes which I wrote, that Doctor Ill dictated to me.

MR. HAMILL: He asks you to testify from memory.

A. As far as you can to save time.

40 THE COURT: If it is necessary, Doctor, to refer to your notes to refresh your memory as to the examination you made, you may do so; but if you can testify without refreshing your memory from your notes, we prefer to have you do so.

Paul H. Hosp—Direct.

A. She had a sensitive lower abdomen; she had tenderness on pressure of the lower abdomen; she had a discharge coming from the vagina; the discharge was reddish, with a foul odor. On further vaginal examination I found that the cervix was open wide enough to admit the tip of the index finger.

Q. What else did you do so far as examination is concerned? A. Well, taking that, the examination, with the remarks which she made, I came to the—

10

MR. HAMILL: If your Honor please, I object Not "with the remarks she made." What did she do, without those remarks?

Q. What conclusion did you reach after you had examined this girl; that is, the first examination? A. I came to the conclusion that—of course, you mean my own conclusion?

20

Q. Of course; it is based, Doctor, on what you heard from her and upon your professional examination.

MR. HAMILL: I object to him drawing a conclusion from what he heard from her. He is to draw a conclusion, as I understand it, from his examination of her, that she had trouble in her low—

MR. HUDSPETH: May your Honor please, a diagnostician and a physician in examining a patient has got to take answer from the patient, and remarks or statement as well as his own physical examination, ocular examination.

30

THE COURT: Did you by reason of anything that she said have your attention directed to any part of her body.

A. I did.

40

Paul H. Hosp—Direct.

THE COURT: And did you then turn to that part of her body?

A. I did.

Q. Now can you say from an examination of that part of her body what you found?

A. I found that there was trouble in her private parts.

10 Q. What then did you do when you found there was trouble in her private parts? A. I consulted with Dr. Ill, and we went ahead and did the operation.

Q. Then she was taken from the examination room to the operation room? A. From the ward to the operating room.

Q. Who operated upon her? A. I did.

20 Q. What operation did you perform? A. I did the operation of taking away the part which remained.

Q. What was that? A. The examination showed that it was composed of blood clot and what seemed like placental tissue.

THE COURT: You mean after-birth?

A. Or after-birth.

Q. Then did you take away what is known as the after-birth? A. After-birth.

30 Q. And what did her condition, the condition of her womb indicate to you, with the after-birth remaining, as to the cause of it? A. She had an operation—an abortion.

Q. In what condition was the after-birth? A. It was foul.

Q. Was there any evidence there as to how this abortion had been committed? A. That could not be stated.

40 Q. That could not be ascertained? A. No; I could not ascertain that.

Paul H. Hosp—Cross.

Q. Doctor, is there such a thing as a complete and incomplete abortion? A. There is.

Q. What is an incomplete abortion? A. An incomplete abortion is one in which the abortion is not complete, part comes away.

Q. What would you call the condition that you found her in, finding the after-birth as you have indicated; was that a complete or incomplete abortion? A. Incomplete abortion. 10

Q. Incomplete abortion. Then when the after-birth was ejected the abortion was complete; is that right? A. Yes, sir.

Q. How long did she remain in the hospital after that? A. Ten days.

Q. And then was she discharged? A. She was.

Q. Is this the girl sitting here. A. That is the young lady, yes.

CROSS EXAMINATION BY MR. HAMILL: 20

Q. Doctor, you said, if I recall correctly what you did say, that when this girl was taken to the operating room and examined you found clots of blood and what seemed to be placental tissue? A. Yes.

Q. That is parts of the after-birth. It could have been something else, could it not? A. The chances are not.

Q. It could possibly have been something else? 30
A. I should say no.

Q. Doctor, isn't your opinion as to its having been placental tissue based on the fact that you determined, or had heard outside of your examination that an abortion had been performed? A. No.

Q. The girl could have been suffering from something else besides an abortion, could she not? A. But those findings would not have been made.

Q. I don't know whether I am clear or not, 40

William J. Charlock—Direct.

Doctor, but this is what I mean: That those same conditions could have been present and yet have been the result of something else besides an abortion. A. I don't think so.

Q. You are not positive, though, that there had been an abortion committed—that an abortion had occurred?

10 THE COURT: He wants to know if you are positive that an abortion had been committed.

A. I should say yes.

Q. But you say it with a great deal of hesitation? A. No.

Q. Well, why do you hesitate now in saying it?

A. Because I want to make sure what I said was right.

20 Q. I think that is all, Doctor.

(Witness excused.)

WILLIAM J. CHARLOCK, sworn.

DIRECT EXAMINATION BY MR. HUDSPETH:

Q. Mr. Charlock, you are a detective connected with the Prosecutor's office? A. Yes, sir.

Q. And were you in April, 1914? A. Yes, sir.

30 Q. Do you know this case of this girl? A. Yes, sir.

Q. And Mrs. Fletcher being brought in this indictment? A. Yes, sir.

Q. This girl says Mrs. Fletcher gave her certain pills, a white and a dark pill, and that certain of those pills she handed to you. Is that so? A. Yes, sir.

Q. What did you do with them?

40 MR. HAMILL: He does not know that that is so; he only knows if any pills were handed to him or not.

William J. Charlock—Cross.

Q. Did she hand you certain white and dark pills? A. She handed me three dark ones and four white ones.

Q. What did you do with them? A. I brought the pills to Doctor McLoughlin to have them analyzed at your order; I gave him three white ones and two dark ones.

Q. And what did you do with the other white and dark one? A. I gave them—kept them and put them with the papers in the case. 10

Q. In this envelope? A. Yes, sir.

Q. And from that time until I have produced them in court have they been in this envelope? A. Yes, sir.

Q. And is this the envelope and are those the pills that you have seen? A. Yes, sir.

Q. Now, I show you a white pill and the dark pills, and you say those are the remainder of the pills that you did not hand to Doctor McLoughlin and which you put in the envelope and kept with the papers from that time until the present? A. Yes, sir. 20

CROSS EXAMINATION BY MR. HAMILL:

Q. Mr. Charlock, were all these—do you know where these pills that you put in the envelope were kept? A. Kept with the papers in the jacket. 30

Q. You didn't have charge of the papers, did you? A. No; they put them in the jacket; they have been there ever since.

Q. All you know about it is this: That you put a number of pills, took possession of a number of pills that the Prosecutor handed you; some of them you gave to Doctor McLoughlin and some of them you put in an envelope and handed the envelope to somebody at the office? A. No; put them in the jacket. 40

William J. Charlock—Re-Direct.

George E. McLaughlin—Direct.

Q. And you put them in the jacket? A. In the jacket there.

Q. But you don't know anything further about them since that? A. No, sir.

Q. And how long ago is that? A. That was last June.

10 RE-DIRECT EXAMINATION BY MR. HUDSPETH:

Q. That jacket is kept in the safe where private papers—

MR. HAMILL: Wait a minute, now let him tell.

Q. Where is that jacket kept? A. When the case is completed it is turned into the Prosecutor's office and put in a safe.

20 Witness excused.

GEORGE E. MCLAUGHLIN, sworn.

DIRECT EXAMINATION BY MR. HUDSPETH:

Q. Doctor, you are a practicing physician in this community? A. No, I beg pardon.

Q. Well, you are a doctor, a physician? A. Yes, sir; I am.

30 Q. Doctor of medicine, in other words? A. I am, yes, sir.

THE COURT: Not practicing in general, but specializing?

A. Specializing.

Q. You specialize in analytical chemistry; you make chemistry? A. Bacteriology; chemistry to a certain extent.

40 Q. You are familiar with chemistry? A. Yes, sir.

Q. And you practice chemistry, do you not, and experiment? A. Yes, sir.

George E. McLaughlin—Direct.

Q. Do you know Mr. Charlock, the Prosecutor's detective. A. I do.

Q. Did he give you certain pills, or drugs in the form of pills for the purpose of analysing? A. He did.

Q. What color were those pills? A. White and black.

Q. I show you a white pill and ask you whether this white pill bears any resemblance to the white pill or pills handed you by Mr. Charlock for examination? A. Yes, sir. 10

THE COURT: The white pill you are now showing him being taken from the exhibit already marked for identification.

Q. And I show you the black pills and ask you whether they are not similar. A. It is pretty well broken up, but generally speaking, I should say yes. 20

Q. I am now referring to the white and the dark pills taken from the envelope, State's exhibit for identification. Now, take the white pellets or pills; did you chemically analyse it? A. Yes.

Q. Or them. And what was the result of your chemical analysis? A. They proved to be a quinine pill, approximately four grains of quinine in each pill.

MR. HAMILL: Doctor, you are reading from notes there, are you? 30

A. I am just refreshing my memory as I go along. This is the report I made on the pill.

MR. HAMILL: When did you make that memorandum, Doctor?

A. It is dated June 6, 1914.

MR. HAMILL: And when—do you remember when you got the pills? 40

George E. McLaughlin—Direct.

A. Yes; it is stated here on June 1, 1914, from detective Charlock's office,—of your office.

MR. HAMILL: Doctor, here is the situation: It is only by looking at that paper—I don't doubt but that you made an examination—but it is only from that paper that you know really when you got those pills, isn't it?

10

A. That I remember the exact date, yes; it is some time about a year ago.

MR. HAMILL: Here is what we want to get at: How long after you made the examination did you make the notes—without referring to that, (memorandum) Doctor?

A. It was a matter of a very few days; within a week, I should say. As soon as the analysis of the pills was finished the report was turned into the Prosecutor's office.

20

THE COURT: It is well settled that he has the right to refresh his mind from notes made within a reasonable time.

MR. HAMILL: I just wanted to find out how long after the examination they were made.

Q. You found the white pellet or pill to be composed mainly of sulphate of quinine; is that right?

30

A. Yes, sir.

Q. The dark pill—what was the result of your analysis? A. The dark pill was composed of sulphate of iron and aloes.

Q. Now, taking the white pill composed principally of sulphate of quinine, from your knowledge and experience as a doctor of medicine, can you tell us what effect sulphate of quinine has upon a woman's womb if administered to her in-

40

George E. McLaughlin—Direct.

ternally? A. I personally believe that it has none ordinarily, unless—

Q. (Interrupting.) What is the popular understanding?

MR. HAMILL: I object.

A. There seems to be a difference of opinion on that.

MR. HAMILL: I object to that—"What is the popular understanding?" 10

MR. HUDSPETH: I withdraw it.

THE COURT: The question is withdrawn.

MR. HAMILL: Yes.

Q. Is it understood in the profession at all that its effect is to contract the womb or not?

MR. HAMILL: I object to that, if your Honor please.

THE COURT: Why? 20

MR. HAMILL: Because the doctor is testifying. He has put the doctor on to tell us what in his opinion would be the effect of this drug, not to tell us what other people think.

THE COURT: How can we say what the Prosecutor's purpose was in putting this witness on the stand? It is not developed yet.

MR. HAMILL: I don't think, if your Honor please, that the doctor can say that it is the opinion of other men—what would be the effect of drugs—when he has told us in his judgment—and he as witness—that they have no effect. 30

THE COURT: I may have an opinion about a certain proposition in law, and yet your associate, Mr Cain, may take the stand here and testify that the general opinion of 40

George E. McLaughlin—Direct.

the Bar as to a legal proposition in New York is so and so.

MR. HUDSPETH: Your Honor is perfectly correct, because they have disagreed here several times on propositions during the trial of this case.

10 THE COURT: He has the right to give an opinion as to what the general opinion of medical practitioners is. He as an expert has the right to say that, though he may disagree with it, as I think he does say.

Q. (Repeated by the stenographer:) Is it understood in the profession at all that its effect is to contract the womb or not?

20 THE COURT: In other words—better reframe that question, “Is it generally understood—” I suppose the State means to inquire what is the general opinion as you find it among the medical professor and in books as to the effect of these drugs upon the womb.

A. Are you speaking now of quinine?

Q. In other words, is there an opinion, Doctor McLaughlin, that sulphate of quinine will contract the womb? A. There is.

30 Q. Now, what effect has aloes and sulphate of iron in combination regarding the womb of a woman if administered internally? A. That has more of an effect than the sulphate of quinine, but I would say as regards both of them that where a uterus—where a womb has been interfered with in some way, such as by the insertion of instruments, that then both these drugs; that is, the quinine, and the sulphate of iron and aloes, would tend to have an effect.

40 Q. And if the uterus had not been interfered

George E. McLaughlin—Cross.

with by an instrument or other foreign substance, why would it be necessary to administer sulphate of quinine, and aloes and iron in combination; for what purpose? A. The aloes and iron pill is used frequently for other conditions; it is also used in anaemic conditions; that is, in conditions of poor blood, in an endeavor to bring the blood back to more nearly normal condition.

Q. But if administered where instruments had been used would it or not contract the womb? A. I should say in a goodly number of cases it would. 10

Q. And the effect of that contraction if there was a foetus still in the womb—what would it be? A. It would expel it.

CROSS EXAMINATION BY MR. HAMILL:

Q. Doctor, you say—testify sulphate or iron and aloes are used in anaemic conditions? A. Yes. 20

Q. Conditions having no reference at all to pregation by means of instruments a painful operation? nancy or abortion? A. Yes.

Q. Now, Doctor, is the performance of an oper- A. Well, I am not here exactly in that capacity.

Q. No; but I would like your opinion as a physician. A. It might be or it might not; usually there is no great amount of pain.

Q. Usually there is no great amount of pain? 30

Q. Usually there is no great amount of pain? A. Yes. There would be a sensation, but I should not say that it was pain; I mean the actual performance of it, the instrumentation of which I am speaking more especially.

THE COURT: You mean while the instruments are being used?

A. Yes.

Q. Depending on the kind of instrument used. 40

A. Well yes, somewhat.

William J. Doherty—Direct—Cross.

Q. More on the condition of the person on whom the operation is performed. A. They vary.

(Witness excused.)

WILLIAM J. DOHERTY, sworn.

DIRECT EXAMINATION BY MR. HUDSPETH:

10

Q. Chief, you are connected with the detective force in the Prosecutor's office? A. Yes, sir.

Q. I show you exhibit S—an envelope containing certain pills, white and dark, in this case, State against Fletcher; can you tell us where the envelope has been kept since handed you by detective Charlock? A. In the safe; the office safe in your office.

Q. Is that a locked safe? A. Yes, I have the key with me; combination also.

20

Q. Who put the papers in the safe? A. I did, sir.

Q. Who handed them to the Prosecutor for production here in court? A. I did.

CROSS EXAMINATION BY MR. HAMILL:

Q. I suppose everything in the Prosecutor's office is done in the most proper and formal manner? A. Yes, sir; proper manner.

30

(Witness excused.)

MR. HUDSPETH: I offer that envelope and these pills in evidence. I have offered the speculum.

THE COURT: Yes; that is admitted. I have already dealt with that.

MR. HUDSPETH: And that is my case. I rest.

40

MR. HAMILL: I wish to object and ask

William J. Doherty—Cross.

to have an exception to the presentation of the pills.

THE COURT: Well, I will hear you, Mr. Hamill, before I rule on it. Why aren't they permissible in evidence? On what grounds do you object?

MR. HAMILL: Well, as I recall the testimony, the girl did not properly identify those as the pills she got from Mrs. Fletcher, That is about the only reason I have. 10

THE COURT: I will overrule the objection. I will admit the pills in evidence, and you may have an exception? It is signed and sealed accordingly.

GEORGE G. TENNANT,
J.
(Seal)

MR. HUDSPETH: That is the case, sir. 20

THE COURT: Proceed with the defense. Counsel for the defendant opened his case to the jury.

30

40

Jenny Fletcher—Direct.

JENNY FLETCHER, SWORN.

DIRECT EXAMINATION BY MR. HAMILL:

Q. What is your name, Mrs. Fletcher, Jane Fletcher? A. Jenny Fletcher.

Q. Where do you live? A. 303 Grand Street.

Q. And you are a midwife by profession? A.
10 Yes, sir.

Q. Have a certificate? A. Yes.

Q. And how long have you practiced midwifery?
A. Twenty years.

Q. Do you remember a certain day last April when this young girl, Edna Palmer, called at your house? A. I do.

Q. Tell us what occurred on the occasion of
20 your call. A. Well, I really can't say much; but I wasn't home when she came, and my little girl telephoned to Will Clark, and I had left there and gone up to Ocean Avenue, and she telephoned to Ocean Avenue and said there was a girl at my home very sick.

MR. HUDSPETH: I object to what her girl said to her over the 'phone.

THE COURT: Strike that out.

THE WITNESS: Please let me say what
30 I have to say.

THE COURT: No, madame; you will deal with what I permit you to say.

Q. Not what anybody told you, but just what you did? A. Yes.

Q. You came in response to a telephone call. A.
Yes.

Q. Well, what happened when you got home. A. Well, when I got home this girl was sitting on the chair and she was awful sick.

40 Q. Where was she sitting? A. On the rocker in the kitchen.

Jenny Fletcher—Direct.

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

Q. Yes? A. So I asked Pauline, the girl, who wanted to see me, and she said this girl; and I asked this girl what she wanted and she said she had been to New York and had been sent by a doctor to me for examination, and one year, she said, before she was the same and came before I said "Go back; you can't get it here;" and she said "Can I use your 'phone?" and I said yes, and she used the 'phone to Newark. That is all I know.

10

Q. About what time was it that you got to the house. A. About five minutes of three.

Q. Five minutes of three? A. Yes.

Q. And who was there when you came in? A. Mrs. Hadden and the servant.

Q. Mrs. Hadden? A. Yes, sir; Mrs. Haddon and the servant.

20

Q. And who was the servant? A. Pauline.

Q. Were you with her? A. Well, Mrs. Haddon was sitting on Mr. Fletcher's chair, and Pauline was doing washing and scrubbing.

Q. Was the girl sitting in the kitchen? A. Yes; she was on a rocker.

Q. Was she sitting at any time in the dining room? A. I don't know.

Q. Did you take her to a room beside the parlor and perform an abortion on her? A. I did not.

30

Q. Did you have her lie on the bed while you used instruments? A. What for?

Q. For the purpose of effecting an abortion? A. No.

Q. Just answer the questions. Did you ever use that instrument or an instrument like that on her? A. No.

THE COURT: Showing her exhibit S-1, I guess.

40

Jenny Fletcher—Direct.

Q. Have you an instrument of that kind? A. Never had.

MR. HUDSPETH: What did she say?

MR. HAMILL: She said "Never had."

Q. Did she call at your house; did she call at your house Sunday morning? A. No.

10 Q. That is, did she call the day—the morning of the day, or the morning after the day when you had this conversation with her? A. Not while I was in.

Q. Not while you were in? A. No.

Q. Did you hear what she said over the telephone? A. I do—I did.

20 Q. Well, what did she say? A. She spoke to some man named "Mike" and she said she had been to New York and she was in Jersey, and she was going right on to Newark.

Q. What is that? A. She was going right home.

Q. To Newark? A. Yes.

Q. How long was she in the house after you got there? A. Two or three minutes; just by the door; that is all.

Q. Just by the door? A. Yes.

30 THE COURT: Mr. Hammill, may I interrupt you just a minute. Do I understand you never saw her except on the one occasion?

A. Only one.

THE COURT: You didn't see her on the Sunday that she tells about?

A. No.

Q. Did you ever give her any pills or medicine of any kind? A. No.

40 Q. You never gave her any pills? A. No.

Jenny Fletcher—Direct.

Q. Did you ever give her these pills (showing the pills already offered in evidence)? A. No, or anything like them.

Q. Or anything like them? A. No.

THE COURT: Showing pills already offered in evidence.

Q. Did all of your relations with the girl consist of this conversation that you had with her— A. (Interrupting.) Yes. 10

Q. (Continuing.) When she asked you to perform an abortion? A. Yes.

Q. Did you examine her in any way? A. No.

Q. Put her on the bed? A. The girl was too sick.

Q. Where did she say she had come from? A. She told me she had come from New York and she had come from Doctor—doctor. 20

Q. Yes. A. Yes.

Q. That she had come from a doctor in New York? A. Yes.

Q. What did she say about other abortions, anything? A. Yes; she said she had been over a year previous to the same doctor and she was very sick at that time and had been in the City Hospital in Newark.

Q. Did you leave the kitchen with her at all? A. No, sir; no. 30

Q. Where was the telephone at that time? A. In the bedroom.

Q. It was not in the dining room then, was it? A. No.

Q. Did you decline to have anything to do with her because she did not have money enough and then after she telephoned to Newark to raise the money to perform the abortion? A. Money was never mentioned at all.

Q. Money was never mentioned at all? A. No. 40

Q. In any way? A. No.

Jenny Fletcher—Cross.

Q. Did you hear her telephone to a friend and ask for the loan of five dollars? A. No; I did not.

Q. Was all that she said to the friend that she was coming home? A. She had been to New York and was in Jersey City, and was going home.

Q. That she was going home? A. Yes.

Q. You never used any instrument of any kind?

10 A. No; I haven't got any.

CROSS EXAMINATION BY MR. HUDSPETH:

Q. How old a woman are you, Mrs. Fletcher?

A. Forty-five.

Q. Forty-five? A. Yes.

Q. How many years have you been a midwife?

A. Twenty.

Q. Actively practicing in Jersey City? A. Yes.

20 Q. All that time? A. Yes.

Q. Pretty well known, aren't you? A. Well, you ought to know, you were my counsellor.

Q. Beg pardon? A. You ought to know; you were my counsellor years ago.

Q. Well, it must have been so many years ago, Mrs. Fletcher, that I have forgotten. A. You were with Judge Foster.

Q. I mean you are well known as a widwife? A. Yes; I am.

30 Q. Have you always practiced on Grand Street?

A. Yes; always.

Q. Same house and number? A. Yes.

Q. What floor was it you met this girl on?

A. Second floor, I guess.

Q. The front of that second floor is a parlor, is it not? A. Yes, sir.

Q. Off that parlor a bed-room? A. Yes, sir.

Q. Off the bed-room towards the rear, the dining room? A. My dining room.

40 Q. What? A. The dining room; yes.

Jenny Fletcher—Cross.

Q. And off that the kitchen? A. Yes, sir.

Q. You say the telephone was kept in the bedroom, was it? A. Yes.

Q. And there is a window—an embrasure of a window where you set the telephone? A. No.

Q. What was there? A. A shelf.

Q. At the window? A. Yes.

Q. And you mean to say now, in all truthfulness now—— A. (Interrupting.) Yes. 10

Q. (Continuing.) Mrs. Fletcher—— (Interrupting.) A. Yes.

Q. (Continuing.) In your twenty years in midwifery you never used a speculum? A. I saw lots.

Q. What? A. I saw lots, but I didn't use it.

Q. Did you ever use a speculum in your twenty years' practice? A. Well, I never used any, but I had been in practice——I saw a good many physicians use these. 20

Q. Isn't that as common in your practice as a teaspoon is for an afternoon cup of tea? A. That is what I said—no.

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

Q. You don't use that for the purpose of opening the lips of the vagina? A. No.

Q. Never have used it? A. I said no.

Q. Have you ever used it? A. I saw but I have not used it.

Q. Have you ever used it? A. I saw, but I have not used it. 30

THE COURT: Answer the question yes or no. Have you ever used it?

A. I said no.

MR. HUDSPETH: I want you to say no to me.

Q. Have you ever used it? A. I said no. Did you use it? 40

Jenny Fletcher—Cross.

Q. That is not necessary. A. No; and not for me.

Q. You are telling the truth to this jury that in twenty years' practice you never used a speculum for any purpose?

MR. HAMILL: I object. She has denied it positively by saying no.

10 THE COURT: She has made herself liable to further cross-examination because of her apparent variation from the question and the answer. If she will answer the question directly—remember where you are, madame, and obey what I say.

A. I have said no.

THE COURT: Answer the question yes or no.

20 A. No.

Q. You mean to say to this court and jury in your practice as a midwife that you have never used a speculum in connection with your practice? A. I said no.

Q. What is it for? A. Well, doctors use it for several things; but I don't know.

Q. What is it for, do you know? Do you know what it is for? A. I don't know.

30 Q. You don't know? A. I know the doctors use it on different patients, but not for what you said, Judge.

Q. You have practiced obstetrics as a midwife for twenty years, haven't you? A. Yes, sir.

Q. And you don't know what a speculum is for? A. I said for several things.

Q. Now, this girl was suffering, wasn't she, when she first saw you on this morning or afternoon? A. Yes.

40 Q. Suffering very keenly, suffering very keenly?

Jenny Fletcher—Cross.

A. She said she had pain; that is all I know.

Q. What? A. She said she had pain.

Q. Was it apparent to you as an experienced midwife that she was suffering? A. I didn't bother to ask; she said she had pain and she asked if she could use the 'phone.

Q. Was it apparent to you as a midwife that she was suffering? A. Yes, sir.

Q. Yes. Why didn't you say so? 10

THE COURT: How did she express to you—what did you observe about her that indicated pain, that she had pain?

A. She said that she had come from a doctor in New York, and she had been for to have something done. That is why I thought there was something wrong.

THE COURT: That is not the question. 20
You have said she was suffering pain. What was there about her that indicated to you she was suffering pain?

A. That she had been to a doctor and she had pain. Why?

THE COURT: She had what?

A. She had pain.

THE COURT: How do you know she had pain? 30

A. She said she had pain.

THE COURT: Is that the only reason you say she had pain?

A. Yes.

Q. Now, here was a young woman coming to you, suffering pains of pregnancy— A. (Interrupting.) Yes. 40

Jenny Fletcher—Cross.

Q. (Continuing) and you a skillful midwife; is that right? A. Yes.

Q. Who wanted you to perform an operation. A. Yes.

Q. And you abruptly said, "Nothing doing." A. Yes.

Q. And that ended it. A. Yes.

10 Q. You offered to do nothing to alleviate her pain, did you? A. No.

Q. Turned her out by the door; is that true? A. Yes.

MR. HAMILL: I object, if your Honor please.

THE COURT: I will sustain the objection.

Q. Well, you turned her out? A. Well, I said there wasn't anything doing.

20 Q. You turned her out, suffering as she apparently was? A. I am not a doctor.

Q. I beg pardon? A. We are not allowed to do anything.

Q. Do you mean to tell me you couldn't give her something, or do something to alleviate her pain at that time? A. No.

Q. You could not? A. No.

30 MR. HAMILL: If your Honor please, I object to this. It is not in evidence that she asked to have the pain relieved, but to have an abortion performed, and she said no; she could not do that.

THE COURT: Have you anything further to say, Mr. Hamill?

MR. HAMILL: I do not think that is proper cross examination, if your Honor please.

40 THE COURT: I think it is within the reasonable limits of cross examination.

Jenny Fletcher—Cross.

Q. Now, she was suffering from the pains of pregnancy, wasn't she? A. She said so.

Q. Well, to your trained eye, would you or not say she was suffering from such pains? A. I don't know.

Q. Did she look it? A. Well, I didn't notice so much.

Q. Well, as little as you did notice, was she or not from your observation suffering from the pains of pregnancy? A. I don't know; I don't know. 10

Q. Did you form an opinion? A. No.

Q. But you told her that you would not do anything? A. Yes.

Q. Did you explain why you would not do anything? A. No.

Q. Said nothing at all? A. No.

Q. Any fear did you indicate if you performed such an operation? A. No.

Q. Didn't express any fear? A. No. 20

Q. Gave no explanation? A. No.

Q. And as soon as you said there was nothing doing she wanted to use the telephone? A. Yes.

Q. And in your presence telephoned, as you testified to? A. Yes.

Q. You listened? A. Yes.

Q. And she knew you were there? A. I had to listen because it was in my bed-room.

Q. And you had two other witnesses there? A. The servant and another lady; she was in my home. 30

Q. Just happened to be there? A. Yes.

Q. And you are going to have her here today, aren't you? A. Yes, sir.

Q. And your servant? A. Yes.

Q. Those are the two that you have to corroborate you? A. Yes.

Q. What doctor's name did the girl give? A. Doctor Muttart.

Q. What? A. Muttart. 40

Jenny Fletcher—Cross.

Q. Why didn't you say that on your direct?

A. What?

Q. Why didn't you say the doctor's name on your direct when your counsel had you? What is your explanation?

10

MR. HAMILL: I object to the question, if your Honor please; it is absolutely irrelevant and immaterial. She said a doctor in New York. Now, she might have a hundred reasons; she didn't want to use the doctor's name in the case; that is one reason.

THE COURT: It is cross examination.

MR. HAMILL: I object to the question.

THE COURT: I will allow it.

MR. HAMILL: Exception.

20

(Exception allowed, signed and sealed accordingly.)

GEORGE G. TENNANT,

J.

(Seal.)

Q. What is your explanation? A. Nothing; only I didn't want to say the doctor.

Q. Didn't want what? A. I didn't want to give his name.

Q. Why not? A. Well, I don't know.

30

Q. Is that your explanation? A. Yes, sir.

Q. You overheard what this girl said on that 'phone, didn't you? A. Yes, sir.

Q. You overheard her say "Mike"? A. Yes.

Q. And you overheard her say "Sykes" when she called up, didn't you? A. I can't say that.

Q. Just try and jog your memory. A. I don't remember her saying "Sykes."

Q. Don't you remember her using the name "Sykes"? A. No; I don't.

40

Q. What name did she use? A. "Mike."

Q. What? A. "Mike."

Jenny Fletcher—Cross.

- Q. "Mike" what? A. I don't know.
- Q. Didn't you hear? A. No.
- Q. Are you sure of that? A. Positive.
- Q. Did you get the number she called? A. Well, I got it afterwards.
- Q. What? A. Must I tell that, too?
- Q. Yes. A. Well, I got it from the telephone people.
- Q. What? A. I got it from the telephone people. 10
- Q. You got it from the telephone people? A. Yes.
- Q. What number? A. I could not tell you now.
- Q. Can I help you—Market 2950? A. I really could not say that either.
- Q. Is that anything like it? A. My counsel has the number.
- Q. What? A. My counsel has the number. 20
- Q. Can you recall it was Market 2950? A. No.
- Q. And can you recall that the gentleman's name was Carl Sykes? A. No.
- Q. What was his name? A. "Mike."
- Q. "Mike"? A. Yes.
- Q. Can't you recall the name of the gentleman having the telephone 2950 Market was Carl Sykes? A. No.
- Q. And that he has a place at 569 Broad Street, Newark? A. No. 30
- Q. What? A. No; I don't know that.
- Q. Let me see if I can refresh your recollection a little. Since you were indicted you called him up, didn't you? A. No—me call him up?
- Q. Yes. A. No.
- Q. Didn't you call up the individual at 2950 Market since you were indicted? A. Since I was indicted?
- Q. Yes. A. Never.
- Q. Didn't you call him up and tell him he got 40

Jenny Fletcher—Cross.

you in trouble and you wanted him to get you out of it? A. God kill me; no.

Q. Oh, you needn't say "God kill you." A. No.

Q. You didn't do it? A. No.

Q. Now, your girl has got this telephone number, has she? A. I don't think so.

10 Q. Why, didn't you say a minute ago—— A. (Interrupting.) I said my counsel had got it, and I had to get it through the telephone.

Q. Didn't you say your girl had the telephone? A. I said she asked the girl to telephone to Newark.

Q. Didn't you say the girl had this telephone number of this person in Newark? A. No; I said the counsellor had it.

20 Q. Is it true or not that she has it to your knowledge? A. No; I said that the counsellor has it.

Q. Is it true to your knowledge that she has it or not? A. My girl?

Q. Yes. A. Positively no.

Q. Didn't you telephone and get the number? A. No; I telephoned to the telephone people.

Q. Who? A. The telephone people.

Q. What for? A. For this number.

30 Q. Why? A. Why, because I wanted that number.

Q. What for? A. Because she telephoned.

Q. What difference did that make to you? A. Well, I wanted to know where she went to.

Q. Why in the world did you have any necessity to telephone to 2950 Market? A. I never telephoned to these people.

Q. Why did you send for that number? A. Because I wanted that number.

40 Q. What did you find out? A. I found out the number; that's all.

Winnie Haddon—Direct.

Q. What else? A. Nothing.

Q. What did you do with the number? A. My counsellor has it.

Q. What? A. Mr. Hamill has that number.

THE COURT: She says her counsel has it.

Q. What did you want the number for? A. Why wouldn't I want the number? 10

Q. I don't know. I am trying to find out.
A. I wanted that telephone number for evidence.

Q. What evidence? A. Of telephoning in my home.

Q. We don't deny it. Now what did you want it for? A. That is all I wanted it for.

(Witness excused.)

20

WINNIE HADDON, SWORN.

DIRECT EXAMINATION BY MR. HAMILL:

Q. What is your name, Mrs. Haddon? A. Winnie.

Q. What? A. Winnie.

Q. And where do you live? A. 229 Third Street.

Q. You know Mrs. Fletcher, the defendant in this case? A. I do. 30

Q. You are a friend of her's, are you? A. I sew for her.

Q. Now, were you ever at Mrs. Fletcher's house when this—I will withdraw that question.

Q. Did you ever see this girl on the second bench before? A. I seen her in Mrs. Fletcher's house on Saturday; I brought her over a kimona, on April 4, 1914.

Q. About what time? A. Well, I left my house 40

Winnie Haddon—Direct.

after two; and I can't tell exactly what time I got over to Mrs. Fletcher's; I know it was after two I left my house.

Q. And this girl was there, was she, or did she come in? A. She was sitting in the kitchen when I went in and she had a corduroy dress on, and she was crying; and I asked Pauline what was the matter with the lady—

10 Q. (Interrupting.) Never mind what you asked Pauline. Just what you did. Now, did Mrs. Fletcher come into the house? A. After that?

Q. Yes. A. Yes, sir; I waited quite a while, though, but she came in after that.

Q. Now from the time—did you see Mrs. Fletcher talking to the girl? A. Mrs. Fletcher talked to the girl while I was reading the paper.

Q. Now tell us what Mrs. Fletcher said to the girl, if you heard what she said— A. (Inter-
20 rupting.) Mrs. Fletcher—

Q. (Continuing) and what happened that came under your observation from the time Mrs. Fletcher came in until the time the girl went out. A. She talked to Mrs. Fletcher kind of low and I kept looking at the paper; and I heard Mrs. Fletcher say "Nothing doing, little girl, you are in the wrong house;" and I heard her ask Mrs. Fletcher if she could use the 'phone and Mrs.

30 Fletcher said yes; she used Mrs. Fletcher's 'phone, and while I was there the young lady went out.

Q. What? A. Went out, and Mrs. Fletcher had Pauline—

MR. HUDSPETH: Never mind, the girl is out.

Q. And the girl went out? A. The girl went out.

Q. Now, you are familiar with this apartment
40 that Mrs. Fletcher lives in, are you? A. Yes, sir.

Q. Is it the usual apartment of the parlor, and the bed-room, and then another bed-room?

Winnie Haddon—Direct.

MR. HUDSPETH: I object, if your Honor please, to that as immaterial.

THE COURT: Don't lead her.

Q. Just tell us what was the arrangement of the rooms in Mrs. Fletcher's. A. Mrs. Fletcher's kitchen, then comes the dining room, then comes the bed-room, then comes her front-room, and then there is a hall bed-room.

10

Q. Now, did Mrs. Fletcher take the girl into the room off the parlor? A. No—

MR. HUDSPETH: That suggests.

Q. Do you know whether she did? A. She telephoned.

MR. HUDSPETH: That suggests and it is leading.

THE COURT: It is leading.

20

Q. Tell us, if you know, what Mrs. Fletcher did to the girl so far as you observed. A. That is all I seen; the young lady asked her if she could 'phone, and she said yes; and she went into the bed-room to 'phone.

Q. Now, from the time when Mrs. Fletcher came in were she and the girl continuously under your observation until the girl left? A. She was continually until she went into 'phone and she 'phoned and after she 'phoned she went out.

30

THE COURT: Where was the defendant while the girl was 'phoning?

A. Taking off her coat and hat in the dining room.

THE COURT: What room, the same room that you were in?

A. I was in the kitchen; Mrs. Fletcher was in the dining-room and then the lady was telephoning in her bed-room.

40

Winnie Haddon—Cross.

THE COURT: You were not in the same room with the defendant while she was taking off her coat?

A. I was in the kitchen all the while.

Q. Could you see Mrs. Fletcher and the girl from the kitchen? A. You can't help but see it, because the rooms run right through.

10 Q. How long was the girl in the house after Mrs. Fletcher got there? A. Mrs. Fletcher didn't have her hat and coat off, and then she was in the dining room and took it off; but Mrs. Fletcher talked to her while her hat and coat was on.

Q. While Mrs. Fletcher's hat and coat were on; is that it? A. Yes, sir.

Q. Did or did not the girl go out before Mrs. Fletcher took her hat and coat off? A. Mrs. Fletcher was taking her hat and coat off while
20 the girl was 'phoning.

Q. Yes. And then how long after—how long was it after the girl 'phoned that she went out?

A. She went right out after 'phoning.

Q. After 'phoning.

CROSS EXAMINATION BY MR. HUDSPETH:

Q. You are a married lady? A. Yes, sir.

Q. Are you living with your husband? A. Yes,
30 sir.

Q. What is your husband's business? A. He is a tug-boat man.

Q. And you are a dressmaker? A. Plain sewing.

Q. What? A. Plain sewing.

Q. How long have you known Mrs. Fletcher?

A. I know Mrs. Fletcher ten years.

Q. Ten years? A. Yes, sir.

Q. Been pretty intimate with her during that
40 time? A. Only I sewed for her; just plain sewing.

Winnie Haddon—Cross.

Q. You have been pretty intimate with her? A. Only just when she wants me; she sends me a postal when she wants me.

Q. What is her name? A. Mrs. Jane Fletcher.

Q. What is her first name? A. Jane.

Q. Did you ever call her Jane? A. No, sir.

Q. And did she ever call you by your first name? A. Yes, sir.

Q. What is your first name? A. Winnie.

Q. Did she call you Winnie? A. Sometimes. **10**

Q. You didn't call her Jane? A. Never called anybody that name.

Q. And this particular afternoon you happened to be there and finished her kimono? A. Yes, sir.

Q. What time of day? A. It was after two o'clock when I left the house.

Q. What? A. After two o'clock when I left my house.

Q. Then you came straight to Mrs. Fletcher's? A. Yes, sir. **20**

Q. By the bye, what were you doing the afternoon before that about four o'clock?

MR. HAMILL: I object; it is immaterial.

A. Well it is so long ago.

MR. HAMILL: Wait a minute. I object.

THE COURT: Why?

MR. HAMILL: On the ground that it is immaterial—what was she doing in the afternoon before that? **30**

THE COURT: No; I think that is a test as to the fixing of this date, Mr. Hamill; I will allow that question.

Q. It is pretty long ago, isn't it? A. Last year?

Q. Yes; a year ago, a little over a year ago.

A. What was I doing that afternoon?

Q. No; the afternoon before, about four o'clock.

A. I don't know; I can't recall that; it is so long ago. **40**

Winnie Haddon—Cross.

Q. Pretty long ago, isn't it? A. Well, it is a year ago, isn't it?

Q. Yes. What was the day of the week, the day before the afternoon you met Mrs. Fletcher?

A. You mean that day?

Q. No, the day before. A. The day before?

Q. Yes. A. Well, Mrs. Fletcher—

10 Q. (Interrupting.) I know; but what day of the week was the day before? A. I don't know exactly what you mean; but I know when I try on Mrs. Fletcher I have to go over to Mrs. Fletcher's because I have three people—

Q. What was the day before the day you say you met Mrs. Fletcher, the day of the week? A. It was on Saturday when I went over to her house.

Q. So you said two or three times. What was the day before? A. Friday.

20 Q. Friday, you say? A. Well, I don't remember—

Q. (Interrupting.) Why, didn't you say a minute ago it was Friday? A. I don't know what you mean.

Q. You didn't? What were you doing the day before in the afternoon? A. I don't know; it is so long ago I forget.

(Witness excused.)

30

40

Pauline Reb—Direct.

PAULINE REB, SWORN.

DIRECT EXAMINATION BY MR. HAMILL:

Q. Pauline, what is your name? A. Pauline Reb.

Q. And you are Mrs. Fletcher's maid—— A. (Interrupting.) Yes; three years.

Q. (Continuing) servant girl in her house? A. I have been with the same woman; she is married woman; she come around—— 10

Q. (Interrupting.) Wait a minute. Just wait a minute.

MR. HUDSPETH: Let her tell her story.

MR. HAMILL: You are telling it too quickly.

Q. How long have you lived with Mrs. Fletcher? A. Three years, one month three years. 20

Q. Just answer the question and nothing more. Did you ever see this young lady before (indicating complaining witness)? A. I never see her before April, one o'clock; twenty-five minutes after one, the woman.

Q. Tell us where you saw her then? A. She came around, banged at the door. I say, "Who is this?" I got up and open the door——

Q. (Interrupting.) Now stop. She came to the door and that is how you saw her first? A. Yes. 30

Q. What happened after she came to the door? A. She came around and she crying. She say, "Mrs. Fletcher living here?" I say yes, "Mrs. Fletcher is out." She say, "Please give me a drink water." I give her glass water she got like little pills—I don't know what she got in her hands, like candy something; she take with a glass water. She say, "Oh, I am so sick." I say, "Take this arm." She say, "Give me to sit down a little while in the kitchen; I rest myself." She 40

Pauline Reb—Direct.

sat down in the rocker chair; she never speak to me; I never speak to her nothing. Half an hour she start awfully hard crying. I say, "What are you crying?" She say, "I am awfully sick; I am married woman; my husband leave me; I work with Doctor Ill, Newark; he done to me three times before a year ago; I never been so sick; then he send me to Doctor Muttart in New York, Dr. Muttart." I say, "Stop crying." She say, "I awfully sick."

10 Q. Now wait a minute. Did she at any time ask you to get Mrs. Fletcher? A. No.

Q. Did you get Mrs. Fletcher? A. I telephoned to Mrs. Fletcher to two places because she was awfully sick.

20 Q. Why did you telephone to Mrs. Fletcher? A. I telephoned to Mrs. Fletcher—to Mr. Will Clark where Mrs. Fletcher go; I say, "A lady in my house."

Q. Did Mrs. Fletcher come back? A. I call Mrs. Cohn, the druggist; a little boy talk on the 'phone. I tell, "Mrs. Fletcher in your house?" and she say yes. I say, "Tell Mrs. Fletcher come around home—"

Q. (Interrupting.) Don't talk too much. Tell us, did Mrs. Fletcher come to the house? A. Mrs. Fletcher come to the house.

30 Q. And what did you notice after Mrs. Fletcher came to the house? A. What?

Q. What happened after Mrs. Fletcher came to the house? A. Mrs. Fletcher come around the house. She say, "Who is the woman sick?" I say, "This one girl." She say, "What is the matter—"

MR. HUDSPETH: Never mind what she said to you.

40 Q. What happened so far as you know? A. She said, "Why do you keep some strange woman

Pauline Reb—Cross.

in the house?" I say, "She is awfully sick." She say, "You are not supposed to keep her." She said, "What is the matter, girl?" She say, "Mrs. Fletcher, Doctor Muttart in New York sent me. Doctor Ill sent me to Doctor Muttart and Doctor Muttart sent me to you." She say, "Little girl, go to your own house—"

Q. (Interrupting.) Never mind. What did you see Mrs. Fletcher do? A. Nothing; she never passed my room. 10

Q. Did you see her take her into the bed-room? A. Mrs. Fletcher never take her to the bed-room. She say, "You show her where the telephone is." She wanted to telephone.

Q. How long was the girl there? A. Two hours.

Q. After Mrs. Fletcher came in? A. Oh, no; Mrs. Fletcher wasn't there three minutes. Mrs.—

Q. How long had she been out when this girl came in? A. After one come around; she leave near three o'clock. 20

Q. What time did she get there? A. Mrs. Fletcher? Twenty-five minutes to three o'clock she come down the house.

Q. How long was the girl there? A. This girl was there more than two hours.

Q. What? A. Two hours. She come around twenty-five minutes after one o'clock.

Q. Twenty-five minutes after one o'clock? A. Yes, sir; she leave near three o'clock. 30

CROSS EXAMINATION BY MR. HUDSPETH:

Q. What is your nationality; where do you come from? A. Austria.

Q. Austria? A. Yes, sir.

Q. How long have you been in this country? A. Seven years.

Q. Ten years? A. Seven.

Q. Seven. What was your business before you 40

Pauline Reb—Cross.

went to live with Mrs. Fletcher? A. I live at Ridgewood, New Jersey.

Q. What was your business, your work? A. Work in house, cleaning house.

Q. Domestic servant? A. Sewing, cooking, cleaning.

Q. And you have been three years with Mrs. Fletcher? A. Mrs. Fletcher three years.

10 Q. What is Mrs. Fletcher's business? A. Mrs. Fletcher go to confinement, with babies to confinement. I work in the house.

Q. Does she do a large business? A. What?

Q. Have a big business? A. No; a lady has a baby; she go to the confinement.

Q. She has a good many people come to see her? A. No; the insurance man come to see her; her sister come around to see her at the house. I stay there all night and day; I never go out.

20 Q. Have any patients come to see her? A. No; no patients come to see her.

MR. HAMILL: I object to this.

MR. HUDSPETH: I have a right to test this girl's recollection. How is she to remember everything that happened on this occasion?

THE COURT: I suppose on that point you have a right to do it.

30 MR. HAMILL: All right. Withdraw the objection.

Q. Does she have women come to her house? A. No; they never come around to the house. A woman have a baby in a week, she come around to Mrs. Fletcher and she care for the baby.

Q. You were at the door upstairs when this girl came? A. I was in the kitchen.

40 Q. Did she ring the bell? A. The door was open; janitor—

Pauline Reb—Cross.

Q. The door was open? A. Yes, sir; she come down.

Q. The door opened from the hall into the dining room? A. The janitor was cleaning.

Q. Did she come in that way? A. No; she came around the kitchen door.

Q. Who let her in? A. Me let her in.

Q. Did she ring the bell? A. She not ring the bell; she ask where Mrs. Fletcher living. **10**

Q. How did you know she was at the door?

A. She came to the door and knock at the door.

Q. She banged at the door? A. Yes, sir.

Q. And then you went to the door and let her in? A. No; she crying. She said, "Do Mrs. Fletcher live here?"

Q. Crying? A. Yes, awfully sick.

Q. In front of the door? A. Yes, sir.

Q. She cried? A. Yes. **20**

Q. Said she was very sick? A. Yes, sir. "Give me a drink of water."

Q. Then you got a glass of water? A. Yes, sir; I gave a glass of water.

Q. One minute; don't go so fast. You got a glass of water for her? A. Yes, sir.

Q. And she still stood out in front of the door? A. She said, "I am awfully sick; give me a rest a little while; I am awfully sick."

Q. Where did she go? Did she stand up or sit down? A. No; she sit on the rocker in the kitchen. **30**

Q. She sat on the steps? A. No; she sat on the rocking chair.

Q. Did she sit in a chair? A. She sat on the rocker-chair.

Q. In the dining room? A. No; in the kitchen.

Q. And she said she wanted a drink of water? A. She awfully sick; she wanted a drink of water.

Q. And you gave her the glass of water? A. I gave her the glass of water. **40**

Pauline Reb—Cross.

Q. And then she took a little bottle. A. She no take bottle; a pill she take.

Q. She took how many? A. She got something in her hand.

Q. She put that in her mouth? A. Yes.

Q. And then drank some water to swallow it? A. Yes.

10 Q. And then what did she do? A. She sat down like that, and again, fast. (Witness characterizes complaining witness' action by breathing very heavily.) I 'fraid; I frightened.

Q. Don't go too fast, because I can not follow you. She sat down and then (imitates witness' heavy breathing)? A. Yes; she say she awfully sick,——

Q. Hold on; hold on. While she was doing that what were you doing? A. I was cleaning.

20 Q. You were cleaning up? A. Yes; she was sitting down.

Q. And she threw her clothes back that way? A. No; she loose her coat.

Q. What kind of clothes did she have on? A. Brown suit.

Q. What kind of cloth? A. I can't tell; plain cloth, but brown suit.

30 MR. HUDSPETH: (Addressing somebody in the room.) Now don't you shake your head at her again!

Q. What kind of cloth did she have? A. I can't examine the cloth; I see she have a brown suit, velvet hat—brown hat.

Q. Yes; a brown hat. What kind of ribbon did she have on her brown hat? A. She have no ribbon; little feathers, black.

Q. What color was the feather? A. Black.

40 Q. What did she have around her neck? A. No got nothing; she have a waist.

Pauline Reb—Cross.

Q. She had it cut low? A. Yes; she had a silk waist.

Q. Silk waist? A. Yes.

Q. White silk waist? A. Yes.

Q. And that was cut low, was it? A. Yes.

Q. Then she had over the white silk waist a blouse? A. I don't know what is a blouse.

Q. Little jacket like yours. A. Yes.

Q. And that jacket she kept throwing back? **10**
A. Yes.

Q. What color was the jacket? A. Brown.

Q. What kind of buttons did she have down in front of her waist? A. Something like this; she got a white waist.

Q. Did she have buttons? A. I no look at the buttons; she have a white waist.

Q. Was the waist buttoned up here, or laced-up kind? A. Laced in the back.

MR. HAMILL: I object to all this. **20**

Q. Laced behind. Now how could you tell it was laced up behind?

MR. HAMILL: I object to that as irrelevant and immaterial. It is carrying the examination and testing her observation in the most ridiculous way, to say nothing else.

THE COURT: I suppose that he has a right to test her credibility, whether this was the same woman or not. That is what he is obviously doing. I think he has a right to do that. **30**

Q. Now, she had it laced on behind. How could you tell she had it laced on behind when she had a jacket on? A. The back she got—the buttons go on the back; she put the jacket back.

Q. She put the jacket so far back that you **40**

Pauline Reb—Cross.

could see it was laced behind? A. Yes; she got the buttons on the back; she loose her coat.

Q. Did you notice what kind of shoes she had on? A. I no look at the shoes.

Q. Did she have spats on? A. I don't know what she got.

Q. You don't know whether she had spats on or not? A. No.

10 Q. She stayed there about an hour? A. She stayed more than an hour.

Q. What time did she get there? A. I don't know.

Q. About eleven o'clock? A. What?

Q. About eleven o'clock? A. Twenty-five minutes after one.

Q. Twenty-five minutes after one she came there. A. Yes, sir.

20 Q. Now, let's see. How many hours did she stay there after twenty-five minutes after one? A. Two hours.

Q. So that would make it 3:25. Now, where was this other lady that was just in the witness-box? A. Mrs. Haddon.

Q. Where was she, Winnie? A. She came to the kitchen.

30 Q. What time did Winnie come in? A. After two; but I no look at the clock; I go telephone; I want to order my grocery; I go and telephone; it was twenty-five minutes after one; around three o'clock leave this girl.

Q. By the bye, how do you know it was twenty-five minutes after one when she went in? A. I telephone; she come around the door.

Q. How do you know it was twenty-five minutes after one when she came in? A. I call information to see right time.

40 Q. Did you look at the clock? A. I call information for the right time; I know this woman come around twenty-five minutes after one.

Pauline Reb—Cross.

Q. You looked at the clock and when she came in it was twenty-five minutes after one? A. I was there twenty-five minutes after one.

Q. Now what time was it when Winnie came in, the clock still being there? A. May be half an hour.

Q. What time was it; what time by the clock was it? A. Little after two. About ten minutes after two.

Q. Ten minutes after two when Winnie came in. Now, what time was it when the madame came in—Mrs. Fletcher—by the clock? A. Twenty minutes to three o'clock. 10

Q. Now, you are sure of all that, aren't you? A. Yes, sir; sure.

Q. Now, before Mrs. Fletcher came in this girl told you all about her condition? A. Before coming in the house she cry and say she was awfully sick.

Q. She cried and was suffering pain terribly? A. She had pain; yes. 20

Q. And told you she was going to have a baby? A. She never tell me she was going to have a baby or anything else; she said Doctor Muttart had an operation on her.

Q. What Doctor, Doctor Ill? A. Doctor Muttart, New York.

Q. What did she say about Doctor Ill? A. Doctor Ill done something to her and sent her to Doctor Muttart, of New York, to have an operation; she tell me. 30

Q. Do you mean to tell us that this woman told you that Doctor Ill of Newark sent her to Doctor Muttart to be operated on; do you mean to say that? A. The girl tell me.

Q. Do you mean to say that? A. I don't say that; the girl tell me. I say, "What are you crying?"

Pauline Reb—Cross.

Q. Do you mean to say in this court-room that she said Doctor Ill——

MR. HAMILL: That is brow-beating. She is——

Q. Now, do you mean to say that this girl told you—— A. (Interrupting.) The girl tell me——

10 Q. Now, wait, please. Do you mean to say this girl told you that Doctor Ill told her to go to Doctor Muttart in New York and be operated on? A. That is what the girl tell me.

Q. And after she told you this you knew she was in pretty bad shape? A. I knew she was sick girl. I ask her what is she carying; she tell me everything.

20 Q. Now, when Winnie came in did you tell her? When Mrs. Haddon came in did you tell her? A. She say, "What is the matter with this woman?" I say, "She is sick; she is off in a faint."

Q. Was it after all this that you telephoned Mrs. Fletcher to come? A. Yes, I telephone to Mrs. Fletcher; Mrs. Cohn——

30 Q. (Interrupting.) To come for what? What did you want Mrs. Fletcher to come back to the house for? A. The girl didn't want to go home; she say she wanted to see Mrs. Fletcher and the doctor sent her; she didn't want to go.

Q. Mrs. Fletcher was out on confinement cases? She didn't have any women come to the house?

MR. HAMILL: There is nothing to show Mrs. Fletcher was out on confinement cases. The only evidence is that Mrs. Fletcher was out, and, so far as there is anything in the evidence, that she was visiting.

Q. Mrs. Fletcher was out on confinement cases?

40 A. She go to buy the grocery, and she go to see Mrs. Cohn.

Pauline Reb—Cross.

THE COURT: Talk slowly. It is very hard for the jury to understand. Talk slowly and distinctly. It will help us.

Q. (Repeated by the stenographer.) Mrs. Fletcher was out on confinement cases? A. She go to buy the grocery, and she go to see Mrs. Cohn.

THE COURT: He wants to know whether Mrs. Fletcher was out on a confinement case at that time? **10**

A. No; she go to buy the grocery.

THE COURT: She was not out on confinement cases?

A. No.

Q. Did you know where she was? A. She go out to buy the grocery.

Q. She was out to the grocer? A. Yes, sir. **20**

Q. How long had she been out? A. She go down at twelve o'clock.

Q. This was after two when you telephoned her, wasn't it? A. Yes, sir.

Q. Where did you telephone her from? A. I call Mr. Clark in the building.

Q. Mr. Clark where? A. In the grocery.

Q. Why didn't you telephone in your own house? A. I telephone in my own house to Mr. Clark—Mrs. Clark. **30**

Q. You telephoned from your house to the grocery? A. Yes, sir.

Q. For Mrs. Fletcher? A. Yes, sir.

Q. What did you want Mrs. Fletcher to come for? A. A woman sick in the house.

Q. But she didn't attend to women in the house? A. No; she didn't want to go out; I tell her to go out; I call Mrs. Fletcher.

Q. Do you know Doctor Muttart? A. No.

Q. Did you ever hear his name mentioned? A. **40**
No; I heard once; I heard his name; she tell me.

Pauline Reb—Cross.

Q. Didn't you tell this girl, Miss Palmer, when she asked you where Mrs. Fletcher was and when she would come back, that she was out taking dinner with Doctor Muttart and that you would reach her; didn't you tell her that? A. I no tell the girl. What I want to tell the girl? I go washing in the house.

10 Q. Did you tell her that? A. No; I never tell her; tell her, "Mrs. Fletcher is out; you go ahead to your house." She say, "No, I want to see Mrs. Fletcher." I can't put the girl in hall; the girl was sick.

Q. Now this girl was suffering pain all the time she was there, wasn't she? A. Yes; all the time she sit down.

Q. Until Mrs. Fletcher came? A. Mrs. Fletcher come around. She say, "Girl, you are in the wrong house."

20 Q. How often did Winnie go to Mrs. Fletcher's house? A. Half an hour she sat down.

Q. How often would she come to the house; how often did Mrs. Haddon come to the house?

MR. HAMILL: I object to that.

A. After two.

MR. HAMILL: I object to that. He is asking how often did Mrs. Haddon come to the house.

30 THE COURT: The complaining witness?

MR. HAMILL: No, not the complaining witness.

THE COURT: How is that cross-examination?

MR. HUDSPETH: Why, may your Honor please, she has connected Mrs. Haddon with this affair and places her there at a given time. I have a right to discredit her as to Mrs. Haddon being there at all at this time,

40

Pauline Reb—Cross.

and how she knows she was there at this time. She has specified ten minutes after two. It is a question of accuracy, credibility.

MR. HAMILL: If he means on that day I have no objection, but how often as a habit I object to.

THE COURT: Why doesn't it go to the accuracy of the story told by this woman? It all goes to the reasonable cross-examination. I will allow that question. 10

Q. How often did Mrs. Haddon come to the house? A. After two.

THE COURT: How many times, every day, once a year, once a month?

Q. Sometimes come around every week once, sometimes two weeks, come around to visit.

Q. Ever take her meals there? 20

MR. HAMILL: I object, if your Honor please, to this. It is absolutely irrelevant. My point is this: That the fact that Mrs. Haddon did or did not go there on former occasions would have absolutely no weight in proving or disproving that she was there on this occasion.

THE COURT: No; I think it is within—

MR. HAMILL: There is no system established. 30

THE COURT: It is within the reasonable latitude of cross-examination. I will allow that question.

Q. Sometimes she come around for a cup of tea or crackers.

(Witness excused.)

Mollie Cohn—Direct.

MOLLIE COHN, SWORN.

DIRECT EXAMINATION BY MR. HAMILL:

Q. Mrs. Cohn, what is your name? A. Mollie Cohn.

Q. Where do you live? A. 26 West 49th Street, Bayonne.

10 Q. Where did you live during the month of April, 1914? A. 612 Ocean Avenue.

Q. 612 Ocean Avenue? A. Yes, sir.

Q. And where is 612 Ocean Avenue; near what street is it? A. Between Grand and Claremont.

Q. Grand and Claremont Avenue? A. Yes.

Q. Now, did Mrs. Fletcher ever visit your house during the month of April? A. Yes, sir.

Q. Did she ever visit you on the first Saturday of April? A. Yes, sir.

20 Q. Do you remember what date that was? A. I think it was on the 4th.

Q. April 4th. When did she call at your house? A. Well, it was—

Q. (Interrupting.) I mean what time of day?

A. A little after one.

Q. A little after one on that day? A. Yes, sir.

Q. And how long did she remain there? A. Well, she got a call.

30 Q. How long did she remain at your house? A. She left my house twenty past two.

Q. What? A. Twenty minutes past two.

Q. How long had she been at your house? A. Well, almost an hour.

Q. Almost an hour. And you say she got a call? A. In Pax, in the drug store.

Q. She got a call to go to her own house? A. To go to her own house.

40 Q. And she left at what time? A. About twenty minutes past two.

Mollie Cohn—Cross.

THE COURT: Do you know who called her on the telephone?

A. No; my son went over to answer.

MR. HAMILL: We have another witness here, if your Honor please, who answered the 'phone.

MR. HUDSPETH: Well, how is it material? Who denies it? 10

MR. HAMILL: You seem to throw some doubt.

THE COURT: Go on, gentlemen.

CROSS-EXAMINATION BY MR. HUDSPETH:

Q. How do you know it was this Saturday? A. The children weren't going to school.

Q. What is that? A. The children weren't going to school. 20

Q. They don't go to school any Saturday, do they? A. I don't exactly understand you.

Q. Why wasn't it April 11th? A. Well, I don't know; I know it was the 4th.

(Witness excused.)

30

40

Paulne Reb—Cross.

PAULINE REB, recalled.

EXAMINED BY THE COURT:

Q. It was you who telephoned to Mrs. Fletcher?

A. Yes; I telephoned.

Q. How long had this young woman, Miss Palmer, been at the house before you telephoned to Mrs. Fletcher? A. She came around twenty-five minutes past one.

Q. Twenty-five minutes past one; and you telephoned past two? A. About twenty minutes past two.

Q. That made it about an hour before you telephoned? A. Yes, sir; she came in and sat down.

Q. During that time she had taken this pill, that you say, in the water, candy or whatever it was? A. Yes; she took it in the kitchen.

Q. And it was during that time that she told you that some doctor had sent her to another doctor; she was sick? A. Yes, sir.

Q. Did she tell you that she was in trouble that time? A. Yes, sir; she told me three or four times.

Q. She told you three or four times that she was in trouble? A. Yes, sir.

Q. Did she say what she wanted Mrs. Fletcher for? A. I didn't ask her; she said doctor sent her; Dr. Muttart sent her.

Q. Doctor Muttart had sent her to Mrs. Fletcher? A. Yes, and gave her the address.

Q. Doctor Muttart had given the address to her to go to Mrs. Fletcher? A. Yes.

Q. Did you find out what she wanted with Mrs. Fletcher? Did you find out what she wanted? A. She was crying.

Q. She cried? A. Yes, sir.

Q. Did she tell you what she wanted with Mrs. Fletcher? A. She said Doctor Muttart sent her; that Mrs. Fletcher was going to examine her.

Pauline Reb—Cross.

Q. Did she tell you what she wanted Mrs. Fletcher for? A. To examine her; the doctor sent her to Mrs. Fletcher to examine her.

Q. The doctor sent her to Mrs. Fletcher to examine her? She told you that? A. Yes, sir.

Q. After she had been there an hour you called up Mrs. Fletcher? A. Yes, sir.

Q. Did you tell that to Mrs. Fletcher? A. I told first boy. 10

Q. What did you tell the boy? A. "Mrs. Cohn?" He say, "Yes. Who is that?" I say, "It is Pauline. Mrs. Fletcher in your house?" He say, "Yes."

Q. You asked the boy if Mrs. Fletcher was at the house and he said yes. Did you get Mrs. Fletcher then? A. What?

Q. Did Mrs. Fletcher come to the 'phone? A. No; he talk. I say, "Tell Mrs. Fletcher right away some lady very sick. Doctor Muttart of New York sent her." 20

Q. Is that the boy? Look around. A. Yes, that is the boy.

Q. You heard his voice? A. Yes, sir.

Q. You told him to tell Mrs. Fletcher there was a girl there who was sick, and that Doctor Muttart had sent the girl to her? A. Yes, sir.

Q. Did you tell the boy what she wanted? A. I tell him she was awfully sick; Doctor Muttart sent her. 30

Q. Did you tell the boy that the lady wanted her to make an examination of her? A. No; I never tell what.

Q. Didn't tell the boy that? A. No; just that Doctor Muttart sent the woman. "Tell her to hurry up over; I can't get her home." 40

Pauline Reb—Cross.

Sol Kohn,—Direct.

CROSS-EXAMINATION BY MR. HUDSPETH:

Q. Bye the bye, you lady, you know Dr. Muttart? A. I don't know him; I don't know Doctor Muttart; I don't know any doctor.

Q. Did you ever hear of Doctor Muttart? A. I heard the lady.

10 Q. Did you ever hear anyone else speak of Doctor Muttart? A. No; I never heard of Doctor Muttart. This one lady, this one here (indicating complaining witness), she tell of him.

Q. You never heard of him otherwise? A. No; I never heard of Doctor Muttart.

(Witness excused.)

20 SOL KOHN, a witness produced on behalf of the defendant, being sworn, testified as follows:

DIRECT EXAMINATION BY MR. HAMILL:

Q. Do you remember Saturday afternoon in April, when Mrs. Fletcher was visiting your mother? A. Yes.

Q. Did you see her at your house? A. Yes.

Q. Did you get a message for her over the telephone? A. Yes.

30 Q. What was the message?

MR. HUDSPETH: I object.

Q. Did you tell her what the message was? Did you tell Mrs. Fletcher? A. Yes.

Q. What did she do after you gave her the message? A. She went home shortly after.

Q. How long after you got the message did she go home? A. I don't know exactly, about half an hour.

40 Q. After she got the message from you? A. Yes.

No Cross-Examination.

Walter A. Smith—Direct.

MR. HAMILL: There is another witness, I think will take but a minute.

THE COURT: I understand—if I am wrong, correct me, but I understand it is admitted by the State that the defendant was out and that she was telephoned for. There is no doubt about that?

MR. HUDSPETH: No.

THE COURT: That is really corroboration 10
of what the State's testimony shows, that they sent word for her to come.

MR. HAMILL: It is for the purpose of showing what time the telephone message was sent.

MR. HUDSPETH: There is nothing in that.

THE COURT: If they want it I will not overrule it.

20

WALTER A. SMITH, a witness produced on behalf of the defendant, being sworn, testified as follows:

DIRECT EXAMINATION BY MR. HAMILL:

Q. You are auditor of the Telephone Company?

A. Yes.

Q. Do you know if a telephone call was sent to Newark from Mrs. Fletcher's house, 303 Grand Street, on the first Saturday in April, 1914? A. 30
Yes, I do.

Q. How do you know it? A. I have the toll check record.

Q. What does the toll check show? A. It shows the number called to and the number called from, the time and date.

Q. What is it? A. From 2759 Jersey to Market 2840.

Q. What time was it? A. 3:13 p. m.

40

No Cross-Examination.

Walter A. Smith—Direct.

Q. (By Mr. Hamill.) Was that the only call from that station that day? A. Yes.

MR. HUDSPETH: I would like to recall Mrs. Fletcher.

MR. HAMILL: For what purpose?

THE COURT: I suppose it is for further cross-examination.

10 MR. HUDSPETH: It is for further cross-examination.

(Mrs. Fletcher, the defendant, called.)

MR. HAMILL: We have Mr. Clark here, at whose house Mrs. Fletcher called before she went to her house.

MR. HUDSPETH: We don't deny it.

MR. HAMILL: It is admitted she called at Mr. Clark's house.

20 THE COURT: Unless I misunderstand the purport of this testimony, it is practically admitted that the defendant was out and they sent for her.

MR. HAMILL: I thought there might be some doubt about it.

THE COURT: I don't see the materiality of it myself, but if you have any other view of it I will hear you.

30

40

Jenny Fletcher—Cross.

JANE FLETCHER, recalled.

FURTHER CROSS EXAMINATION BY MR. HUDSPETH:

Q. Do you know Doctor Muttart? A. Never saw him in my life.

Q. You don't know Doctor Muttart? A. I know of him, but I don't meet him.

Q. How long have you known him? A. I have, over a year. I knew him when he was in Jersey City. 10

Q. Yes; you knew him when he was in Jersey City, practicing?

MR. HAMILL: I object. This is not cross-examination. We brought out nothing regarding Dr. Muttart. It is absolutely new examination as to Dr. Muttart.

THE COURT: I don't know. The difficulty about it is this, that one of your own witnesses has testified now that this complaining witness, when she called there, said that Dr. Muttart had sent her there. The complaining witness did not say anything of that kind on the stand; so I think this is within the limitations of cross-examination. I will allow it. You may have an exception. 20

MR. HAMILL: I ask for an exception.

Exception allowed, and signed and sealed accordingly. 30

GEORGE G. TENNANT,
Judge.

(Seal.)

Q. You knew him when he was in Jersey City, practicing? A. No.

Q. You didn't know Dr. Muttart when he practiced at the corner of the junction of Grand Street in Jersey City? A. No. 40

Jenny Fletcher—Cross.

Q. Never heard of him? A. I heard of him.

Q. You had heard of him? A. Yes.

Q. How long had you heard of him? A. I couldn't say that. I don't know.

Q. How many years? A. I don't know. I couldn't say.

Q. About how many years? A. I don't know.

10 MR. HAMILL: Your Honor, please, haven't we the right to know the purpose of this cross-examination of the witness. Is there any purpose to it?

20 THE COURT: I don't know. In view of the fact that the complaining witness said nothing about Dr. Muttart, and I think denied that his name was mentioned, as I recall the testimony, and especially in view of the fact that one of the witnesses now says that this girl said that Dr. Muttart sent her to the defendant, I think I should allow these questions.

MR. HAMILL: You will give me an exception?

THE COURT: Yes. I have already ruled on it. You have an exception.

Q. Where is his office now? A. I don't know.

30 Q. Where was his office in April, 1914? A. I don't know.

Q. Had you heard? A. No.

Q. Then you didn't know anything about him, did you? A. I heard of him often.

Q. Frequently? A. No, not of late.

Q. Rarely? A. I don't know anything about him.

Q. Didn't you know he was a practicing physician in Jersey City? A. Yes, I did.

40 Q. Didn't you know he made a specialty of women? A. Don't know anything about him.

Jenny Fletcher—Cross.

Q. Never got any business from him? A. No, positively.

Q. You never got any business from Dr. Muttart? A. No.

MR. HAMILL: I object to that, if your Honor please. It is irrelevant.

THE COURT: It is cross-examination as to her credibility, when she says she doesn't know him. 10

MR. HAMILL: I ask for an exception.

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

Exception allowed and signed and sealed accordingly.

GEORGE G. TENNANT,
Judge.

(Seal.)

20

Q. When I asked you on cross-examination why you omitted to give your counsel the name of Dr. Muttart, you said you didn't want to bring him in the case, or words to that effect. What did you mean by that? A. Well, this, I don't like to mention a name unless I am sure.

Q. Why didn't you mention a name in this case until it was gotten out of you on cross-examination? A. Well, I don't know anything about him. 30

Q. You didn't want to bring the doctor into this case? A. No. I don't know he was the man. I don't know anything about him. What could I do?

Q. That is all right. That is all.

MR. HAMILL: That is the case.

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Elva E. Palmer—Direct.

ELVA E. PALMER, recalled.

DIRECT EXAMINATION BY MR. HUDSPETH:

Q. Did you ever hear of Dr. Muttart's name in your life before you heard of it at— A. Yes.

Q. —at Mrs. Fletcher's that first day you went there? A. Yes.

10 Q. Did you know such a man existed? A. Yes.

Q. Did you mention his name? A. I didn't, until it was mentioned to me.

Q. Who mentioned it to you? A. Mrs. Fletcher.

Q. When? A. On the day I went there for the operation.

Q. Had you heard it before? A. Yes.

Q. Who told you before about him? A. I had been to the doctor.

20 Q. Who? A. I had seen him some time ago, about a year previous.

Q. Doctor who? A. Muttart.

Q. Did you on this day, on this Saturday when you went to her tell her he had sent you to her? A. No, sir.

Q. As a patient to be operated on? A. No, sir.

Q. Did you say anything about it? A. No, sir.

30 Q. What, if anything, did she say about him to you? A. She asked me if I ever heard him mentioned in New York City, in 72nd Street, and I said yes, I did.

Q. Anything else, did she say? A. She told me he was a friend of hers, and she had been to dinner with him the Saturday.

Q. That she was a friend of him? A. A personal friend of him, she knew him in Jersey City, and she knew him while he was in New York City.

40 Q. (By the Court.) Who said that? A. Mrs. Fletcher.

Elva E. Palmer—Direct.

Q. That was all that was said about him? A. She told me he sends his patients over there, to Jersey City.

THE COURT: How is that rebuttal? I will overrule that.

Q. This woman, Winnie Haddon, says she was in the kitchen while you were there, on this Saturday, and stayed there while you were talking with Mrs. Fletcher? Was she there? A. There was no one in the kitchen as I passed through it. I stayed in the dining room. 10

Q. Did you talk to Mrs. Fletcher in the kitchen at all? A. No.

Q. Was this woman, Mrs. Haddon, in the dining room at all? A. No.

Q. Did you ever see her before to-day? A. No. 20

Q. Did you see her before to-day? A. No. There was a woman in the dining room.

Q. What became of that one woman before you went in the parlor? A. She left by the front door.

Q. Wasn't she in the kitchen? A. She wasn't in the kitchen, no.

Q. This Austrian girl, this servant, says when you came you knocked on the door, she opened the door, you asked her for a drink of water, saying you were sick? A. I was not sick. 30

Q. Did you get a drink of water from her? A. No.

Q. She says you got a glass of water from her, took something in your hand, between two fingers, put it in your mouth, and took the water to swallow it? A. No.

Q. Then sat down and breathed two or three times, loudly (illustrating), and threw up your hands? A. No, sir. 40

Elva E. Palmer—Cross.

Q. Is that true? A. No, sir, I wasn't sick, no, sir.

Q. This Mrs. Haddon says you had on a light corduroy suit; is that true? A. Yes, I had a gray velvet corduroy.

Q. Did you have on such a dress as this Austrian girl describes? A. No, sir.

10 Q. Did you have on a waist with a flounce over it? A. No.

Q. Did you have on a waist that buttoned or tied up behind? A. No, sir.

Q. Did you have on a hat she described, with a feather in it, of the character she described? A. No, sir, I had a plain black hat on.

CROSS EXAMINATION BY MR. HAMILL:

20 Q. There is not any doubt of the servant girl having been there when you were there, is there?

A. As I rang the bell downstairs, as I entered, she was washing the floor, and asked me what I wanted.

Q. There is no doubt that Mrs. Haddon has correctly described your suit? A. Why, no.

Q. And there was somebody there in the house, in that house, when you came? A. There was, in the parlor.

30 Q. Beside the servant girl? A. There was, in the parlor.

Q. You said you had been to Dr. Muttart? A. Yes.

Q. What for? A. Same reason.

Q. To have an abortion performed? A. Yes.

Q. Did he perform an abortion on you? (No answer.)

Q. Answer the question. A. I don't think it is necessary to answer that question.

40 Q. How many abortions have you had? A. This was the second one.

Elva E. Palmer—Re-Direct—Re-Cross.

Q. This is the third? A. No, it was the second one.

Q. How old are you? A. Twenty-two.

Q. Single girl? A. Yes.

RE-DIRECT EXAMINATION BY MR HUDSPETH:

Q. When did you first intimate to any one that it was Mrs. Fletcher you charged with this abortion? A. I didn't tell it to any one because she had asked me not to. 10

Q. When did you first speak of it? A. Not until I was in the hospital.

Q. When did it become public property? A. When I was in the hospital.

Q. What is that? A. When I was in the hospital.

Q. And through that source it came to the public authorities? A. No, sir, it came to the public authorities through Dr.—Van Horne—the first doctor that was mentioned to-day—Dr. Valentine (Ballantine). 20

Q. The first doctor that attended you? A. Yes.

Q. Doctor Wilson? A. No. Dr. Ballantine.

RE-CROSS EXAMINATION BY MR. HAMILL:

Q. I am sorry to ask you these questions; but you are familiar with the things used to effect an abortion, are you? A. No, sir, I am not. 30

Q. You know it can be effected by pills or drugs? A. I have never used it.

Q. You know there are certain drug stores that sell those things? A. There may be. I don't know.

Q. That the drugs can be procured? A. I don't know.

Q. For girls to take? A. No, sir. 40

Elva E. Palmer—Re-Cross.

Q. How did Mr. Muttart perform the operation? A. I don't know.

MR. HUDSPETH: I object. It is immaterial and irrelevant.

MR. HAMILL: I will withdraw the question.

Q. Did you ever get any pills before from any
10 one? A. No.

Q. From anybody? A. No, sir.

Q. Ever purchased any pills before? A. No sir.

Q. When was the last time you were at Dr. Muttart's office, before?

MR. HUDSPETH: I object. It is immaterial and irrelevant.

Q. When was the last time you were in Dr. Muttart's office before you came to Mrs. Fletcher's?
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MR. HUDSPETH: I object. It is immaterial and irrelevant, unless it has a bearing upon what Mrs. Fletcher says, that she said Dr. Muttart sent her there.

THE COURT: Wait till the answer comes in.

A. More than a year ago, more than two years from now. I don't know just what date it was.

Q. All you know about going to Mrs. Fletcher's
50 was that you saw her name in the telephone book, and you overheard somebody talking about her as a midwife? A. Yes.

Q. Dr. Muttart ever say anything to you? A. No, sir.

MR. HUDSPETH: State's case closed.

MR. HAMILL: I move that the Court direct a verdict on the ground that the State has not made out a sufficient case,
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Elva E. Palmer—Re-Cross.

has not proved sufficient facts to justify the case going to the jury; secondly, I move for the direction of a verdict on the ground that the State has not made out a case against her, on the further ground that the evidence will not warrant the Court in finding that the claim of the State has been proved by evidence which satisfies the Court that the case should be presented to the jury.

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THE COURT: I will deny your motion.

MR. HAMILL: I ask an exception.

THE COURT: Exception allowed.

It is signed and sealed accordingly.

GEORGE G. TENNANT,
Judge.

(Seal.)

Counsel summed up to the jury.

In the course of Mr. Hudspeth's summing up to the jury he said:

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"From an examination he made of her he became convinced that a criminal operation had been performed, and he would not have anything to do with her, but he gave her some codeine pills to allay the pain."

MR. HAMILL: I object. He testified that he made no examination from which he found that a criminal operation was performed. He testified he made no examination.

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MR. HUDSPETH: This testimony was, may your Honor please, that from the situation he found there he declined to attend the woman. That is what he said.

MR. HAMILL: You said he found that a criminal operation had been performed.

MR. HUDSPETH: We will eliminate the question of a criminal operation. He reported it—

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Elva E. Palmer—Re-Cross.

MR. HAMILL: That is right.

MR. HUDSPETH: —reported it to the criminal authorities.

MR. HAMILL: It is not in evidence that he reported it to the criminal authorities.

10 MR. HUDSPETH: This girl, when I asked her how her condition became public property, said that Dr. Ballantine made it known to the public authorities. That is her testimony.

MR. HAMILL: It is not in the testimony.

MR. HUDSPETH: Let us go back to the testimony.

20 THE COURT: We will not discuss the testimony now. The question is whether this was improper comment. I do not think it was. Go on.

MR. HAMILL: Exception.

Let it be signed and sealed accordingly.

GEORGE G. TENNANT,

Judge.

(Seal.)

Mr. Hudspeth resumes.

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Charge.

GENTLEMEN OF THE JURY :

The defendant, Jane Fletcher, is being tried before this court on a charge of what is commonly known as committing an abortion. She is being tried because the Grand Jury, or what we call the Grand Inquest of the county, has handed in an indictment, which serves as a complaint, which serves to start the machinery of justice. 10
 Because of the fact that an indictment has been found, does not of course weigh against her. Anybody can be indicted. Now she is here for trial, and you are to say in this case whether under the evidence she is guilty of the charge. There are several counts in the indictment, and among them I find in addition to the charge that she committed an abortion upon this young woman, a charge of simple assault and battery. You have the right, in view of that fact, if you are satisfied from all the evidence, to find her guilty of committing an abortion, or to find her guilty of assault and battery. It is only proper, however, for me in this kind of a case to make this comment, that in view of the evidence in this case, it would seem very remarkable if any jury could find this defendant guilty of simple assault and battery. If she is guilty of abortion—if the facts persuade you of that—why, she is guilty of abortion—even if there was an assault and battery in the doing of the abortion. If she did what is claimed by the State in this case, and you are satisfied of that beyond all reasonable doubt, your verdict should be a verdict of guilty of abortion. It would be difficult for us to understand how, if she did the things alleged by the State, a verdict of guilty of simple assault and battery could be justified, in view of the greater charge 20
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Charge.

involving the same facts regarding the act committed.

The statute under which this defendant is being tried is important, and I am going to read it to you so that you may understand the law under which we are conducting these proceedings. The statute says—so much of it as is necessary for our consideration at this time—that any person
10 who maliciously or without lawful justification, with intent to cause or procure the miscarriage of a woman then pregnant with child, shall administer to her, prescribe for her, or advise or direct her to take or swallow any poison, drug or medicine or noxious thing; or who maliciously or without lawful justification, shall use any instrument or means whatever, with the like intent—that is, to bring about a miscarriage, she being
20 pregnant with child—shall be guilty of a high misdemeanor.

The proof goes to show—that is, as contended by the State—that this woman, being an unmarried woman, finding herself to be in a condition of what we call pregnancy, was recommended by somebody to go to this defendant, at her place of residence on Grand Street, 303, I think the evidence is, in Jersey City; that when she got there
30 she found one of the witnesses, a young girl, cleaning or doing some work in the hall, so that she was able to walk right in, and that she waited there for approximately a period of one hour. In the meantime this young house-girl telephoned in some way to the defendant, who appeared half an hour after the complaining witness had gotten there first. The complaining witness says that at first, after having explained her condition to the defendant, the defendant said she
40 would not do what was wanted. The complaining

Charge.

witness says she explained to the defendant that she was in a delicate condition, told her she was pregnant with child, and that she wanted to be relieved of that condition, that after some conversation the defendant said something about fifteen dollars, and finally that the complaining witness telephoned to somebody. Whatever the facts are, you will have to determine. I am only reciting them in a general way to focus your attention on the main part of the case; that the defendant then took her into an adjoining bed room, and after the complaining witness laid down on the bed, the defendant with some instrument similar in character, as the complaining witness described it, to the one which was offered in evidence, placed this instrument in her private woman's parts, and did something to her which she said was to relieve her of this pregnancy. That she also gave her, at that time or on the following day, I am not determining which, some pills containing medicines which the State's witnesses say are believed by some physicians to excite the genital organs and congest them, so that they will more readily throw out the foetal mass, as it is called. That the complaining witness returned on the following day, or Sunday, in the morning, and that this same operation with the same or a similar instrument was performed again, and that she then went home. She seems to have been in the company of some other woman, and to have been taken so seriously ill, that about two or three o'clock on Monday morning a physician was called, who finding her condition, gave her a medicine, codeiene, I believe, to quiet her, and reported the case to the authorities. Either he or some other physician did that. And another physician upon being called, finding the condition, upon her statement, the statement she then made to him, and finding

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Charge.

the foetal mass or still-born child in a turkish towel near the bed in this bed room, realizing her condition, arranged for her transportation to some hospital in the City of Newark, where she was at a later period operated upon to remove the after birth. If I am stating or have stated, evidence which is at variance with the evidence as it is in your minds, you are to remove entirely
 10 what I say. I am only trying, as I said before, to crystallize the evidence so that you may eliminate what is unnecessary in the case, but you are after all to take your version of the testimony, what you heard, and determine the case upon your determination of the facts, not on anything I have recited at all.

If this defendant, either by use of an instrument of any kind, or by means of drugs, that the
 20 young woman, being pregnant, used the drugs or used the instrument on her private parts, with the intent of bringing about from her an abortion or miscarriage whether she were successful in it or not, she is guilty of an abortion; if you are satisfied of those facts, it is your clear sworn duty to bring in a verdict in this case.

I think the evidence is not contradicted—I think it is not contradicted—that this woman did have in Newark, upon her return home, either Monday
 30 or Tuesday or some time, a miscarriage. She said she was pregnant. It is not denied, as I understand, that she did have an issue from her genital organs, as one doctor testified. The question is: did this defendant do the thing? Did this Jane Fletcher, charged in this indictment, bring this condition about? Did she give this girl medicines? Did she use an instrument upon her, bringing about a miscarriage? That, gentlemen, is the
 40 case in a nut-shell, and it would be very unwise, I think very unnecessary for me to extend my re-

Charge.

marks beyond simply crystallizing, if I can properly and reasonably, what is in your minds the facts, other than to charge you, as I have read the law and the indictment, referring to it as I have, that you may get your minds right to the point—what is this case about? Did Jane Fletcher, this defendant, do that thing? If she did, if you are satisfied beyond all reasonable doubt that she did, it is your clear duty to find a verdict of guilty. 10

There are two or three things I ought to say for your general guidance in this case. I will try to do so as briefly as possible. In the first place, this defendant is presumed to be innocent until you find her guilty. The burden of proof is on the State. And she is entitled to any reasonable doubt you may have in your minds.

Don't go astray with the term "reasonable doubt." It does not mean you have got to be satisfied beyond a moral certainty by mathematical calculation, that is, that you can prove it and demonstrate, just as you can that four and four make eight. That is not what is meant by establishing a thing beyond all reasonable doubt. If you are satisfied to a moral certainty in your minds that this thing is true, then you may be said to have satisfied your minds beyond the period of reasonable doubt. The fact that you may be sorry for this woman, or you may go away from this court room and say perhaps, perhaps, she was not guilty; that is not the way you are to determine it. Let us sit down and be reasonable about this when you go outside. That is the way the Court should instruct the jury, and the way the jury should act. You are twelve men, coming from all sections of Hudson County, and you take this evidence, you talk about it, as you talk among yourselves, talk about it to determine whether this woman did the thing which is charged. Then 20
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Charge.

some of you may agree with the State, and some of you may agree with the defense. It is highly improper, when you come to that period, that somebody should go off in a corner and say, "I will never bring in a verdict of guilty." That is highly improper. It is highly improper for one or two or you to say, "I will not consent to find any other verdict except a verdict of guilty." At that

10 period—that is, when your minds, as twelve men, must come together, be reasonable, sit down, talk over the evidence, talk over with each other the evidence, and reasonably persuade each other, and ask questions as to what the evidence was, and then having done so, cautiously, frankly, judiciously, weighing the facts up and down, saying in your minds, "Is there any doubt after all? If I have, is that doubt such a doubt that I have a

20 reason for it? If I have, then I give the benefit of that doubt to the defendant. But if I have no reasonable doubt, at that period, then, whatever is, I owe a duty to the State, I have taken an oath, I am a juror"—if you have passed that period, I say, gentlemen, it is unavoidable, you should find this woman guilty. That is what your duty is, to weigh, to test, and determine. That is the best way for jurors to do, to have regard for the opinions of others. Perhaps the individual is

30 wrong. I am often wrong; until somebody comes and reasons with me; I must be a reasonable man and I begin to think and see things from a reasonable point of view. That is what you must do in this case.

Did this woman do this thing?—that is the question. The fact that this young woman had a previous miscarriage, or visited some one else, is not finally to affect your minds in determining this

40 defendant's guilt. If she had ninety-nine other operations and somebody else has gone free, that

Charge.

is not the question. The fact that this young woman has been successfully relieved of an unborn child, so that she does not have to carry a bastard child in her arms the rest of her life—be a mother although unmarried—the fact she is relieved of that embarrassment is not to deter you from doing your duty. The law is for the benefit of mankind, to prevent criminal operations. The law has been written; it was the common law; with some slight alterations the legislature has put it on our statute book. It is to prevent murder, in some cases. It used to be a little different—that if the child was not quickened, it would not be an abortion. Now the law is that whether the child was quick or not, whether there was life in the foetal mass or not, makes no difference. If she was pregnant in any degree, and this defendant used instruments or medicines to get her relieved of that condition, that is abortion, that is bringing about a miscarriage, and that is contrary to the law, which you and I must uphold.

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You may consider, in this case, as you should, whether this young woman has been corroborated to the extent of satisfying you that the thing which is charged by the State is true. You may consider whether her going there is corroborated. I understand these people admit she was there. I understand that it is admitted that the doctors found this condition in her, subsequently found this unborn child, or rather, dead child, in a towel, so there is corroboration of that; and she was afterwards taken to the hospital where this further operation was performed on her. There is corroboration in that. Are you satisfied that this defendant did this operation? Are all these other facts corroborative of that main thing?

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Counsel has asked me, and I do not hesitate, to charge that under the statute you must find that

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Charge.

these drugs which were used were noxious drugs. You have heard the testimony on that point. I think that the only testimony which has a bearing on that question, if I recall it correctly, was given by Dr. McLaughlin, who says that aloin and the sulphate of quinine and the iron—I think it was—he found in these pills; now, counsel has asked me to say to you that if you find that these

10 drugs were used, you must be satisfied that these drugs were noxious in character. Sometimes a thing is noxious under one set of circumstances, and the same thing may not be noxious under other circumstances. Sometimes we use quinine to cure a cold. It is not noxious then. Sometimes we use iron to tone up our blood. It is not noxious then. But of course it is noxious if it is used to bring about an abortion; and if you find

20 in this case that this defendant gave these things to be used in that way, that is a noxious thing. The statute does not confine it, however, that it must be a noxious thing that must be given to bring about a miscarriage. The statute says—I am going to read it again because of this request which is handed to me—Any person who maliciously or without lawful justification, with intent to cause or procure the miscarriage of a woman then pregnant with child, shall administer to her,

30 prescribe for her, or advise or direct her to take or swallow any poison, drug or medicine or noxious thing—so it might be an ordinary medicine, taken under a certain set of circumstances, that would be sufficient under this statute, under other circumstances, to justify a conviction at your hands.

Counsel have asked me to say to you, and I will —you must be satisfied that this girl was pregnant at the time the drugs were administered or the instruments were used with intent to produce

40 a miscarriage. I think I have already said that

in substance, but I repeat it at their request. If you do not find that as a fact the defendant is entitled to a verdict of acquittal.

Defendant's Requests to Charge.

Jury must be convinced beyond reasonable doubt that Elva Edna Palmer was pregnant at the time the drugs were administered or instruments used with intent to produce the miscarriage. If they do not so find the defendant is entitled to a verdict of acquittal. 10

The burden of proof is upon the State to show that a criminal operation upon Elva Edna Palmer took place as charged in the indictment and that the offense was committed by the defendant, and on both points the jury must be without reasonable doubt, that is that an offense was committed and that defendant committed it.

The burden of proof is upon the State to prove all the essential facts necessary to constitute the crime, and the burden continues from the beginning to the end and is never shifted. 20

To caution jury that unless they can find corroboration in the testimony of other witnesses upon such material circumstances as tend directly to establish the guilt of the accused, that they should not convict the defendant on the testimony of the complainant alone.

If the jury find that drops were used they must be satisfied that such drops were noxious in character. 30

EXCEPTIONS TO CHARGE.

1. Defendant's counsel prays an exception to that part of the charge of the Court wherein the Court said "that in view of the evidence in this case, it would seem very remarkable if any jury could find this defendant guilty of simple assault 40

Defendant's Requests to Charge.

and battery. If she is guilty of abortion—if the facts persuade you of that—why, she is guilty of abortion, even if there was an assault and battery in the doing of abortion.”

(Exception allowed and signed and sealed accordingly.)

GEORGE G. TENNANT,
J. (Seal.)

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2. Defendant's counsel prays an exception to that part of the charge of the Court wherein the Court said: “The fact that this young woman had a previous miscarriage, or visited some one else, is not finally to affect your minds in determining this defendant's guilt. If she had ninety-nine other operations and somebody else had gone free, that is not the question.”

(Exception allowed and signed and sealed accordingly.)

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GEORGE G. TENNANT,
J. (Seal.)

3. Defendant's counsel prays an exception to that part of the charge of the Court wherein the Court said: “Sometimes a thing is noxious under one set of circumstances, and the same thing may not be noxious under other circumstances * * * so it might be an ordinary medicine, taken under a certain set of circumstances, that would be sufficient under this statute, under other circumstances, to justify a conviction at your hands.”

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(Exception allowed and signed and sealed accordingly.)

GEORGE G. TENNANT,
J. (Seal.)

4. Defendant's counsel prays an exception to the charge generally.

(Exception allowed and signed and sealed accordingly.)

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GEORGE G. TENNANT,
J. (Seal.)

Certificate of Judge Tennant.
 HUDSON COUNTY COURT OF QUARTER
 SESSIONS.

<p style="text-align: center;">THE STATE, <i>Defendant-in-Error,</i> <i>vs.</i> JANE FLETCHER, <i>Plaintiff-in-Error.</i></p>	<p>Sur Indict- ment for Abortion and Assault and Battery.</p>	<p>10</p>
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I, GEORGE G. TENNANT, Judge of the Court of
 Quarter Sessions, in and for the County of Hud-
 son, before whom the above entitled indictment
 was tried, do hereby certify that the foregoing is
 the entire record of the proceedings had upon trial
 of the indictment in the above stated cause in the
 State of New Jersey against Jane Fletcher. **20**

GEORGE G. TENNANT,
 Judge.

Dated, May 12th, 1915.

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NEW JERSEY SUPREME COURT.

THE STATE OF NEW JERSEY,

Defendant-in-Error,

vs.

JANE FLETCHER,

Plaintiff-in-Error.

On Writ of
Error to
Hudson
Quarter
Sessions.

10

Afterwards, to wit, the first Tuesday in June, Ninteen hundred and fifteen, before the Justices of the Supreme Court of Judicature at Trenton, comes the said JANE FLETCHER by Hamill & Cain, her Attorneys, and says that in the record and proceedings there is manifest error, in this:

20

1. Because the Court at the said trial permitted the witness Palmer, produced on the part of the State, to answer a question which contained an unwarranted assumption of fact and ruled thereon to the injury of the defendant, as follows:

“Q. You were lying on this bed; while you were there you saw the basin and this instrument you point out, which I have shown you. Next what followed?”

“MR. HAMILL: I object to the question; it contains an assumption—‘you saw this instrument which I have pointed out.’”

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“THE COURT: She said distinctly a moment ago referring to that instrument—whatever she means—that instrument or some other.

“MR. HAMILL: I object.

“THE COURT: I will overrule the objection.

“MR. HAMILL: I ask an exception.

“THE COURT: Exception allowed.”

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Assignment of Error.

2. Because the Court at the said trial admitted in evidence over the objection of Counsel, the instrument (speculum), to the injury of the defendant.

3. Because the Court at said trial permitted, over the objection of Counsel, the witness Ill, produced on the part of the State, to use while testifying and for the purpose of refreshing his memory so that he could testify, notes which he himself had not personally made and which were not, so far as he could state, prepared from memoranda he had dictated at the time, to the injury of the defendant. 10

4. Because the Court over the objection of Counsel erroneously admitted the "pills" in evidence, to the injury of the defendant.

5. Because the Court over the objection of Counsel compelled the witness Fletcher to state why she had not on her direct examination revealed the doctor's name, to the injury of the defendant. 20

6. Because the Court over the objection of Counsel compelled the witness Fletcher, the defendant, to state whether she had known Dr. Muttart, to the injury of the defendant.

7. Because the Court before whom the said cause was tried erroneously and illegally denied the defendant's motion to direct an acquittal. 30

8. Because prejudicial error was admitted, over the objection of defendant's counsel, when the Prosecutor of the Pleas in summing up to the jury said:

"From an examination he made of her he became convinced that a criminal operation had been performed, and he would not have anything to do with her, but he gave her some codeine pills to allay the pain," 40

Assignment of Error.

and by reason of the fact that the Court stated that this was proper comment for the Prosecutor to make to the jury.

9. Because the Prosecutor, over the objection of the defendant, in summing up to the jury, stated:

10 "This girl when I asked her how her condition became public property, said that Dr. Ballantine made it known to the public authorities. That is her testimony."

and which statements though untrue in point of fact were made by the Prosecutor and allowed by the Court as proper comment to the jury.

10. Because the Court before whom said cause was tried at and upon the trial of the issues so joined between the State of New Jersey and the said Jane Fletcher charged and instructed the jury as follows:

20 "That in view of the evidence in this case it would seem very remarkable if any jury could find this defendant guilty of simple assault and battery. If she is guilty of abortion—if the facts persuade you of that—why she is guilty of abortion even if there was an assault and battery in the doing of abortion."

30 11. Because the court before whom said cause was tried at and upon the trial of the issues so joined between the State of New Jersey and the said Jane Fletcher charged and instructed the jury as follows:

"The fact that this young woman had a previous miscarriage, or visited someone else, is not finally to affect your minds in determining this defendant's guilt. If she had ninety-nine other operations and somebody else had gone free, that is not the question."

40 12. Because the Court before whom said cause was tried at and upon the trial of the issues so

Assignment of Error.

joined between the State of New Jersey and the said Jane Fletcher, charged and instructed the jury as follows:

“Sometimes a thing is noxious under one set of circumstances and the same thing may not be noxious under other circumstances—so it might be an ordinary medicine taken under a certain set of circumstances, that would be sufficient under this statute, under other circumstances, to justify a conviction at your hands.” **10**

13. Because the judgment in said cause was entered in favor of the State, whereas it should

HAMILL & CAIN,

Attorneys for Plaintiff-in-Error.

have been entered in favor of the defendant.

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Specification of Causes.

NEW JERSEY SUPREME COURT.

<p style="text-align: center;">THE STATE OF NEW JERSEY, <i>Defendant-in-Error,</i> <i>vs.</i> 10 JANE FLETCHER, <i>Plaintiff-in-Error.</i></p>	}	<p style="text-align: center;">On Writ of Error to Hudson Quarter Sessions.</p>
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TO ROBERT S. HUDSPETH, ESQ.,
Prosecutor of the Pleas:

TAKE NOTICE, that the following is a specification of the causes relied upon by the plaintiff-in-error in the above entitled cause for reversal of the judgment below:

- 20 1. Because the judgment rendered was contrary to law.
2. Because the Court permitted the witness Palmer to answer a question containing an unwarranted assumption of fact, over the objection of counsel.

30 “Q. You were lying on this bed; while you were there you saw the basin and this instrument you point out, which I have shown you. What next followed?”

3. Because the Court admitted the instrument (speculum) in evidence, over the objection of counsel although it was not the instrument used at the alleged commission of the crime.
4. Because the Court at said trial permitted, over the objection of Counsel, the witness Ill, produced on the part of the State, to use while testifying and for the purpose of refreshing his memory so that he could testify, notes which he himself
- 40 had not personally made and which were not so

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far as he could state prepared from memoranda he had dictated at the time, to the injury of the defendant.

5. Because the Court admitted the "pills" in evidence over the objection of counsel.

6. Because the Court compelled the witness Fletcher to explain why she had not given the doctor's name on her direct examination over the objection of counsel. 10

7. Because the Court permitted the State to examine the witness Fletcher as to knowing Dr. Muttart, &c., over the objection of counsel.

8. Because the Court permitted the State to ask the witness Fletcher if she had gotten any business from Dr. Muttart.

9. Because the Court refused to direct a verdict of acquittal on the motion of counsel for the plaintiff-in-error. 20

10. Because while Mr. Hudspeth, the Prosecutor, was summing up before the jury the following colloquy occurred. Mr. Hudspeth said:

" * * * From an examination he made of her he became convinced that a criminal operation had been performed, and he would not have anything to do with her, but he gave her some codeine pills to allay the pain.

"MR. HAMILL: I object. He testified that he made no examination from which he finds that a criminal operation was performed. He testified he made no examination. 30

"MR. HUDSPETH: This testimony was, may your Honor please, that from the situation he found there he declined to attend the woman. That is what he said.

"MR. HAMILL: You said he found that a criminal operation had been performed.

"MR. HUDSPETH: We will eliminate the question of a criminal operation. He reported it— 40

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"MR. HAMILL: That is right.

"MR. HUDSPETH: —reported it to the criminal authorities.

"MR. HAMILL: It is not in evidence that he reported it to the criminal authorities.

"MR. HUDSPETH: Let us go back to the testimony."

Whereupon the Court of its own motion interposed and ruled on the said colloquy as follows:

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"THE COURT: We will not discuss the testimony now. The question is whether this was improper comment. I do not think it was. Go on."

And although objection was made by the defendant yet the Court did not instruct the jury to disregard it; but on the contrary approved it by declaring it was not improper and directed the Prosecutor to "Go on."

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11. Because the Court before whom the cause was tried charged and instructed the jury as follows:

"That in view of the evidence in this case, it would seem very remarkable if any jury could find this defendant guilty of simple assault and battery. If she is guilty of abortion—if the facts persuade you of that—why, she is guilty of abortion, even if there was an assault and battery in the doing of abortion."

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12. Because the Court before whom said cause was tried charged and instructed the jury as follows:

"The fact that this young woman had a previous miscarriage, or visited someone else, is not finally to affect your minds in determining this defendant's guilt. If she had ninety-nine other operations and somebody else had gone free, that is not the question."

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13. Because the Court before whom said cause was tried, charged and instructed the jury as follows:

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"Sometimes a thing is noxious under one set of circumstances, and the same thing may not be noxious under other circumstances—so it might be an ordinary medicine taken under a certain set of circumstances, that would be sufficient under this statute, under other circumstances, to justify a conviction at your hands."

14. Because the Court permitted the State to ask leading questions of its own witness, Edna Elva Palmer, throughout her entire examination by the prosecuting attorney; who though cautioned by the Court to refrain from so doing disregarded said request. 10

15. Because the Court permitted the State to ask the witness, Fletcher, whether she had ever used a speculum again and again, after she had answered in the negative the first time the question was asked. 20

16. Because the Court allowed the State to ask the witness, Fletcher, "Do you mean to tell me you couldn't give her something or do something to alleviate her pain at that time?" Which question, coupled with the one which the Court had ruled out just before in reference to turning her, the witness Palmer, out by the door, prejudiced the plaintiff-in-error in the minds of the jury; the prosecuting attorney well knowing that the plaintiff-in-error was prohibited by law from doing anything in the way of alleviation or relief. 30

17. Because there was no corroboration of the complaining witness that the defendant used any instrument or administered any drug.

18. Because the Court refused to charge the jury that:

"The burden of proof is upon the State to prove all the essential facts necessary to constitute the crime, and the burden continues 40

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from the beginning to the end and is never shifted."

19. Because the Court refused to caution the jury:

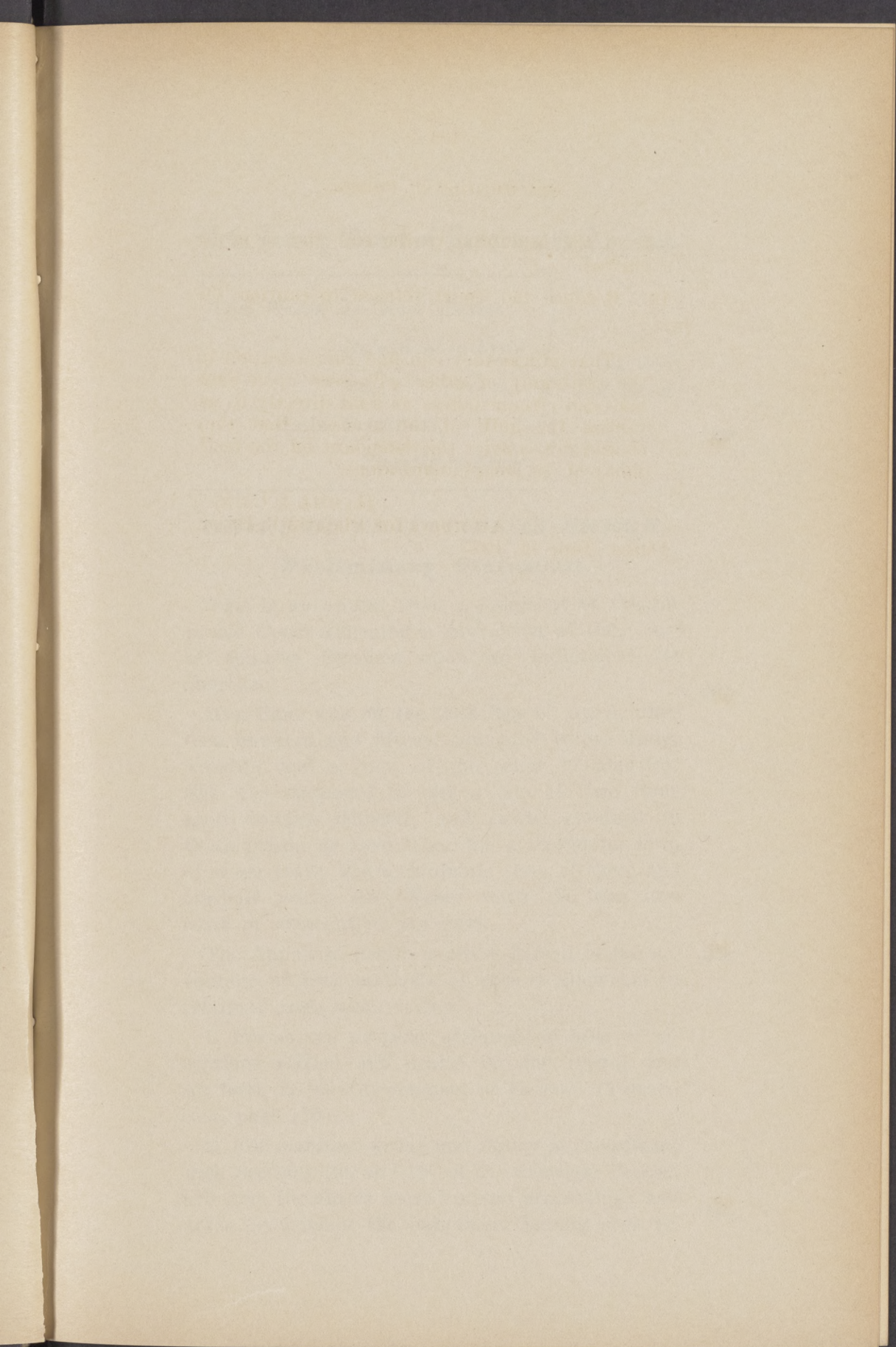
10 "That unless they can find corroboration in the testimony of other witnesses upon such material circumstances as tend directly to establish the guilt of the accused, that they should not convict the defendant on the testimony of the complainant alone."

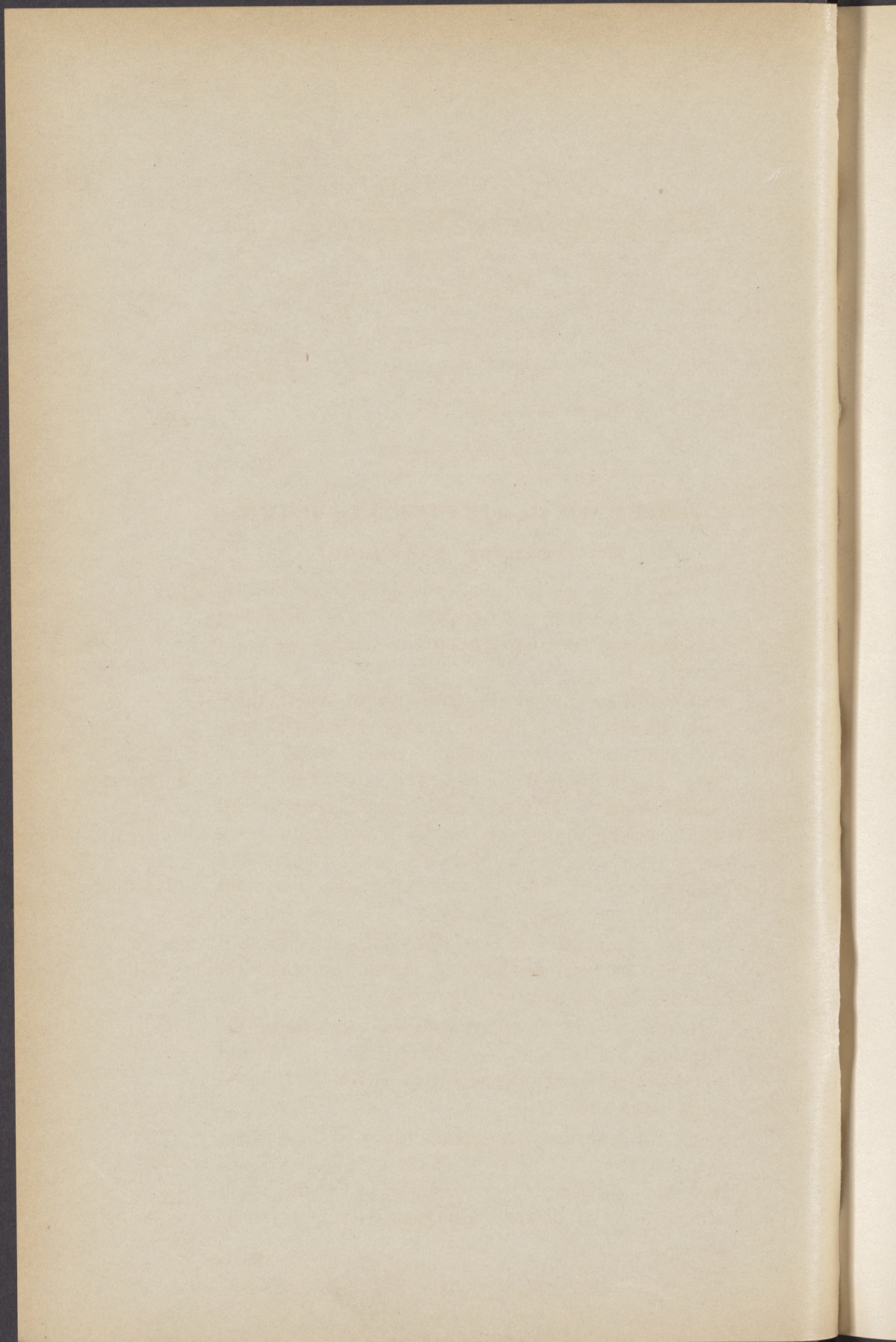
HAMILL & CAIN,
Attorneys for Plaintiff-in-Error.
Dated, June 11, 1915.

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New Jersey Court of Errors and Appeals.

THE STATE OF NEW JERSEY,

Defendant-in-Error,

vs.

JANE FLETCHER,

Plaintiff-in-Error.

On Writ
of Error.

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BRIEF OF PLAINTIFF-IN-ERROR.

Preliminary Statement.

This is an appeal from a judgment of the Supreme Court affirming a conviction of the Court of Quarter Sessions upon an indictment for abortion.

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Appellant was on the 20th day of April, nineteen hundred and fifteen, convicted before Judge Tennant and a jury, of the crime of abortion. She was sentenced to pay a fine of Two thousand dollars (\$2,000), and to be confined in State prison at hard labor for a maximum term of seven years, and a minimum term of three and one-half years, and thence until the fine and costs of prosecution are paid.

The Appellant herein availing herself of the advantage of both methods of appeal allowable in criminal cases seeks review.

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1. For errors properly assigned on bills of exceptions settled and sealed on the record and set forth in the "Assignment of Errors" (Printed case, page 130).

2. For manifest wrong and injury in accordance with Sections 136 and 137 of the Criminal Procedure Act; the entire record of the proceedings had upon the trial of the indictment having been re-

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turned with the writ of error, to which entire record the certificate of the trial judge is attached (Printed case, page 129).

In the present brief the right of the Appellant to a decision in her favor under each of the methods above stated is separately discussed.

Statement of Facts.

10 The case against Jane Fletcher, the defendant, is made out from the evidence of Elva Edna Palmer, the complaining witness. She testified that on April 4, 1914, about four o'clock in the afternoon, she called on the defendant at the latter's residence, 303 Grand Street, Jersey City, New Jersey. She was then, so she said, two months pregnant with child, and the purpose of her visit was to have an abortion performed.

20 The defendant told her the operation would cost \$20., and refused to perform it because she had only \$15. The complaining witness said that this difficulty was got over by her telephoning to a friend in Newark who guaranteed the payment of an additional \$5.00. The price having been settled she charged that the defendant led her to a room off the parlor and as she lay on a bed used an instrument upon her. She said "something else" she could not tell what was also used on her.

30 She alleged that she returned to Mrs. Fletcher's house on the morning of Sunday, the next day, at which time the performance of the day previous was repeated and some pills which she was instructed to take at different times given her by the defendant, after which she returned to her home at Newark, New Jersey.

40 The complaining witness then went on to relate how she became sick that same night, after having taken the pills given her by the defendant, and how she had summoned Dr. Ballentine. Dr.

Ballantine testified (Printed Case, pp. 41 & 42), that he found her suffering from severe bearing-down pains; that it indicated to him as if she was going to have a miscarriage; that he suspected something had been done and declined to have anything to do with her. He did, however, at her request give her something to relieve the pain. As near as he could remember he gave her codiene. He did not see her after that and his whole connection with the case ended there and is confined to this single visit. 10

The attention of the court is urgently invited to the testimony of Dr. Ballantine because it will have an important bearing in the discussion later of certain remarks made by the Prosecutor of the Pleas in summing up to the jury.

After Dr. Ballantine left her the foetus was expelled from the womb and she called in Dr. Wilson, who made no examination of her but merely observed her condition and sent her to Saint Barnabas Hospital in Newark. Here she came under the care of Dr. Ill, the attending surgeon, and of Dr. Hosp, who was then the interne of that institution. Dr. Ill examined her and observed her condition while Dr. Hosp removed the placenta. Dr. Ill was unable to testify from his recollection and resorted to certain notes or memoranda for the purpose of refreshing his memory. Counsel will contend that the use of these notes for the above purpose was not permissible. 20 30

During the direct examination of the complaining witness she referred to an instrument which she said the defendant had used to effect the abortion. Thereupon the Prosecutor exhibited to her a speculum. It was conceded that the instrument presented by the Prosecutor was not the actual instrument used and it was employed by him at the trial for the purpose of illustrat- 40

ing the testimony of the complainant. This exhibition, counsel will contend later, prejudiced the cause of the defendant in the eyes of the jury.

The defendant took the stand in her own defense. She said she was not at home when complaining witness called; she was visiting a friend when she received a telephone message from her servant, Pauline, telling her to return home. She reached her residence about a quarter after
10 three in the afternoon; which was about an hour after she got the message. She found the complaining witness sitting in the kitchen.

She was very sick and said a New York doctor had sent her to Mrs. Fletcher for examination. She told Mrs. Fletcher she had been to this doctor one year before. Mrs. Fletcher replied, "Go back; you can't get it here" (p. 71. l. 11). Then the girl asked if she could use Mrs. Fletcher's
20 telephone and permission was granted her to do so. She telephoned to someone whom she called "Mike", saying to him that she had been to New York, was now in Jersey and she was going right on to Newark (p. 72, l. 16), but this is all the communication that was had over the telephone. Complaining witness left immediately thereafter. The defendant denied that she had performed an
30 abortion on her or that she had taken her into a room beside the parlor, or that she had her lie on a bed or used instruments on her for the purpose of effecting an abortion.

She also denied that the girl had called on her the morning following or that she had given her any pills to bring about the abortion as alleged by the complaining witness on her direct examination or had taken any money from her and insisted that her relations with the complaining witness consisted merely of the few minutes' conversation she had with her on the afternoon of the day when she called, at her house.

The defendant was corroborated in her testimony as to what occurred on the first visit by the testimony of a Mrs. Hadden (pp. 83 to 86), and also of her servant girl, Pauline Rebb (p. 91, l. 6). Both these witnesses were present on the afternoon when complaining witness visited the defendant and both corroborated in every particular the testimony of the defendant as to what happened on that occasion.

During his cross examination of the defendant the Prosecutor by a series of questions upbraided the defendant for not having given the complaining witness something to relieve her pains of pregnancy although it was in evidence that the defendant was merely a midwife without the right to practice medicine. Counsel will show that it would have been unlawful for the defendant to have administered any drug or given any medicine to allay or relieve the condition of the complaining witness, and that therefore these questions worked manifest wrong and injury to the defendant for the reason that it held her up to the jury as a heartless person, although she was acting in strict conformity with the law. It furthermore was calculated to have the jury believe that an innocent, unsophisticated person had been cruelly dealt with by a skillful midwife (p. 76, ll. 37-40; p. 77, ll. 38, 39; p. 78, ll. 1-27; p. 79, ll. 14, 15), although the complaining witness herself admitted she had had an operation for abortion performed on her by a doctor in New York a year previous (p. 114, ll. 32-41).

When the defendant was recalled for further cross examination she was, so counsel contend, improperly questioned about having obtained business from a Dr. Muttart and asked to explain why she had omitted mentioning the doctor's name until compelled to disclose it by cross examination.

The motion of defendant's counsel for a direction of a verdict having been denied both sides summed up to the jury. It was during the State's summing up that the Prosecutor made reference to Dr. Ballantine having discovered evidences of a criminal operation although there was no evidence to sustain such a contention.

ON STRICT BILL OF EXCEPTIONS.

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Points.

1. The Court erred in permitting the witness, Ill, to refresh his memory and testify from the notes.

2. The Court erred in ruling that the comment made by the Prosecutor in his summing up was proper comment.

3. The Court erred in allowing the State to ask the defendant if she had known Dr. Muttart.

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4. The Court erred in allowing the State to ask the defendant if she had not gotten any business from Dr. Muttart.

ARGUMENT.

POINT I.

The Court erred in permitting the witness Ill to refresh his memory and testify from notes.

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This point constitutes the third assignment of error which relates to certain notes or memoranda used by the witness, Dr. Ill, to refresh his memory while testifying. Dr. Ill testified that he had made an examination of the complaining witness when she was in the hospital. He could not recall the result of his examination and asked permission to read his "hospital history" (p. 50, ll. 27 and 28). His testimony is as follows:

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"Q. Did you examine her? A. Yes.

"Q. What did you find her condition to be? A. Can I read my hospital history?

"Q. (By the Court.) Did you make it? A. I didn't write it, but I dictated it.

"Q. (By the Court). Those are notes you dictated at the time of the examination you made of her? A. Yes.

"BY MR. HAMILL:

"Q. When? How long after you examined the woman did you dictate this statement? A. Probably at the time. I don't remember exactly. It is customary to dictate them at the time. 10

"Q. But you don't remember when you dictated them? A. No.

"Q. You didn't see the person to whom you dictated it taking it down? A. Probably, yes.

"Q. We have to get this accurately; you couldn't say positively? A. I don't recollect no.

"Q. You don't know whether the person that took it, first took rough notes, and then completed the perfect copy you have in your hand? A. I don't know, no." 20

Underhill on Criminal Evidence (Sec. 217, page 396, beginning at line 13) lays down the rule that a witness at a criminal trial will be allowed to consult a writing to refresh his memory under the following circumstances:

"If he, while retaining no independent recollection of the facts transcribed, remembers having made the memorandum, or, when it was made by another, if he remembers having seen it, and that, when he saw it, he knew it was correct" (citing 12 Pac., 318, 97 S. W., 566, 94 S. W., 1038, 3 R. I., 132, 32 S. W., 102, 10 At. 210, 302; 29 Pac., 117, 31 Pac., 561; 19 N. Y. S., 121, 15 At., 371). 30

In *Titus v. Gunn*, 69 N. J. L., 410, it is held that it is erroneous to permit a witness to use as a memorandum from which to testify, a document in the preparation of which he did not par- 40

ticipate and concerning the accuracy of which he had no personal knowledge. This case is quoted with approval in *Hill v. Adams Express Company*, 68 At. Rep., p. 94.

While it is true the Doctor dictated the statement he does not remember when he did so or whether the person to whom it was dictated took down the dictation in his presence or how the statement was prepared.

- 10 He therefore had no personal knowledge of the accuracy of the statement or notes from which he testified. Counsel respectfully submit that it was improper for Dr. Ill to be permitted to use this "hospital history" in order to refresh his memory.

POINT 2.

- 20 **The Court erred in ruling that the comment made by the prosecutor in his summing up was proper comment.**

This constitutes the eighth assignment of error. The Prosecutor in his address to the jury said:

"From an examination he made of her he became convinced that a criminal operation had been performed, and he would not have anything to do with her, but he gave her some codeine pills to allay the pain."

- 30 There is no evidence on the part of any of the doctors in the case showing the commission of a criminal operation. In fact Dr. Ballentine's treatment of the girl consisted in his calling once upon her during which visit he made no examination whatever and leaving her some codeine pills to take. It is true that the Prosecutor (printed case, pages 48 and 49) in his examination of Dr. Wilson endeavored to inject into the doctor's testimony an inference that a criminal operation
40 had been committed but the attempt to do so was

promptly overruled by the Court. Having been prevented by the Court from getting this evidence into the record he erroneously over the objection of counsel, commented upon it before the jury.

But comment upon excluded evidence is practically the same thing as comment upon matters which are not in evidence and is governed by the same rules as statements not supported by evidence.

People vs. Aiken, 33 N. W., 821;

State vs. Sullivan, 66 Ala., 48;

Commonwealth vs. Flint, 81 Ky., 186;

State vs. Exon, 26 S. W., 1088;

State vs. Clark, 5 S. W., 115.

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In *Blackman v. W. J. & S. R. R. Co.*, 68 N. J. L., page 1 it is held that where counsel in summing up to a jury travels outside the evidence, bases arguments upon facts which have not been proved and appeals to the prejudice of the jury, it is the plain duty of the Court, upon objection made, to interpose; and a refusal of the Court to interpose, where otherwise the right of the party would be prejudiced, is legal error.

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In *Ivey, Plaintiff-in-Error vs. State of Georgia*, (113 Ga., 1062) the Court said:

“While the State is the accuser in every criminal case, it does not seek the conviction or punishment of anyone of its citizens unless the evidence shows beyond a reasonable doubt that he is guilty. An officer is appointed to represent the State in the courts, and it is his duty, when the evidence shows and tends to show the guilt of one on trial for crime, to argue to the jury that the evidence is sufficient to authorize a conviction, and that the jury should return a verdict of guilty. The State, however, will in no case permit its representative to go outside of the evidence to find a basis for appealing to the sentiments, passions, or prejudices of the

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10 jury in order to obtain a conviction (*Jesse v. State*, 20 Ga., 169). The solicitor general, appointed to represent the interest of the State in the trial of offenders, does not occupy the position of counsel generally. His duty does not require him to insist upon the conviction of the accused unless the evidence is sufficient to authorize it. His office is quasi judicial, and, while it is his duty, if he honestly believes that the evidence shows the guilt of the accused, to insist upon this view before the jury, and to use in his argument all his ability and skill in presenting the case as made by the pleadings and the evidence, still it is under no circumstances his duty either to go outside of the case, and state facts not in evidence or to appeal to the passions or prejudices of the jury."

20 The only question remaining is whether the Prosecutor withdrew his statement that a criminal operation was performed. He did in fact say: "We will eliminate the question of a criminal operation"; but then he immediately followed it up by saying that Dr. Ballentine reported it to the criminal authorities. After further colloquy between the Prosecutor and counsel for defendant the Court of its own motion intervened and said:

"We will not discuss the testimony now. The question is whether it was improper comment. I do not think it was. Go on."

30 This we submit was error. In *Long v. State*, 12 Ga., 293, it is held that it is error for the Court not to permit correction of misrepresentation of the evidence made by counsel by recalling the witness if in court or by referring to the testimony as recorded.

40 It would have been useless for the defendant to have requested the Court to have the jury disregard this testimony or to withdraw it from its consideration because the Court approved the

comment of the Prosecutor by declaring it was not improper and telling him to "Go on." It is submitted that the case of the *State vs. Kroll* (Vol. 93, No. 6 of the advance sheets of the Atlantic Reporter, issue of April 22, 1915, page 571) does not apply here for the reason that the Prosecutor in that case actually withdrew the objectionable remark from the jury and the Court confirmed the contention of defendant's counsel that there was no evidence to support the objectionable remark. 10

POINTS 3 and 4.

The Court erred in allowing the State to ask the defendant if she had known Dr. Muttart.

The Court erred in allowing the State to ask the defendant if she had not gotten any business from Dr. Muttart. 20

These points constitute the fifth and sixth assignment of error and are argued together.

It is contended that the cross examination of the defendant (printed case, pages 109, 110, 111) regarding her knowledge of and relations with Dr. Muttart was improper cross examination. Counsel for the defendant in direct examination brought out nothing regarding Dr. Muttart and any testimony in reference to this matter was totally irrelevant and immaterial to the issue. 30

In *State v. Sprague*, 64 N. J. L., 419, the rule is laid down as follows:

"That the cross examination of a defendant who offers himself as a witness and testifies in his own behalf on his trial upon a criminal indictment must be limited to the subjects originated in his examination in chief. He is subjected to the same liabilities and the same privileges of any other witness. If upon cross examination he testifies to facts 40

and things which are collateral and immaterial to the issue, he cannot be contradicted as to those acts and things by evidence in rebuttal."

It is further pointed out that no effort was made by the State to contradict anything elicited by this cross examination.

10 The only purpose of the State was to discredit the witness in the eyes of the jury by conducting an examination on a matter which could not have any bearing on the issue involved in the trial.

If it would tend to show that the real import of her testimony was materially different from its original aspect it might upon the authority of *Colloty v. Schumann*, 73 N. J. L., 92, have been proper. But it failed to do this and was therefore not permissible, and its admission greatly injured the defendant.

20 **Under Sections 136 and 137 of The Criminal Procedure Act.**

Points.

I. The defendant suffered manifest wrong and injury by reason of the Court admitting the "speculum" in evidence.

II. The defendant suffered manifest wrong and injury by reason of the Court charging the jury that

30 "The fact that this young woman had a previous miscarriage, or visited someone else, is not finally to affect your minds in determining this defendant's guilt. If she had ninety-nine other operations and somebody else had gone free, that is not the question."

III. The defendant suffered manifest wrong and injury by the Court's ruling that the following question was proper cross examination.

40 "Q. Do you mean to tell me you couldn't give her something, or do something to alleviate her pain at that time? A. No.

"Q. You could not? A. No."

IV. The defendant suffered manifest wrong and injury by reason of the Prosecutor's leading method of examining the complaining witness throughout her entire direct examination.

V. The defendant suffered manifest wrong and injury by reason of the Court's ruling that the comment made by the Prosecutor in his summing up was proper comment.

ARGUMENT.

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POINT I.

The Defendant Suffered Manifest Wrong and Injury by Reason of The Court Admitting the "Speculum" in Evidence.

This point constitutes the third specification. The use of the speculum in evidence to illustrate the testimony of the complaining witness worked manifest wrong and injury to the defendant.

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Underhill in his work on Criminal Evidence, section 48, page 78 says:

"As a general rule, it seems essential that articles shown to the jury should be connected, at least *prima facie*, with the crime in issue. Indeed, the propriety and justice of permitting articles and implements, such as deadly weapons, lanterns, masks, counterfeiters' tools, gambling apparatus and the like, used by criminals, but which are not shown to be connected, with the accused, to be exhibited to the jury may well be doubted. Such a practice, under the pretext of illustrating or explaining the evidence, is well calculated to prejudice the jury against the accused."

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Prof. Wigmore in his work on Evidence, section 2130, page 2890, says:

"There is a general mental tendency, when a corporal object is produced as proving something, to assume, on sight of the object, all else that is asserted about it. The sight

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- of it seems to prove all the rest. Thus, it is easy for a jury, when witnesses speak of a horse being stolen from Doe by Roe, to understand, when Doe, is proved to have lost the horse that it still remains to be proved that Roe took it; the missing element can clearly be kept separate as an additional requirement. But if the witness to the theft were to have the horse brought into the court room, and to point it out triumphantly, 'If you doubt me, there is the very horse!' This would go a great way to persuade the jury of the rest of his assertion and to ignore the weaknesses of his evidence of Doe's connection. The sight of the horse, corroborating in the flesh, as it were, a part of the witness' testimony, tends to verify the remainder. This tendency, illogical though it be, is deeply rooted among all persons, even the most intelligent and reflective; and it has been already specially noticed with reference to the propriety of using autoptic preference (or, real evidence) as a source of proof (ante 1157, 1158). The great dramatist has satirized it in his scene with Jack Cade's mob, where their leader proclaims himself, to the questioning magistrate as the descendant of Earl Mortimer, whose son
- 10 " 'Was by a begger woman stol'n away,
And, ignorant of his birth and parentage,
Became a bricklayer when he came to age
His son, am I; deny if you can';
to which his follower, Smith the Weaver,
adds vehemently the following strong confirmation:
- 20 " 'Sir, he made a chimney in my father's
house; and the bricks are alive at this day
to testify it, therefore deny it not!'"
- 30

It is admitted that the speculum received in evidence was not the instrument used in effecting the alleged abortion. In fact the complaining witness stated that she saw it for the first time in the office of the Prosecutor (Printed case page 23, lines 20 to 30, page 24).

- 40 The introduction of the instrument was solely for the purpose of illustrating her testimony. It

may be urged that this was permissible under the authority of the case of the *State v. Fox*, 25 N. J. L. 566. But in that case, however, the facts are very different. There a model and measurements of injuries suffered by the deceased were allowed in evidence. This was competent evidence for as the court said: "It was not denied that the evidence was itself competent."

In *State v. Johnson*, 59 N. J. L. 542, 543, it was held competent to admit in evidence the boots worn by the defendant on the night of the murder and to impress them in a box of sand and ask certain witnesses if the marks thereby made were similar to what they had seen on the ground near where the body of the murdered woman was found. It will be noted that here again the article exhibited was present so to speak, and connected with the commission of the crime. 10

In *State v. Barnes*, 75 N. J. L. 426, it was held permissible to admit in evidence bottles of ergot and needles found in the house of the defendant. Here again we find that the property exhibited to the jury and admitted in evidence was the actual property of the defendant and connected with the crime. 20

The Barnes case refers to *Commonwealth v. Brown*, 121 Mass., p. 69, where a speculum chair and other surgical instruments adapted to use in producing abortions and found in possession of the defendant were declared to have been properly admitted in evidence. This was, however, for the express reason that they were in possession of the defendant and tended to prove that the defendant had the means and opportunity to commit the offense charged. In the case sub judice the defendant not only never had a speculum in her possession but furthermore never used a speculum in her professional work as a midwife. (Printed case, page 75, beginning at line 10, also page 76, lines 1 to 36). 30 40

POINT II.

The Defendant Suffered Manifest Wrong and Injury by Reason of the Court Charging the Jury That "The Fact That This Young Woman Had a Previous Miscarriage, or Visited Someone Else, is Not Finally to Affect Your Minds in Determining This Defendant's guilt. If she had Ninety-Nine Other Operations and Somebody Else had Gone Free, That is not the Question."

This point constitutes specification number twelve. There is no evidence in the case that the girl had, as the Court said, "ninety-nine other operations and somebody else had gone free." The point here made is that the learned trial judge gave instructions which were not based upon any evidence contained in the case. The Court did not know and had no means of knowing the facts thus stated. And even though stated hypothetically it is submitted that they were not permissible.

In *State v. Smith*, 41 N. J. L., 598, the Court in his charge stated: That it was a part of defendant's story that the murderer had come in through an opening in the floor, and he commented unfavorably on the probable truth of the story. No such statement had been made by defendant and it was held that this was error as it assumed a fact to have been proved.

Instructions of this character have been held to be ground for reversal. In *State v. Skillman*, 76 N. J. L. 464, affirmed 77 N. J. L. 804, it was said "instructions not based upon any evidence in the case should not be given."

POINT III.

The Defendant suffered manifest wrong and injury by the Court's ruling that the following question was proper cross examination: "Q. Do you mean to tell me you couldn't give her something to alleviate her pain at that time? A. No. Q. You could not? A. No."

10

This point constitutes specification number sixteen. The Court allowed the State to ask the defendant the following question (printed case, page 78, line 24):

"Q. Do you mean to tell me you couldn't give her something or do something, to alleviate her pain at that time? A. No.

"Q. You could not? A. No."

Defendant's counsel objected to this and the following colloquy occurred (printed case, page 78, lines 18 to 40):

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"MR. HAMILL: If your Honor please, I object to this. It is not evidence that she asked to have the pain relieved, but to have an abortion performed, and she said no; she could not do that.

"THE COURT: Have you anything further to say, Mr. Hamill?

"MR. HAMILL: I do not think that is proper cross examination, if your Honor please.

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"THE COURT: I think it is within the reasonable limits of cross examination."

The defendant was not a physician but merely a mid-wife and while authorities on this point are somewhat scarce the case of *Commonwealth v. Hannah Porn*, (196 Mass., 326, 82 N. E., 31) seems to be in point. This case holds a defendant mid-wife to be guilty of practicing medicine because she used six printed prescriptions or

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formulas in treating her patients, which contained directions for their application, and the purposes for which they were used, as follows: "For vaginal douche", "For postpartum hemorrhage", "To prevent purulent ophthalmia in the newborn", "For uterine inertia", and "For painful hemorrhoids or piles." She used no other prescriptions or formulas. The Court held that this was a practice of medicine even though it was connected with obstetrics.

In *Higgins v. McCabe*, 126 Mass., 13, it is intimated that treatment of eyes of the infant (for which one of the prescriptions of the defendant was employed) is not within the duties of midwifery.

Previous to this question we have the following inquiry by the Prosecutor (printed case, page 78, lines 9 to 15):

20 "Q. You offered to do nothing to alleviate her pain, did you? A. No.

"Q. You turned her out by the door; is that true? A. Yes.

"MR. HAMILL: I object, if your Honor please.

"THE COURT: I will sustain the objection."

The effect of this line of questioning on the part of the Prosecutor was to excite in the minds of the jury a hatred for the defendant because they made her appear before them as a cold and cruel woman who refused to help another who was in pain, whereas the defendant was only refraining from doing an act she could not perform as a lawful practitioner of midwifery. She could not have assisted the complaining witness in the manner the Prosecutor indicated without subjecting herself to a criminal prosecution for practicing medicine without a license. It is further respectfully submitted that the question

which was allowed by the Court was cognate with the question previously ruled out. In *People v. Ray*, 36 App. Div., 389, 55 N. Y. Supp., 410, it was held that the repetition of questions having a tendency to cast suspicion upon the accused, cognate with questions already excluded was improper and unjustifiable.

POINT IV.

The defendant suffered manifest wrong and injury by reason of the prosecutor's leading method of examining the complaining witness throughout her entire direct examination.

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Underhill on Criminal Evidence, Section 211, page 385, states the rule as follows:

"It is not usually allowable in the direct examination to ask leading questions, i. e., questions which by their form or character suggest to the witness the answer desired" (Greenleaf on Evidence, Vol. 1, Section 434, is to the same effect).

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The Prosecutor continually during his examination of the complaining witness resorted to leading questions and it will be seen that this conduct on his part unquestionably worked manifest wrong and injury to the defendant, especially when we consider that the case against defendant is practically made out solely by the evidence of the complaining witness. To appreciate the important part which leading questions played in the examination of the complaining witness requires a reading of her entire direct testimony. We shall, however, refer here to some of these questions:

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"Q. You waited half an hour? A. Yes (p. 12, l. 4).

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"Q. What was said about the twenty dollars being the price? A. She took it.

"Q. Then what—after you arranged to pay her twenty dollars?

"MR. HAMILL: She did not say that (p. 14, ll. 14 to 19).

"Q. Did you give her any money then? A. I gave her fifteen dollars.

"Q. That was the amount you had with you? A. Yes (p. 14, ll. 27 to 30).

10 "Q. She had an instrument in a basin? I show you what purports to be an instrument; was it anything like that? A. Yes (p. 15, ll. 10-12).

"Q. Where did she put this something else? A. I didn't notice.

"Q. Did you feel it? A. Yes.

"Q. Where? A. Felt cramps in my stomach after it was used.

"Q. Did she or not use it in your privates? A. She did (p. 17, ll. 13 to 21).

20 "Q. Go to the same room? A. Yes.

"Q. Upon the same bed? A. Yes.

"MR. HAMILL: I object. It is leading.

"MR. HUDSPETH: I will withdraw it.

"Q. You went in the same room? What happened? A. She performed the same operation again (p. 17, ll. 38 to 40; p. 18, ll. 1 to 4).

"Q. Standing up or lying down? A. Lying down.

30 "MR. HAMILL: I object.

"THE COURT: Why?

"MR. HAMILL: He is absolutely putting the answer into the girl's mouth.

"THE COURT: I will allow the question.

"Q. On the bed? A. On the bed (p. 18, ll. 9 to 17).

"Q. Did you feel any liquid on that day? A. Yes.

"MR. HAMILL: All through this examination it has been leading.

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"THE COURT: Try not to lead (p. 19, ll. 31 to 35).

"Q. Was there anything in the room the result of the operation? A. Yes" (p. 21, ll. 23 and 24).

These are a number of instances of leading questions which were asked throughout her entire examination. It can be seen that the case of the complaining witness is built up mainly through a policy of asking leading questions which policy was continued even after the Prosecutor had been admonished by the Court to desist from it. 10

While it may be argued under the authority of *Luckenbach v. Sciple*, 43 Vroom, 476-478, that the Trial Court in its discretion may allow leading questions this authority it is submitted does not countenance a continued series of such questions designed to build up a case which could not be made out without resorting to them. It is submitted that a reading of the testimony of the complaining witness will suggest that in reality it was not the complaining witness, but rather the Prosecutor who testified with the approval of the complaining witness. 20

POINT V.

The defendant suffered manifest wrong and injury by reason of the Court's ruling that the comment made by the prosecutor in his summing up was proper comment. 30

The above point has reference to the following statement made by the Prosecutor in his address to the jury:

"From an examination he made of her he became convinced that a criminal operation had been performed and he would not have anything to do with her, but he gave her some codiene pills to allay the pain." 40

This same point is argued under Point 2, beginning at page 8 of this brief. It constitutes the eighth assignment of error and is argued as a cause for reversal on the strict bill of exceptions. It is believed by counsel for defendant that it also shows manifest wrong and injury to the defendant. The argument, therefore, made upon it in Point 2 of the Strict Bill of Exceptions is relied on here. The Court is respectfully referred to that argument beginning on page 8 of this brief as it is not considered advisable to unduly prolong this brief by reciting it verbatim here.

Lastly.

It is respectfully insisted that this defendant was not properly convicted and for the reasons advanced in this memorandum, both under the Strict Bill of Exceptions and under Sections 136 and 137 of the Criminal Procedure Act the conviction aforesaid should be reversed.

HAMILL & CAIN,

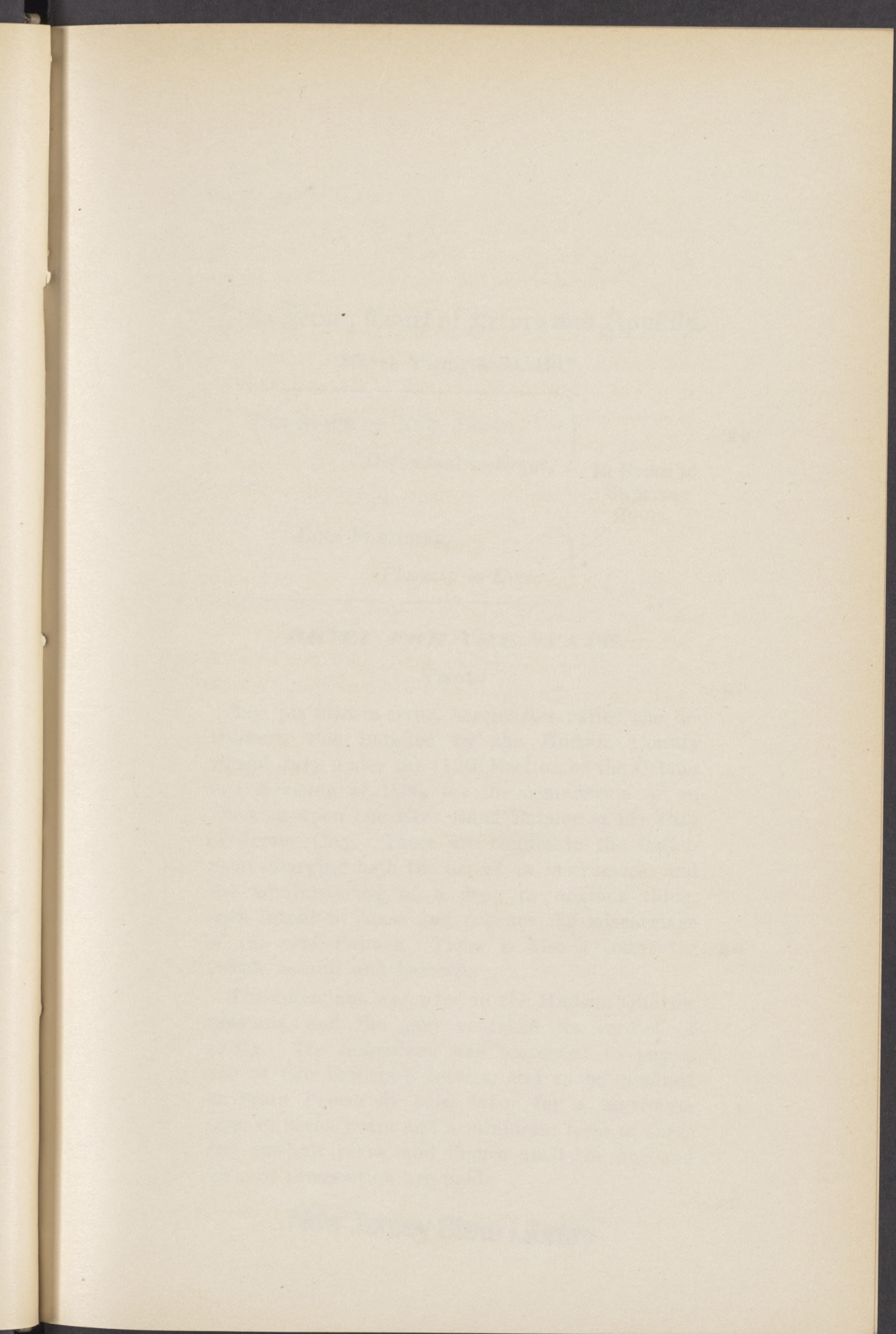
Attorneys for Plaintiff-in-Error.

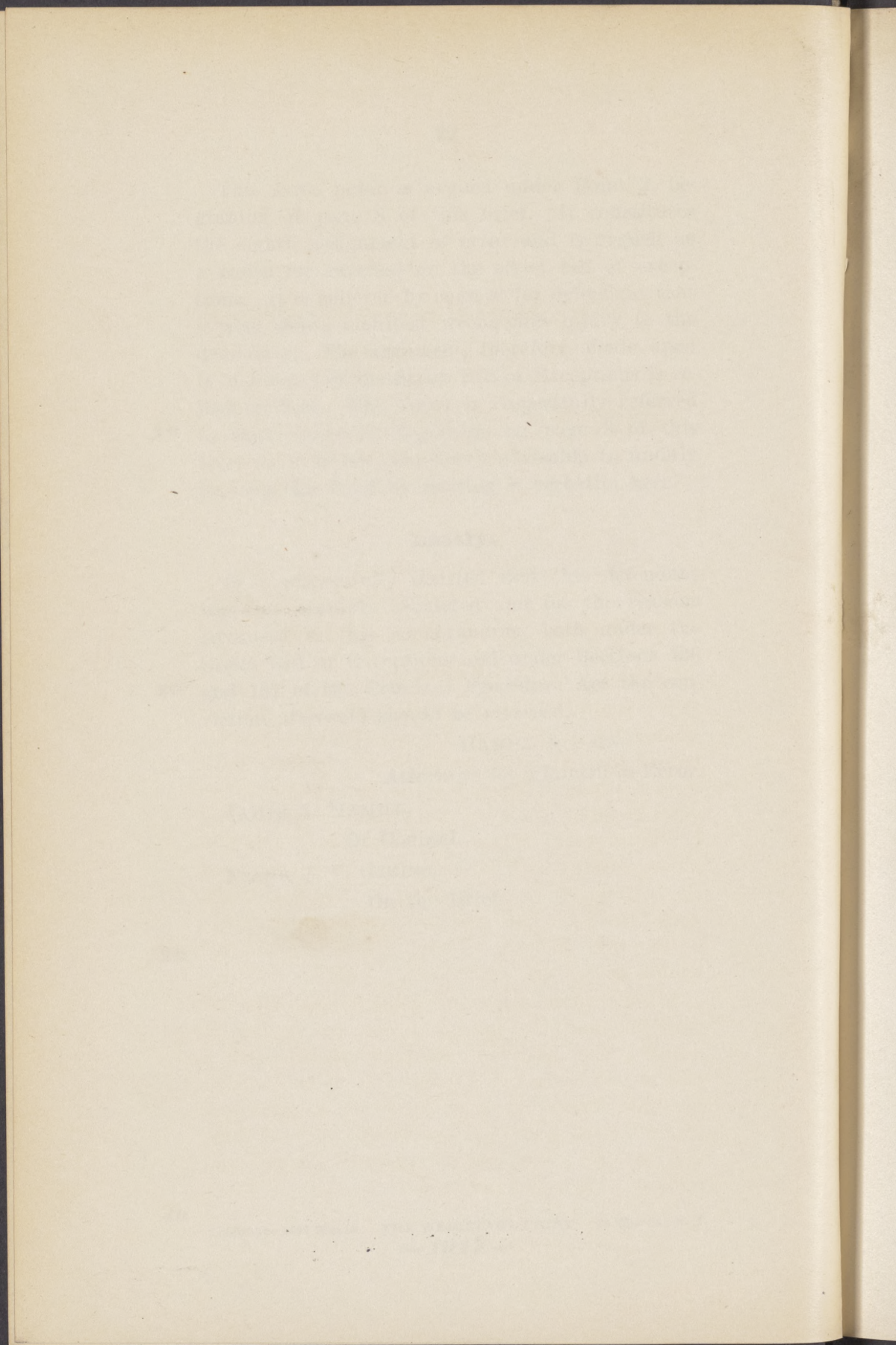
JAMES A. HAMILL,
Of Counsel.

FRANK J. V. GIMINO,
On the Brief.

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New Jersey Court of Errors and Appeals.

March Term, A. D. 1917.

THE STATE OF NEW JERSEY,

Defendant-in-Error,

vs.

JANE FLETCHER,

Plaintiff-in-Error.

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In Error to
Supreme
Court.

BRIEF FOR THE STATE.

Facts.

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The plaintiff-in-error, hereinafter called the defendant, was indicted by the Hudson County Grand Jury under the 119th Section of the Crimes Act Revision of 1898, for the commission of an abortion upon one Elva Edna Palmer at the City of Jersey City. There are counts in the indictment charging both the use of an instrument, and the administering of a drug or noxious thing, with intent to cause and procure the miscarriage of the said Palmer. There is also a count for simple assault and battery. 30

The defendant was tried in the Hudson Quarter Sessions, and the jury returned its verdict of guilty. The defendant was sentenced to pay a fine of two thousand dollars, and to be confined in State Prison at hard labor for a maximum term of seven years and a minimum term of three and one-half years, and thence until the fine and costs of prosecution are paid.

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The Supreme Court, at the November Term, A. D. 1915, affirmed the judgment of the Hudson Sessions. The judgment of the Supreme Court is now here brought for review on writ of error.

There are both assignments of error and specifications of causes for reversal. All the points of objection raised by the assignments are included in the specifications. The specifications also contain several additional objections. We shall, therefore, deal with the specifications of causes, taking in their order those that seem to merit consideration.

POINT I.

There was no error in the admission into evidence of the instrument (speculum).

The second specification of cause for reversal relates to the admission into evidence of a speculum, an instrument that may be used in connection with the performance of abortions (Case, p. 53, l. 4 et seq.).

The complaining witness testified (Case, p. 15, l. 2) that the defendant "performed the operation with the instrument." Thereupon she testified as follows (Case, p. 15, ll. 10-35), with reference to that instrument:

"Q. When you were on the bed, what did she say? A. She had her instrument in a basin.

"Q. She had an instrument in a basin. I show you what purports to be an instrument; was it anything like that? A. Yes.

"Q. It was like that, was it? A. Yes.

"Q. That was in the basin? A. Yes.

"Q. Describe the instrument as nearly as you can? A. I don't know what the other instrument was; I didn't see it. I didn't see the other instrument that was used.

"Q. You saw— A. I saw *that instrument* in some water."

Some confusion seems to have arisen between counsel and the Court as to the language of the complaining witness, Palmer, in identifying the *kind* of an instrument which was used. It is apparent from the language of this witness that there were two instruments used. This appearance is in the following language:

“Q. Describe the instrument as nearly as you can. A. I don’t know what the *other instrument* was; I didn’t see it. I didn’t see the *other instrument* that was used.” 10

The witness having apparently been interrupted, a new question is begun as follows:

“Q. You saw— A. I saw that instrument in some water” (Case, p. 15, ll. 25-30).

It was not contended by the Prosecutor that he had either of the identical instruments that were used (Case, p. 23, l. 34 et seq.):

“MR. HUDSPETH: I don’t want to mislead you. We don’t say that was the same instrument that was used upon her, but a similar instrument to that, identically similar to that.” 20

One of the instruments used (referred to by the witness as the “other instrument”, Case, p. 15, l. 25) the witness did not see and, of course, could not identify. The speculum, however, she did see, and endeavored to describe by her reference to the speculum displayed at the trial. Nor was it intended that the speculum which the witness saw at the time of the illicit operation was the direct means by which the abortion was committed, that is to say, by which the abortion was actually consummated. 30

If, for the sake of argument, it ought to be conceded that the speculum admitted into evidence was not properly described by the complaining witness, she being a lay witness, it cannot, on the other hand, be charged that the admission on 40

this ground was harmful to the defense, because, whatever lack there may have been in the qualification of this instrument, was amply supplied by the testimony of Dr. Ill in his examination by the Prosecutor and counsel for the defendant (Case, pp. 53-55).

Now, all this reference to the instrument in question was a description of the instrument that was alleged to have been used in aid of the criminal operation performed by the defendant. The complaining witness swore, as quoted above, that one of the instruments used on her was like the one that was admitted in evidence. It was, therefore, clearly proper for the trial judge to allow this in evidence, as a thing which served as an autopic, tangible description.

“That a witness may properly communicate his knowledge in the form of a map, drawing or diagram, has never been doubted, and in numerous instances they have been received to describe all manner of physical objects, from houses and land to blood corpuscles; and the mode of representation, whether termed chart, map, plan, diagram, sketch or otherwise is immaterial. The map, etc., on the principle already explained, must be verified or otherwise put in as a part of some one’s testimony, and it may be excluded either because not verified at all, or because the witness using it has no knowledge of the thing it purports to represent. Conversely, on the same principle it is not necessary that the user of the map, if acquainted with the object it represents, should be the maker, or the map should be an official one—

“A model is governed by the same principle just described as applying to maps and diagrams.”

Greenl. Ev. 16th Ed. Vol. I, p. 545, Sec. 439g, citing *State vs. Fox*, 25 N. J. L., 566-602.

“It is further objected that there was no proof that the model produced was a cor-

rect model. A model is a copy or imitation of the thing intended to be represented. And when the witness states that he exhibits a model, it is to be inferred, in the absence of all proof to the contrary, that the model is correct. If otherwise, the fact should have been shown upon the trial."

State vs. Fox, 25 N. J. L., 566-602.

POINT II.

No error in allowing witness to refresh his memory, while testifying, by means of notes and memoranda.

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The third specification of cause for reversal relates to the permission by the Court of the witness, Ill, called on behalf of the State, to use, while testifying for the purpose of refreshing his memory, certain notes, alleging further that these notes had not been personally made by the witness and had not been prepared from memoranda dictated at the time to which they related.

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The writing used to refresh the memory of the witness, and now in question, was the hospital history of the case of the complaining witness. Concerning this history the witness testified as follows (Case, p. 50, l. 29) :

"Q. (By the Court) Did you make it? A. I didn't write it but I dictated it.

"Q. (By the Court) Those are the notes you dictated at the time of the examination you made of her? A. Yes."

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And again (Case, p. 51, l. 13) :

"BY THE COURT:

"Q. Is that a transcription of the notes you dictated at the time the case was treated by you? A. Yes.

"Q. Can you by reading those notes refresh your memory as to the condition you found this woman in at the time she was in the hospital, under your care? A. Yes."

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The Court then permitted the witness to use the notes for the purpose of refreshing his memory (Case, p. 51, ll. 30, 37).

The next witness, Hosp, also testified, with apparent reference to the same notes, as follows (Case, p. 56, l. 30) :

“By the way, I may add that these notes are my notes, which I wrote, that Dr. Ill dictated to me.”

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“Entries in diaries exhibiting the acts of a party may be used for the purpose of refreshing the recollection of a witness who had knowledge of the facts to which they relate.”

Lindenthal vs. Hatch, 61 N. J. L., 29.

“A witness may use his own memorandum, made at or near the time of the events recorded, either to refresh or to supplement his memory.”

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Myers vs. Weger, 62 N. J. L., 433.

In the latter case Judge Adams, speaking for the Court of Errors and Appeals, said (at p. 441) :

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“The use by a witness of his own memorandum, made at or near the time of the events recorded, is not merely to refresh the memory by reviving faint impressions, but also to supplement the memory by preserving details that would otherwise be forgotten. In a case of the latter class the witness is able to prove the details, not by remembering the particulars that compose them, but because the circumstances under which the memorandum was made afford satisfactory assurance that at the time of the entry its contents were known by the witness to be true * * *
It may be added that the use of a memorandum rests very much in judicial discretion.”

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POINT III.**No error in the refusal of the Trial Court to direct a verdict.**

“The review of the refusal of the Court to discharge a defendant under trial upon an indictment, or to direct a verdict of not guilty at the close of the State’s case, permitted and required by Section 137 of the Criminal Procedure Act of 1898, brings into question only whether there were then presented facts proper to be submitted to the jury in respect to the charge contained in the indictment.” 10

State v. Jagers, 71 N. J. L., 281.

“The direction of a verdict for the defendant in a criminal case is a matter resting in the discretion of the trial court, and unless it appears that in the refusal to so direct the defendant has suffered manifest wrong and injury, this Court cannot say that the refusal of the trial court was error.” 20

State v. Brown, 72 N. J. L., 354.

“Where an indictment contains several valid counts, and the evidence warrants conviction upon one of the counts, a motion for direction of a general verdict of acquittal cannot properly be granted.”

State v. Terry, 72 N. J. L., 375.

POINT IV.**The seventh specification of cause for reversal relates to certain comments upon the evidence made by the prosecutor during his closing address to the jury. No error in these comments.** 30

Counsel for the defendant seeks to predicate error on a certain colloquy between the Prosecutor and defendant’s counsel during the former’s closing address to the jury. An examination of this 40

colloquy, as it appears in the record (Case, p. 135, l. 20; p. 136, l. 1) will disclose that whatever fault defendant's counsel had to find with the Prosecutor's remarks, these remarks were amended, and to the evident satisfaction of defendant's counsel, when he expressed his assent in the words, "That is right" (Case, p. 136, l. 1).

So far as concerns the alleged inaccuracy of the Prosecutor's statement to the jury that it was in
 10 evidence that Dr. Ballantine reported to the criminal authorities the illicit operation performed on the complaining witness, attention is called to the following excerpts from the testimony of the complaining witness (Case, p. 115, l. 8, et seq.) :

"Q. When did you first intimate to anyone that it was Mrs. Fletcher you charged with this abortion? A. I didn't tell it to anyone because she asked me not to.

20 "Q. When did you first speak of it? A. Not until I was in the hospital.

"Q. When did it become public property? A. When I was in the hospital.

"Q. What is that? A. When I was in the hospital.

"Q. And through that source it came to the public authorities? A. No, sir, it came to the public authorities through Dr. Van Horne—the first doctor that was mentioned to-day—Dr. Vallentine (Ballentine)."

At the time of the introduction of this testimony
 30 quoted by the Prosecutor, counsel for the defendant remained silent as to any possible objection because of its impropriety or lack of probative force. It being in evidence, the Prosecutor's comment thereon was not proper subject of objection.

POINT V.**No error in the instructions to the jury.**

The eighth specification of cause for reversal relates to the instructions given by the trial judge to the jury.

The charge in its entirety, as well as the particular portion thereof made the subject of this specification, speaks for itself. No defensive comment is required to sustain it. 10

“A judge is not required to adopt the form, or the words, or the collection of phrases in which a request to charge is framed.”

Gardner v. State, 55 N. J. L., 17.

POINT VI.**The allowance of leading questions is in the discretion of the Court. There was no abuse of this discretion.** 20

The ninth specification of cause for reversal alleges error in the Court's permission to the State to ask leading questions of its own witness.

This specification will not be considered by this Court. It is vague and general, and is not directed toward any particular admission or admissions of testimony. However, in defense of the general objection made by this point, it is contended for the State that the allowance of leading questions lies in the sound discretion of the Court, and that the record reveals no abuse of that discretion. 30

“The Trial Court has a discretionary power to allow leading questions, and its rulings do not constitute ground for reversal.”

State v. Van Ness, 82 N. J. L., 181.

In *State v. Johnson*, 73 N. J. L., at p. 201, the Court said: 40

"The allowance of a leading question was a matter in the discretion of the Court. There was no error in the admission of the question objected to."

Judgment should be affirmed.

ROBT. S. HUDSPETH,
Prosecutor of the Pleas,
Atty. of Deft.-in-Error.

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GEO. T. VICKERS,
Asst. Prosecutor of the Pleas,
Of Counsel with Deft.-in-Error.

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